

Phone call between Adam Bereki and Sergeant Macchiaroli

Recording Name:

[E7 SAPD– CITIZEN COMPLAINT AGAINST OFFICERS
INTERNAL AFFAIRS INTERVIEW SGT. MICHELLE
MACCHIAROLI 080520]

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1 Macchiaroli: -- recorded. Just be aware of that.

2 Bereki: Okay.

3 Macchiaroli: Um, and I guess is there -- in reading this it
4 looks like the main complaint on the -- the two
5 sergeants was that they, uh, didn't wanna take a crime
6 report? Am -- am I understanding that?

7 Bereki: Yes.

8 Macchiaroli: Or -- or do you wanna, you know, is there anything
9 else that you (inaudible - 0:00:18)?

10 Bereki: Well -- i- -- in -- just in different words. I -- I -
11 - I think you're o- -- you're hitting the nail on the
12 head totally. Um --

13 Macchiaroli: Okay.

14 Bereki: -- th- -- the, um, several judges -- there -- there's
15 a policy in the State of California, a public policy,
16 um, I did not include it in there. It's called
17 Business and Professions Code 7031(a) and 7031(b).

18 Macchiaroli: Mm-hmm.

19 Bereki: And basically what this public policy does is it
20 violates the state and federal constitution. Um, so
21 it's totally unconstitutional. Um, it -- it -- it --
22 it -- basically, so like, um, let's hypothetically say
23 that you hired me to, um, build you a -- a house, and
24 I -- I spent a million bucks and I built you the house
25 and, um, you paid me for that. But then, if you found



1 out that I was an unlicensed contractor, under this
2 law I have to give you the million dollars back, and
3 you get to keep the house.

4 Macchiaroli: Okay.

5 Bereki: So that's, uh -- that's a unconstitutional fine. It's
6 an excessive fine. And so it has to -- it has to go
7 through the criteria that I outlined in there. That's
8 what the -- the judges have to do. They have to apply
9 the excessive fines clause. And if they don't do that
10 they're unlawfully taking property. So basically
11 what's happening right now is -- is nearly the court
12 has ordered that nearly -- I have to give back nearly
13 a million dollars. And they did not allow for all of
14 the offsets that I -- for all the work that I did, and
15 they did not, um, um, whatchamacallit, um, uh, apply
16 the -- the principles of the excessive fines clause.
17 Now there's another element that I did not include in
18 there and -- and if we get more detailed into the
19 factual elements of the complaint -- like, I'm sure
20 you're aware that penal laws have to be prosecuted by
21 the state, right?

22 Macchiaroli: Um, I guess -- I know you were talking about the -
23 - the -- the -- the theft, you're -- you're bringing
24 that up (inaudible - 0:02:25).

25 Bereki: Well wha- -- n- -- no, what I'm saying is that, like,



1 if you go out in your job and you arrest someone for
2 robbery I can't prosecute that person, right? The
3 state has to do it. The district attorney has to do
4 it on behalf of the people of California, correct?

5 Macchiaroli: Yes.

6 Bereki: Okay.

7 Macchiaroli: Obviously you need a victim and all that, yes.

8 Bereki: Right. Exactly. So there's no victim in this quote-
9 unquote "crime," and yet this law is entirely penal.
10 And so, under the law -- again, this is highly
11 lawfully complex argument, or -- or something that I'm
12 sharing with you, but just to give you another
13 principle about the illegality of it, is that because
14 it's a penal law it can't be prosecuted by a private
15 party. It has to be prosecuted by the public d- --
16 uh, the -- uh, um, the DA on behalf of the people of
17 California. But yet, in this instance, somehow, they
18 have tried this, um --

19 Macchiaroli: Uh, uh, not to mean to cut you off. I guess why
20 did you feel that Santa -- like, that you need to file
21 it here at Santa Ana? That's --

22 Bereki: Well -- well, because this is where the crime
23 occurred, at the --

24 Macchiaroli: 'Cause --

25 Bereki: -- at the superior court in Santa Ana, and the other



1 justices that are involved are at the Fourth District
2 Court of Appeal in Santa Ana.

3 Macchiaroli: 'Cause I -- I -- I know -- you know, I did some --
4 some research myself because obviously it's, you know,
5 involving a lot of -- looks like, uh, claims and --
6 and obviously you went through obviously superior and
7 then the appellate court and all that. So I'm looking
8 at some stuff and it says that for judges it seems
9 like the, um -- I guess it's called the Commission on
10 Judicial Performance for the one that investigates the
11 misconduct by these judges.

12 Bereki: They do not investigate criminal misconduct.

13 Macchiaroli: A- -- and again, um, as far as this type of com- -
14 - you know, that you're looking at is the -- it --
15 it's kind of a civil matter because --

16 Bereki: No, it's not. If the judge breaks the law and takes
17 some property that they don't have lawful authority to
18 take, that's th- --

19 Macchiaroli: What property is it that -- that they're taking?

20 Bereki: They -- a -- a milli- -- we- -- \$930,000.

21 Macchiaroli: Ag- -- again, it- -- it's kind of like small
22 claims court, right, when people, "Hey, uh --"

23 Bereki: N- --

24 Macchiaroli: "-- they -- they damaged my property and I'm suing
25 them for -- for the damages."



1 Bereki: Okay, tha- -- th- -- th- --

2 Macchiaroli: I mean obviously they're -- they're -- they're --
3 they're saying that you owe this money -- and again,
4 this is something that -- that you guys obviously went
5 to court on, and looks like, you know, obviously you
6 lost, and now they're, you know, I guess, requiring
7 some money (inaudible - 0:05:13) in return (ph).

8 Bereki: Okay, so i- -- in the discharge of your duty there's
9 laws that you have to follow, correct?

10 Macchiaroli: Yes.

11 Bereki: Okay. And if you don't follow those laws, or you
12 break them, y- -- you could be committing a criminal
13 act, is that correct?

14 Macchiaroli: Yes.

15 Bereki: Okay, so -- and -- and if you commit that criminal act
16 it's not a civil matter, you can be arrested and put
17 in jail, correct?

18 Macchiaroli: For criminal, yes.

19 Bereki: Yes. Okay. So now if you, under color of your
20 authority as a police officer, took money from someone
21 that wasn't yours, or took it from them and gave it to
22 someone else when you didn't have authority to do
23 that, could that be a criminal act?

24 Macchiaroli: If -- if I stole somebody's money, yes.

25 Bereki: Okay.



1 Macchiaroli: But -- but they're basically -- this is for, I
2 guess, services that you rendered, right, on this --
3 this house that -- that you remodeled and were
4 unlicensed. And then they're saying that all this
5 money is owed. That's kind of how I was understanding
6 that.

7 Bereki: Um, so th- -- that's where you cut me off. I was
8 trying to explain a little bit more of that. But
9 that's -- that's -- if we stay with the general
10 principle of the judge, a police officer, any public
11 official, there are laws that have to be followed.
12 And if they don't follow those laws, and they take
13 something that doesn't belong to them and give it to
14 someone else, that's theft. That's a criminal act.

15 Macchiaroli: Well if -- if -- if -- if you have an issue with -
16 - with -- with their ruling on that, then you're gonna
17 have to take it up with that Commission on Judicial
18 Performance --

19 Bereki: But -- but they don't investigate --

20 Macchiaroli: -- (inaudible - 0:06:54) --

21 Bereki: -- they don't investigate --

22 Macchiaroli: Well --

23 Bereki: -- criminal acts.

24 Macchiaroli: -- that's -- that's where you're gonna need to
25 start 'cause we're not gonna take a police report for



1 th- -- the theft.

2 Bereki: Okay. Um, I started with them and they told me that
3 they do not in- -- investigate criminal acts by
4 judges.

5 Macchiaroli: Well this is not the AG. This is the Commission -
6 - if you go online they -- they kinda walk you through
7 everything.

8 Bereki: Okay. I- --

9 Macchiaroli: Um, on how -- how to file a complaint.

10 Bereki: I've been at this for years, and I'm well aware of
11 what the complaint process is, and how to use it, and
12 what they do and don't do. Hang on -- if you just
13 hang on one sec I will direct you to a website that
14 shows exactly what the Commission on Judicial
15 Performance investigates and what they don't
16 investigate. And what they do not -- they do not have
17 police officer powers to investigate crimes. They are
18 simply an administrative agent --

19 Macchiaroli: Again, uh, we are not gonna investigate them, the
20 judge demanding you pay back this, the -- the -- the
21 fees on this -- this remodel that you did. We would
22 not investigate them.

23 Bereki: Well, if it was a crime it's your job to. But what's
24 happening is that you're not seeing the criminal link
25 for it, and so I'm okay with that. But what I would -



1 - what I would appreciate is that if you could share
2 with me how it's not a crime. I'm -- I'm totally open
3 to hear what you have to say. I'm open to being
4 completely wrong. But, based upon -- you know, look,
5 I -- I'm not sure if you're aware, but I was a
6 policeman for about ten years, too.

7 Macchiaroli: Okay.

8 Bereki: So I have ver- -- a lot of experience being out on the
9 street, looking at what's criminal and what's not.
10 And, frankly, if something like this had come to me
11 when I was a police officer I probably would have
12 said, "Hmm, I don't know. That sounds like an issue
13 for -- to deal with with judges and the jud- --
14 judicial council." But I've been at this for years
15 now, and I've done the investigative work, and I've s-
16 --

17 Macchiaroli: But you're telling me that the Commission on the
18 Judicial Performance told you to come to our police
19 department and file a police report?

20 Bereki: They did not --

21 Macchiaroli: Is that what you're telling me?

22 Bereki: -- say -- they did not say that, no. I filed a
23 complaint with them and they told me that they do not
24 investigate criminal matters against judges. They do
25 not have that power. That's -- that's what the police



1 department has power. The police department
2 investigates crimes. The judicial performance
3 investigates complaints against the judicial canons of
4 law, and they are not criminal canons, they're --
5 they're administrative canons. So they're -- they're
6 canons like, um, the judge fell asleep on the bench,
7 um, th- -- th- -- the judge took a bribe from
8 somebody. The judge, um -- things like that. They're
9 not -- th- -- the bribe could be a criminal act, but
10 it's also an administrative act. So they do not
11 investigate, uh, criminal activities of judges. They
12 -- they -- they -- they -- they have not been given
13 that power to do it. Um, so they can't. So the only
14 investigative body that is empowered to investigate
15 criminal activity, as far as I know, in the State of
16 California, as a state agency is a police department.
17 And that agency is where the crime occurred, which is
18 Santa Ana. So I will find -- I'm trying to -- I tried
19 to find the paper that I had printed out, but I can't
20 find it, so let me look online. Ju- -- Commission on
21 Judicial Performance. Filing a complaint. Okay, here
22 it is. "Types of misconduct: abuse and contempt of
23 sanctions, administrative malfeasance for improper
24 conduct, alcohol or drug-related conduct, uh, biased
25 appearance towards a particular class, comment on a



1 pending case." It just goes through this whole list
2 of behaviors here, some of them actually say, "Non-
3 substance abuse criminal conduct, alcohol or drug-
4 related conduct." But none of them involve theft.
5 And so I filed a complaint with them and gave them the
6 information that you have, and they told me -- let me
7 see if I can find that very quickly. Uh, okay, I'll
8 paraphrase for you but, uh, "The Commission on
9 Judicial Performance voted to close your complaint,"
10 uh, duh-duh-duh-duh-duh -- "Even if a judge's decision
11 is later determined to be legally incorrect, that, by
12 itself, is not a violation of the Code of Judicial Ed-
13 -- Ethics, and is not misconduct." "With respect to
14 the legal proceedings you may wish to consult other --
15 an attorney or other legal services if this can help
16 you. We cannot provide you with legal assistance."
17 So, we're back at the place of, if the judge commits a
18 crime where do y- -- who do you report that to?

19 Macchiaroli: So -- so w- -- so what we're telling you, um, Mr.
20 Bereki, is that the judge basically ordered --
21 basically it's kind of like restitution, right, this -
22 - this disgorgement, of paying back the fees and
23 penalties and whatnot for unlicensed work that was
24 done. So, again, that's -- that's something that
25 we're not gonna investigate.



1 Berekhi: Okay. If the judge did not have authority to do that,
2 what would that be?

3 Macchiaroli: When you say they did not have the authority,
4 that's what --

5 Berekhi: Okay --

6 Macchiaroli: -- he ruled on. So if you're, uh, disagreeing
7 with his ruling then, again, that's something you
8 would take up with the Commission, not saying it's a
9 crime, but saying, "Yeah, I disagree with his ruling."

10 Berekhi: W- -- s- -- so -- so let's say that, um -- let's say
11 that you're in my position right now. And, um, you
12 violated, uh, y- -- you -- you -- you, uh, were
13 driving without a license. And you went to the court,
14 and the Court says, "Okay, um --" can I have your
15 first name, real quick?

16 Macchiaroli: Mine?

17 Berekhi: Yeah.

18 Macchiaroli: Yes, uh, Michelle.

19 Berekhi: Okay. He says, "Okay, Michelle, um, your fine is a
20 million dollars for driving without a license." And
21 you say, "What? Where is your authority to do that,
22 Judge?" And he has none. He's not authorized by law,
23 by statute, nothing. He just says, "You have to pay a
24 million dollars." And you say, "Well, Judge, I don't
25 have a million dollars. How am I going to pay that?"



1 "I don't wanna hear it, Michelle." And so you say,
2 "Well, you're gonna force me into bankruptcy, then. I
3 don't have the million dollars to pay." And you say,
4 "Well, Judge, there's the Constitution, and it says
5 that there's an excessive fines clause in that when
6 there's a -- when you fine me you have to go through
7 these criteria. One of them is my ability to pay, and
8 that the fine has to be proportional to the offense.
9 And you didn't do that. Where is your authority to
10 fine me a million dollars?" And the judge says,
11 "Michelle, I don't wanna hear it. Pay the million
12 dollars. Get out." So then, in my situation, you go
13 to the Council on Judicial Performance and you say,
14 "This Judge didn't have authority to do this. I need
15 you to investigate it." And they say, "We're not
16 gonna investigate it." So then you, uh -- you go to
17 an appeal and all three appellate justices uphold that
18 same unconstitutional la- -- ruling of the judge. So
19 then you say, "Well, if the judge didn't have the
20 authority to do this he's operating on the same
21 principle as an ordinary person because the judge can
22 only do things within the law."

23 Macchiaroli: But that's -- but that's your interpretation that
24 he didn't have the authority to (inaudible - 0:15:44).

25 Bereki: Wh- -- i- --



1 Macchiaroli: To -- for his ruling, and not (ph) --

2 Bereki: Michelle?

3 Macchiaroli: -- the appellate, but -- sir, but if the appellate
4 court upheld it, and then the --

5 Bereki: But Michelle, wha- -- what --

6 Macchiaroli: -- the Commission on Judicial Performance as well
7 didn't agree with it --

8 Bereki: But what I'm saying is this --

9 Macchiaroli: You're the only one that -- that doesn't see that
10 --

11 Bereki: Okay, I -- I --

12 Macchiaroli: -- with -- with these other courts that have been
13 (inaudible - 0:16:06).

14 Bereki: Correct. So -- so what if I'm actually correct?
15 Let's just play with that proposition for right now.
16 What if I'm actually correct, and there was no
17 authority for the judge to do it?

18 Macchiaroli: Again, you would have to go back to the Commission
19 on Judicial Performance.

20 Bereki: Okay, but what --

21 Macchiaroli: That's where you need to -- that's -- that's who's
22 gonna be able to do anything with this --

23 Bereki: Okay, so -- so y- --

24 Macchiaroli: -- (inaudible - 0:16:31) we're not gonna
25 investigate the crime.



1 Bereki: Wait, you're not going to investigate the crime? Do
2 you hear what you just said?

3 Macchiaroli: Yes because it's not a crime.

4 Bereki: Oh, but you just said it was. I -- how is it not a
5 crime?

6 Macchiaroli: Because he's ordering you to pay back -- it's --
7 it's -- it's restitution, or it's -- they call it
8 disgorgement.

9 Bereki: But -- but it's not restitution.

10 Macchiaroli: (Inaudible - 0:16:59).

11 Bereki: It's not restitution.

12 Macchiaroli: Okay, disgorgement.

13 Bereki: Okay, that's a form of restitution and it's not
14 disgorgement either.

15 Macchiaroli: But that's --

16 Bereki: So -- so wh- -- wh- --

17 Macchiaroli: -- but that's what the judge ruled on.

18 Bereki: Right.

19 Macchiaroli: (Inaudible - 0:17:08). And that's why I'm saying
20 it's not a crime because --

21 Bereki: So --

22 Macchiaroli: -- basically -- this was a lawsuit that resulted
23 in you having to pay back these -- this -- this money
24 and fines. So again, we're not gonna investigate it
25 because it's not a crime. And that's what Sergeant



1 Hernandez and Sergeant Alcantar were trying to -- to
2 explain.

3 Bereki: But I'm not able to see how it's not a crime. And so
4 maybe I'm wrong, and I'm asking you to share with me
5 how that's the case. But it doesn't seem like you
6 understand. And I say that, um, because y- -- y- --
7 you're referring to it as restitution or a
8 disgorgement, and you don't understand what those
9 principles are. Um --

10 Macchiaroli: I know what disgorgement is.

11 Bereki: Okay, what -- what is it?

12 Macchiaroli: It's basically a repayment of fines based -- based
13 on --

14 Bereki: Not even close.

15 Macchiaroli: -- an unethical business transaction.

16 Bereki: Not even close. Not even close.

17 Macchiaroli: Repayment of fines obtained through illegal or
18 unethical business transactions?

19 Bereki: That's not it.

20 Macchiaroli: Is that what it is?

21 Bereki: That's not even --

22 Macchiaroli: Please tell me what it is.

23 Bereki: Okay. Disgorgement is a principle, under the law of
24 restitution and unjust enrichment. Unjust enrichment
25 means that you do something and you don't lawfully



1 have a right to maintain the profits of that illegal
2 act. So, a -- a -- a very easy way to understand that
3 would be to take the case of a bank robbery, the
4 example that I used in my complaint. So the bank
5 robber, when he steals 20 grand from the bank, he's
6 been unjustly enriched. And the -- the court, as a
7 means of restitution, can order him to disgorge -- the
8 word "disgorge" means to give up -- he has to give up
9 the -- the money that he was unjustly enriched by. So
10 he -- he -- in other words, when he robbed the bank he
11 made -- he made 20,000 bucks in profit. So the Court
12 says, "You have to give back that 20,000 bucks. But
13 if the Court orders him to give back more than what he
14 took, that would be a penalty. That would be a fine.
15 Disgorgement is not a fine. Disgorgement is -- is the
16 principle of --

17 Macchiaroli: But it does say -- it's often with interest and/or
18 penalties. So the --

19 Bereki: No.

20 Macchiaroli: -- the --

21 Bereki: No, what -- what are you reading? Can you share with
22 me the source that you're reading that from?

23 Macchiaroli: If you just look it up, the meaning, it's --

24 Bereki: Okay, that's -- you cannot use that. You have to
25 actually go to what the law on the subject is. The



1 definitions that you find by google searching are not
2 law. You have to go to the court cases. That's why I
3 included Lou (ph) v. SEC with you because that is the
4 hi- -- the Lou v. SEC case is a case that just came
5 down -- I believe it was June 22, 2020, from the
6 United States Supreme Court, the highest court in our
7 country. And they said, "Here's what the law of
8 disgorgement is." So in that case what happened was,
9 um, th- -- this company, uh, was started to build --
10 if I remember correctly, a cancer center, um,
11 somewhere in the United States. And they solicited
12 about \$30 million in -- in money to build this center.
13 Well, in this agreement that they had with the
14 investors they didn't tell the investors what their
15 profits were gonna be. So these people started paying
16 themselves millions of dollars in profits. The
17 business didn't actually -- cancer center didn't
18 actually get built, but some things did. They did
19 marketing, they did advertising. I think they may
20 have rented a -- a space for it, something like that.
21 Um, so what happened was the Securities and Exchange
22 Commission prosecuted them in federal court in a civil
23 action for fraud and violation of the Securities and
24 Exchange rules. And they used the principle of
25 disgorgement to make them pay back the \$27 million



1 that they were awarded. And -- and both the courts
2 said, "Yep, that's it. That's disgorgement." So the
3 case went to the Supreme Court and the Supreme Court
4 said, "Absolutely not. This is a penalty.
5 Disgorgement is you have to take into account the
6 benefits that were conferred." So what this means is
7 they voided the judgment of the -- the Ninth Circuit
8 Court of Appeal and sent it back to them and said,
9 "You need to do it over again because you're wrong.
10 That's not what disgorgement is. Disgorgement is not
11 to be used in a penal way. It only applies to the
12 amount that was unlawfully taken, or, in -- in this
13 case, profits. So -- so in my case, the case of
14 building a house, the Court was required to go back
15 and find out how much profit I made. I didn't make a
16 million dollars in profit. That was the pr- -- that
17 was the -- the amount that the whole project cost to
18 build. So if you don't go back and find out what was
19 actually profited by me for these quote-unquote
20 "illegal activity" of not having a license, then
21 you've -- are im- -- imposing a fine. And a fine is
22 not disgorgement.

23 Macchiaroli: Then -- I mean everything that you told me,
24 basically they went to the Supreme Court, and that's
25 who overturned that, right?



1 Berekhi: Correct.

2 Macchiaroli: Is that what you just explained to me?

3 Berekhi: Correct.

4 Macchiaroli: So, again, that's something that you would have to
5 do.

6 Berekhi: But I can't. They won't take my case.

7 Macchiaroli: Well, unfortunately that's the process that you're
8 gonna have to do because --

9 Berekhi: But I've already done it.

10 Macchiaroli: -- (inaudible - 0:22:52) --

11 Berekhi: Michelle, I already did it. They -- it's
12 discretionary if the Supreme Court wants to take your
13 case. Okay? So that case that I just shared with you
14 isn't my case 100 percent. But what it is is -- is
15 the Supreme Court is laying down the law for what the
16 principle in -- in law, of --

17 Macchiaroli: Well, then --

18 Berekhi: -- disgorgement is.

19 Macchiaroli: Well that's something, again, that you're gonna
20 have to readdress with them, then, if that's something
21 that just came down. But, again, that's something
22 that we're not gonna be investigating or doing
23 anything about.

24 Berekhi: But Michelle, what I'm reporting to you is a crime.
25 And you're sharing with me that you're not going to



1 take --

2 Macchiaroli: We're not gonna investigate.

3 Bereki: -- it from me (ph).

4 Macchiaroli: No. Because it's not a crime for us to
5 investigate.

6 Bereki: What -- what specifically is not a crime? I -- I
7 would like to -- so -- so I --

8 Macchiaroli: Again, this -- we're going back to you believe
9 it's a crime. We're saying it's not a crime.

10 Bereki: Okay. But --

11 Macchiaroli: So --

12 Bereki: -- what I'm asking from you is specifically what
13 you're saying is not a crime.

14 Macchiaroli: Is you're saying the -- the -- the amount that the
15 judge is telling you you have to pay back is not -- is
16 not right. So you're basically saying it's some type
17 of, uh, theft on you. Is that what you're --

18 Bereki: I'm -- I'm saying that the judge was not a- --
19 authorized by either the Constitution --

20 Macchiaroli: So what -- so what crime did he commit?

21 Bereki: I would -- minimally theft. I would say robbery
22 because he's using the --

23 Macchiaroli: Okay, that's -- again --

24 Bereki: -- (inaudible - 0:24:22) -- okay.

25 Macchiaroli: No. I --



1 Berekhi: So, I'm --

2 Macchiaroli: -- again, you have to -- you have to look at this
3 is a court case where you were required to pay back a
4 certain amount and you don't agree with the amount.
5 And again, there's steps, right? You go to the
6 appellate court and then -- then the supreme court.

7 Berekhi: Okay.

8 Macchiaroli: And again, so --

9 Berekhi: But -- but -- but here's what I'm getting at. And the
10 difference is I'm asking if what you're saying is that
11 if the judge can take money, or property, without
12 lawful authority, that that is not a crime.

13 Macchiaroli: He did, under -- when he did the case --

14 Berekhi: No.

15 Macchiaroli: -- and that's what I'm saying --

16 Berekhi: No. Yeah, that's a -- where you're --

17 Macchiaroli: -- you're (inaudible - 0:25:08) --

18 Berekhi: -- that's where you're wrong.

19 Macchiaroli: But you're disagreeing with his -- his ruling
20 (inaudible - 0:25:13).

21 Berekhi: No it's -- it's -- it's not just a disagreement,
22 Michelle. Let's say this. Let's say that, um --
23 let's say that, um, you're out on patrol and you see a
24 guy wearing a pink shirt. And there's no crime for
25 it. But you don't like pink shirts. So you say,



1 "Come here, asshole. I'm gonna arrest you. You're
2 going to jail." And you -- you hook this guy up for
3 wearing a pink shirt. And where's your authority? Is
4 that an unlawful arrest? Did you make that a- --
5 arrest without authority? Of course. So now, imagine
6 that guy says, "Officer, what's your authority?" And
7 you have none. So he goes to the police department
8 and he says, "Internal affairs. Michelle Macchiaroli
9 arrested me for wearing a pink shirt and I wanna know
10 where that crime is. I wanna know where the law says
11 that I can't wear a public shirt -- a pink shirt is."
12 And they say, "Well, there is no law, but that's not a
13 crime that she arrested you." And he says, "Well wait
14 a minute. She took my liberty. She took my time.
15 She took my property and she had no lawful authority
16 to do it." And then -- then the officer says to her,
17 "Well, you just disagree with the ruling. You just
18 disagree with Michelle's judgment." And then I say,
19 "No, it's -- yeah, I do disagree with her judgment,
20 but I -- what I'm asking you is where's the authority
21 for Michelle to do that in the first place?" There
22 isn't any. And that is what I'm saying is happening
23 in my case. And you guys keep saying, "Oh, well you
24 just disagree with the judge." No. What I'm sharing
25 is the judge had no authority to do what he did. He's



1 not a judge if he's doing that, just as you're not
2 acting as a police officer if you don't have a lawful
3 authority to perform an action. The power of the --
4 the people of California, the state, is only vested in
5 you to do things which are required by law. If you go
6 outside of those bounds you are not acting within your
7 authority. And if you do something that -- in that
8 action of authority -- without authority, is criminal,
9 like you take something from a prisoner, or you arrest
10 somebody without authority, you can be held criminally
11 liable because it is a crime to do that. And it's the
12 same thing with the judge. If the -- the -- the
13 Constitution and the laws of California say that the
14 judge has to do something within a certain specific
15 bounds. If he doesn't follow those rules he's not
16 acting in lawful authority. This is not -- it's not
17 rocket science. It says, "Judge, when you're gonna
18 impose a fine you have to follow these four or five
19 criteria." They didn't follow any of them. It's not
20 a lawful fine. And second, the thing that they call
21 disgorgement isn't even disgorgement at all. And the
22 Supreme Court said so. So what is it? It's a fine.
23 I got fined a million bucks. Okay, well let's look at
24 what the -- the crim- -- the comparable criminal
25 penalty for the same offense is. It's a maximum fine



1 of 5,000 bucks. So how do you, in a civil case, get a
2 fine for a million dollars? Michelle, this stuff does
3 not add up. And I -- I'm --

4 Macchiaroli: Well, unfortunately -- again, we're not gonna be
5 able to help you, so you're gonna have to go through
6 the appeals process, (inaudible - 0:28:54) --

7 Bereki: Okay, but I've already gone through the appeals
8 process.

9 Macchiaroli: Well, you're gonna have -- that's all I can
10 recommend you do. But as far as us handling anything
11 at this level we're not gonna do that.

12 Bereki: Okay. So would I be correct in saying that even if a
13 judge does not follow the law, that you are not
14 interested in investigating whether that is criminal
15 activity or not?

16 Macchiaroli: Again, I'm referring you to the Commission on
17 Judicial Performance for your -- for -- for what your
18 situation is. That's what we're talking about here,
19 not hypothetical (inaudible - 0:29:27) --

20 Bereki: I -- I -- I'm not -- I -- this is not -- the situation
21 that I gave you is not a hypothetical.

22 Macchiaroli: Okay.

23 Bereki: It is my situation.

24 Macchiaroli: Okay. And again, I'm saying we are not gonna
25 investigate this as a crime.



1 Berekhi: Okay. You're not going to --
2 Macchiaroli: Okay?
3 Berekhi: -- investigate whether it's a crime or not?
4 Macchiaroli: No.
5 Berekhi: Or --
6 Macchiaroli: We're not gonna investigate this.
7 Berekhi: Okay. So are you also not going to investigate the
8 complaint that I made against the two supervisors?
9 Macchiaroli: No, I am investigating it. That's why I'm
10 speaking with you, and that's why I wanted --
11 Berekhi: Well, that --
12 Macchiaroli: -- to verify (ph) --
13 Berekhi: -- is --
14 Macchiaroli: -- that -- that you were -- your main complaint
15 was that they refused to take a -- a -- a police
16 report, is that correct?
17 Berekhi: That's one of them. The next complaint that is going
18 to be amended by that is that they are not lawfully in
19 office because, according to the records that I
20 received from your department, they have never taken
21 an oath of office. They've never subscribed an oath
22 of office. Let's put it that way. And that is a
23 violation of the Ca-- California constitution, I
24 believe it's Article 20.
25 Macchiaroli: Okay.



1 Berekhi: So I received a Public Records Act request that I had
2 made from them and I asked for both of their oath of
3 office, including that of Commander Rodriguez and none
4 of them have an oath of office. I believe it's
5 Article -- well, it's Article 20, I believe, of the
6 California constitution, and then there's multiple
7 things in department policy that say they have to both
8 take and subscribe an oath of office in order to be in
9 office as a police officer. And they have not done
10 that, according to the Public Records Act, uh, answer
11 that I received. And that --

12 Macchiaroli: Okay.

13 Berekhi: -- answer is that there is no records that exist of
14 them taking an oath.

15 Macchiaroli: Okay.

16 Berekhi: So then, at that point, we may even get into the point
17 of collecting money from the City of Santa Ana without
18 being lawfully in office, which is fraud. So I --
19 just so you know, I'm not sure if they informed you
20 but I did make another Public Records Act request for
21 the oath of office and the date of being sworn in for
22 every so-called officer in Santa Ana, and I believe
23 that that response is due on the 8th, so -- which is a
24 Saturday. So when I receive that I will likely, um,
25 amend my complaint and also file a government tort



1 claim with the City of Santa Ana on this issue.

2 Macchiaroli: Okay.

3 Bereki: So I'm also just curious have you subscribed an oath
4 of office with the police department?

5 Macchiaroli: You mean actually, uh, signed?

6 Bereki: Yes.

7 Macchiaroli: We -- we get sworn in. We do get sworn in.

8 Bereki: Tha- -- that may be the case --

9 Macchiaroli: (Inaudible - 0:32:31).

10 Bereki: -- but the constitution requires that you both take
11 and subscribe the oath, meaning you sign it. Have you
12 signed an oath of office?

13 Macchiaroli: Uh, it's, like, 20 years ago. I've had to check.
14 Uh, off the top of my head I -- I -- I can't give you
15 an answer.

16 Bereki: Okay. I remember --

17 Macchiaroli: (Inaudible - 0:32:49).

18 Bereki: -- signing mine vividly. But that's okay. I will get
19 it on the 8th to find out if you are in office too.

20 Macchiaroli: Okay.

21 Bereki: So that is -- that is going to be the -- the amendment
22 of my complaint. So if you're going to basically --
23 it sounded like to me that you were finding out if --
24 what, the matter that I had was really a crime or not,
25 so to speak. And if they were in dereliction of their



1 duty for not taking a crime report, and that if they,
2 you know -- obviously you're not gonna investigate
3 that quote-unquote "not crime," well then the
4 complaint against them goes bye-bye. But, no, it's
5 gonna be amended.

6 Macchiaroli: Okay. So their oath of office?

7 Bereki: Yes. And -- and still -- well, that's a dereliction
8 of duty in and of itself, but also, um, I -- I mean
9 you can do what you're gonna do with the other issue
10 about taking a crime report. Um, so is -- is there
11 another, uh -- so your -- your recommendation to me,
12 based upon that other issue, was strictly to go to the
13 Council on Judicial Performance? Th- -- there's no
14 other -- there's no other criminal law enforcement
15 agency within the State of California that you're
16 aware of that can investigate, uh, a criminal activity
17 like this?

18 Macchiaroli: Uh, I mean it's -- it's at the courthouse, which
19 the Orange County Sheriff's Department basically is in
20 charge of, like they -- any of the court buildings in
21 Santa Ana, they have, uh, police officers that are
22 inside those buildings. Um, as far as I'm aware,
23 usually they handle crimes, um, inside of there, or if
24 something happens. Um, but, uh, yeah, you could reach
25 out to the sheriff's department, uh, since, you know,



1 it's at the courthouse. That would be my only other
2 recommendation.

3 Berek: Okay. Okay.

4 Macchiaroli: Yeah, I mean 'cause --

5 Berek: I do.

6 Macchiaroli: -- they oversee -- they oversee all, you know,
7 like the Social Security building, uh --

8 Berek: Okay. I will do that. But just so you know, as far
9 as I'm aware, the Council on Judicial Performance does
10 not have criminal law enforcement authority.

11 Macchiaroli: Okay. Okay.

12 Berek: So, um, as an administrative agency they -- they
13 cannot even investigate any of that. Um, I think they
14 can from the administrative side in- -- investigate
15 the -- if you look up, there are rules of judicial ca-
16 -- the canons, um, and that is what the Commission
17 investigates, not -- not crimes. That's what --
18 that's why people in this state are -- are -- are
19 sworn as police officers to investigate criminal
20 activity, and they're not sworn to do that. It's not
21 within their, um, their purview, if you will, or their
22 duties.

23 Macchiaroli: Okay.

24 Berek: Um, so -- okay, well thank you. So I guess I will --
25 will be in touch on the other issue whenever I amend



1 my complaint for that.

2 Macchiaroli: Okay.

3 Bereki: And that, um -- is it safe to say that you're done
4 investigating the other issue, um, I -- I mean I -- I
5 --

6 Macchiaroli: As -- as -- as far as us not -- or them not taking
7 a -- a police report?

8 Bereki: Yeah. So I -- I mean i- -- if that's the case, then
9 it's pretty clear to me that your finding on the --
10 the investigation (inaudible - 0:36:13) --

11 Macchiaroli: Well I don't -- I don't make the findings. I mean
12 that -- I -- uh, I -- I'm just the factfinder here, so
13 obviously I'm explaining you know, the initial here
14 (ph), and then ultimately, um, that's why I was doing,
15 like -- doing some homework on -- on --

16 Bereki: Right.

17 Macchiaroli: -- what it is that --

18 Bereki: So if I can make a recommendation to you, if you'll --
19 you're open to hearing that --

20 Macchiaroli: Sure.

21 Bereki: -- I would really, really, highly recommend that you,
22 um, either -- if you would like to, with me, I'm happy
23 to spend the time with you, get really clear on what
24 actually happened in this case and what the judge did
25 or didn't do, and what the judge has authority to do



1 and not do. Um, because it seems to me that you guys
2 don't understand what the principle of disgorgement
3 and restitution and what a fine is, what is actually a
4 civil matter, what is a criminal matter, and how those
5 are separated in law in this regard. And because of
6 that it seems to me -- again, this is my
7 interpretation, you guys are making egregious errors
8 in law because you don't actually understand what's
9 going on on -- on the level of what I'm -- what
10 happened, what transpired here. Um, so, uh -- I mean
11 just in asking you what -- what your concept of what
12 disgorgement is you're -- you're using just bogus
13 definitions that you find on Google searches to get
14 the terms of what happened in the case, and those are
15 so remote, and so incorrect, as to what happened that
16 it's going to skew the way that you process and
17 interpret what's gone on here. So I -- I sent you the
18 case of *Lou v. SEC*. You can -- I would suggest
19 reading that and, um, looking at how the court defines
20 disgorgement in there. Um, and you will see that is
21 not what they did here, despite that's what they said
22 they did. Um, so I- -- I- -- I- -- I'll leave it at
23 that, but, uh, I -- I guess what I'm saying, in -- in
24 -- in different words, is that because you guys don't
25 -- aren't actually looking into the -- the true nature



1 of the law, the situation, that you're just dismissing
2 this as not a criminal matter and saying bye-bye with
3 it, when it's really actually something that you
4 should be doing something about. Again, my opinion,
5 what I feel actually is the law, um --

6 Macchiaroli: Okay.

7 Bereki: -- because you're supposed to investigate crimes. So
8 --

9 Macchiaroli: Okay.

10 Bereki: -- um, that being said --

11 Macchiaroli: Okay.

12 Bereki: -- your investigation's your investigation.

13 Macchiaroli: All right. Well thank you, Mr. Bereki, for taking
14 the time.

15 Bereki: You're welcome. Thank you for calling me.

16 Macchiaroli: Okay.

17 Bereki: I appreciate your time, too.

18 Macchiaroli: You have a good day.

19 Bereki: You too.

20 Macchiaroli: Uh-huh.

21 Bereki: Bye.

22 Macchiaroli: All right, bye bye.

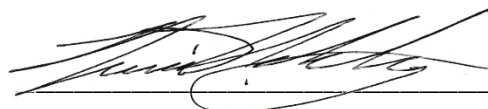
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