

Analysis of the Respondent's Disclosure (October 2009)

| | |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| (October 1, 2009) (Volume 3, X), S/Sgt. Campbell's notes: | (October 1, 2009) S/Sgt. Campbell's transcribed notes pertaining to Constable Michael Jack: |
| 459 Kent Taylor. stake down w/ 2200 32 | 01 Oct 09 1459 Kent Taylor get into driver training ASAP |

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (October 1, 2009) Counsel's additional disclosure (March 13, 2012), PC Jack's notes: | |
| <p>THU 1-09-04</p> <ul style="list-style-type: none"> - CHECKED EMAILS - SORTED FOLDERS OUT + UPDATED WITH MEET CHANGES + IMPROVE- MENTS <p>14:00 SPOKE WITH OPPA</p> <p>MR. CST MITCH</p> <p>ANDERSON</p> <ul style="list-style-type: none"> - NOTICE OF INTERNAL COMPLAINT <p>ANDERSON ADVISED</p> <p>HE HAD BROUGHT</p> <p>THE ISSUE UP WITH</p> <p>DETACHMENT</p> <p>COMMANDER ICSO.</p> <p>JOHNSON AND</p> <p>OPPA BRANCH DIREC-</p> <p>TOR AND 3RD BRANCH</p> <p>REPRESENTATIVE</p> | <p>14:35 CALLED OPPA</p> <p>ASSOCIATION</p> <p>SPOKE WITH</p> <p>MARTY MALMADOW</p> <ul style="list-style-type: none"> - FAXED PCS-068A FORMS TO THE ASSOCIATION ATTN: MARTY MALMADOW <p>15:30 - PREPARED # 2010</p> <p>OPP COUNT CALENDAR</p> <p>FOR AVAILABILITY</p> <p>DATES</p> <p>16:00 GDT + PROGRAMMED</p> <p>A NEW SMART CARD</p> <p>16:00 FOLLOWED UP ON</p> <p>MOBILE OCCURRENCES</p> <p>PROPERTY DAMAGE 45</p> |

(October 2, 2009) Counsel's additional disclosure (March 13, 2012), PC Jack's notes:

FM 02-OCT-09
 02 1-OCT-09 @
 [REDACTED]
 [REDACTED]
 FAXED EVALUATION
 REPORTS TO OPPA
 WITH PARTY INFORMATION
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 49

Exhibit 26b - Correspondence to OPPA

(October 2, 2009) (Volume 3, X), S/Sgt. Campbell's notes:

2930 Kent Taylor
 Re Mike Jack
 - Decision maker not
 good with him
 in recruit train
 - judgment not to be
 good & taking
 responsibility for
 his actions also
 poor thing: Driving
 Drives
 Obs. in recruit
 training gun scenario
 storm house
 spoke to Callahan
 Forbet of the
 other areas
 most of it just OK
 biggest point of
 concern was the
 internal distractions

- Gun problem
 - External - radio
 passenger - low
 score. Are driver
 not good in multiple
 FTunked PVO COPE
 2nd instructor 2nd
 Police Service
 mental thing for distraction?

Rich. Driv. in fire not good
 near collision in P. 40R
 - not taking responsibility
 for actions

evaluation 09 OCT 09
 27 OCT 1999

- Rich Nie - progress
 gun & crime scene
 - photo line ups
 instructions are
 same - I could see

names

1001

(October 2, 2009) S/Sgt. Campbell's transcribed notes pertaining to Constable Michael Jack:

02 Oct 09

0930

Kent Taylor Re: Mike Jack-decision making not good with him in recruit training-judgement has to be good \7 taking responsibility for his actions did poor things during drives

Obs. In recruit training gun scenario stormed house spoke to Colleen Kohen far bit of time

-other areas most of it just ok biggest point of concern weak with internal distractions
UNKNOWN WORD...problems

External -radio passenger low score ave. driver not good @ multi-tasking flunked PVO
@ OPC

2nd instructor 2nd police service mental thing for distraction

Rich driving is not good near collision in p.lot

-not taking responsibility for actions

Evaluation 09 Oct 09

27 Oct 1pm

Rich Nie -progress give e.g. crime scene - photo line-up instructions given - I will send message

Anticipated evidence of Mr. Michael Jack (Schedule A):

My numerous correspondences to the Ontario Provincial Police Association during the month of October (Exhibit 26b) seeking assistance were never returned and further exacerbated my feelings of being helpless.

02Oct09 - PC Nie

- attended crime scene near Burleigh Falls – PC Jack advised he had never done one before and needed direction – he was given a crime scene log from the prior officers that he was relieving and was told to fill in the blanks with the appropriate responses as it was straightforward – at one point he asked if licence plates should be written down and people that passed by – he was given direction as to what I thought was appropriate or not – he then got out and showed me a copy of a log that he had found with instructions on what to do – I told him this was another example of him setting me up to tell him something different than what he already knew to do
- teleconference with Kent Taylor and Staff Campbell discussing the need for remedial driving
- family dispute call – PC Jack got to the point where he had no idea what to do and told the complainant that he needed to have me explain what to do because I was more senior and had better knowledge – he tried to justify it by saying that I knew more about banking and mortgages which I explained had nothing to do with the complainants questions – the son of the complainants girlfriend attended and was irate- PC Jack appeared nervous and was very concerned by his words “oh no” when he saw the son punch his truck in the driveway - it was explained to PC Jack that I was not certain he felt confident to look after that situation had I not been there – it appeared it would have gone out of control quickly – he even needed direction at the beginning of the call to keep the involved parties separate

My responses to the above 3 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

The documentation of the incident is true except for the PC Nie’s interpretation (as always) of my motive to share with him the source of my knowledge. Since it was my first time securing a crime scene I did ask PC Nie for direction. While filling out the crime scene log sheet I recalled that I had a copy of a crime scene log sheet with instructions on how to fill it out in my duty bag. (Note: I had come across a copy at the detachment and took a copy of it for reference purposes a few months earlier. In my duty bag I had many different forms and documents that I carried around with me, many of which I never actually used. The crime scene log sheet with instructions was just one of those forms/documents). When I pulled it out to review and presented to PC Nie he immediately accused me with setting him up.

PC Nie extreme biasness and prejudice towards me precipitated that he firmly believed that I was an “Undesirable”. He had already made it clear in an e-mail to Sgt. Postma on August 27, 2009, that he was going to make certain things clear to me and I guess he was.

- ***‘I want it made clear to him (which I will do) that I am not about to waste my time on someone that does not want to learn or accept constructive criticism.’***

PC Nie was determined that anything I said or offered in an explanation to anything that he perceived wrong was an attempt to usurp his level of intellect or authority. All I was doing was pointing out the instructions on the log that any officer would have. All he had to do was advise me that this is what he does and you can see that what I do is no different than what is required of an officer as per the crime scene log instructions. This is the method I use and it accomplishes the same objective.

Anticipated evidence of Mr. Michael Jack (Schedule A):

Note: I was wrong with respect to the month in which the incident took place. Unlike my personal respondents when they compiled the point form chronology I did not have the benefit of access to my officer’s notes when I compiled my statement. Hence, I thought the incident took place in September 2009.

Sometime in September 2009 I was working a day shift at Peterborough Detachment. Cst. Nie and I were dispatched to secure a crime scene of a suspected arson in a cottage country. I was not feeling well that day and had a severe nasal congestion. At the scene, while outside of the cruiser, I blew my nose. I did not have a tissue and did so by turning aside. There were only two of us at the scene at the time. Cst. Nie immediately reprimanded me for doing this by saying in a vexatious manner that “it was disgusting” and lectured me that it was inappropriate what I did. I agreed and apologized; however, I felt humiliated. I was made to feel like a little boy who had misbehaved.

The Tribunal can see how demeaning it is to have one adult tell another adult that what was natural to their ethnic origin was disgusting. There was absolutely nothing disgusting about it. I even turned aside and blew my nose. Though the average white Canadian might not do that, it is a common thing for someone else of an Eastern origin. I do not mean that every ethnic minority from the east blows their nose onto the ground. However, it is common for one to do that when one does not have a handkerchief or a tissue. I did a natural act of blowing my nose onto the ground without any forethought and I was instantly reprimanded. I was literally scared of anything else I did and became even more conscientious of my actions. I was scared because I did not know when I would do something else that was second nature to me, but offensive to PC Nie. It was extraordinary stressful and extremely humiliating to live in a state of constant apprehension.

Anticipated evidence of Mr. Michael Jack (Schedule A):

Being a probationary and a minority and constantly being subjected to comments like I have mentioned earlier, no one can possibly imagine the stress one goes through. One starts to become acutely aware of his every action and comments to the point where one is constantly measuring how he is perceived. As the result of those derogatory comments I became very self-conscious and my self-confidence was further eroded. I was literally being made to feel like I was a puppet on Cst. Nie's string and hence the string of the Ontario Provincial Police and the Ontario Public Service. Yet, shocked as I was to the brazen and bare faced discrimination, I never voiced my objection to Cst. Nie's inappropriate comments because I was concerned that if I had done it would have negatively affected my performance evaluations.

My response to the 2nd bullet point entry is as follows: Ok

My response to the 3rd bullet point entry is as follows:

It is true that I asked PC Nie to explain to the complainant what to do as I did not know. Among other things, the complainant in the matter sought advice on how to split their property up, their mortgage, each of their initial financial investments in the property and his rights and obligations with respect to the matter (Exhibit 47, page 80):

HISTORY: Jeff EVANS and Diane KELLY have been in a common law relationship for approximately 5 years and are currently going through a separation. Approximately 5 years ago Jeff and Diane jointly purchased a 35 acres farm at the incident location with Diane making a down payment of \$50,000. Chad has been residing with them permanently at the incident location. Recently, Jeff had two of his daughters from the previous marriage move in with them. Jeff has not been getting along with Chad and Diane has not been getting along with Jeff's daughters. On Thursday, October 1, 2009 the couple had a family dispute and Diane left the house to stay at her daughter's, Lori VANDENBERG, place in Norwood. Jeff in turn sent his daughters back to their mother's until things calmed down.

INVESTIGATION: On Friday, October 2nd, 2009 at approximately 12:15 hrs PC JACK and PC NIE arrived at the incident location and spoke with Jeff who advised officers about his situation, the separation process and the problems he was having with Chad. Chad has been cutting cedar trees and transporting them away from the property despite Jeff prohibiting him to do so. Jeff advised officers that Chad is an unreasonable young man of a very large size and that he seeks confrontation when spoken to. Jeff sought advice from the officers as to what his rights and obligations were in dealing with the matter and what appropriate courses of action were available to him to handle the situation. As the officers were finishing speaking with Jeff, Diane arrived at the incident location.

I was unfamiliar with these types of calls, but knew that PC Nie was familiar with from reading some of his reports from past occurrences, specifically one in reference to a chronic neighbor dispute between Rod Fallis and Robert Macintosh at the 1610 Ninth line in Smith-Ennismore-Lakefield Township, Peterborough County. Hence, when I realized I did not know what advice to give to the disputing parties, I asked PC Nie to explain to them. As always, regardless of what I did or did not do, asked or did not ask I was viewed and documented as an incompetent recruit.

Rebuttal to PCS-066P (Month 9) (Exhibit 59):**Self-Confidence**

Rating: Does Not Meet Requirements

I did not have much confidence left when I reported to Platoon 'D' shift. The rest of the confidence was quickly eroded by Cst. Nie's accusations of me lying to him, playing mind games with him, not doing anything properly, not accepting personal responsibility for my mistakes, etc. I was literally being made to feel like I was a puppet on Cst. Nie's string and hence the string of the Ontario Provincial Police and the Ontario Public Service.

(October 4, 2009) Counsel's additional disclosure (April 3, 2012), PC Jack's notes:

| | | |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 09:10 | SUL 09-04-09 SIGNED & SUBMITTED PCS-066P (MONTH 8) SST BUDNAC FORWARDED FROM TO PC FILMAN FOR HIS SIGNATURE AND SST ELKHILL FOR HIS | |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

That is a very crucial piece of evidence to my allegation of the Respondent's falsification of my refusal to sign my Month 8 PER. When I look at my notes I wonder what it was that I signed and submitted on October 4, 2009. I clearly remember how, sometime in September 2009, I was served with my Month 8 PER with the word 'REFUSED' written in place of my signature and that is what this Tribunal has. No evaluation meeting ever took place. Is it possible that I was served with and signed an extra copy of my Month 8 PER after they had forwarded the fraudulent one (Exhibit 27) with the falsified refusal to sign it ('REFUSED' in place of my signature) to the Regional Command Staff in Orillia? If so then where did that copy go to? Is it possible that after I had signed it, it went to a shredder? I know this is a speculation. However, if I am wrong about my speculation then where is the document that I signed? I have not been able to find any trace of it in any of the Respondent's many disclosures.

My Month 8 PER (PCS-066P) (Exhibit 27):**Evaluation Meeting**


- ☒ I have met and discussed my performance with my coach officer or my accountable supervisor.
- ☒ I have reviewed and discussed with my coach officer or my supervisor, my responsibilities under the policy on Safe Storage and Handling of Firearms.
- ☒ I have reviewed and discussed with my coach officer, or my supervisor, my performance in relation to my responsibilities under the Professionalism, and Workplace Discrimination and Harassment Prevention policies.

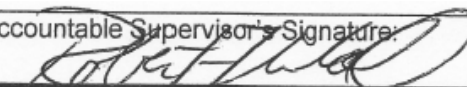
Employee's Comments:

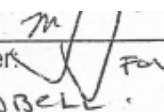
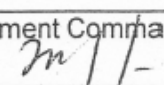
Employee's Signature:

REFUSED

Date:

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Coach Officer's Signature (Performance has been observed that supports the rating assigned for each category).  | Date: 11 Sep 09 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|

| | | |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------|
| Accountable Supervisor: SGT. R. FLINDALL | Accountable Supervisor's Signature:  | Date: 11 Sep 09 |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------|

| | | |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-----------------|
| Detachment Commander:  RON CAMPBELL | Detachment Commander's Signature:  | Date: 11 Sep 09 |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-----------------|

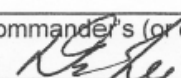
Instructions:

At the conclusion of each evaluation period:

Regional Commander (or designate)

Comments (Mandatory)

Issues noted. Work Improvement plan is attached.

| | | |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Insp. Dave E. Lee Manager Staff Development Training | Regional Commander (or designate) Signature:  | Date: 05 Oct 09 |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-----------------|

Of interest is Insp. Lee's signature dated October 5, 2009. Hence, if according to my notes I signed my Month 8 PER on October 4, 2009, then:

- How did the word 'REFUSED' materialize in place of my signature?
 - How is it possible that PC Filman, Sgt. Flindall and S/Sgt. Campbell signed it on September 11, 2009?
 - Moreover, how is it possible for Insp. Lee to review it, add his comments and sign it the day after?
- After all, the delivery of it to the GHQ in Orillia would normally take some time.

(October 5, 2009) (Volume 2, N-21):

From: McNeely, Dave (JUS)
Sent: Monday, October 05, 2009 10:50 AM
To: Campbell, Ron (JUS); Taylor, Kent (JUS)
Cc: Lungstrass, Chris (JUS)
Subject: FW: DRIVING MEMO - Michael Jack

Staff Sgt Ron Campbell / Sgt Kent Taylor

Here is the report on Probationary CST Michael Jack. As discussed Sgt Kent Taylor will do some remedial driving with Cst Jack. If you require any additional information please give me a call.

Dave
503-4561
613-284-4561



D. McNeely M. Jack
Driving Mem...

(October 5, 2009) (Volume 3, V-2):

D McNeely M Jack Driving Memo.txt
Eastern Region Headquarters
Quartier General de la Region Est

3312 County Rd. 43 East 3312 ch. de comtl~43 est

P.O. Box 2020
c.p. 2020
Smiths Falls ON K7A 5K8 Smiths Falls ON K7A 5K8
Tel: (613) 284-4500 Fax: (613) 284-4597
Vnet: 503-4500 Fax Vnet: 503-4597

File Reference: 291-00

October 2nd, 2009

MEMORANDUM TO:

Detachment Commander Ron Campbell
Staff Sergeant
Peterborough County Detachment
Central Region

RE:
Probationary Constable: Michael Jack
Detachment Peterborough County
ERHQ File# 291

On Friday 18 September 2009 I conducted a "Driver Competency Assessment" on Probationary Constable Michael Jack.

This assessment took place in the City of Kingston using an unmarked Chevrolet Malibu. A specially designed route was utilized to conduct the driver assessment and each driver navigates a broad range of situations to assess their driving abilities. These sessions take approximately 1.5 hours to complete. During this time, the driver is also exposed to internal/external "distracters"

while their driving continues to be assessed.

During this assessment CST Jack was required to drive a complex route that varies in 3 distinct respects.

- Driving while receiving directions from myself
- Driving while following a navigation sheet -and while doing this pointing out various house (building) numbers
- Driving while counting backwards by 3' s.

Under these conditions I found some concerns with respect to Constable Jack's driving and have contacted Sgt Kent Taylor of the Provincial Academy to provide some remedial driving opportunities.

□
I am including a copy of the "Driver Competency Assessment". When Transport Canada initially developed the standards used in these assessments they tested numerous people to determine

what the "average" driver is. A baseline (5) (average) was established through the scientific analysis of the data. Most professional drivers measure over (6). The goal of the OPP driving program is to have all of our drivers score 6 and above (i.e. above average.) Anything under 6 indicates areas where there is room for improvement. Although the report indicates that Michael is an above average driver -this is not the level that we are looking for with respect to our officers.

Please note the following excerpts:

- ***'During this assessment CST Jack was required to drive a complex route that varies in 3 distinct respects'***
- ***'Under these conditions I found some concerns with respect to Constable Jack's driving'***
- ***'the report indicates that Michael is an above average driver'***
- ***'This is not the level that we are looking for with respect to our officers'***
- ***'Most professional drivers measure over (6).'***
- ***'The goal of the OPP driving program is to have all of our drivers score 6 and above (i.e. above average).'***
- ***'Anything under 6 indicates areas where there is room for improvement.'***

If the report as stated identifies me to be at a level above 5 and goes on to show that professional drivers exhibit a skill level of 6 and in parenthesis classifies this level of skill as above average (i.e. above average) then what was the purpose of this assessment? The majority of police officers are not professional drivers. Where professional drivers in the report of this assessment exhibit a skill level of 6, I was clearly viewed by this report to be of almost the same level. If anything this report shows that the level of driver training given to each officer simply can never meet the impossible goals of the OPP to have every member be above professional.

As such there are areas that have been identified in the assessment where improvement can take place. I will say that I found CST Jack to be cooperative but felt that he truly was under a fair amount of stress. There were a few situations that presented themselves during the assessment that, involved other drivers breaking the law (for example a 2ndcar running a 4 way stop -we had the right of way and started to turn / and another older woman running a red etc). Cst Jack took appropriate measures to prevent collisions in both cases, but wanted me to know "emphatically" that the problems were caused by the other drivers. I discussed how the unexpected has to be expected when driving in the city and you really can not predict the actions of others.

Please note the following excerpts:

- ***'I will say that I found CST Jack to be cooperative but felt he truly was under a fair amount of stress'.***
- ***'There were a few situations that presented themselves during the assessment that, involved other drivers breaking the law'.***
- ***'Cst Jack took appropriate measures to prevent collisions in both case, but wanted me to know "emphatically" that the problems were caused by the other drivers'.***

• Speed -slowing down assists in building in safety margins but at times a consistent speed is also required when "way finding" or self navigation. If a situation presents itself that requires some thought or reaction, the best course of action is to move your vehicle to a

safe location and then determine what the best course of action is.

• Headway -maintain proper distances between vehicles -builds in escape routes -this includesthevehiclesinfrontofyou-butalsoincludesvehiclesfollowingyou-more attention to the actions of vehicles following your vehicle can increase safety margins.

• Junctions -interaction between the driver and the road system -range in this area

indicates room for more consistent performance.

• Dynamic Space Management -increasing "space-cushion" between all vehicles around you.

• Driving with distractions -as indicated by the Driver Competency Report, Probationary

CSTJackshouldfocusonhisdriving-especiallywhenfacedwithcompetingdemands for his attention. (Internal or external distractions).

It is interesting to note that when CST Jack was operating the vehicle, while counting backwards

and faced with very busy and complex intersections he chose to focus "on the driving" and

dropped counting until he had successfully navigated the situation -often communicating clearly

with other drivers to accomplish what he needed to do. This is exactly what we want our people

to do when faced with competing demands. By elevating driving and making it a priority our officers will be able to avoid problems while behind the wheel.

Please note the following excerpts:

- ***'It is interesting to note that when CST Jack was operating the vehicle, while counting backwards and faced with very busy and complex intersections he chose to focus "on the driving" and dropped counting until he had successfully navigated the situation – often communicating clearly with other drivers to accomplish what he needed to do. This is exactly what we want our people to do when faced with competing demands.'***

The Ontario Provincial Police Officer must be an above average driver and it is hoped we will set the standard for professional vehicle operation. Elevating "driving" to a higher priority will increase CST Jack's overall driving performance, allow him to increase his safety margins, and assist him in becoming a better driver. Some overall work with Sgt Kent Taylor will give him the

tools he needs to make better decisions, faster when dealing with situations that present themselves while operating a police vehicle.

I have included a definition sheet of the variables contained in the assessment report to assist in understanding the computer generated sheet.

Should you require any additional information or assistance please contact me.

Thank you,

Sgt Dave McNeely

Eastern Region Headquarters

613-284-4561

503-4561

Driving Characteristics:

All drivers are scored on 4 discrete variables: speed, headway, junctions, vehicle control, and two composite ones: dynamic time management and dynamic space management. Overall Mr. Jack's driving was in the upper end of the average range. Drivers can use either space or time to control their environment. Mr. Jack uses time and space equally effectively (DSM -dynamic spacemanagement and DTM -dynamic timemanagement). Both time and space were in the upper end of the average range. Mr. Jack was in the upper end of the average range on both junctions (JUN -junctions; understanding and use of the road system) and headway (REA -headway; interaction with other road users). Mr. Jack was in the average range on speed (SPD -appropriateness of speed choices for road

and traffic conditions). On vehicle (VEH -vehicle handling skills) Mr. Jack scored above average. with the exception of the high degree of variability found in junctions this driver was relatively consistent within individual measures as well as between all measures taken.

Please note the following excerpts:

- 'Overall Mr. Jack's driving was in the upper average range'
- 'Mr. Jack uses time and space equally effectively'
- 'Both time and space were in the upper end of the average range'
- 'Mr. Jack was in the upper end of the average range on both junctions'
- 'Mr. Jack was in the average range on speed'
- 'On vehicle handling skills Mr. Jack scored above average'

Task Loading Conditions:

During the drive Mr. Jack was scored while driving normally, while following a set of written navigational instructions

and pointing out a predetermined set of addresses and while counting backwards by threes. Mr. Jack showed significant difference between driving normally and driving while wayfinding (multitasking), suggesting this driver needs to develop better strategies to deal with competing demands and should exercise caution if operating a motor vehicle while trying to complete a secondary task. Mr. Jack showed no difference between driving normally and driving while counting backwards (internal distraction) suggesting that Mr. Jack has developed good control over his allocation of attentional

resources.

Please note the following excerpts:

- ***'Mr. Jack showed significant difference between driving normally and driving while way finding (multitasking)...'*** This is in contrast to stating that I possessed and demonstrated above average skills with respect to vehicle handling skills.
- ***'Mr. Jack showed no difference between driving normally and driving while counting backwards (internal destruction) suggesting that Mr. Jack has developed good control over his allocation of attentional resources'***

Segments:

while each segment was approximately three minutes long, some segments were more complex than others based on a

predetermined set of criteria. Mr. Jack showed no differences between driving in complex and simple environments

suggesting that he can handle both complex and simple driving situations equally.

Please note the following excerpts:

- ***'Mr. Jack showed no differences between driving in complex and simple environments suggesting that he can handle both complex and simple driving situations equally'***

Recommendations:

Mr. Jack is an average driver who could easily raise his overall driving performance. This driver should undergo some

remediation to raise his overall safety margins as found in the driver competency assessment across all areas of driving

and when driving with external distractors. This driver should be re-evaluated upon completion of remediation.

Please note the following excerpt:

- ***'Mr. Jack is an average driver who could easily raise his overall driving performance.'***

Please note two contradictions in the same report:

indicates areas where there is room for improvement. Although the report indicates that Michael is an above average driver -this is not the level that we are looking for with

Mr. Jack is an average driver who could easily raise his overall driving performance. This driver should undergo some

Also, I was found to be under a fair amount of stress, which I was of course:

place. I will say that I found CST Jack to be cooperative but felt that he truly was under a fair amount of stress. There were a few situations that presented themselves during the

Moreover, the two common mathematical rules for rounding numbers dictate the following:

- Determine what your rounding digit is and look to the right side of it. If the right side digit is 4, 3, 2, or 1, simply drop all digits to the right of your rounding digit.
- Determine what your rounding digit is and look to the right side of it. If the right side digit is 5, 6, 7, 8, or 9 add one to the rounding digit and drop all digits to the right of it.

How come, according to all the excerpts above that show I scored **in the upper end of the average range** I was still rated **an average driver**? I hope the Tribunal will see the pattern of focusing only on the negative aspects of my performance.

The contradictions of this report also speak of the author's poor articulation skills for the report is lacking in credibility. The report, in being reviewed and supported by the author's supervisor, Sgt. Kent Taylor raises questions about the competency of the sergeant and in turn raises the same questions about everyone else that placed weight to it.

Furthermore, in the Driving Questionnaire (Volume 6, 45) that I was required to fill out on May 29, 2008, prior to the commencement of the personal interview at the OPP General Headquarters in Orillia I indicated the following:

13. How do others rate your driving skills? (More than one area may be checked)

- ☒ Cautious
- ☐ Overly Cautious
- ☒ Confident
- ☐ Very Confident
- ☐ Routine
- ☐ Assertive
- ☐ Somewhat Aggressive
- ☐ Aggressive
- ☒ Considerate

14. Using the scale provided, indicate your driving experience on the following roadways.

| | Never | (Circle one for each) | | | Often |
|------------------------|-------|-----------------------|---|---|-------|
| | | Seldom | | | |
| a. Country - Highway | 1 | 2 | 3 | 4 | 5 |
| b. City – Suburbs | 1 | 2 | 3 | 4 | 5 |
| c. City – Downtown | 1 | 2 | 3 | 4 | 5 |
| d. City – Highway | 1 | 2 | 3 | 4 | 5 |
| e. 400 Series Highways | 1 | 2 | 3 | 4 | 5 |

As the Tribunal can see from my answers in the Driving Questionnaire I was less than accustomed to driving in City-Downtown area. That was exactly the area where the driving assessment took place!

While it may sound far-fetched I wonder who picked or recommended the City-Downtown as the place for assessing my driving skills. Should not have the driving instructor or whoever designed the assessment's route familiarize themselves with my driving history? Because out of the five choices for roadways, the one in which I had the least experience was chosen for the purposes of assessing my driving skills. Fundamental law of probability dictates the chance of randomly selecting City-Downtown would have amounted to only 20% success. Interesting, is not it?

Furthermore, on the date of the driving assessment on September 18, 2009, I was under a lot of stress because my work environment was toxic as:

- I felt the racial hate and contempt towards me by numerous members at the Peterborough Detachment,
- I had been falsely charged under the HTA by my accountable supervisor,
- I was viewed as an incompetent recruit,
- I was disallowed to work on my own,
- I was under unfair scrutiny,
- I was being targeted.

Hence, Sgt. Dave McNeely rightfully observed my high stress level and wrote in the assessment report: ***'I will say that I found CST Jack to be cooperative but felt he truly was under a fair amount of stress'.***

(October 5, 2009) (Volume 2, N-20):

From: Taylor, Kent (JUS)
ent: October 5, 2009 12:41 PM
to: Kohen, Colleen (JUS)
Cc: Campbell, Ron (JUS); McNeely, Dave (JUS); Nie, Richard (JUS)
Subject: PC Michael Jack - Driving Remediation

S/Sgt Kohen

On Friday, 02Oct09 I had the opportunity to discuss PC Jack's driving history with S/Sgt Campbell ad PC Nie of Peterborough detachment. We agreed that following your advice we need to do whatever we can to help improve PC Jack's driving situation.

The earliest date that I was able to schedule PC Jack for remedial training is 22Oct09 as I am currently on two weeks training. Sgt Robin James has just returned from an extended leave and may be able to assist at an earlier date. She is checking with her manager regarding availability.

I will advise when we have further information.

Thank you.

Kent

Sgt. T.K. (Kent) Taylor
Provincial Police Academy
Driver Training Coordinator

Office (705) 329-7510
Cellular (705) 345-0759

(October 5, 2009) (Volume 2, N-21 and Volume 3, V-5):

From: Campbell, Ron (JUS)
Sent: October 5, 2009 2:11 PM
To: Taylor, Kent (JUS); Kohen, Colleen (JUS); Lee, Dave E. (JUS); Nie, Richard (JUS); Butorac, Peter (JUS); Postma, Jason (JUS)
Cc: Johnston, Mike P. (JUS)
Subject: FW: DRIVING MEMO - Michael Jack

Attachments: D. McNeely M. Jack Driving Memo.pdf

I have placed a copy of this in Mike Jack's file. Last week when Kent called Rich Nie went over some other info concerning Mike Jack's progress. He advises Mike Jack is still not being accountable for his own actions. He is concerned about his progress in other areas. As an example Rich advised of scene security detail at a fire. Mike told him he had never done this before. So Rich explained what his responsibilities would be. Mike then asked him where the plate log was? Rich questioned him and he told him that he understood he should copy down plates of vehicles passing the scene. Rich advised that this was for eg. vehicles that may drive by a few times or be suspicious not the next door neighbour leaving their house. Mike produced an instruction sheet he had previously been given that covered this. Rich finds he is constantly being told by Mike. "I have never done this before" when he has or he has the instructions and if a small point is missed he questions this or states I was not trained properly. Anyway his next anniversary date is coming up and I have advised Rich he should have a conference call with Colleen prior to disclosing his next evaluation. As has been said earlier Mike is very book smart it appears the common sense factor or the transfer of book to practical is not taking place very well. Ron

Is the Tribunal expected to believe that according to the last statement I was not fit to be a police officer because I did not possess common sense?

Excerpts from an Introduction to Psychology – a text book from a first year University course:

'Common sense and intuition are not accurate guides to understanding human behavior because they often point to inconsistent or contradictory conclusions, and because they are subject to many forms of bias.'

'Critical thinking is thinking that avoids blindly accepting conclusions or arguments, and instead closely examines all assumptions, carefully evaluates existing evidence, and cautiously assesses all conclusions.'

(October 5, 2009) (Volume 2, N-22):

From: Kohen, Colleen (JUS)
ent: October 5, 2009 3:18 PM
To: Campbell, Ron (JUS); Lee, Dave E. (JUS); Nie, Richard (JUS); Butorac, Peter (JUS); Postma, Jason (JUS)
Cc: Johnston, Mike P. (JUS)
Subject: RE: DRIVING MEMO - Michael Jack

Ron

I think it would be a good idea to have a conf call with you folks in Det, Dave and myself. The next PCS66P and WIP is due on the 08 Oct.

It would help to have a draft version of both .

What date works for you folks ?

Colleen

C.S.Kohen
Staffing Officer
Career Development Bureau
905 681-2511 (office)
505 4030 (VNET)
905 973- 8877 (cell)

(October 5, 2009) (Volume 2, N-23):

From: Lee, Dave E. (JUS)
ent: October 5, 2009 4:18 PM
o: Kohen, Colleen (JUS); Campbell, Ron (JUS); Nie, Richard (JUS); Butorac, Peter (JUS); Postma, Jason (JUS); Salter, Peter (JUS)
Cc: Johnston, Mike P. (JUS)
Subject: RE: DRIVING MEMO - Michael Jack

Everyone:

I am on vacation starting 07Oct. S/Sgt Peter Salter is sitting in for me.

Pete: are you available for a meeting tomorrow?

Insp. D. Lee
Regional Manager
Staff Development and Training
OPP Central Region
705-329-7418

(October 5, 2009) (Volume 2, N-24):

From: Campbell, Ron (JUS)
ent: October 5, 2009 4:41 PM
o: Lee, Dave E. (JUS); Kohen, Colleen (JUS); Nie, Richard (JUS); Butorac, Peter (JUS); Postma, Jason (JUS); Salter, Peter (JUS)
Cc: Johnston, Mike P. (JUS)
Subject: RE: DRIVING MEMO - Michael Jack

The shift is on rest days and work their last 2 day shifts Wed and Thur 07 and 08 Oct this week before starting 2 weeks of days. I have a meeting on Wed at 1000hrs and 1430hrs I would suggest either Wed morning at 0900hrs or Thursday. I don't know if Rich has any court on these two days. Ron

(October 5, 2009) (Volume 2, N-25):

From: Kohen, Colleen (JUS)
Sent: Monday, October 05, 2009 4:56 PM
To: Campbell, Ron (JUS)
Subject: Re: DRIVING MEMO - Michael Jack

Hi
Ron

Will we have a draft version of pcs66/wip by that date ?

With rich and the sgt on nights will he be able to join ?

Colleen

(October 5, 2009) (Volume 2, N-25):

From: Campbell, Ron (JUS)
To: Kohen, Colleen (JUS)
Sent: Mon Oct 05 16:58:19 2009
Subject: RE: DRIVING MEMO - Michael Jack

I hope so but they are off on rest days and don't return to work until Wed. Rich seem to indicate he has lots of documentation. The common theme here is Mike continues to not be accountable for his own actions. Perhaps Thursday would be the best day for a phone conference. Ron

The other three probationary officers were obviously perfect for I was the only one whose coach officer had a lot of documentation on for me. The truth is that their mistakes were overlooked because they were not minorities and did not speak with such a noticeable accent. However, according to the Counsel for the Respondent this was not a differential treatment, not a form of targeting and neither did this mean that I was racially marginalized from the rest of the detachment.

(October 5, 2009) (Volume 2, N-25):

From: Kohen, Colleen (JUS)
Sent: Monday, October 05, 2009 5:00 PM
To: Campbell, Ron (JUS)
Subject: Re: DRIVING MEMO - Michael Jack

I am good thursday at 0900 but really need the draft version to review to see what is there

Let me know which day/time is good

(October 5, 2009) (Volume 2, N-25):

From: Campbell, Ron (JUS)
Sent: October 5, 2009 5:01 PM
To: Kohen, Colleen (JUS); Nie, Richard (JUS); Butorac, Peter (JUS)
Subject: RE: DRIVING MEMO - Michael Jack

Peter, Please ensure Rich has time Wed morning to complete this and get it to Colleen. Jason would be a good candidate for Mike to go out with if Rich is going to be in the office. Ron

(October 6, 2009) (Volume 1, I-43):

Re: Break & Enter investigation at Young's Point Public School

From: Eberhard, Kelly (JUS)
Sent: October 6, 2009 8:11 AM
To: Jack, Michael (JUS)
Cc: Hobbins, John (JUS); Lafreniere, Bob (JUS); Schroter, Sarah (JUS)
Subject: [REDACTED]

hi, this accused's mum has called a couple of times wanting to know if her son is eligible for the EJS program. My gut reaction is no as it is a serious offence there were three co-accused and all ran from police plus we don't know amount of damages. I understand that all youth have no records...

Can you give me some insight into this? What do you think? Do you now have the exact damages? What is the school board's feeling...

(don't say we are going to agree to ejs becauz I am far from that but you might canvas their ideas for dealing with...

thanks,
kelly

(October 6, 2009) (Exhibit 34b):

Re: Break & Enter investigation at Young's Point Public School

From: Eberhard, Kelly (JUS)
Sent: October 6, 2009 8:11 AM
To: Jack, Michael (JUS)
Cc: Hobbins, John (JUS); Lafreniere, Bob (JUS); Schroter, Sarah (JUS)
Subject: r v. Vollick sp09178964

hi, this accused's mum has called a couple of times wanting to know if her son is eligible for the EJS program. My gut reaction is no as it is a serious offence there were three co-accused and all ran from police plus we don't know amount of damages. I understand that all youth have no records...

Can you give me some insight into this? What do you think? Do you now have the exact damages? What is the school board's feeling...

(don't say we are going to agree to ejs becauz I am far from that but you might canvas their ideas for dealing with...

thanks,
kelly

(October 6, 2009) (Volume 1, I-43):

From: Hobbins, John (JUS)
Sent: October 6, 2009 8:15 AM
To: Eberhard, Kelly (JUS); Jack, Michael (JUS); Jack, Michael (JUS); Flindall, Robert (JUS)
Cc: Lafreniere, Bob (JUS); Schroter, Sarah (JUS)
Subject: [REDACTED]

MICHAEL - pls respond to the crown. Thanks.

I must have been special as court officer PC John Hobbins not only took an initiative to remind me to respond to the Crown Attorney Kelly Eberhard exactly 4 minutes after she had sent me an e-mail in regards to the matter, but also added my name twice to the emailing list. For my response to Crown Attorney Kelly Eberhard please refer to Exhibit 34b.

(October 6, 2009) (Volume 1, I-43):

From: Flindall, Robert (JUS)
Sent: October 6, 2009 9:59 AM
To: Butorac, Peter (JUS)
Cc: Nie, Richard (JUS)
Subject: [REDACTED]

Robert Flindall
Sgt. 9740
Peterborough County OPP

Though the Counsel for the Respondent masked out the subject line they did not mask out a single entry in the disclosure's bibliography. I wonder why? In any case, the subject line is: Re: R v. Vollick SP09178964. That was in reference to the Break & Enter occurrence (SP09178964) at Young's Point High School.

(October 7, 2009) Counsel's additional disclosure (April 5, 2012):

From: Campbell, Ron (JUS)
Sent: October-07-09 8:26 AM
To: Kohen, Colleen (JUS); Butorac, Peter (JUS); Nie, Richard (JUS); Slater, Peter (MTO)
Subject: FW: DRIVING MEMO - Michael Jack

Colleen I spoke with Sgt Butorac this morning and he has a 0900hrs meeting with the Crown. Could we make the meeting 1030hrs? Will you have a # for the teleconference? Tks Ron

-----Original Message-----

From: Butorac, Peter (JUS)
Sent: Wednesday, October 07, 2009 6:29 AM
To: Campbell, Ron (JUS)
Subject: RE: DRIVING MEMO - Michael Jack

we'll be available
Pete

Anticipated evidence of Mr. Michael Jack (Schedule A):

On October 7, 2009, I attended a call of suspicious activity in the north-east end of my zone. Also in attendance to this call was Cst. David Stimson. Upon arrival we parked our cruiser on the road and walked towards the house on the property. When we approached the house we caught the distinct odor of freshly cut marihuana and it caused us to look at each other to see if we recognized it. We did and immediately and quietly retreated from the area before our presence was detected. We then directly drove to the Community Police Office in Havelock and I placed a call to the Peterborough Detachment Drug Unit. We completed a general occurrence report (SP09233537) and cleared the call advising that a cursory investigation revealed a possible illegal drug grow in operation at the address and information was passed on to the Drug Unit for further investigation. Nine days later I received an e-mail from our drug unit officer, Cst. Earnie Garbutt (Exhibit 35). The e-mail was addressed to Cst. Stimson, Cst. Jack and our shift supervisor, Sgt. Butorac. It thanked us for the initial investigation and having the prudence of leaving the continued investigation to the Drug Unit. It went on to commend us that as a result of the information received a search warrant was executed and over 2000 large marihuana plants were seized. That was a substantial seizure, approximately two million dollars in street value. Moreover, it was our information that put the Drug Unit onto it. However, I never received any positive documentation from either my shift sergeant, the Detachment Operations Manager or the Detachment Commander. One would have thought that especially during a probationary term it is important to offer positive 233-10s and/or commendations where possible. However, I believe that if one wanted to terminate a new recruit during their probationary period all one had to do was to focus on every action of the recruit, criticize it where possible, concentrate on negative documentations only and generate investigations by the Professional Standards Bureau with any false allegation. The fact that I was never documented positively for conducting the initial investigation that led to a successful seizure of a two million dollar illegal drug grow operation certainly adds credence to my belief that the decision to terminate my employment had already been made and all one needed to do was to build up a file in support of a forced termination of employment.

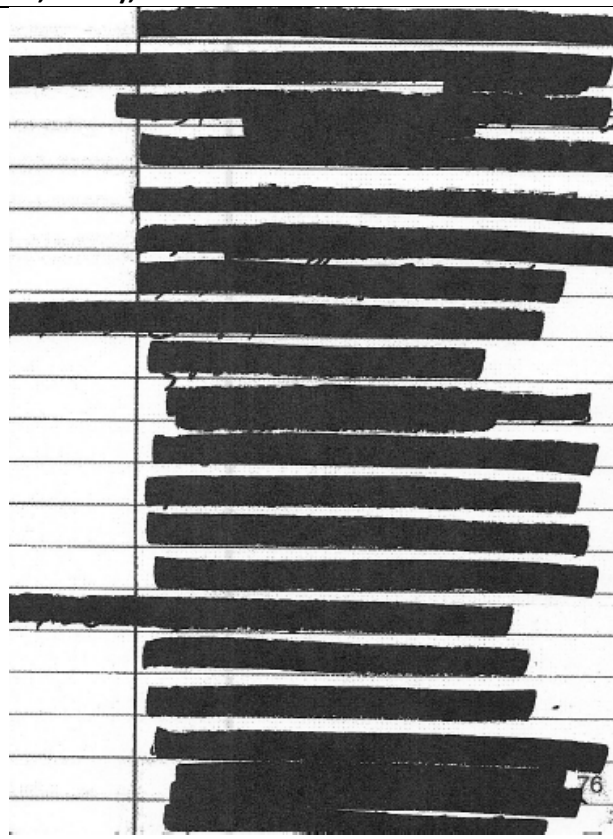
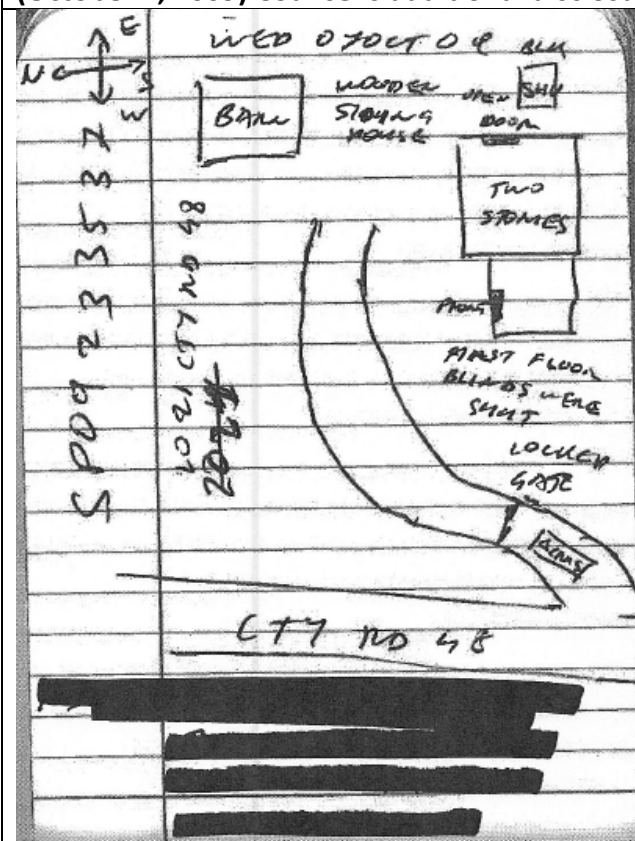
Calls for service (reportable and non-reportable) (Exhibit 47):

| | | | | | |
|------|------------|-----|---------------------------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 193) | SP09233537 | OPP | Trespass to property act [8560] | 2009/10/07 10:46 | Complete - solved (non-criminal) - 1979 48 CTY RD, HAVELOCK-BELMONT-METHUEN TWP, ON Canada (Area: 1040, Duty locn: 1104) Reportable / REPORT OF TRESPASSING CM'S PROPERTY..REPORTED FOR / POLICE INFORMATION..SEE RPT / (UNKNOWN PARTIES CLEARING TRAILS ON CALLER'S 100 ACRES) / (SUSPECTS NEW NEIGHBOURS NEXT DOOR) / (.) / (REQUESTING A CALL.) |
|------|------------|-----|---------------------------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

WED 07 OCT 09
- LM WISHED TO
REPORT FOR POLICE
INFO
- BUSINESS CARD
LEFT.
- SUSPECTS ABUSE
ROLLS FROM [REDACTED]
[REDACTED]
12:00 [REDACTED]
GATE LOCKED
WALKED UP THE
DRIVEWAY
OBSERVED BLACK
SUV PARKED ON
THE EAST SIDE
OF THE BUILDING
WIDEN FROM THE
VIEW FROM [REDACTED]
[REDACTED]
GARAGE DOOR ON
THE EAST SIDE
OPEN
NOISE OF SOME
SORT OF MANIPULATION
FROM INSIDE, I.E.
FANS; SMELLED
ODOR OF FRESHLY
CUT MANICURE
PLANTS FROM
INSIDE
PC STANSON
WITNESSED THE
OPEN DOOR & SMELL
OF MANICURE
BLACK SUV
PARKED SOUTH OF
THE OPEN DOOR.
SOMEONE MIGHT
BE INSIDE

WED 07 OCT 09
RETREATED DOWN
THE DRIVEWAY
CLEARED THE
SCENE AND DROVE
TO HAVELOCK
12:21 @ HAVELOCK ESO
NOTIFIED SGT.
BUTORAC
CALLED PICST
GAMBUTT ON
CELL:
[REDACTED]
[REDACTED]
LEFT MESSAGE TO
CALL BACK
SPOKE WITH GAMBUTT
ADVISED OF THE
ABOVE.
GAMBUTT ADVISED
HE IS CURRENTLY
AWAY IN OVERSEAS
BUT HE WILL
IMMEDIATELY ADVISE
DING UNIT AND
SOMEBODY MIGHT
CALL PC JACK FOR
MORE INFORMATION
ATTEMPTED TO CALL
[REDACTED]
LINE IS BUSY
ATTEMPTED TO
NOTIFY OF THE
ONGOING INVESTI-
GATION OF THE
PROPERTY SUSPICIOUS
ACTIVITY [REDACTED]

(October 7, 2009) Counsel's additional disclosure (April 3, 2012), PC Jack's notes:



(October 7, 2009) (Exhibit 34b):

Re: Break & Enter investigation at Young's Point Public School

-----Original Message-----

From: Jack, Michael (JUS)
Sent: Wednesday, October 07, 2009 4:52 PM
To: Eberhard, Kelly (JUS)
Cc: Nie, Richard (JUS)
Subject: RE: r v. Vollick sp09178964

Hi Kelly,

Here my insights into the matter:

We do have the monetary figure for the total value of the damage to the school property. I disclosed the repair bills provided to me by the Kawartha District Pine Ridge School Board to the court some 4 weeks ago. You should have them on file. If they grew legs, I saved a copy.

The Kawartha District Pine Ridge School Board is seeking monetary restitution for the damages caused. The total worth of the damage done is \$3,688.00 and that is all the school board wants back.

I spoke with the School Board representative and was advised that they wish to handle the case delicately and would prefer to resort to restorative justice if it is ok with the police.

As an investigating officer, I believe that since the offence is a first-time, non-violent offence (property damage only) the extrajudicial measures would be adequate to hold them accountable.

Three accused were 17 years old and one turned 18 just 4 months prior to the event. Not sure how you will prefer to hold the adult accountable.

Please let me know what else you would like to know.

Glad to be of assistance.

Michael

Though it was a Break & Enter offence there was no property stolen. Aside from the damage which had been addressed in the occurrence/synopsis/statements that the youth's parents were willing to make restitution, Extrajudicial Sanctions (EJS) were most appropriate.

(October 7, 2009) (Volume 3, X), S/Sgt. Campbell's notes:

| | |
|------|-----------------------------------------------------------------------------------------------------------|
| 0800 | Wed 07 Oct 09 On Duty Spoke to Sgt Butera Re: Mike Jack & evaluation concerns Call subject |
| 0810 | MS note |
| 0842 | Colleen Cohen Re: evaluation & meeting |
| 0934 | |

(October 7, 2009) S/Sgt. Campbell's transcribed notes pertaining to Constable Michael Jack:

07 Oct 09

0800

On duty spoke to Sgt Butorac Re: mike Jack & Evaluation concerned all subjective.

0820

MS mail

0842

Colleen Kohen Re; Evaluation & meeting time.

I know the majority of it was subjective. Who was concerned that it was all subjective?

(October 8, 2009) (Exhibit 34b):

Re: Break & Enter investigation at Young's Point Public School

Jack, Michael (JUS)

From: Eberhard, Kelly (JUS)
Sent: October 8, 2009 2:01 PM
To: Jack, Michael (JUS)
Subject: RE: r v. Vollick sp09178964

Hi Michael, thank you very much for your information. It is very helpful. I found the restitution documents, thanks. It becomes more confusing when we have an adult in the picture...I wonder if I might have the school board rep's name and number and if I could contact them and see exactly what they have in mind, then we can have a pow wow about it.
thanks,
Kelly

(October 7, 2009) (Volume 2, L-2 and Volume 3 W-12):

From: Nie, Richard (JUS)
Sent: October 7, 2009 4:25 PM
To: Campbell, Ron (JUS); Kohen, Colleen (JUS); Salter, Peter (JUS); Butorac, Peter (JUS); Postma, Jason (JUS); Lee, Dave E. (JUS)
Subject: PC Jack evaluation draft
Attachments: Recruit Prob Eval(jack#9).doc; Recruit Prob Eval (Jack work improve #9).doc

Attached below are the first drafts I completed today of PC Jack's 9th month evaluation and work improvement plan.

Colleen - I am working days again tomorrow so if you have any suggestings prior to the teleconference I can add them into the plan. I followed the format for the work improvement plan that you have suggested in the past. The only difference here is that some of the categories are measureable in that we can fix them by assigning tasks and tracking results, and some are not as measureable. By that I mean that for the categories like Oral, Decisive Insight, Analytical Thinking, Resolution, Personal Accountability, Flexibility, and Respectful Relations I struggled a bit with what to write for the action steps. My gut feeling is that I can fix some of the categories, but others fall under the "you can't teach common sense" umbrella, and PC Jack needs to step up and accept some responsibility here. Anyway, let me know what you think,

Rich

(October 8, 2009) (Volume 2, N-26):

From: Campbell, Ron (JUS)
Sent: October 8, 2009 9:19 AM
To: Kohen, Colleen (JUS); Butorac, Peter (JUS); Nie, Richard (JUS); Postma, Jason (JUS); Lee, Dave E. (JUS); Salter, Peter (JUS)
Subject: FW: PC Jack evaluation draft
Attachments: Recruit Prob Eval(jack#9).doc; Recruit Prob Eval (Jack work improve #9).doc

Rich in reviewing this I was a little confused in the one area of Listening skills and Oral Communication. Is the sudden death the same incident as for Oral you indicated he couldn't get the appropriate info to pass onto the Sgt who was enroute to the call. In the listening skills you state he was able to get the pertinent info from the relatives at the sudden death to complete the investigation? I could not open the second attachment for some reason I will keep trying maybe it is just slow. I have attached my comments on the bottom of the evaluation on the left. Ron

A review of my first five PERs revealed no deficiencies in these categories. PC Nie was having a struggle because he was seeking to rate me as 'Does Not Meet Requirements' in as many PER categories as possible.

For example, in my Month 9 PER in the *Respectful Relations* category PC Nie noted the following:

RESPECTFUL RELATIONS

Exercises the skill and willingness to react sensitively; to be empathic, compassionate and sincere. Recognizes the positive contributions of others; demonstrates trust in others by acknowledging their strengths, skills and expertise.

Specific example:

PC Jack has the first part of this category covered well. He is polite and cooperative and has the ability to be compassionate to those in need. Unfortunately, he has not gained the trust of his coworkers with his decision to answer shop. As mentioned previously, PC Jack continually asks questions that he appears to know the answers to already. It appears that he is well aware of the fact that he is doing this as he has chuckled sometimes when his coach officer has pointed it out to him. He respects the skills and expertise of his partners, however has shown that he will blame another officer rather than admit a mistake.

Does Not Meet Requirements

Of interest that PC Nie's comments in the *Team Work* category in my Month 9 and Month 10 PERs contradict those with respect to gaining trust of my coworkers in the *Respectful Relations* one above.

TEAM WORK

Works effectively with others towards a common purpose while putting the group's goals ahead of personal achievement.

Specific example:

PC Jack has been a willing participant in shift RIDE checks. Though quiet in nature, he appears to get along well with the other members of his shift.

EXHIBIT 11
Meets Requirements

TEAM WORK

Works effectively with others towards a common purpose while putting the group's goals ahead of personal achievement.

Specific example:

PC Jack has not had any issues working with the members of his platoon. He remains very quiet and for the most part deals only with his coach officer.

Meets Requirements

All PC Nie had to really say in the *Respectful Relations* and *Team Work* categories for example was, '**PC Jack is always cordial when dealing with supervisors and humble in his interaction with his peers for he fears being castigated**'.

As stated earlier what little self-confidence I had left was quickly eroded under the coaching of PC Nie. Consequently, clarification was sought for even the smallest incident that I thought I could handle just so that I would garnish some positive ratings from my coach officer. When this was perceived negatively and documented as such I just clamed up and tried my best not to speak.

(October 8, 2009) (Volume 2, N-26):

From: Campbell, Ron (JUS)
Sent: October 8, 2009 9:19 AM
To: Kohen, Colleen (JUS); Butorac, Peter (JUS); Nie, Richard (JUS); Postma, Jason (JUS); Lee, Dave E. (JUS); Salter, Peter (JUS)
Subject: FW: PC Jack evaluation draft
Attachments: Recruit Prob Eval(jack#9).doc; Recruit Prob Eval (Jack work improve #9).doc

Rich in reviewing this I was a little confused in the one area of Listening skills and Oral Communication. Is the sudden death the same incident as for Oral you indicated he couldn't get the appropriate info to pass onto the Sgt who was enroute to the call. In the listening skills you state he was able to get the pertinent info from the relatives at the sudden death to complete the investigation? I could not open the second attachment for some reason I will keep trying maybe it is just slow. I have attached my comments on the bottom of the evaluation on the left. Ron

(October 8, 2009) (Volume 3, X), S/Sgt. Campbell's notes:

| | |
|------|--------------------------------------------------------------------------------------|
| 0800 | THURSDAY, OCTOBER 8, 2009 |
| 0830 | On Duty [redacted] |
| 0915 | Karen Co-John evaluation |
| 1400 | teleconference only Peter Salter via Butorac present |
| 1415 | Arrive |
| 1430 | Colleen Kohen Nie, Butorac; myself, Peter Salter, but Gemma Segg know |
| 459 | [redacted] |

(October 8, 2009) S/Sgt. Campbell's transcribed notes pertaining to Constable Michael Jack:

08Oct09

0830

Review Cst. Jack Evaluation

1400

Teleconference only Peter Salter, Nie and Butorac present

1415

Admin

1430

Colleen Kohen, Nie Butorac, myself, Peter Salter to let Command Staff know

(October 8, 2009) (Volume 3, BB) Point Form Chronology:

08Oct09 - PC Nie

- near start of shift had to transport a prisoner to court – attended cell area with PC Jack, two other members of the shift were present as well – PC Jack had all dealings with guard and a female prisoner walking by without talking his gun off – began completing prisoner form for a release as opposed to a transfer – when he went to get our prisoner I pointed out his gun and he said he knew – I told him he didn't or he would have taken it off – also pointed out that he didn't search the accused - once at court he opened door and just let accused walk up to jail, did not do proper escort or take any control – when asked about this he confirmed he knew proper escort techniques but assessed the situation and felt the accused was compliant – told him never to defer from his training – said he didn't search because the male came from our cells, confirmed we had already talked about searching prisoners before – said that he missed the things in the cell because he said too many things were going on at once and he got confused

My response to the above bullet point entry is as follows:

To the best of my recollection the documentation of the above incidents is accurate and is true. However, it is worth mentioning PC Nie's words and attitude towards me to show his utter contempt of me. PC Nie pointed out the fact that I was still wearing my gun to which I told him, 'Yes, I know,' and he immediately retorted with a raised and authoritative voice, 'No, you don't'. I point this out to show how humiliating and degrading he was towards me.

12Oct09 - PC Nie

- when approaching a collision scene in Apsley, PC Jack was so excited that he parked on top of the evidence of the collision – only focussed on getting to the call, another officer was already there so he could have thought things through - talked about multitasking and how he needs to observe these things prior to destroying evidence
- while attending domestic call with unwanted male at residence, PC Jack chose to drive at less than speed limit, no lights or sirens – said that he felt getting to call minutes sooner would not help as the "headlock" and domestic were already over – explained to him about risks at domestics, etc
- asked PC Postma on air how fast he was travelling and how he didn't think he could catch up to him
- once at the domestic, he spoke with the victim and did not even check whether she had been assaulted or not – appeared unsure how to handle the information she was giving him
- when completing DVSR – he did it more like an interrogation than a victim report – when she was unsure of an answer he told her very firmly it was an important question and she needed to answer

My responses to the above 5 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Police Vehicle Operations

Rating: Does Not Meet Requirements

The evidence in the matter was nothing more than tire marks on the pavement. It was long after the sunset and it therefore was very dark. By initially parking the cruiser on the so called "evidence" I did not destroy any of it. Note: the accident was property damage only.

My response to the 2nd and 3rd bullet point entries is as follows:

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Decisive Insight

Rating: Does Not Meet Requirements

First, another officer (Cst. Jason Postma) was way ahead of us enroute to the call and Cst. Nie said that Cst. Postma is probably the best driver at the detachment and that "you will never catch up with Cst. Postma." Second, it would have taken approximately 30-40 minutes to get to the call (from the Peterborough Detachment to Apsley.) Third, my rationale for not speeding was that only extreme circumstances, such as "officer needs assistance", warranted driving with lights and sirens. Fourth, the call was reported after the domestic dispute had been over, the parties were separated and the involved male called the Communication Center to advise that he was waiting outside of the residential apartment building for police to arrive. Fifth, I did activate emergency lights after Cst. Nie appeared to be dissatisfied with my "slow" driving. Sixth, after we covered approximately half the distance, Cst. Postma radio called us advising that all was in order at the scene and there was no need to rush.

It is noteworthy to mention that I was responding as a backup officer to the call and well before arrival the first officer, who was handling the call, radioed in to advise that all was in order. Cst. Nie was deliberately seeking to rate me negatively in a call that I would have had no business interfering other than assisting like I did in the interview. The investigating officer, Cst. Postma, had already spoken to the male at the scene and made any needed assessments.

My response to the 4th bullet point entries is as follows:

It is true that I did not ask the victim (Melissa Jessup) if she had been assaulted. It was a verbal only domestic incident though her next-door neighbor "head locked" her former common-law spouse (John Couch) in an attempt to get him out of the victim's apartment (Exhibit 114).

My response to the 5th bullet point entries is as follows:

The so called victim (Melissa Jessup) that PC Nie referred to had been involved in 14 previous incidents of domestic nature with her ex-common-law spouse John Couch (Exhibit 114). She was not very cooperative while I asked her questions in order to complete the DVSR. I might have been firm in insisting she provided answers to police. After all, she called the police for assistance.

Furthermore, on November 16, 2009, (as PC Nie stated in my Month 11 PER) Melissa Jessup was charged by PC Postma with Assault on John Couch. That must have been at least the 16th reported incident of domestic violence between the two of them. PC David Stimson and I doubled up (I was the driver) as PC Nie was not on the road. That was one of few shifts when the Big Brother was not around and I could breath. PC Stimson looked me in the eyes and told me that my radio communications on that day exuded confidence as opposed to all the other shifts (when I was doubled up with PC Nie) when he heard my voice on the radio lacking confidence.

PCS-066P (Month 11) (Exhibit 44):

LISTENING SKILLS

Meets Requirements

Expresses active listening skills; accurately understands and attends to the facts and feelings of the sender. Able to clarify and re-frame the message with the sender in a professional manner.

Specific example:

PC Jack pays very close attention to people when he is listening to their responses and instructions. His difficulties are still discussed under Oral where he still has trouble putting the information together into something useful and then repeating it to others.

On 16NOV09 PC Jack attended an address in Apsley to assist at a domestic dispute call. He assisted the investigating officer by taking a detailed statement and ensured the victim was being looked after appropriately -SP09266064.

Rebuttal to PCS-066P (Month 11) (Exhibit 61):

Listening Skills

Rating: Meets Requirements

On November 16, 2009 I had an opportunity to take a breather of psychological air. Cst. Nie had a day off and as a result I was doubled up with Cst. Stimson. Towards the end of the shift Cst. Stimson told me that I acted and sounded much better and happier than he had used seeing me and especially hearing my depressed voice on the police radio before. I explained to Cst. Stimson that the absence of the Big Brother next to me with his authoritarian, oppressive and belittling attitude made a world of difference for me and thus was positively reflected in my performance.

Would have I taken a detailed statement and looked after the victim appropriately if Cst. Nie had supervised my work that night? I honestly do not think so. I believe I would have gotten oppressed by Cst. Nie as I always had and Cst. Nie would have found something wrong with my work again.

(October 12/13, 2009) Counsel's additional disclosure (April 3, 2012), PC Jack's notes:

| | | |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>24:42</p> | <p><u>MON 12 OCT 09</u> MEETING WITH SGT BUTORAC AND PC NIE - VISIT DARS, UPDATE STATS ON DARS SINCE JULY 1ST - EVALUATION PCS-DESP DISCUSSED WORK IMPROVEMENTS PLAN</p> | <p>NICHE OCCURRENCES FROM MAY/JUNE PROCESSED PDR #1714723A EMMALED TO COLIN MACKENZIE RE: SINCLAIR CASE MAPLE LEAF PARKING</p> |
| <p>02:10</p> | <p>FINISHED</p> | <p>05:30 GRESSED UP @ PIONEER \$17.53</p> |
| <p>03:05</p> | <p>COMPLETED GDA FOR ANNUAL COMPLAINTS SP09234024</p> | <p>05:35 UNLOADED CMUSEA SHIFT CONCLUSION</p> |
| <p>04:00</p> | <p>COMPLETED GDA FOR MESSAGE/DRUG GROW OP OCCURRENCES SP09233537 NO WORK TWO NIGHT</p> | <p>06:08 OFF DUTY PC 12690 MIA <hr/><u>TUE 13 OCT 09</u> 1700 ON DUTY OIC SGT BUTORAC A/B PC NIE 90</p> |

(October 13, 2009) (Volume 2, M), PC Nie's notes:

| | | |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>0050</p> | <p><u>TUE 13 OCT 09</u> met with Sgt Butorac + PC Jack re: evaluation + covered off WIP - no additional suggestions 0202 - reports/emails</p> | <p>TUE 13 OCT 09 0050 - met with Sgt Butorac + PC Jack re: evaluation + covered off WIP - no additional suggestion 0202 - reports/emails</p> |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

13Oct09 - PC Nie

- after leaving call on Indian Road, he approached a curve in the road and stopped completely – approaching vehicle wanted to turn across us but had no idea what PC Jack was doing
- traffic stop in Havelock – allowed car to pull in behind him then it turned into a parking lot – he stopped in live lane and put rear lights on – then let driver walk up to cruiser – discussed proper vehicle stops again – driver also pointed out that PC Jack did not complete proper stop at railway crossing stop light – with same driver, PC Jack asked to run plate and was told to stand by – when he was told to go ahead he missed the call as he was making notes

My responses to the above 2 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

I do remember that incident. How would have PC Nie known that the approaching vehicle had no idea what I was doing? Did he question the driver?

My response to the 2nd bullet point entry is as follows:

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Police Vehicle Operations

Rating: Does Not Meet Requirements

By parking the cruiser partially in the live lane I was trying to implement the safety offset that I had been taught at the Ontario Police College. Again, it was only logical to agree with Cst. Nie rather than to argue as arguing with him did not have any merits.

The overly excessive scrutiny from PC Nie makes one wonder if he was supposed to be coaching me or simply documenting every mistake and perceived mistake of mine. The latter is obviously true.

Anticipated evidence of Mr. Michael Jack (Schedule A):

On October 13, 2009, I was presented with my Month 9 performance evaluation (09 Sep 2009 – 09 Oct 2009) (Exhibit 32) by Sgt. Butorac. The evaluation was prepared by Cst. Nie. There were 13 “Does Not Meet Requirements” ratings. When Sgt. Butorac asked Cst. Nie in my presence why there were 13 “Does Not Meet Requirements” ratings, Cst. Nie replied that he did not find anything else wrong with me to comment in the rest of the sections. By that time I had been under the constant surveillance of my new coach officer (Big Brother) Cst. Nie. Sgt. Butorac advised me that I could submit a rebuttal to the evaluation. While I disagreed with the thoroughly documented negative comments in the evaluation, 4 or 5 out of which were totally false, I did not even bother to dispute them at the time. I knew that if I was going to attempt to dispute them, I would have been targeted even more ruthlessly. I had learned the hard way. I must re-iterate that by that time, my confidence, inspiration, decisive insight and belief in what I was doing were gone. My health was deteriorating (Exhibit 31 and Exhibit 50). I felt that my days with the OPP were numbered and I lived my life in fear and absolutely hated coming to work. Also, due to the Professional Standards Bureau investigation launched against me, I felt I was isolated with no rights.

It is noteworthy to mention that after reviewing my performance evaluations and 233-10s for the months 6, 7, 8 and 9, I observed an attention-drawing trend. First I was accused of answer shopping, then I was accused of not asking questions and after that I was accused of asking questions I knew answers to. What should have I really done to please my evaluators? This compelling trend is more commonly referred to as 'a no-win situation'. I was being led to the slaughter house and there was nothing I could do about it. Note: The value of Decisive Insight is only achieved upon realizing the collective knowledge of the majority where after one is able to make a well-meaning and wise answer.

Exhibit 23b - File 233-10 (Month 7):

On the 2nd of August 2009, PC JACK was spoken to by his coach officer PC S. FILMAN and his Sergeant, R. FLINDALL in regards to complaints received from his peers that PC JACK is constantly "shopping for answers". Complaints were received not only from his platoon mates, but also officers from other shifts. At this time, he was advised to cease and desist and that if advice is given by his coach officer or Sergeant, he is to follow this direction.

Exhibit 27 - PCS-066P (Month 8) (*Personal Accountability* section):

As well PC JACK has complained on a number of occasions that he felt abandoned or didn't have help with calls for service. In a number of instances in which he's complained, it was found that he had not let it be known that he required assistance and did not actively seek out assistance.

Exhibit 32 - PCS-066P (Month 9) (*Personal Accountability* section):

Since that day, it has been daily that something will come up where PC Jack attempts to ask questions that he already knows the answer to. On 19SEP09 he asked his coach how to sign

I have to admit that my feelings for Cst. Nie's coaching approach were mixed at the time. I liked the instructional aspect of coaching with which he was providing me. Over the 3 months with Cst. Nie (in comparison to the 3 months with Cst. Filman) I learned a fair amount about the job. On the other hand, Cst. Nie was perpetually unhappy with my performance from day one and had been extremely authoritarian, intolerant, and in many instances plain wrong. He kept me in a permanent state of defense and treated me like I was a little boy. It felt like I had a Big Brother attached to me with an umbilical cord whose presence I utterly feared. I was terrified of coming to work. I could not sleep well. Sometimes I was on the verge of tears (something that was very hard for me to admit to myself, let alone to others). I was the only police officer at the Peterborough Detachment at that time being subjected to this type of treatment. Later on I found out that Cst. Lloyd Tapp, who was a seasoned veteran officer from Toronto Police, also shared similar feelings during his time at the Peterborough Detachment which saw him initiate proceedings with the Ontario Human Rights Commission (Exhibit 95).

There were other incidents in which Cst. Nie treated me inadequately and at times inappropriately. He frequently belittled me. For example, after I had bought a few cream puffs and éclairs during our stops for coffee and a doughnut at a local Coffee Time shop, he nicknamed me "cream puff" and advertised my new nickname to other officers on our shift. In the given circumstances it was very belittling and derogatory.

Response to the Application (HRTO 2010-07633-I) Paragraph 50:

With respect to the “cream puff” nickname, other officers at the Detachment joked with Constable Nie whenever he ate a donut in uniform. When the Applicant ordered the cream puffs, Constable Nie said to the Applicant that he was glad he had someone to support him. When he called him “cream puff” the Applicant laughed out loud. It should also be noted that whenever a rookie comes on to a platoon they end up with a nickname. It is part of the camaraderie and shows a sense of belonging. If the Applicant had not laughed or had indicated that the nickname bothered him, Constable Nie would not have used it again.

The Promise of the OPP (Exhibit 87):

Fairness, Courage and Caring (empathy and compassion)

Understand consequences for others of when/how I express my personal feelings and opinions; try to understand the underlying feelings of others; try to anticipate others’ reactions to my behaviour or comments, e.g. jokes

Treat all others with equality, as I would want my loved ones and myself to be treated; victims and accused (their families and communities), colleagues and staff, regardless of gender, race, ethnicity, ability, age, etc.; enable

Support colleagues, especially those who may feel vulnerable or at a disadvantage because of their employment status, e.g. new recruits, volunteer, civilian, contract; or background, e.g. race, gender, ethnicity

Be thoughtful about both what I say and “how” I communicate, i.e. sensitive to inadvertent or subtle messages, terms or labels; avoid potentially hurtful rumours and gossip; maintain confidentiality

Diversity (in society and my workplace)

I will:

- Seek to understand different perspectives, cultures, lifestyles, creeds and apply that understanding to effect quality policing
- Identify candidates for recruitment to enhance the diversity of the O.P.P. workforce reflective of the communities we serve
- Adjust the way I work (behave and communicate) by appropriately accommodating others’ basic human rights
- Respect the individual dignity and strengths of all people

Anticipated evidence of Mr. Michael Jack (Schedule A):

It did not really matter what I did or how I did it. What mattered is it either did not meet his standards or his pattern of thinking was different than mine. He was always "right" like in the old adage that "might is right". It was therefore easier for me to admit "making a mistake", apologize, and move on rather risk making him angry by voicing my objections. My spirit, morale and enthusiasm were at a low point. I felt like a slave and became servile. I feared voicing my points of view or letting anyone know that I did not appreciate the way I was being treated as first, my self-esteem was eroded and second, I did not see any merits to doing that. I was brought down to my knees. It was very humiliating.

In reflection later on, I realized that I was experiencing the so called "Boiling Frog Syndrome" (Exhibit 100) in so much that the constant discrimination I was being subjected to reached a point where I literally became oblivious to it and/or no longer cared. I would tend to rely on the later since it became very apparent that my days with the OPP were numbered and no matter what I did the inevitable was not going to change.

Counsel's Response to the Application (HRT0 2010-07633-I), paragraph 45:

It is the Respondent's position that the Applicant's coach officers and other officers within the Detachment tried to assist the Applicant but the Applicant failed to heed their advice and guidance. The Applicant was resistant to receiving feedback or constructive criticism and would respond with the silent treatment.

In my Month 10 PER (Exhibit 37) PC Nie stated the following:

INITIATIVE

Tries to make a positive difference, improve outcomes and effectively manage problems.

Specific example:

PC Jack is making his best effort to stay positive in his present situation. He still has a strong desire to learn and often comes to work on days off to complete tasks so he does not fall behind.

Meets Requirements

Anticipated evidence of Mr. Michael Jack (Schedule A):

During the fall of 2009 I frequently came to the detachment on my days off to work on my reports so Cst. Nie and I could spend more time on the road. I would document the dates and work done in my officer's notebook. When Cst. Nie learned about it he forbade me to document my attendance at the detachment and work when I was off duty. I complied and while I continued to work on my days off I did not document it in my notebook anymore.

Also, for some reason Cst. Nie accused me of playing mind games with him (he said it to me approximately 2 months into our time together). Yet another point worth mentioning is Cst. Nie's admission to me that when he was a rookie, he was "swimming" throughout the first year on the job. His first posting was in the Highway Safety Division, which meant that he only had to deal with traffic related incidents – no domestics, no break and enters, no thefts from vehicles and from premises, no neighbor disputes, no nuisance and harassing phone calls, no frauds, no walk-in complaints, etc. The first break and enter call he was dispatched to took place on his first shift at the Peterborough Detachment. He was then 3 years on the job. When he was coaching me, he had 9 years on the job while I was still in my first year, a year filled with aggravating factors such as toxic and disruptive workplace environment. I tried to seek his compassion and gain his understanding of my situation. I disclosed everything about myself, e.g. where I came from, how I immigrated to Canada, how I became a police officer, my education, my interests, my aspirations, why I needed this job, the fact that I was the only one in my family living in Canada and even that I needed the job to be able to sponsor my family to come to Canada or at least give me the hope that one day my family and I will re-unite. I literally did not hide anything from him. I hoped that he would understand my perspective, see that I am not an evil person, and realize that my judgment and my performance were severely undermined by the poisoned work environment and by his authoritarian coaching methods. I hoped he would change his dictatorial and intolerant approach to "coaching" and ease up on me. I hoped he would start looking for the positive in me and provide me with support and inspiration. Alas, my efforts were in vain. Cst. Nie remained as cold as a chunk of ice and constantly prided himself on being objective.

Cst. Nie liked to listen to the radio (he was mostly interested in sports transmissions). I normally had the regular radio turned off and listened to the police radio only. Cst. Nie subsequently accused me of being disrespectful to him by having the radio turned off when I was operating a police vehicle. He further used it to accuse me of being unable to multi-task. It is also noteworthy to mention that in a few instances when we were returning to the detachment towards the end of the shift and I was running a moving radar as I drove, Cst. Nie would shut the radar off thus effectively affecting any developmental opportunities for me with respect to radar operations, which I might say are a key component to the OPP's promise of providing effective public safety and service and not to mention an opportunity to improve on my so called 'inability' to multi-task. When I asked Cst. Nie why he did not allow me to run the radar, he replied that our platoon Sergeant would never approve overtime for a traffic stop.

(October 14, 2009) (Volume 2, N-27):

From: Taylor, Kent (JUS)
Sent: October 14, 2009 2:50 PM
To: Jack, Michael (JUS)
Cc: Butorac, Peter (JUS); Nie, Richard (JUS); Kohen, Colleen (JUS)
Subject: Driver Training

Michael

This is to confirm our appointment for driver training on Thursday, 22Oct09 @ 13:00 hrs. Please meet me at Kawartha Lakes Detachment in Lindsay. You will need to dress in civilian attire for the training.

If you are travelling in a marked cruiser and uniform, I'm sure there would be a place for you to change at the detachment.

I'll look forward to seeing you there.

Sgt. T.K. (Kent) Taylor

(October 14, 2009) (Volume 1, C):



ONTARIO PROVINCIAL POLICE
PROFESSIONAL STANDARDS BUREAU
777 Memorial Ave. 777 Ave Memorial
Orillia ON Orillia, ON
L3V 7V3 L3V 7V3

Telephone: 705-329-6473
Fax: 705-329-6050

File Reference/
Référence: 2545009-0173

October 14, 2009

Sergeant Robert Flindall #9740
Peterborough County
Ontario Provincial Police
453 Lansdowne Street.
Peterborough, ON
K9J 6Z6

Re: Order for Duty Report

I am investigating an internal complaint investigation where you are identified as a witness officer. The complaint stems from an allegation that Provincial Constable Michael Jack has associated with:

[REDACTED]

On the delegated authority of Chief Superintendent Kenneth C. Smith, Commander, Professional Standards Bureau, you are hereby ordered to provide me with a duty report responding to the allegations listed below and outlining your involvement as well as any observations you made with respect to the actions of those present including yourself. Please include in as much detail as possible, any conversations you had with, or observations made of any and all officers, civilians, etc. and the identity of those persons, if known. Indicate when you first heard about this complaint, who first told you about the complaint and who else has told you about the complaint.

Allegation: PC Michael Jack may be associating with known criminals.

Forward to my attention at the address above, copies of each entire day's notes that you made in relation to all of these allegations. These notes will include, but not be limited to:

All notes made for each entire date listed above and all other notes made in relation to the allegations described above. Your business card shall be copied adjacent to your notes. No portion of notebook entries for those dates is to be obscured. Please also include any other comments or information not specifically requested which you feel may be of assistance or otherwise pertinent.

This order is issued to ensure the employer has a full understanding of your knowledge, actions and communications in relation to this matter.

It is preferable that you send me your duty report electronically (via E-mail). Your duty report must be received by Detective Sergeant Tym Thompson no later than ten (10) clear days exclusive of approved vacation time from the date of receiving this order.

You will be provided with sufficient time at work to respond to this order, or when deemed appropriate, authority to direct overtime to ensure compliance may occur.

"This statement is ordered in the course of a complaint investigation under the Police Services Act of Ontario.

The statement is not requested during an attempt at informal resolution, and the provisions of the PSA which protect statements made during such an attempt will not apply. As such, the statement may be admitted at a Police Services Act hearing.

If informal resolution is considered at some later point, you will be advised accordingly."

Please contact me if you have any questions with respect to this order.

Tym Thompson
Detective Sergeant
Professional Standards Bureau
Ontario Provincial Police
777 Memorial Ave,
Orillia, ON
L3V-7V3

Office (705) 329-6473
Cell (705) 238-7107
Fax (705) 329-6050

(October 15, 2009) (Volume 1, D):

From: Thompson, Tym (JUS)
Sent: October 15, 2009 9:44 AM
To: Flindall, Robert (JUS)
Subject: PSB Internal Complaint Note: A read receipt is required. Do not decline the read receipt
Attachments: 9740 Duty Report Order.doc

Sergeant Flindall,

I have been assigned to investigate a internal complaint, our file #2545009-0173.

You have been identified as a Witness Officer in the incident resulting in the internal complaint.

Attached is an order for you to submit a duty report as well as a copy of your notes pertaining to these allegations. **Please be advised that opening this email constitutes service of this duty report order to you. You have "ten clear days" to submit your duty report and a copy of your notes to me. Please note that "ten clear days" includes scheduled days off as well as weekends.** Please forward your completed duty report to me via email. You may fax or scan your notes to me as long as they are completely legible. If they are not legible, please forward them to me via regular mail.

Please be advised that the fact you may want the O.P.P.A. (Legal Counsel) to review your duty report, prior to submission to P.S.B., does not absolve you nor is it justification from having to submit your duty report and notes within the "ten clear days". If, however, there are other legitimate reasons eg. Vacation, training, why you cannot complete your duty report within the time period please contact me and arrangements can be made for an extension.

- Request for duty report to Professional Standards Bureau (PSB) made on October 15, 2009, with clear instruction to be filed within 10 clear days.
- I was interviewed by D/Sgt. Thompson with regards to the matter on October 31, 2009.
- I presume that D/Sgt. Thompson wanted to obtain Sgt. Flindall's duty report before interviewing me.
- Sgt. Flindall was on the pre-approved vacation at the time of the request (Exhibit 66).
- Sgt. Flindall returned on duty on October 28, 2009 (Exhibit 66).
- Sgt. Flindall faxed his duty report to D/Sgt. Thompson only on November 11, 2009.
- There were 15 clear days between October 28, 2009, and November 11, 2009.

an ear to the radio. PC BROCKLEY has advised me today that PC JACK was spoken to by PC PAYNE and PC FILMAN about 2 hours after the plate had been run, and PC JACK advised he didn't recalling running the plate nor had anything in his notebook about it. PC BROCKLEY

I was advised of PC JACK potentially running an [REDACTED] August after I had gotten back from holidays. Again, I don't have the exact date with me. I wasn't familiar with [REDACTED] nor did I have the information above about the [REDACTED] I believe it was PC PAYNE that told me about him running the plate. No one on the shift fully heard the plate he had run or the RO information, but thought it was something similar [REDACTED] I advised her I would look into the matter when I had a chance and would see about pulling the tape from the PCC.

The information from Provincial Communications Center that the dispatcher had run the wrong plate in error was available to D/Sgt. Tym Thompson and known to the detective prior to coming out to interview me. Hence the OPP basis for accusing me of associating with “Undesirables” was based solely on a six year old photograph and asking one of the “undesirables” to pick up a scope for me on one of their return trips from the States. All of which I revealed to the OPP voluntarily, in good faith and with the best of intentions to fight drugs and organized crime, which was my duty!

(October 16, 2009) (Volume 3, X), S/Sgt. Campbell's notes:

| | | |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 0806. | Feeling 16 OCT 09. On Duty [REDACTED] | |
| 258. | Colleen Kohen probationary Cst Jack Summary to her manager month 6 & 7th performance review signed pull file [REDACTED] fax | |
| 200. | [REDACTED] | |

(October 16, 2009) S/Sgt. Campbell's transcribed notes pertaining to Constable Michael Jack:

16Oct 09

1058

Colleen Kohen Probationary Cst Jack summary to her manager month 6 & 7 performance review signed pull file 505-4030 fax

From the above entry it appears that my rebuttal to my Month 6 & 7 PER was delivered to the management in Human Resources approximately a month after its disclosure.

(October 16, 2009) Counsel's additional disclosure (April 5, 2012):

From: Kohen, Colleen (JUS)
Sent: October-16-09 11:43 AM
To: Pomeroy, Margaret (JUS)
Subject: Prob Jack

Good Morning Margaret

Wanted to provide you a update on a Probationary Constable

- Prob Jack started his probation period on 09 Jan 2009
- Posted to Peterborough County Central Region
- Month 1 and 2 (09 Jan to 09 Mar) which are combined performance reviews this member had 4 Does not meet requirements: Police Vehicle Operation, Radio Communication, Flexibility- The work improvement plan was not given to the member until 15 April by Detachment
- Month 3 (09 Mar to 9 Apr) performance review this member had no Does Not Meet Requirements.
- Month 4 (09 Apr to 09 May) performance review this member had no Does Not Meet Requirements.
- Month 5 (09 May to 09 Jun) performance review this member had no Does Not Meet Requirements but his performance review was given to him on the 16 Aug which is 2 months after the fact.
- Month 6 and 7 combined performance review (09 Jun to 09 Aug) this member had 10 Does Not Meet Requirements: Prov Statuses Federal Status, Listening Skills, Radio Communication, Resolution, Follow up, Personal Accountability, Planning and Organizing, Respectful Relations, Self Confidence. This performance review was given to him on the 20 Aug and he refused to sign it.
- Month 8 performance review (08 Aug to 08 Sept) this member had 17 Does Not Meet Requirements : Attitude Towards Learning, Prov Status, Police Vehicle Operations, Oral and Written Communication, Listening Skills, Radio Communication, Analytical Thinking, Resolution, Follow Up, Personal Accountability, Planning and Organizing, Respectful Relations, Self Confidence, Team Work, Self Awareness, Deportment. This performance review was given to Prob Jack on the 11 Sept. He refused to sign the performance review but later on the 25 Sept provided a statement
- I became involved with Detachment 27 August. Since that time we have had 3 conference calls with Detachment members and Region, we have changed his coach officer and platoon which is reflective of his month 9 performance review. Was able to assist in this member attending additional driving with Sgt McNeely.
- Month 9 performance review (09 Sept to 09 Oct) this member had 13 Does Not Meet Requirements: Attitude Towards Learning, Fed Status, Police Vehicle Operations, Traffic Enforcement, Oral Communication, Radio Communication, Decisive Insight, Analytical Thinking, Resolution, Personal Accountability, Flexibility, Respectful Relations, Self Confidence. This performance review was given to Prob Jack on the 13 Oct and Prob Jack did sign the performance review.
- Proposed direction for month 10 (09 Oct to 09 Nov) is once coach officer has completed the performance review arrange another conference call with Detachment members and Region prior to disclosure.

Wanted to provide you heads up on this member and will keep you apprised

Colleen

C. S. Kohen

Staffing Officer
Career Development Bureau
905 681-2511 (office)
505 4030 (VNET)
905 973- 8877 (cell)

(October 16, 2009) (Volume 3, BB) Point Form Chronology:

16Oct09 - PC Nie

- stopped several cars along Highway 28 north of County Road 4 – had to discuss again several times about proper and safe vehicle position during stops – each time I would correct one issue he would fix it but a new one would come up – having great difficulty in assessing where to stop and how to stop vehicle safely – too much to consider all at once in his words
- while doing RIDE, had truck approach with MAR09 val tag – saw him look at tag when approaching then asked no questions about it and told driver he could leave – I continued with questions and told driver to wait, resulted in 1072 driver

My responses to the above 2 bullet point entries are as follows:

- Each time I would fix PC Nie's "issue" with me, he would find another one. PC Nie never ran out of issues with either me or my performance.
- True.

Re: Large illegal drug grow op (letter of commendation from Cst. Ernie Garbutt) (Exhibit 35):

Jack, Michael (JUS)

From: Garbutt, Ernie (JUS)
Sent: October 16, 2009 9:35 AM
To: Stimson, David (JUS); Jack, Michael (JUS); Butorac, Peter (JUS)
Subject: Update

Gentlemen

Just want to thank you for the info you provided the other day about possible drug grow at 2021 Cty Rd 48. I executed a warrant on Tuesday and got over 2000 large marihuana plants behind the house. This was an organized asian crime house. They had been in the house trimming, but were gone when we showed up. We had no idea there was a set up at the house and your info put us onto it. Thanks for your help and observations.

Ernie Garbutt

Could the Counsel for the Respondent furnish the Tribunal a rational explanation as to the reason this e-mail along with numerous other ones from my Justice account were withheld?

17Oct09 - PC Nie

- at start of shift, PC Jack advised we had a traffic complaint to go to but it was ten minutes old and vehicle was tailgating and passing unsafely, he then said he had to do log-on sheet because dispatch didn't have one – we headed to shift briefing and he appeared very stressed and informed OIC Postma that log-on was not done – he was advised to leave it for now and it would be sorted out by Postma as we needed to figure out zones as 4 people were off – PC Jack just sat there and stared at table appearing frustrated – when briefing was over he told me we had another traffic complaint and it was threats, someone gave another person the finger – I asked if there was a plate and description and he confirmed there was so I said we had better go – he got upset saying that he had to do the log-on

and raised his voice at me – I told him to relax that it was not a big deal, he could just ask someone else to do the log-on sheet – within 30 seconds Postma walked back in and asked PC Jack to do the log-on before we left if we had the time and told him three times what to log people on as including himself– PC Jack became obviously frustrated and started muttering things under his breath about being asked to do two things at once – he finished the log-on and walked out – I then took a call from PCC and the dispatcher said the log-on was all messed up – people were logged on as different zones and numbers as what she had been told by Postma verbally – I corrected the errors and spoke with PC Jack – he again became quite angry advising that he heard Postma's instructions but no one can be expected to handle three things at once – I explained that a log-on sheet and two traffic complaints were minor tasks, and that he wasn't doing them at the same time, he just needed to prioritize them – he said it was impossible and that he couldn't be expected to start assessing and formulating a plan for one thing and then have to switch to another – I told him to take a breather and start over – he said he had no idea what to do and that everything he did was wrong – we sorted out what he had heard with the traffic complaints – I then called back to dispatch to confirm and there were more details that he had left out – explained this is why I have seen he has difficulties listening, hearing, etc because he only gave partial information to me. I explained to him that if he can't handle more than one thing at a time than to tell me and I will make sure we just do one thing until he can handle more

- call for rollover with three suspicious youths on Burnham line – as he approached the scene obvious skid marks were observed in fresh gravel – he didn't slow down and drove right past the car in the ditch and the kids standing on the road – second officer on scene questioned why we drove past scene – when deciding where and how to turn around, he drove into a large pothole where the ground had washed out, inches away from rolling us into the creek at the side of the road
- when dealing with the youths, he just stood there and watched PC Clark – was unable to determine that he could assist by separating the youths as they were being evasive with Clark – he only did so when he observed me take one youth out of the group
- at threats call in Norwood with HBD male, he began questioning to assess whether threats existed or not – he was prepared to take complainant to residence without confirming the type of situation he was heading into – he knew the complainant was scared to go home because his girlfriend had told him the suspect was there – I clarified the details and then explained how we could take the complainant home to his private apartment, no threats were actually made, and we did not have to speak with the suspect because he was most likely passed out drunk (from prior info from PC Stimson)
- call on Old Norwood Road – we had to drive intoxicated male party to his residence – PC Jack was planning to drop him off at the end of his driveway and let him walk to his house - then he said he would be polite and drive him to the door – then admitted to me that he did not intend on making sure the drunk guy was looked after by his parent

My responses to the above 5 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Resolution

Rating: Does Not Meet Requirements

First of all, it was my regular responsibility at the beginning of each shift to prepare a shift log-on sheet and email it to the Communication Center and to check, prepare, and load the cruiser. At the beginning of the shift I received a 10 minutes old traffic complaint call and the dispatcher at the Communication Center was waiting for me to send them then log-on sheet. In the midst of preparing the log-on sheet I was called into the boardroom for a shift briefing. The officers in there were joking around and talking about job unrelated matters. I felt it was a waste of our time. I had urgent work to do but I was forced to sit in there and listen to them shoot 'B'. That is why I was frustrated.

Cst. Postma did not tell me **three** times what to log people on as.

For Platoon 'D' night-shift log-on sheet on October 17, 2009, please refer to Exhibit 115.

Then I received yet another traffic complaint call. When I finally completed the log-on sheet and sent it off there was only one entry partially incorrect, that of Cst. Postma (I only incorrectly entered his vehicle ID #). It was not all messed up as Cst. Nie commented! Note: the log-on sheet entries are dynamic in nature and therefore vary from shift to shift. They include officers' names that are on duty, their badges, times they start and finish the shift, their soft ID's and vehicle IDs, their specialty, such as Marine, Intox Tech, SOCO, etc. and a comments section. All this information needed to be taken into careful consideration when filling out the log-on sheets.

Shortly thereafter when I was driving around looking for the phantom cars that had been complained about my emotional state finally hit the bottom and I started crying. I do not know how much of it Cst. Nie noticed, but I pulled the car into a Coffee Time parking lot on Highway 7 to calm down. I then told Cst. Nie that I lived my life in fear, to which he just smiled and allowed me to calm down. What I saw in his smile was so real that it felt as if he was getting satisfaction out of it. Once I regained control we patrolled the area where the vehicles were reported and as per Cst. Nie's instructions cleared the calls as non-reportable to my badge with the clearing "Area patrolled. Vehicle not observed."

The Tribunal should ask the following question: 'What kind of person one has to be to smile when another human being is crying?' Furthermore, the two calls I cleared to my badge as non-reportable in the evening of October 17, 2009, are also mysteriously missing from my list of calls for service (Exhibit 47). The Respondent has access to this information for I firmly believe they were deliberately moved to another officer(s) so as to show that I did not do many calls. There are many calls that I did do that are not on my list of calls for service. Interestingly, S/Sgt. Campbell addressed an e-mail to Sgt. Flindall on September 9, 2009, (Volume 1, I-24) with the following comment: ***'Also when you account for his time on the 6 shifts if there is a reason he only wrote 4 tickets what was he doing with his time. If he was completing follow-up or had a number of calls for service this should be mentioned and given credit for it.'*** In light of that e-mail it is easy to see the merits of reassigning calls for service that were completely investigated by me to another officer.

My response to the 3rd and 4th bullet point entries is as follows:

Exhibit 47:

| | | | | | |
|------|------------|-----|-------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 203) | SP09243027 | OPP | Motor vehicle collision | 2009/10/17 19:54 | Cleared by charge - [YP] 2449 BURNHAM LINE between 7 HWY and OLD NORWOOD RD, OTONABEE-SOUTH MONAGHAN TWP ON Canada (Area: 1052, Duty locn: 1111, Beat: 16, ESZ: 15036) Non-reportable TR09-00880 / 12064 CLARK / SINGLE VEH. DRIVER CHARGED 130HTA. VEH TOWED BY / FITZSIMMONS. NO INJURIES. PD ONLY. TR ON FILE / (REQ NEXT ON LIST TOW) / (FITZSIMMONS TOWING ENR) / (RES |
|------|------------|-----|-------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Rebuttal to PCS-066P (Month 10) (Exhibit 60):**Federal Statutes**

Rating: Does Not Meet Requirements

At no point in time did I approach the vehicle in the ditch. I stayed with the other officer (Cst. Daniel Clark) on the road to back him up when he was speaking with the 3 youths while Cst. Nie went into the ditch to examine the vehicle. I did not indicate that I had noticed the smell of the burnt marijuana because I never detected the odor of the burnt marijuana in the first place. First, I did not approach the vehicle and second I had a cold at the time and had a severe nasal congestion. I therefore could not have smelled the odor of the burnt marijuana from the distance. After a bag of marijuana and a weighing scale had been surrendered by one of the youth I complied with Cst. Nie's order to witness the destruction of the marijuana and the weighing scale by that youth at the road side. No CDSA charges were laid. Furthermore, it is standard police practice when on the road that the first officer at the scene in such calls is normally the officer in charge. More so was the fact that by then I was constantly cognizant of my conduct so as to not interfere or even be perceived as interfering with another officer's call/investigation.

My response to the 4th bullet point entry is as follows:**Rebuttal to PCS-066P (Month 10) (Exhibit 60):****Oral**

Rating: Does Not Meet Requirements

On October 17, 2009, there were 3 officers at the scene speaking with the complainant in the threats call – Cst. Nie, Cst. Stimson and myself. I started questioning the complainant and elicited the majority of the pertinent information when Cst. Nie intervened and finished the interview. According to Cst. Nie "I did not take it the step further to assess the living arrangements at the house." Having perused Cst. Nie comments in my performance evaluation reports I have observed the following trend: Questioning the complainants with too many questions was bad! Questioning the complainants with only a few most pertinent questions was bad! This time I apparently questioned the complainant properly, but of course according to Cst. Nie I forgot to ask something again! What kind of interview would have met Cst. Nie's standards? What were Cst. Nie and Cst. Stimson there for? Were they just spectators attending the call to watch me do my job and look for something lacking? A prudent and impartial coach officer would have commended a probationer's performance in such a call and even commented that such interviews would get much better in time. Not so for me.

My response to the 5th bullet point entry is as follows:**Rebuttal to PCS-066P (Month 10) (Exhibit 60):****Analytical Thinking**

Rating: Does Not Meet Requirements

The example referring to the intoxicate male on October 17, 2009, is true.

Anticipated evidence of Mr. Michael Jack (Schedule A):

On October 19, 2009, while off duty, I wrote a memorandum to myself (Exhibit 36). A couple of weeks later I showed it to Sgt. Butorac. After reading it he appeared to be sympathetic yet stated that I could not work on my own and further said to me, "We do not like whiners".

21Oct09 - PC Nie

- PC Jack attended MVC call alone on County Road 2 (he had started early and did not inform dayshift Sgt. that he was not to ride alone – he arrived at 2 car mvc at 1711hrs – not blocking lanes – called his coach officer at 1910hrs to advise he was complete – said delay was getting tow truck as he allowed involved party to call for tow for the victim instead of confirming himself – traffic report was not completed in this time frame as well – explained how this could have been done faster
- Discussed the lack of notes with him for call – no indication of damage, no diagram, no summary, no weather/road conditions – advised he had some of the details on the traffic report and it would be on his ticket – then advised he determined that it was not an important call so he didn't feel the need to waste time on very thorough notes

My responses to the above 2 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

First and foremost, Sgt. Rathbun would have been fully aware of the fact that I was not to ride alone since Sgt. Flindall sent out two e-mails on August 15, 2009 (at 9:18 am and 9:20 am, respectively) to all OIC's and Sergeants that I was no longer allowed to work overtime or by myself:

- ***'Just a heads up to let you know that PC JACK is no longer allowed to work overtime for your shift shortages. I will make the necessary changes to our duty schedule to reflect this.'***
- ***'This also applies to him covering shifts for other officers as well.'***

Second, I told Sgt. Rathbun very clearly that I was not allowed to work alone on my shift, to which he said that he allowed me to attend and investigate the accident by myself and that he was going to approve OT for me. Note: Having recalled this incident I am led to believe that there were office politics involved as this incident brings to mind an earlier and seemingly unrelated incident. Sometime in the summer of 2009 during one of the nights Sgt. Rathbun and other OPP officers were involved in pursuit and apprehension of a suspect in a stolen van, which eventually resulted in the arrest of the suspect by the Peterborough City police. During the pursuit PC Jeff Knier set up a spiked belt to intercept the suspect who was being pursued by Sgt. Rathbun and both the suspect and Sgt. Rathbun ended up with tire punchers. The suspect escaped at the time and drove into the City of Peterborough. When Sgt. Flindall discussed the occurrence during the shift briefing with Platoon 'A' officers he ridiculed Sgt. Rathbun for his incompetence in pursuit driving and for damaging the cruiser. At the time I found Sgt. Flindall's manner of communication very odd as I thought Sergeants were supposed to support each other. Anyway, PC Nie is lying through his teeth as I did inform Sgt. Rathbun that I was not supposed to be out alone yet he told me to go out and investigate that accident. How could I be expected as a probationary rookie given all the circumstances to object to a Sergeant's order? Sgt. Rathbun ordered me to attend the collision scene to conduct an investigation and

according to PC Nie I was supposed to tell him that I could not go because I was not allowed to. If I had done that I would have committed an offence of Insubordination under the Police Services Act and Sgt. Flindall, PC Payne and PC Nie would have jumped for joy then.


Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Respectful Relations

Rating: Does Not Meet Requirements

It is noteworthy to mention the Motor Vehicle Collision I attended on my own on October 21, 2009, on the orders of Platoon "C" shift supervisor Sgt. Brad Rathbun, which I investigated and handled properly and in which I laid an appropriate HTA charge, is also mentioned in the *Provincial Statutes* section of this evaluation.

Traffic reports re: Motor Vehicle Collisions (Exhibit 47d, page 20):

| | | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------|--|----------------------------------|--|
|  Ontario | | Motor Vehicle Accident Report | | SP09245861 | |
| Report Type: <input checked="" type="checkbox"/> Original <input type="checkbox"/> Amended <input type="checkbox"/> Failed To Remain | | Accident Number: 1E-09-00886 | | Page 1 of 1 | |
| Time Officer Arrived or Police Force Reported to: 17:11 HRS | | Accident Date: 09/10/21 | | Day of the Week: WEB Time: 04:25 | |
| Name of Investigating Officer: JACK, MICHAEL | | Badge No.: 12690 | | Div./Station: 1200 | |
| Name of Submitting Police Force: O.P.P. | | MTD Use Only: | | Highway Distance Unit Dir. | |

Interestingly enough, this call that I cleared to my badge as non-reportable is also mysteriously missing from my list of calls for service (Exhibit 47). The Tribunal should be naturally curious about these missing calls for service for they raise the inference when one just looks at the number of calls one did for a given date that I did not do much and hence should have dedicated more hours to traffic enforcement. This is a deliberate act of deceitfulness on the part of the Respondent and my request to have all records concerning me under the request for documents section of my Application has been deliberately violated by the Respondent. In doing so the Tribunal is also deliberately manipulated by the Respondent into believing that that is all there was to the disclosure from the Respondent.

Month 10 PER (Exhibit 37):

PROVINCIAL STATUTES

Able to identify, articulate and process applicable elements in Provincial Statutes.

Specific example:

PC Jack continues to have an adequate understanding of the Provincial Statutes that he has been observed dealing with this month. On 21OCT09 he attended a collision and laid the appropriate charge given the circumstances - one vehicle turning in front of another.

Meets Requirements

My response to the 2nd bullet point entry is as follows:

I do not understand it. Why did I have to have the indication of damage, diagram, summary, weather/road conditions in my notes when I had all of the above in the Traffic Report? It is common that in most accident investigations one need not denote the criteria mentioned by PC Nie since it is already mentioned on the report. All one has to note a reference to TR in their notebook. However and once again it is another

example of PC Nie's insatiable desire to find anything negative or anything that he thought was negative with respect to anything that I did.

(October 22, 2009) Counsel's additional disclosure (March 13, 2012), PC Jack's notes:

THU 22 OCT 09
 11:15 ON DUTY
 10-13 +8°C, CLOUDY,
 NOS WET
 SOFT 11-09Z
 HARD 11-405
 MIL 118404/118509
 DRIVEN TRAINING
 IN LINDSAY (CKY)
 (2 OPS 36)
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 12:00 10-8 E/N TO
 LINDSAY
 13:00 @ CKY OPD
 DETACHMENT
 21 ANGLING N. ST.
 LINDSAY
 MET WITS
 SGT. KENT TAYLOR
 13:40 COMPLETED THE
 THEORY OF GOOD
 DRIVING DISCUSSION
 13:41 PRACTICAL PART

14:23 BACK AT DETACH
 14:35 TRAINING COMPLETED
 PRELIMINARY SCHEDULE
 TO MEET FOR THE
 SECOND TIME WAS
 WHEN AFTER THE NEXT
 POSSIBLY WED OR THU.
 EAR SGT. TAYLOR
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

THU 22 OCT 09
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 16:10 CALLED SGT TAYLOR
 SCHEDULED NEXT
 REMEDIAL DRIVING
 SESSION FOR
 05 NOV 09 AT 13:00
 AT CKY OPD
 DETACHMENT
 [REDACTED]

22Oct09 - PC Nie

- while having conversation on a teaching point, PC Jack observed vehicle he wanted to stop on Dummer-Asphodel road – told me to stop talking to him as he could not concentrate on both things at the same time
- PC Jack stopped five vehicles in the first half of the shift and gave out three warnings for speeding – two of the three were warnings because he said they were nice people, the third was because they looked poor and could not have afforded the ticket – the one speeder he did charge was a hockey scout driving a nice vehicle – told him not to discriminate about how people looked as a gauge on whether to give a ticket or not – said it was his discretion to make these choices – advised him that his choice better be because he was not confident with the speed of the vehicle rather than “she was nice” or “they looked poor”

My responses to the above 2 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

It is amusing in a strange way that PC Nie found it necessary to document that I told him politely to shut up so that I could concentrate on stopping a vehicle. Again I wonder if the other three probationary recruits had this much scrutiny. Maybe the Respondent could provide this Tribunal with the same amount of detailed documentation and chronology for each of the other three probationary recruits so as to show that I was not treated any different.

My response to the 2nd bullet point entry is as follows:

It is true that I mitigated my authority with a degree of diplomacy and compassion that PC Nie was obviously devoid of.

1

CONFIDENTIAL DUTY REPORT

This is the first page of a confidential duty report. The next page is number two. Any additional pages are numbered consecutively and are attached here to. I have initialled all pages and signed the last page.

This report is being made to my employer in the course of my employment at the request of Detective Sergeant Tym Thompson. It is also being submitted as a statement in an attempt to resolve informally a complaint made against Constable Michael Jack in accordance with the Police Services Act.

This report is submitted without prejudice and is a non-voluntary statement. I object to and claim privilege from the use of all, any part, or parts of the report in any proceeding whether criminal or civil and including any disciplinary proceedings or in any investigation or inquiry.

Improper use of this report without my consent is forbidden and any requests that I waive such privilege or any notices that my claim to privilege will not be honoured or recognized must be directed to:

LEGAL SERVICES BRANCH
ONTARIO PROVINCIAL
POLICE ASSOCIATION
119 FERRIS LANE
BARRIE, ONTARIO
L4M 2Y1

TELEPHONE: (705) 728-6161 OR
(800) 461-4282

FAX: (705) 721-4867

EMAIL: legal@oppa.on.ca

During the week of January 26 2009, I was working my general duty as a Detective Constable with the Drug Enforcement Section. I had occasion to be introduced to a new Probationary Officer who just started working at the Detachment. His coach officer was Constable Shaun FILMAN, and the Probationary Officer was Constable Michael JACK. Upon meeting and greeting Constable JACK, he was interested in the line of work that I was in, being the Drug Enforcement Section. During our brief conversation, PC JACK stated that he was friends with a guy who just got busted for a larger drug bust. Constable JACK stated his name was [REDACTED]

I was familiar with [REDACTED] as he had just recently been involved in a drug incident at the US Border [REDACTED] [REDACTED] crossing the border for [REDACTED] in his own pick up truck.

Constable JACK stated that he knew him and worked out at the gym with him and his friends all the time. I am not able to remember how it came up in the conversation, but at some point two associates of [REDACTED] [REDACTED] were brought up, that being [REDACTED] and [REDACTED]. Constable JACK stated he worked out at the gym with all those guys and that he didn't know they were into anything illegal.

Constable JACK further advised that he was aware that [REDACTED] [REDACTED] would travel to the USA frequently and he recently had brought back Constable JACK a scope for one of JACK's guns from the USA.

Constable JACK stated that he actually had a photograph of himself with all the guys he worked out in the gym with.

The following day, I had attended the Detachment and Constable JACK was there and advised me that he brought in the photograph of himself with his work out partners. Upon viewing the photograph, there was approximately 8-10 people, including Constable JACK, [REDACTED] and [REDACTED]. I had advised Constable JACK that [REDACTED] and [REDACTED] were involved in the drug trade, and Constable JACK

had stated that the guys always seemed to have money and stuff but he didn't know where they worked. I don't remember who the other persons were in the photograph nor did I recognize them.

I did not make any notations in my notebook at the time and have no notations in regards to this incident. I was not concerned nor did I see it necessary at the time to make a notation in my notebook on the photograph.

Respectfully Submitted:

Jamie Brockley

Badge #10489

Submitted: October 24 2009 via Email

(October 26, 2009) (Volume 3, BB) Point Form Chronology:

26Oct09 - PC Nie

- abandoned m/v on 115 – PC Jack stopped cruiser in front of vehicle on a curve as he couldn't decide whether he should stop or not – finally made choice to stop and cut across in front of the vehicle then repositioned behind as better position for safety and tactics
- traffic stop on County Road 1 – 80km/h zone – stopped cruiser in live lane – said he was doing this for an offset – agreed he was not trained this on highway stops – caused long line of traffic stopped behind cruiser - while approaching the vehicle he appeared nervous, touching various radio buttons and light bar, then rolled down window completely – said he was

unsure why he rolled down the window – all took place while approaching vehicle and trying to turn around

- vehicle stop on County Road 29 – felt vehicle was unsafe as indicator light on drivers side was missing at front – turned around and stopped vehicle – expired insurance, and driver had full plate of hot food on passenger side floor – appeared he placed it down upon stop – PC Jack missed hearing a radio call to his unit during the stop – appeared stressed by what to do with individual – advised it was clear he had no insurance and was going to write part III summons – explained to him that slip was only expired and to maybe clarify with driver – subsequent call to insurance company revealed valid policy in effect – no concern was given to the plate of food that was obviously going to be eaten
- PC Jack attended Chemong RV for follow-up to theft occurrence RM09125442 – on July 13 he received a call about vandalism to a pop machine with the money being stolen – complainant called for information only and PC Jack took report but did not attend call – on August 18 he gets voicemail from cousin of original complainant advising there was a theft of his belongings from the same time – between August 18 and October 7 PC Jack plays phone tag with the complainant as he is a truck driver and PC Jack had vacation – on October 13 the complainant faxes a statement with a list of stolen items – PC Jack's first thought was that there was an insurance scam going on – he was asked why he never attended the incident location given the situation – how can you solve a theft without attending the call – his reason was that the original call was for information only, and the second call he could never get a hold of the complainant – he was made to attend the call on October 26 and spoke with the original complainant – the point of entry onto the property was located and the complainant advised that the grass was packed down like a trail at the time of the theft – the coin changer from the pop machine was still located in the back of the property – it was explained that the call could have been completed some three months ago had he just attended the call

My responses to the above 4 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

The actions documented here are true and indicative of how my level of confidence and assertiveness had decreased based on the overly excessive scrutiny and belittling by my terminator coach officer.

My response to the 2nd bullet point entry is as follows:

Again, the documentation as provided by Cst. Nie is true and I re-iterate my previous sentiments.

My response to the 3rd bullet point entry is as follows:

PC Nie had an issue with the plate of food, but I did not for to suppose that he was eating while driving would have been too presumptuous of me. The driver could have very easily left it there from a previous stop having eaten all he wanted. The food could have been cold. How could PC Nie say that the food was hot? There was no steam rising from the plate of food. The point is just because one sees a plate of food on the floor in front of the passenger seat one is supposed to assume the driver was eating while driving and had just placed it down prior to stopping. That would be no different than one observing an open case of beer on the floor of the front passenger seat and presuming that it was placed there so that the driver could access a bottle and open one while driving. However, many an officer does view this to be an offence when in actuality they are completely wrong. They go as far as seizing complete cases that were found open, but containing sealed bottles of beer. Nowhere in the Liquor License Act does it state that an open case of beer has to be out of reach to the driver or for that matter in the truck. The LLA given authority to a peace officer to search any vehicle and any person found in the vehicle if he finds an open container of liquor. An open container is not the same as an open box. In the open box are many closed and or sealed container of liquor. The authors of the act deliberately worded the act to read container for it simple encompassed all possible forms of liquor containment whether that is a bottle or a plastic container or any other form. If the authors were to stipulate an open bottle of liquor then a plastic container is not a bottle or a plastic bag of liquor is not the same as a bottle of liquor. Again the overly excessive scrutiny I was subjected to is vividly apparent.

My response to the 4th bullet point entry is as follows:

The initial call on July 13, 2009, was for information only and like many information only calls officers usually handle them over the telephone. Second, I received the call during the busiest time of the season and I prioritized and acted accordingly. (Note: Had I told my rationale to PC Nie he would have reprimanded me and negatively rated me for blaming it on others.) The call warranted an attendance only when more than a month later (on August 18, 2009) a relative of the complainant called to report some of his things stolen. When I received this information I phoned the complainant right away, but was unable to get hold of him. Despite the fact that between August 20, 2009, and September 9, 2009, I was on my time off, I called the complainant from the detachment when I came in to work on cleaning my task list, but was unable to get hold of him again. Furthermore, from August 18, 2009, to October 13, 2009, is less than 2 months not 3 months. However, it was more convenient for PC Nie to view it in a completely negative manner and with a larger number.

| | | | | |
|------------|-----|-------|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RM09125442 | OPP | Theft | 2009/10/13 14:35 | Complete - unsolved - 1467 CHEMONG RD, SMITH- ENNISMORE-LAKEFIELD, ON Canada (CHEMONG RV) (Area: 1044, Duty locn: 1105, Beat: 30, ESZ: 80968) THEFT UNDER FROM A CARGO TRAILER AT CHEMONG |
|------------|-----|-------|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

(October 27, 2009) (Volume 3, BB) Point Form Chronology:

27Oct09 - PC Nie

- missed radio call while talking to person at collision scene
- call was on radio where night shift was looking for a stolen vehicle – PC Folz advised he had two people under arrest at Airport Road by train tracks – advised PC Jack of information and he said he heard – did not appear to be in any type of hurry to assist his coworkers – PC Pitts confirmed he was leaving at the same time – had to repeat location to PC Jack three times prior to even leaving the parking lot – encouraged him to move faster so we could help our partners and all it did was slow him down – he appeared very confused and could not deal with the lack of information on the call – wanted more details than just “go here to help the officers”
- dispatched to deer on road on County Road 4 – PC Jack advised there was no point in attending as roads department had already been advised – convinced him we needed to attend and found dead deer in the middle on the westbound lane – PC Jack removed the deer himself - discussed the need to attend as things may unfold differently than thought – can't count on others to always do our job
- collision with vehicles in an apartment building parking lot – PC Jack advised he would be charging the driver with Careless driving – he let at fault driver leave scene to attend court and kept her I.D. – after discussion explained problem with careless driving charge and the need to now return I.D. that could have been returned at the time
- disabled vehicle in turning lane on Highway 7 at 7th line Asphodel – two cars were facing each other attempting boost – PC Jack realized something was wrong but continued to drive right past the involved people – then had to return to his original position to be the safest – could not piece everything together when first approaching the scene – caused more concern as driving past problem at 5km/h
- drove past Good Life fitness club and PC Jack said “that's the gym where they say I hung out with the criminals”

My responses to the above 6 bullet point entries are as follows:

My response to the 1st bullet point entry is as follows:

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Radio Communications

Rating: Does Not Meet Requirements

I cannot recall what happened at a collision scene on October 27, 2009. I must have missed hearing a call on the radio while talking to an involved driver. So I missed hearing a radio call. Does not hearing a radio call constitute a failure? In a multitude of instances I used my own personal mobile phone to call shift officers on their personal mobile phones to advise them that they were being called on the radio when they were not responding after a couple of radio calls from the Communication Center. Why were not they responding to the radio calls? Perhaps because they were busy. That attests that I was not the only one not always hearing radio calls. From this section it would appear that out of numerous radio calls that I heard and responded to if I missed one or two that was sufficient for Cst. Nie to rate me negatively. It clearly shows that he was on a mission to undermine me and constantly sought opportunities to negatively rate my performance.

My response to the 2nd bullet point entry is as follows:

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Flexibility

Rating: Does Not Meet Requirements

First of all, I was in a hurry and I even rushed Cst. Nie to get to the cruiser. The comment about me not being in a hurry to assist our coworkers is very wrong. Second, I was first to get in the cruiser and was trying to get directions when Cst. Nie joined me and rushed me to start driving. How could I drive to a call when I did not know where I was going? The call was in an unfamiliar to me zone (Zone 1). I needed to know where I was going first before driving out and it was not going to take me long to figure it out. I am confident that Cst. Nie, who was born and raised in Peterborough and was a police officer at the Peterborough Detachment for 6 years, knew where to go right away, but I did not. Cst. Nie first applied pressure on me and then of course negatively rated me in my evaluation. I believe that a stitch in time saves nine. When I was in the cruiser (ahead of Cst. Nie) looking at the map trying to figure where to drive and what route to take Cst. Nie rushed me to drive into an unfamiliar to me zone to assist in the situation which had already been under control by two other officers (Cst. Jeff Knier and Cst. Jason Folz). We accomplished nothing of value. However, this served as yet another opportunity for Cst. Nie to rate me negatively.

My response to the 3rd bullet point entry is as follows:

The dead deer was NOT in the middle of the west-bound lane. The remains of the deer were scattered on the left side and the shoulder of the west bound lane. You see when one is constantly viewing the actions of another with a negative eye only and also constantly looking for negative things in an individual it is easy to see the entrails of such an animal scattered on the roadway and state that the animal was in the middle of the roadway raising the inference that the animal was still intact, but dead and lying in the middle of the roadway which would pose as a traffic hazard. However, I acknowledge my error in thinking that I did not need to attend for I did have to drag the bulk of the carcass piece by piece off the roadway into the ditch.

My response to the 4th bullet point entry is as follows:

I kept the Driver's License of Margery Golloher for the purpose of completing the Traffic Report (Exhibit 47d, pages 21 – 22) as she was late for a court appearance in regards to an eviction order for one of the apartment building tenants – the same tenant I questioned on October 17, 2009, in the presence of PC Stimson and PC Nie and with respect to which I was negative evaluated by PC Nie in the *Oral* section in my Month 10 PER. This accident that PC Nie is referring to occurred on private property. At least here I can use PC Nie's false and malicious accusations against him. How could have I advised I was going to charge the driver with Careless Driving when the accident took place in an apartment building parking lot and not on a Highway? There is not authority under the HTA to lay a charge for an accident that took place on private territory such as an apartment building parking lot. Had I only mentioned that I was going to lay a Careless Driving charge under the HTA, PC Nie would have immediately documented me for lack of knowledge of Provincial Statutes in the *Provincial Statutes* category in my Month 10 PER, but he did not:

| PROVINCIAL STATUTES | Meets Requirements |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Able to identify, articulate and process applicable elements in Provincial Statutes. | |
| Specific example: PC Jack continues to have an adequate understanding of the Provincial Statutes that he has been observed dealing with this month. On 21OCT09 he attended a collision and laid the appropriate charge given the circumstances - one vehicle turning in front of another. | |

PC Nie should have known better, but he was on a mission to terminate me and just made up another negative thing about me on the fly.

My response to the 5th bullet point entry is as follows:

I vaguely recall the incident and while I cannot not understand what I did wrong. I do not see anything wrong in being safe and driving past two vehicles at the side of the road slowly to access the entire situation visually and then turning around to render any possible assistance. However, since just about everything I did was wrong in PC Nie's eyes I am not surprised to see this entry.

My response to the 6th bullet point entry is as follows:

I presume that would have been true as the false and malignant accusation that I was associating with "Undesirables" and being under the investigation by PSB was on mind all the time causing me enormous amount of stress and disruption in my life.

(October 27, 2009) (Volume 2, N-28):

From: Taylor, Kent (JUS)
ient: October 27, 2009 2:41 PM
To: Nie, Richard (JUS)
Cc: Campbell, Ron (JUS); Butorac, Peter (JUS); Kohen, Colleen (JUS); Jack, Michael (JUS)
Subject: Remedial driver training for PC Michael Jack

Rich

On 22Oct09 I conducted some remedial driver training with Michael in Lindsay. We spent 1.5 hours together. Approximately 30 minutes of the time was spent discussing ways to reduce errors relating to distractions and inattention when driving. I also provided him with a printed list of tips to assist him with this.

The other hour was spent on the road conducting four different exercises to increase his eye lead and observation skills. These exercises are the building blocks upon which we will base future sessions.

We have tentatively booked a second session for Thursday, 05Nov09 @ 13:00 hrs. Again we will meet at Kawartha Lakes detachment. Please understand that I can be flexible on the time and date if it conflicts with your detachment scheduling requirements.

Thank you and please let me know if another date is better for you.

Kent

Sgt. T.K. (Kent) Taylor

(October 27, 2009) (Volume 1, I-18):

From: Campbell, Ron (JUS)
ient: October 27, 2009 3:33 PM
To: Smith, Gerry A. (JUS); Flindall, Robert (JUS)
Subject: FW: Remedial driver training for PC Michael Jack

1-393 booked for his use. 1100hrs to 1700hrs Ron

My Month 10 PER (Exhibit 37):

RESPECTFUL RELATIONS

Exercises the skill and willingness to react sensitively; to be empathic, compassionate and sincere. Recognizes the positive contributions of others; demonstrates trust in others by acknowledging their strengths, skills and expertise.

Specific example:

PC Jack still has the first part of this category covered well. He is polite and cooperative and has the ability to be compassionate to those in need. He has made an effort to avoid answer shopping and deals almost exclusively with his coach unless instructed otherwise. He biggest challenge this month has been with information sharing. On two different occasions he got into situations involving Sergeants and his coach in which he did not give complete information to the Sergeant to make an informed decision.

On 21OCT09 PC Jack started early and was working in the office. Near the end of the day a collision came in and the dayshift Sergeant asked PC Jack to attend as he was available. He neglected to inform the Sergeant that he was not to attend calls alone. When discovered by his coach and discussed with the Sergeant, a lack of trust developed again from the lack of full disclosure.

Does Not Meet Requirements

Rebuttal to PCS-066P (Month 10) (Exhibit 60):**Respectful Relations**

Rating: Does Not Meet Requirements

In the first occasion that Cst. Nie is referring to I was ordered by S/Sgt. Campbell to drive an unmarked cruiser to Lindsay for my remedial driving session. When I failed to inform my shift supervisor Sgt. Butorac of the order to take an unmarked cruiser and ensured to reserve the cruiser on my own (I was following S/Sgt. Campbell order to the letter and was confident I was supposed to do just that) I was accused of not sharing the information with Sgt. Butorac and Cst. Nie. Furthermore, why did not S/Sgt. Campbell make the appropriate notation in the Sergeant's journal under the required date that I required an unmarked cruiser? Their lack of communications resulted in a negative rating for me. I was being hung out to dry. I hindsight I look back and say, "What a carefully orchestrated scheme to malign and discredit me!" Having said that, do you understand why on the morning of September 9, 2009, while in the Constables office, I asked Cst. Nie for his permission to go to the washroom? Do you understand why I felt like I was a puppet on Cst. Nie's string?

I do not know what the second "information sharing" incident was.

It is noteworthy to mention the Motor Vehicle Collision I attended on my own on October 21, 2009, on the orders of Platoon "C" shift supervisor Sgt. Brad Rathbun, which I investigated and handled properly and in which I laid an appropriate HTA charge, is also mentioned in the *Provincial Statutes* section of this evaluation.

(October 27, 2009) Counsel's additional disclosure (April 3, 2012), PC Jack's notes:

THE 27 OCT 09
[REDACTED]
[REDACTED]
17:05 RECEIVED EMAIL
RE: INTERNAL COMPLAINT
17:25 SENT REPLY THAT
I WILL CAN INTERNAL
INVESTIGATION ON
FRIDAY, OCTOBER 30TH
2009.
[REDACTED]

(October 28, 2009) Counsel's additional disclosure (April 5, 2012):

From: Kohen, Colleen (JUS)

To: Thomas, Sandy (JUS)

Sent: Wed Oct 28 11:39:22 2009

Subject: FW: Prob Jack

Hi

Was this forwarded to you ?

Colleen

From: Kohen, Colleen (JUS)

Sent: October 16, 2009 11:43 AM

To: Pomeroy, Margaret (JUS)

Subject: Prob Jack

Good Morning Margaret

Wanted to provide you a update on a Probationary Constable

- Prob Jack started his probation period on 09 Jan 2009
- Posted to Peterborough County Central Region
- Month 1 and 2 (09 Jan to 09 Mar) which are combined performance reviews this member had 4 Does not meet requirements: Police Vehicle Operation, Radio Communication, Flexibility- The work improvement plan was not given to the member until 15 April by Detachment
- Month 3 (09 Mar to 9 Apr) performance review this member had no Does Not Meet Requirements.
- Month 4 (09 Apr to 09 May) performance review this member had no Does Not Meet Requirements.
- Month 5 (09 May to 09 Jun) performance review this member had no Does Not Meet Requirements but his performance review was given to him on the 16 Aug which is 2 months after the fact.
- Month 6 and 7 combined performance review (09 Jun to 09 Aug) this member had 10 Does Not Meet Requirements: Prov Statuses Federal Status, Listening Skills, Radio Communication, Resolution, Follow up, Personal Accountability, Planning and Organizing, Respectful Relations, Self Confidence. This performance review was given to him on the 20 Aug and he refused to sign it.
- Month 8 performance review (08 Aug to 08 Sept) this member had 17 Does Not Meet Requirements : Attitude Towards Learning, Prov Status, Police Vehicle Operations, Oral and Written Communication, Listening Skills, Radio Communication, Analytical Thinking, Resolution, Follow Up, Personal Accountability, Planning and Organizing, Respectful Relations, Self Confidence, Team Work, Self Awareness, Deportment. This performance review was given to Prob Jack on the 11 Sept. He refused to sign the performance review but later on the 25 Sept provided a statement

- I became involved with Detachment 27 August. Since that time we have had 3 conference calls with Detachment members and Region, we have changed his coach officer and platoon which is reflective of his month 9 performance review. Was able to assist in this member attending additional driving with Sgt McNeely.
- Month 9 performance review (09 Sept to 09 Oct) this member had 13 Does Not Meet Requirements: Attitude Towards Learning, Fed Status, Police Vehicle Operations, Traffic Enforcement, Oral Communication, Radio Communication, Decisive Insight, Analytical Thinking, Resolution, Personal Accountability, Flexibility, Respectful Relations, Self Confidence. This performance review was given to Prob Jack on the 13 Oct and Prob Jack did sign the performance review.
- Proposed direction for month 10 (09 Oct to 09 Nov) is once coach officer has completed the performance review arrange another conference call with Detachment members and Region prior to disclosure.

Wanted to provide you heads up on this member and will keep you apprised

Colleen

(October 28, 2009) Counsel's additional disclosure (April 5, 2012):

From: Thomas, Sandy (JUS)
Sent: October-28-09 8:59 PM
To: Kohen, Colleen (JUS)
Subject: Re: Prob Jack

Thanks Colleen

Margaret had not shared with me.

Let me know if you require anything.

Sandy
 Sandy Thomas -----
 Sent from my BlackBerry Wireless Handheld

(October 29, 2009) (Volume 1, I-13):

From: Payne, Jennifer (JUS)
Sent: October 29, 2009 3:19 AM
To: Flindall, Robert (JUS)
Subject: FW: Block Training Joining Instructions January 11-14 2010

Importance: High
Sensitivity: Confidential

Attachments: 2010 Block Training Joining Instructions Jan 11-14 2010.doc

Rob,

Can you please look into changing my block training as per our conversation earlier re: PC JACK and issues/concerns I have about attending with him. (Either have him or myself changed). I think we are only the 2nd week at the start of the new year.

Any efforts to change this would be greatly appreciated.

Jen

Why was PC Payne so concerned about not being near me? The e-mail is dated October 29, 2009. Since I was transferred from Platoon 'A' 70 days prior to the date of the e-mail I had virtually no interactions with PC Payne.

(October 29, 2009) (Volume 1, I-42):

From: Flindall, Robert (JUS)
Sent: October 29, 2009 9:09 AM
To: Payne, Jennifer (JUS)
Subject: RE: Block Training Joining Instructions January 11-14 2010

Sensitivity: Confidential

I'll make some inquiries for you today. Do you have any preferences for a future date, say, like April 27-30? ;)

I'll let you know how I make out.

Rob

Since Sgt. Flindall added the wink emoticon after the '**... like April 27-30? ;)**' it is clear that he was suggesting to his "number one" officer, his right-hand and possibly more than just a friend, PC Payne to attend Block Training (BT) with him. BT takes place once a year for a period of four days and since Sgt. Flindall attended BT in April 27 – 30, 2009, (Exhibit 66) he was scheduled to attend next BT on April 27 – 30, 2010. I do not think it is easy to postpone BT because an officer must re-qualify in firearms usage at least once a year. That being said, I think Sgt. Flindall was just flirting with PC Payne. On another note, who knows what this mafia was capable of setting up.

However, it was very careless of Sgt. Flindall to add the wink emoticon ;) in his e-mail to PC Payne after his scheduled BT dates. Sgt. Flindall and PC Payne were rumored to be more than just friends by Peterborough County OPP officers and even by Peterborough Court personnel. This wink emoticon certainly adds credibility to those rumors and should make one wonder about the sort of a relationship the two had. I

presume PC Payne never reported Sgt. Flindall's "inappropriate" behavior towards her to Sgt. Flindall's supervisors.

(October 30, 2009) (Volume 1, I-15):

From: Kohen, Colleen (JUS)
Sent: October 30, 2009 3:31 PM
To: Nie, Richard (JUS); Campbell, Ron (JUS)
Cc: Lee, Dave E. (JUS); Borton, Doug (JUS)
Subject: Prob Jack

Good Afternoon

I wanted to touch base with everyone as month 10 PCS66P is due on Tuesday. I am sorry.. I cant remember Rich Sgt name so if you could please forward this message to him.

I was wondering if the PCS66P could be sent to us electronically and then we can set up a conf call. We talked about delaying any recommendation on this PCS66P

Which is good with I am sure everyone

\

Look forward to hearing from you

TX

Colleen

(October 30, 2009) Counsel's additional disclosure (April 5, 2012):

From: Campbell, Ron (JUS)
Sent: October-30-09 7:26 PM
To: Butorac, Peter (JUS); Kohen, Colleen (JUS); Nie, Richard (JUS)
Subject: Fw: Prob Jack

Colleen it is peter Butorac

(Volume 6, 60):

On October 30th 2009, Detective Sergeant Thompson interviewed Jack in relation to his association with Edwardes-Evans, Karaj and Tzavaras. Jack advised that in 2003 he worked out at Good Life gym for a four month period. It was at this time that he met Edwardes-Evans, Karaj and Tzavaras. He only ever saw Karaj and Tzavaras at the gym and has not seen them since. He did not see Edwardes-Evans for a number of years after 2003.

Anticipated evidence of Mr. Michael Jack (Schedule A):

Note: I was wrong with respect to the month in which the interview took place. Unlike my personal respondents when they compiled the point form chronology I did not have the benefit of access to my officer's notes when I compiled my statement. Hence, I thought the interview took place in November of 2009 whereas it took place on October 30, 2009.

In November of 2009 I was interviewed at the Peterborough Detachment by the Professional Standards Bureau (PSB) investigators Detective Sergeant (D/Sgt.) Tym Thompson and D/Sgt. Mark Wolfe regarding an allegation that I was associating with undesirables. The President of the 8th Branch of the OPPA D/Cst. Karen German was present during the interview. The interview was audio recorded by the PSB Detectives and by the OPPA Representative. It is noteworthy to mention that I could not sleep on the eve of the interview so by the time it took place (at approximately 3:00 pm) I had been awake for approximately 30 hours straight. When I advised D/Cst. German shortly prior to the interview that I was deprived of sleep, she immediately called the Detectives, who were en route to the detachment, and attempted to re-schedule the interview. However, the Detectives were already nearing the detachment and insisted on proceeding and I also could not wait to get it over with.

(October 30, 2009) Counsel's additional disclosure (March 13, 2012), PC Jack's notes:

| TIME | 30 OCT 09 | TIME | 30 OCT 09 |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09:10 | called [REDACTED] [REDACTED] [REDACTED] ASKED IF DETECTIVE THE INTERVIEW COULD SCHEDULED INTERVIEW @ 16:00 HRS TODAY KAREN GERMAN WILL BE PRESENT [REDACTED] | 15:10 | [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| | | 16:00 | MEETING WITH PSB - MARK [REDACTED] - [REDACTED] OPPA 8 th BRANCH REP/PRESIDENT KAREN GERMAN INTERVIEW AUDIO- RECORDED BY PSB MEMBERS + BY KAREN GERMAN |
| | | 16:45 | INTERVIEW CONCLUDED |

(October 30, 2009) (Volume 3, BB) Point Form Chronology:

30Oct09 - PC Nie

- advised that he was told to stay on OT on Tuesday night to take a prisoner to Kingston with PC Foster

(October 31, 2009) (Volume 3, BB) Point Form Chronology:

31Oct09 - PC Nie

- spoke with Sgt. Butorac about evaluations – he advised that PC Jack volunteered to go on prisoner run on Tuesday – said he was “jumping out of his skin to go” – found it interesting given that he told me that he was told to go

Due to the shortage of officers on Platoon ‘C’ on the evening of October 27, 2009, (only 6 officers worked – Exhibit 66) they requested two officers from day shift to work OT to transport a female prisoner, who had been sentenced to serve 7 or 9 days in a jail located somewhere west of Kingston. While I “volunteered” at the Sergeant’s request I cannot see how I could have possibly been “jumping out of my skin to go”.

(October 31, 2009) Counsel’s additional disclosure (March 13, 2012), PC Jack’s notes:

| | | | |
|-------|-----------------|-------|--------------------|
| | SAT 31 OCT 09 | | NDS WET + SLIPPERY |
| OLL | SST BUTORAC | SOFT | 11-201 |
| A/B | PC NIE | WAND | 1-235 |
| 2/P | PC STIMSON | MIL | 707501 |
| 1 | PC MCKENSON | EDMIP | RAPAN, ASD |
| 10-13 | +10°C, CLOUDY + | | |
| | SNOWING | | |

My Month 10 PER (Exhibit 37):

PERSONAL ACCOUNTABILITY

Takes responsibility for one's own actions and consequences and willingly deals with any identified performance deficiencies.

Specific example:

PC Jack willingly admits to having problem areas and understands the identified concerns. He has shifted somewhat in his approach in that instead of placing blame on another officer, he suggests his problems arise from the circumstances he is placed into. If a problem is detected or questioned, he will now say it is due to being forced to think when he is tired or not feeling well. If he has several things to do at once he will say that he can't be expected to do three things at once and that is why things fall apart.

Does Not Meet Requirements

Rebuttal to PCS-066P (Month 10) (Exhibit 60):

Personal Accountability

Rating: Does Not Meet Requirements

No matter what I did or how I did it, Cst. Nie almost always found a problem with me. Whenever I tried to justify my actions or explain my rationale for doing or not doing something or tell him where I learned what and who told me what he accused me of not taking personal responsibility. I hoped that he would understand my perspective, see that I am not an evil person, and realize that my judgment and my performance were severely undermined by the poisoned work environment and by his authoritarian and belittling attitude towards me. I hoped he would change his dictatorial and intolerant approach to "coaching" and ease up on me. Alas, my efforts were in vain. Reasoning with Cst. Nie did not work. He was as cold as a chunk of ice and constantly prided himself on being objective. It would appear that Cst. Nie's primary objective was to drill into my mind that I was a failure and I have to admit that he succeeded. It took me approximately 3 months after my resignation from the OPP to regain my confidence and belief in myself.

Anticipated evidence of Mr. Michael Jack (Schedule A):

Sometime in October 2009 I learned from some officers at the Peterborough Detachment that Cst. Nie had coached Al Chase (full name: Harry Allen Chase) and that Al Chase had been dismissed from employment with the OPP (Exhibit 48). Al Chase was a visible minority (African-Canadian) with 21 years of service in the Canadian Armed Forces. I subsequently asked Cst. Nie about what happened to Al Chase. Cst. Nie advised me that Al Chase had a learning disability and that he (Cst. Nie) did not know how they did not catch it in the first place. Note: I am sure who "they" were that Cst. Nie referred to – Canadian Armed Forces, Applicant Testing Service, OPP recruitment bureau, Ontario Police College, or Provincial Police Academy. Cst. Nie further advised me that OPP had expended thousands of dollars on Al's tests and had him see psychologists before terminating his employment (Exhibit 62). Ironically I learned much later on in 2010 from Cst. Tapp who was on Sgt. Gerry Smith's shift along with Al Chase that Al was developing into a fine officer. The so called learning disability was his habit of getting the dispatcher to repeat herself that raised the inference that he had a problem with his hearing. Cst. Tapp had worked with Al on some calls on occasions that Al was alone and commented to Cst. Nie that Al was doing a fine job out there. To that Cst. Nie commented that Al must have a learning disability for he keeps getting the dispatcher to repeat herself. Cst. Tapp told him that Al did not have any learning disability and that he (Cst. Tapp) himself often got the dispatcher to repeat herself so then he (Cst. Tapp) must have a learning disability as well. Cst. Tapp also told me of another officer working at the time on Al Chase's shift, Cst. John Dawson who couldn't utter two sentences without stammering and is still employed with the OPP.

Sometime in late October 2009 I was working a night shift at the Peterborough Detachment. While sitting in the cruiser at the detachment parking lot Cst. Nie mentioned something along the lines, "If things do not work out for you, you will probably be doing something about it". I responded by saying that at the time, I had no such intention. Cst. Nie then advised me that when I asked him about Al Chase it freaked him out. Cst. Nie then added something to the effect that Al Chase's and his family were friends (I think the Church might have been in the picture as well) and that since Al Chase failed to pass his probationary period, he (Cst. Nie) failed as a coach officer too and that was the burden with which he had to live. So when I asked Cst. Nie again what happened, he kind of leaned away from me and said, "Do not even go there".

Furthermore, around late October 2009, I noticed a significant change in the attitude of the Peterborough Detachment civilian personnel towards me. The civilian female employees became more reserved and less friendly in their interactions with me. I felt I was being ostracized from all directions. Later, I learned from Cst. Tapp that one civilian female employee – front desk secretary Deborah Musclow – had said to him in January 2010 that I could not be trusted, had problems and something to the effect that I was not altogether there, though she and I barely ever worked together and I was no longer with the OPP. One must realize that as an officer one does not have a regular interaction with many of the civilian staff. OPP's yearly business plans stress the need of every officer when starting work to hit the road so to speak as soon as possible and stay in their respective zones and communities. When one considers that regular hours of an OPP officer for days start at 6:00 am for mornings and 6:00 pm for evenings one can see that these commencing hours preclude frequent interaction with civilian staff since they normally start at around 8:00 am. Hence the change in their attitudes would have had to be influenced by the rumors concerning me much like the rumors I was hearing concerning visible minority officer Cst. Tapp who has filed 5 complaints with the Ontario Human Rights Commission (Exhibit 95). Furthermore, the change in their attitudes attest to poisoned environment I was working in. Noticing the change in their attitude reinforced my belief that some Peterborough Detachment officers had launched a systematic campaign of interpersonal destruction against me. It was this interpersonal destruction that ultimately ushered in my demise with the OPP.