



1 police arts and sciences include, but are not limited to: police  
2 administration, policies, practices, procedures and standards of  
3 care; civil rights violations; discriminatory police employment  
4 practices; Americans with Disabilities Act; internal  
5 investigation and discipline. I have testified in state and  
6 federal courts for both plaintiffs and defense throughout the  
7 United States.

8  
9 3. I was retained by Jeffrey H. Sadler on June 6, 2000 to  
10 review the facts and circumstances of Lieutenant Joseph J.  
11 Kirby's employment with the City of Tacoma Police Department  
12 (TPD). At the time of making this affidavit I have discussed  
13 the matter with plaintiffs' counsel and I have reviewed the  
14 following documents:

- 15 a. Plaintiffs' Interrogatories and Requests for Production  
16 with Answers and Responses;
- 17 b. Defendants' Interrogatories and Requests for Production  
18 with Answers and Responses;
- 19 c. Defendants' Requests for Admission with Replies;
- 20 d. Plaintiff's City of Tacoma Police Department personnel  
21 file;
- 22 e. Plaintiff's grievance and investigative notes;
- 23 f. Depositions with exhibits thereto:
- 24 1) Chief James Hairston,  
25 2) Deputy Chief Michael Darland,

- 1 3) Assistant Chief William Woodard,
- 2 4) Assistant Chief Raymond Roberts,
- 3 5) Assistant Chief David Brame.
- 4 6) Captain Charles Meinema,
- 5 7) Joseph Kirby,
- 6 8) Deborah Kirby;

7  
8 g. *A Strategic Plan for the City of Tacoma Police*  
9 *Department.*

10 4. It is my customary practice to evaluate the objective  
11 reasonableness of police conduct on a case-by-case basis from  
12 the perspective of a police reviewing authority. In conducting  
13 that evaluation I apply:

- 14 a. My training and experience as a career police officer,  
15 who was required to administer personnel in the  
16 performance of my law enforcement duties;
- 17 b. My training and experience as a police supervisor and  
18 commander, who had to evaluate the performance of my  
19 subordinate officers;
- 20 c. My training and experience as a chief of police, who  
21 had to hire, train, assign, supervise, and, as may be  
22 necessary, terminate police officers;
- 23 d. My training and experience as a chief of police, who  
24 had to develop and administer policies and procedures  
25 for directing police officers under my command;

- 1 e. My training and experience as a chief of police, who  
2 had to review internal investigations and make the  
3 final administrative decision on whether to sustain or  
4 not sustain allegations of police misconduct;
- 5 f. My continuing education and training, supplemented by  
6 an ongoing review of professional publications that  
7 address contemporary developments in my areas of  
8 expertise;
- 9 g. Additionally, I have served as a police practices  
10 expert in 1,000+ matters of police-related litigation,  
11 wherein I have often testified in deposition and/or at  
12 trial on whether or not a particular fact pattern was  
13 objectively reasonable under the totality of  
14 circumstances.  
15

16 5. In my professional opinion plaintiff was a victim of  
17 the internal politics that began within the TPD during the  
18 tenure of former Chief Philip Arreola and that continued under  
19 Chief James Hairston. In reaching that conclusion I considered  
20 the following facts:

- 21 a. After Arreola's appointment as chief of the TPD, officer  
22 morale declined and remained low throughout his tenure;
- 23 b. Chief Arreola's style of management was a radical  
24 departure from preceding Chief Ray Fjetland, who was  
25 widely admired as an outstanding police leader;

- 1 c. Prior to Chief Arreola's arrival in the City of Tacoma,  
2 plaintiff had a distinguished police career with the TPD  
3 and had earned regular advancement through competitive  
4 civil service examination;
- 5 d. Unfortunately and unreasonably, Chief Arreola seemingly  
6 focused his inability to effectively lead the TPD on  
7 plaintiff and, after Chief Arreola was removed, that same  
8 attitude has been perpetuated by Hairston;
- 9 e. Accordingly, plaintiff was treated disparately by being:
- 10 1) Passed over twice for the rank of captain after he  
11 had scored highest on the civil service examination  
12 for that position,  
13
- 14 2) Reassigned under the guise of criteria that were  
15 selectively applied to him alone,  
16
- 17 3) Subjected to repeated internal affairs  
18 investigations that were unduly prolonged and  
19 personally invasive;
- 20 f. Plaintiff was retaliated against by being:
- 21 1) Subjected to humiliating remarks, aspersions against  
22 his character and degrading performance evaluations.  
23
- 24 2) Referred to a series of fitness for duty  
25 psychological examinations that would further serve  
to diminish his stature;

- 1 g. It is clear from the record that Assistant Chiefs Brame  
2 and Roberts were complicit with Chiefs Arreola and  
3 Hairston in focusing negative attention on plaintiff;  
4 h. The creation of such a hostile work environment could  
5 only have been calculated to cause job stresses that  
6 would predictably destroy plaintiff's career and force an  
7 end to his employment with the TPD;  
8 i. Inexplicably, when Chief Hairston replaced Chief Arreola  
9 and had the opportunity to restore plaintiff's dignity  
10 with fair treatment under his new administration, he  
11 arbitrarily chose to invoke disciplinary action against  
12 plaintiff, which had been pending eleven months, for  
13 allegedly having been "insubordinate" to the prior  
14 command.  
15

16 6. It is more probable than not that the abusive behavior  
17 directed against plaintiff was a direct result of his protected  
18 union activities. In reaching that conclusion I considered the  
19 following facts:

- 20 a. Plaintiff was an Executive Board member of the Tacoma  
21 Police Union Local #6 and the union had opposed Arreola's  
22 selection as chief because of his troubled immediate past  
23 as chief of the City of Milwaukee Police Department;  
24 b. Plaintiff's direct contacts with Chief Arreola were in  
25 his role as a union advocate and he was threatened with

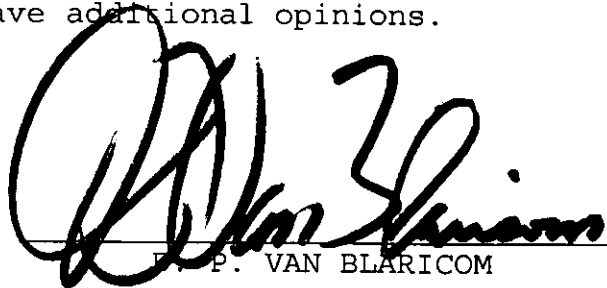
1 disciplinary action, up to and including termination, for  
2 presenting the union's positions on workplace issues;

3 c. When Assistant Chief Meinema attempted to intercede in  
4 plaintiff's behalf, Chief Arreola demoted him back to the  
5 rank of captain.


6 7. In my professional opinion both Chief Arreola and Chief  
7 Hairston failed to conduct themselves in accordance with sound  
8 principles of police management, that are reasonably expected to  
9 be exercised by a chief executive of a contemporary American  
10 police department, and that was a significant administrative  
11 failure.  
12

13 8. I am prepared to testify to these opinions in  
14 deposition or at trial if called upon to do so.

15 9. If I am provided with further documentation for my  
16 review, I may have additional opinions.

17  
18   
19  
20

21 SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of December  
22 2002.

23   
24 NOTARY PUBLIC in and for the State of  
25 Washington, residing at Bellevue. My  
Commission expires 11/10/03.

## EXHIBIT "A"

### D. P. VAN BLARICOM, INC.

MPA, FBI-NA, CHIEF OF POLICE (RET.)

***POLICE PRACTICES EXPERT***

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BELLEVUE, WASHINGTON 98004-4811

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### *SUMMARY of QUALIFICATIONS*

- A. Retained as a police expert by both plaintiffs and defendants in over **1,000** lawsuits alleging police liability throughout the United States: AK, AZ, CA, CO, DC, FL, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MI, MN, MO, MS, MT, ND, NE, NJ, NM, NV, NY, OH, OK, OR, PA, SC, SD, TX, UT, VA, WA, WI and WY.
- B. Testified on numerous occasions in federal courts, state courts and arbitrations.
- C. Recognized as an expert on the issues of:
1. **POLICE USE of FORCE** (plaintiff's expert in leading 9<sup>th</sup> Cir. Davis v. Mason County, WA 1991, a consultant to federal prosecution task force in United States v. Koon, et al. 1993, a plaintiff's expert in Rodney King v. City of Los Angeles 1994, defendants' expert in 1<sup>st</sup> Cir. Roy v. City of Lewiston, ME 1994 and defendants' expert in WA App. Lee v. City of Spokane 2000);
  2. **LESS-LETHAL ALTERNATIVES to DEADLY FORCE in BOTH EQUIPMENT and TACTICS** (plaintiff's expert in the 9<sup>th</sup> Cir. Reed v. Hoy 1989 and ID S.Ct. Kessler v. Payette County and State of ID 1997);
  3. **POLICE K-9s as USE of FORCE** (quoted in Deadly Force: What We Know 1992 and plaintiff's expert in FL App. Pacot v. Wheeler 2000);
  4. **CONTROL of POLICE VEHICULAR PURSUIT and EMERGENCY DRIVING** (my policy was recommended by the Public Risk and Insurance Management Association of Washington, D.C. as being among the 4 best in the United States 1984, quoted by 2 CA App. in Payne v. City of Perris 1993 and Berman v. City of Daly City 1993, OR S.Ct. Lowrimore v. Marion County 1990 and MS S.Ct. Mosby v. Jeffries 1998);
  5. **POLICE ADMINISTRATION and POLICY;**
  6. **POLICE PRACTICES, PROCEDURES and STANDARDS of CARE** (plaintiff's expert in 9<sup>th</sup> Cir. Gulliford v. Pierce County 1998);
  7. **SPECIAL DUTIES to PROTECT and 911 RESPONSES** (plaintiffs' expert in WA S.Ct. Bailey v. Town of Forks 1987 and Roy v. City of Everett 1992, AZ S.Ct. Hutcherson v. City of Phoenix 1998, MT S.Ct. Nelson v. Driscoll 1999 and leading 9<sup>th</sup> Cir. Wood v. Ostrander 1988);

8. **DOMESTIC VIOLENCE** (quoted by the National Law Enforcement Policy Center in their model policy 1991);
  9. **POLICE RESPONSE to the MENTALLY ILL** (plaintiff's expert 9<sup>th</sup> Cir. Gibson v. Washoe County 2002);
  10. **CIVIL RIGHTS VIOLATIONS** (under 42 U.S.C. § 1983);
  11. **IN-CUSTODY ASPHYXIA** (plaintiff's expert in 10<sup>th</sup> Cir. Cruz v. City of Laramie 2001);
  12. **POLICE INTERNAL INVESTIGATION and DISCIPLINE**;
  13. **DISCRIMINATORY ENFORCEMENT or EMPLOYMENT PRACTICES**;
  14. **AMERICANS with DISABILITIES ACT** (discriminatory failure to provide access);
  15. **POLICE COLLECTIVE BARGAINING**;
  16. **FIREARMS** (USMC trained small arms repair MOS 2111 and police firearms instructor); and
  17. **PRIVATE SECURITY PRACTICES** (plaintiff's expert in US WD WA Groom v. Safeway).
- D. Served 29 years in municipal policing with the last 11 as Chief of Police (until retirement and election to the City Council) in Bellevue, Washington - the State's then fourth largest and fastest growing city.
- E. Directed development of a progressive police department and created several model programs, including: control of vehicular pursuits, alternatives to deadly force, fully integrated emergency response team operations, domestic violence reduction, affirmative action employment of minorities and women, comprehensive crime prevention, lateral recruitment of experienced officers, police canine operations, multi-city narcotics unit and others. Additionally, co-authored the Washington State Standards on Internal Discipline of Law Enforcement agencies.
- F. Served on many professional commissions and committees, including: Washington Criminal Justice Education & Training Center Steering Committee, Bellevue Community College Local Advisory Council and Chairman Law Enforcement Program Advisory Board, Washington Attorney General's Committee on Security and Privacy, consultant to U.S. Department of Justice Community Relations Service, consultant to the National Consultation on Safety and Force, intern with 94th Congress, Governor's appointee to Community Task Force for Corrections Development, Washington State Council on Crime & Delinquency's Adult Criminal Policy Committee and Ad Hoc Committee on Board of Prison Terms/Paroles, Youth Eastside Services Board of Trustees, Eastside Community Mental Health Center Advisory Board, King County Executive's appointee to E911 Task Force, U.S. Attorney's Law Enforcement Coordinating Committee, Governor's appointee to Select Committee for Police/Fire Pension Review, IACP's Education & Training Committee, IACP's Organized Crime Committee, Assessor Team Leader for 1 of 5 Pilot Projects of the Commission on Accreditation for Law Enforcement Agencies, Governor's appointee to the Emergency Commission on Prison Overcrowding, IACP book reviewer, Suburban Cities Association's Jail Advisory Committee, Governor's Advisory Group on Personal Harassment, Portland, Oregon Chief's Committee on Police Use of Force. Assisted the appointing authorities at various times in selecting Chiefs of Police for Cities of Longview, Everett, Bellingham, Richland, Bremerton, Kirkland, Redmond, Clyde Hill, Kent (1991), Bellevue (1996) a Sheriff of King County and the Security Administrator of Seattle City Light (all in the State of Washington), King County Regional Justice Center Citizens Site Advisory Committee, Solutions To Tragedies of Police Pursuits Advisory Board, Superintendent of Public Instruction's Washington State Safe Schools Advisory Committee, King County Civil Rights Commission.
- G. Hold a security clearance from the U. S. Government.

- H. Maintain an extensive and current library of standards, policies, procedures, references, depositions and information on other experts with subscription services to update professional and legal developments in my areas of expertise.

### ***EDUCATION***

University of Washington - bachelor of arts degree with magna cum laude honors 1973

Seattle University - master of public administration degree 1976

**University of Washington – certificate in forensics 2000**

Graduate of the FBI's National Academy and Law Enforcement Executive Development programs

Numerous and continuing professional training courses

### ***TEACHING and TRAINING EXPERIENCE***

Taught law enforcement courses at the Bellevue Police Academy, Washington Criminal Justice Education and Training Center, Bellevue Community College, Seattle University, Northwestern University's Traffic Institute and International City Management Association's Training Institute. Lectured on police-related issues before the University of Washington School of Law and Graduate School of Public Affairs, Simon Fraser University, American Civil Liberties Union, Washington State Bar, Seattle-King County Bar, Washington State Court Administrators, Washington Association of Legal Secretaries, American G. I. Forum, United States Justice Department Community Relations Service, National Institute of Law Enforcement and Criminal Justice, U. S. Attorney General's Task Force on Family Violence, Montana Department of Social and Rehabilitation Services, Washington Advisory Committee to the U.S. Commission on Civil Rights, American Society of Criminology, debated California Highway Patrol Commissioner on police pursuit before National Association of Police Planners and International Association of Police Planning and Research Officers in 1990, Labor Relations Information System, City of Bellevue's Management Certificate Training Program, lectured for Association of Trial Lawyers of America's Civil Rights Section and the National College of Advocacy on excessive force from the expert's perspective in 1994 and domestic violence litigation liability arising from failure of prevention and response in 1995, lectured on loss protection civil liability to Nordstrom Washington/Alaska Region in 1997, demonstrated expert witness testimony to the American Board of Trial Advocates in 2002. Additionally, served on the Law Enforcement Education Advisory Committee to the Washington State Board for Community College Education in developing their statewide curriculum and also achieved the first college accreditation of a Basic Law Enforcement Academy in the State of Washington.

### ***PUBLICATIONS***

"Recruitment and Retention of Minority Race Persons as Police Officers" in September 1976 issue of The Police Chief magazine, "An Overview of Police Service Today" in the April 18th and May 2nd, 1978 issues of Law Enforcement News, "Kids Meet Cops Through Basketball Trading Card Program" in the July 9th, 1979 issue of Law Enforcement News, "A Police Chief's View of Deadly Force" in the National Institute of Law Enforcement & Criminal Justice January 1979 booklet on Police Use of Deadly Force, "Career Development: The Next Step to Police Professionalism" in the November 1979 issue of The Police Chief magazine, "Crime Prevention Cuts Insurance Cost" in the August 1980 issue of Center City Report, "A Sensible Alternative to Those High-Speed Chases" in the November 25, 1980 issue of The Seattle Times, "Chiefs Should Chase Sane

Pursuit Driving Guidelines" in the December 22, 1980 issue of Law Enforcement News, "Commercial Crime Prevention Can Earn Discounts" in the February 1981 issue of the FBI Law Enforcement Bulletin, "Enforcing Malicious Harassment Laws" in the January 1983 edition of Washington Council on Crime and Delinquency News, "Reducing Crime, Traffic Accidents - Bellevue Shows It Can Be Done" in the May 10, 1983 issue of The Seattle Times and the June 27, 1983 issue of Law Enforcement News, "Carrying A Gun - It Depends On You" in the February 3, 1985 issue of the Journal-American, "When To Use Deadly Force" in the Winter 1985 issue of the Washington Law Enforcement Executive Journal, "Domestic Violence - A New Approach to an Old Problem" in the June 1985 issue of The Police Chief magazine, "It's Time for Police To Re-Examine Their Role In Society" in the October 1, 1989 issue of The Seattle Times, "Shaking The Pillars of Police Tradition" in the October 31, 1989 issue of Law Enforcement News, "Training-The First Hundred Years" in Law Enforcement In Washington State: The First Hundred Years 1889-1989, "K-9 Use of Force: A Biting Example of Questionable Policy" in the July/August 1992 issue of Law Enforcement News, "Police Pursuit: Uncontrolled Deadly Force" in the February 28, 1993 issue of Law Enforcement News, Bulletin Alert on a "Hair-raising Comb" in the June 1994 issue of the FBI Law Enforcement Bulletin, "Excessive Force - The Expert's Perspective" in the Association of Trial Lawyers of America July 1994 Annual Convention Reference Materials Volume I, "Domestic Violence Litigation: Liability Arising from Failure of Prevention and Response" in the Association of Trial Lawyers of America July 1995 Annual Convention Reference Materials Volume I, "Shades of Blue: What White Police Officers Can - and Must - Learn from Minority Officers" in the January/February 1996 of the Police Executive Research Forum's Subject to Debate, "Doing Something About Excessive Force" in the January 15, 1998 issue of Law Enforcement News, "The Consistent Law Enforcement Expert" in the November/December 1998 issue of The Forensic Examiner, "To Pursue or Not to Pursue: THAT is the Question" in the November 1998 issue of Police, "Handling the Mentally Ill" in the March 2000 issue of Police, "Building a Bridge" in the September 30, 2000 (25<sup>th</sup> Anniversary) issue of Law enforcement News, "The Media: Enemies or Allies?" in the April 2001 issue of The Police Chief.

### ***NATIONAL TELEVISION and RADIO APPEARANCES***

NBC Nightly News special report on the dangers of police vehicular pursuit.

NBC Today Show:

1. Personal protection against criminal attack;
2. Misuse of pepper spray to punish.

NBC "*You Be The Judge*" on the dangers of police vehicular pursuit.

NPR "*Cops and the Mentally Ill*".

### ***QUOTED in MAJOR NEWSPAPERS***

USA Today, Wall Street Journal, The New York Times, The Baltimore Sun, Los Angeles Times, San Francisco Examiner, The Seattle Times, The Oregonian, Toronto Sun.

### ***PROFESSIONAL MEMBERSHIPS***

**American Academy of Forensic Sciences**, International Association of Chiefs of Police (Life Member), Police Executive Research Forum, Americans for Effective Law Enforcement, FBI National Academy Associates, Washington Association of Sheriffs & Police Chiefs (Life Member), American Society of Law Enforcement

Trainers, Police Association for College Education, Police Marksman Association, Law Enforcement Alliance of America, International Police Association, Police Writers Association.

### ***OTHER ACTIVITIES and ASSOCIATIONS***

Present -

Washington State Retired Deputy Sheriffs/Police Officers Association, Bellevue Police Benevolent Association, Pioneer Association of the State of Washington, Holland Society of New York.

Past -

Salvation Army's Metropolitan Seattle Advisory Board, Seattle University Alumni Association Board of Governors, Journal-American Board of Contributors, Historical Society of Seattle and King County Board of Trustees, Secretary of State's Advisory Group on Charitable Solicitations, King County Landmarks Commissioner, Bellevue Downtown Park Review Committee, Co-Chairman of Bellevue Chamber of Commerce Legislative Committee, Search and Screening Committee for Selection of Bellevue Community College President, Washington State Civil Air Patrol Citizens Advisory Council, Statewide City Employees Retirement System elected Trustee, City of Bellevue Disability Board, Municipal Employees Benefit Trust Retirement Committee, City of Bellevue Liaison to the Washington State Legislature, Bellevue Rotary Club, Aircraft Owners and Pilots Association as an FAA licensed commercial airplane and glider pilot with ratings for single engine land and sea, multi-engine land and instrument operations, elected Bellevue City Councilmember (did not run for re-election), Chairman of the Emerald City Flight Festival, Chairman of Wings Over Washington Centennial Celebration, Bellevue Repertory Theater Advisory Board, Woodland Park Zoo Bond Oversight Committee, United Olympic Life Insurance Company Board of Directors, Lakes Club Board of Governors, Columbia Tower Club Founder Member, Wing Luke Asian Museum Advisory Board, National Defense Executive Reserve Emeritus, Vice President and Planning Committee Chairman of the Museum of Flight Board of Trustees Executive Committee, Bellevue Convention Center Authority Vice Chairman and Chairman of the Construction, Human Resources and Art Advisory Committees - Note: structure was selected as the "Best New Building" by the Puget Sound Business Journal, Eastside Journal Editorial Board, Advance Bellevue Advisory Board.

### ***AWARDS***

USMC Expert Rifleman 1953-1956, FBI "Possible Club" 1970 (of the 19,130 police officers who attended the FBI National Academy during the 50 years from when it started to the year of my retirement in 1985, I was 1 of only 165/0086% who fired a perfect score on the PPC or TRC), Appreciation from the Drug Enforcement Administration 1977, Outstanding Community Service from Bellevue Jaycees 1979, Human Rights (Implementing Law and Order with Justice) from Baha'i Communities of Bellevue and Eastside 1980, Youth Service from the Chief Seattle Council of the Boy Scouts of America 1983, Program Innovation from the King County Domestic Violence Coalition 1983, Support and Service from Bellevue Cadet Squadron Auxiliary USAF 1984, Law Enforcement Appreciation from the Puget Sound Chapter of the American Society for Industrial Security (presented by the Governor of the State of Washington) 1984, Outstanding Volunteer Service from the Salvation Army 1984, Outstanding Service as a Public Official Citizenship Award from the Bellevue Kiwanis Club 1985, Appreciation from the United States Secret Service 1986, **Award for Public Service from**

**The U.S. Department of Justice 1986, Recognition for 30 Years of Public Service from the City of Bellevue 1986, Recognition and Commendation Resolution by the Municipality of Metropolitan Seattle 1988, Appreciation for Service from the Woodland Park Zoo Bond Oversight Committee 1990, Appreciation for Service from the King County Executive 1992, Appreciation for Personal Contribution to Developing Bellevue Convention Center from the City of Bellevue 1993, Outstanding Support of the Arts (jointly with wife) from the City of Bellevue Arts Commission 1993, Commendation for Outstanding Service from the City of Bellevue 1997.**