

Complaint #1

Departmental Identification

Name of the offending police department/agency: IRVINE POLICE DEPARTMENT

Title and name of the individual in charge of the offending police department/agency: CHIEF MICHAEL BERKOW

E-mail address: (of Chief/Sheriff/Department Head) ps@ci.irvine.ca.us

Phone number: (949) 724-7000

Fax number: (949) 724-7114

Country: United States

State: California

County: ORANGE

City: IRVINE

Mailing address of department/agency: ONE CIVIC CENTER PLAZA, P. O. BOX 19575

Zip code: 92623

Date and Time of Incident

This incident occurred on or about: December/13/2001 at: 1:0 pm local time

Case Number

Number information: DR 01-19823

Identification and description of subject(s) of this complaint

Was officer CRISTAL HAYES attired in official uniform? No	Race of officer CRISTAL HAYES: DO NOT KNOW - NO CONTACT
Sex of officer CRISTAL HAYES: Female	Age - range of officer CRISTAL HAYES: Middle-aged
Height - range of officer CRISTAL HAYES: Medium height	Physical build of officer CRISTAL HAYES: Heavy-set (fat)
<hr/> Bage number of officer CRISTAL HAYES: 5293	Mode of transport of Other: (van, SUV, officer CRISTAL DARE vehicle, etc.): HAYES: (describe): DO NOT KNOW

Do you have any opinions regarding officer CRISTAL HAYES, and/or his actions, and/or his reputation, and/or his character and/or his motivations? **In my opinion...** The motive behind the outrageously absurd annoying phone call criminal charge against me, which Cristal Hayes initiated, was due to a long history of BIAS by the Irvine Police Department against my family, which forced us to move out of our home that we owned for 16 years. The charge was initiated with malice because NO ONE at the Irvine Police contacted me to corroborate their "evidence."

Without EVER contacting me, they recommended this case for prosecution. I only learned about the charges against me through a subsequent letter dated 12/27/01 from the District Attorney, Tony Rackauckas, notifying me of my arraignment. After I went to my arraignment, I tried to talk to Cristal Hayes to find out what was going on, but she refused to talk to me!

ALLEGATIONS : descriptions

Complainant alleges that on or about the date indicated above, at or near the location herein described, officer CRISTAL HAYES engaged in the following improper, illegal, untechnical, unjustified, and/or unprofessional conduct:

General misconduct

unprofessional conduct: She refused to interview or even talk to the suspect, at the suspect's request, about the annoying phone call case. After suspect received letter of arraignment from District Attorney Tony Rackauckas, suspect called Irvine Police to find out what this was all about. Suspect was referred to Cristal Hayes, who refused to discuss case with suspect.

abuse of authority: She recommended for prosecution a groundless charge of making annoying phone calls without corroborating any of her evidence with the suspect. The "crime" was a series of phone calls consisting of munching chips, a child playing with a toy, and inaudible mumbling. She never contacted the suspect to learn that the suspect was at work when the phone trap said the calls came from suspect's home phone. She never verified that the voice on the tape was not the suspect's voice.

EVIDENCE :

Do you possess any evidence which supports this complaint and the allegations you have made?
Yes

If so, indicate type(s) of evidence you possess and describe what each shows:

audiotape of the incident : Orange County District Attorney audio tape for Irvine Police Case DR 01-19823. Letters, The so-called annoying phone calls consisted of some munching potato chips, a Phone bill, Police child playing with a toy, and inaudible mumbling. No one at the Irvine Police Report (Phone ever verified that the voice of the caller did not matched the suspect's voice. The traps), Test report tape containing the annoying phone calls repeated the SAME calls MULTIPLE TIMES with the exact same date and time stamp.

other : Letters, Letters from my team leader and cube-mate at my place of employment. Phone bill, Police Long-Distance Phone Bill dated 11/10/01 (Page 3) covering period of the Phone Report (Phone Traps cited in Irvine Police Report DR 01-10823. Test report placing me in a traps), Test report laboratory at work, testing equipment. These documents place me at work when the Phone Trap says two of the so-called annoying phone calls happened.

Are you aware of any other similar instances of misconduct, (involving this same agency), in your local area? Yes

Location of incident : Other

City where incident occurred: IRVINE

County where incident occurred: ORANGE

Country where incident occurred: United States

The zip code of the location where the incident occurred: 92623

The telephone area code of the location where the incident occurred: 949

Location of incident : descriptions

address/location at the Irvine Police Department, One Civic Center Plaza, P. O. Box 19575, Irvine, CA 92623-9575

Injuries :

Were you injured as a result of the police conduct during this incident? Yes

Select all that apply. Describe your injuries, and specify which officer caused them.

Other: Cristal Hayes, badge number 5293, cost me \$5,000 in attorney fees to defend myself against a groundless charge of making annoying phone calls. The entire Irvine Police Department, led by Chief Michael Berkow, continually treated us with bias against us, which forced us to move from the home we owned for 16 years. Emergency moving costs came to \$2,392.64.

Did this injury interfere with your daily life and/or your ability to earn a living? Yes

If yes, describe the extent, duration, consequences of the interference: This incident culminated a long period of bias against us by the Irvine Police Department, forcing us to move out of our home that we owned for 16 years. Out of duress, without any place to go, we moved.

Complainant's activity at time of contact: Describe the activity you were engaged in when contact with the police occurred

There was NO ACTIVITY! My first realization that I was being charged with making annoying phone calls was a letter dated 12/27/01 from the Orange County District Attorney, Tony Rackauckas, notifying me of my arraignment. No one from the Irvine Police Department ever contacted me regarding this matter. The Irvine Police Department (IPD) never contacted us regarding three police reports DR 00-23319, DR 01-02842, and DR 01-18508 that non-credible neighbors filed against us. But when we filed police report DR 02-06198 against a violent next door neighbor, the IPD refused to contact him. We shared the same stairwell to our front and only doors with this violent next door neighbor. Because the IPD refused to do their job, we moved out of duress.

Charges/Trial

Were you cited or charged with any offence(s)? Yes

Case number

Case number assigned to this prosecution: DR 01-19823, Orange County Court Case IR02HM00216

Disposition

Dismissed: Per the Minute Order of Orange County Superior Court Case IR02HM00216, District Attorney submitted motion to dismiss the charges on 06/28/02.

Prosecution**Were you prosecuted? Yes****prosecutor ERIK PETERSON****Name the prosecutor's jurisdiction:** County Prosecutor**Is it your opinion that there was prosecutorial misconduct associated with this case? Yes****If so, describe the****basis for your In my opinion...**

opinion, and the The District Attorney refused to dismiss the case, even after I presented him with
nature of the all of my evidence showing I could not have made the so-called annoying phone
misconduct you calls. He did so only after I hired Matthew Kaestner as my attorney, who
believe to have convinced him that we would surely prevail in court.
occurred:

The Judge**Did a judge or a similar court official hear your case? Yes****The Judge : JAMES H. POOLE****This Judge sits in: Superior Court:** Orange County, CA Superior Court, Santa Ana, CA 92701**If you had to do it again, would you choose a different judge, if you could? Yes****Is it your opinion that the judge was biased in favor of the prosecution and/or that the judge engaged in judicial misconduct? Yes****In my opinion...**

If so, describe the
basis for your
opinion, and the
nature of the
misconduct you
believe to have
occurred:

I sued the City of Irvine, CA for their police department's (IPD) malicious prosecution. In this SUBSEQUENT action, Case #03CS007196 at the Orange County Central Justice Center (700 Civic Center Drive West, Santa Ana, CA 92701), Judge James H. Poole IGNORED key facts of my case and ruled CONTRARY to legal precedents (doctrine of "stare decisis"). Per Sheldon Appel Co. v. Albert & Olier [254 Cal.Rptr. 336, 47 Cal.3d 863], I proved that the IPD brought the charge WITHOUT PROBABLE CAUSE and INITIATED WITH MALICE. IPD prosecuted on victim's receipt of 4 postcards containing no threats or obscene language, with NO evidence that they came from me, and on phone traps, while I was 30 MILES AWAY at work, which ONLY shows that 2 calls went from my home phone to another, not WHO the caller was. Yet Judge James H. Poole writes, "[Plaintiff's] primary basis for malic[ious prosecution] was failure of Irvine P[olice] to contact him for his side of story. = Not Malice." [Docket for Case #03CS007196.] He COMPLETELY IGNORED Puryear v. Golden Bear Insurance Company [66 Cal.App.4th 1188, 78 Cal.Rptr.2d 507], which establishes that THERE IS NO PROBABLE CAUSE WITHOUT EVIDENCE AS TO WHO DID IT. He also COMPLETELY IGNORED Baker v. Gawthorne [82 Cal.App.2d 496, 186 P.2d 981], which establishes inference of MALICE from REFUSAL TO DO RESEARCH before filing a complaint. And he COMPLETELY IGNORED the HUGE CONTRAST in the IPD's handling of Melinda Sidor's (annoying?) phone call case, versus my family's case against a violent next-door neighbor, Sean Robert Norton, described in "Additional Information" at the end of this posting. These two cases were CONCURRENT. Judge James H. Poole writes, "[Plaintiff] failed to prove malice - Note phone t[r]aps." [Docket for Case #03CS007196.] Does he want us to think I cannot prove malicious prosecution just because two phone traps exist - which may be phoney? This is false because IPD never proved WHO made the calls.

Trial type: Bench trial (no jury)

Attorney evaluation

Did you have legal representation? Yes

Attorney evaluation : FRED ASCARI

What type of representation did you have? A private attorney

Name of attorney's firm: LAW OFFICES OF FRED C. ASCARI

Bar Association identification number: 197622

City and state where attorney's office located: Newport Beach, California

Rate this attorney's legal skills and services

In my opinion, my attorney's legal skills and representation were: F Terrible

In my opinion, the cost of my attorney's services were: F A rip-off

If I were facing another charge, I would Never rely on this attorney again.

In my opinion...

Do you have any other comments regarding your attorney, the judge, and/or the prosecutor? In my opinion, Fred C. Ascari, who led me to believe that I retained him to be my defense attorney, behaved as if he were working for the District Attorney. He told me that he would not allow me to contact him at all regarding my case or he would declare a conflict of interest and withdraw from the case, without refunding my money. I had to fire him. In my opinion, Fred C. Ascari ripped me off \$1,000.00 because he was in league with the District Attorney's office trying to get me convicted of making annoying phone calls.

Attorney evaluation : MATTHEW KAESTNER

What type of representation did you have? A private attorney

Name of attorney's firm: MATTHEW G. KAESTNER

Bar Association identification number: 122492

City and state where attorney's office located: Long Beach, California

Rate this attorney's legal skills and services

In my opinion, my attorney's legal skills and representation were: A Excellent

In my opinion, the cost of my attorney's services were: A Pretty fair deal

If I were facing another charge, I would Definitely rely on this attorney again.

In my opinion...

Do you have any other comments regarding your attorney, the judge, and/or the prosecutor? My second attorney, Matthew Kaestner, did an excellent job of representing me, the defendant. He made representing me a priority over his relationship with the District Attorney or Judge. As a result, the District Attorney knew that my attorney would fight this ridiculous charge all the way. The District Attorney refused to dismiss the case, even after I presented him with all of my evidence showing I could not have made the so called annoying phone calls. He did so only after I hired Matthew Kaestner as my attorney, who convinced him that we would surely prevail in court.

Officer Testimony

Did any officer testify at your trial? Yes

officer Cristal Hayes

In your opinion, did officer Cristal Hayes tell truth when he testified at your trial? No

If not, describe In my opinion...

this officer's Irvine, CA, Police Department (IPD) Investigator Cristal Hayes, Badge #5293, **allegedly false** PERJURED herself at the trial (my SUBSEQUENT action against IPD for **testimony and how** malicious prosecution, Case #03CS007196 at the Orange County Central Justice **it affected the** Center, 700 Civic Center Drive West, Santa Ana, CA 92701), by stating that she **outcome of the** had no personal bias against me when she recommended my case (Irvine, CA **trial:** Police Report DR 01-19823) for prosecution for making annoying phone calls. She recommended prosecution for (annoying?) phone calls consisting of munching potato chips, a child playing with a toy, and inaudible mumbling: these calls contained no threats or obscene language, and she recommended prosecution without ANY EVIDENCE that I made those calls. She recommended prosecution without contacting me to find out (i) that I was at work 30 MILES AWAY when the phone traps say two calls occurred from my home phone, or (ii) that the voice on the tape with the calls DOES NOT MATCH MY VOICE. She recommended prosecution on victim's receipt of 4 postcards containing no threats or obscene language, with NO evidence that they came from me. And the bias of her employer, IPD, against my family was very obvious from the HUGE CONTRAST in the IPD's handling of Melinda Sidor's (annoying?) phone call case, versus my family's case against a violent next-door neighbor, Sean Robert Norton, described in "Additional Information" at the end of this posting. These two cases were CONCURRENT.

Was a affidavit or incident report (written by an officer) used at your trial? Yes

officer Cristal Hayes

In your opinion, did the signed incident report or affidavit written by officer Cristal Hayes truthfully and accurately describe what transpired? No

If not, describe In my opinion...

this officer's She recommended prosecution for (annoying?) phone calls consisting of **allegedly false or** munching potato chips, a child playing with a toy, and inaudible mumbling: these **inaccurate written** calls contained no threats or obscene language, and she recommended prosecution **testimony and** without ANY EVIDENCE that I made those calls. She recommended prosecution **describe how it** without contacting me to find out (i) that I was at work 30 MILES AWAY when **affected the** the phone traps say two calls occurred from my home phone, or (ii) that the voice **outcome of the** on the tape with the calls DOES NOT MATCH MY VOICE. She recommended **trial:** prosecution on victim's receipt of 4 postcards containing no threats or obscene language, with NO evidence that they came from me. And the bias of her employer, IPD, against my family was very obvious from the HUGE CONTRAST in the IPD's handling of Melinda Sidor's (annoying?) phone call case, versus my family's case against a violent next-door neighbor, Sean Robert Norton, described in "Additional Information" at the end of this posting. These two cases were CONCURRENT.

Complaint status

Have you already filed an official police complaint regarding this incident? Yes

What was the resolution of the complaint? Other: DENIED

If applicable, I sent a complaint via letters dated 4/24/03 and 5/24/03, both by certified mail, to describe the the City of Irvine. These two letters described how the Irvine Police Department investigation and committed malicious prosecution against me, in violation of California outcome of your Government Code Section 9149.22(c), and presented my claim of \$5,000.00 for complaint, and attorney fees to defend myself against that wrongful charge. I also submitted a whether/why you claim-for-damages form in person on 6/23/03. My claim was denied in a letter are satisfied or dated 6/19/03 from the City of Irvine. The 6/19/03 letter DID NOT EVEN unsatisfied ADDRESS the issue of malicious prosecution or police misconduct. The City of Irvine assigned a file number of S 139440 PC to my claim. I am very dissatisfied because the City of Irvine never gave a reason for their denial of my claim and never indicated if any internal investigation happened in the Irvine Police Department.

Civil redress**Have you filed suit over this incident? Yes**

If so, in what court? Orange County (CA) Superior Court

What were the specific claims made in your suit? The Irvine Police maliciously prosecuted a groundless charge of annoying phone calls against me, in violation of California Government Code Section 9149.22(c), which cost me over \$5,000 for needless attorney expenses. According to California Civil Procedure Section 1021.7, malicious prosecution is a prosecution not done in good faith. According to Crowley v. Katleman, 34 Cal.Rptr.2d 386, 390 (1994), and Sheldon Appel Co. v. Albert & Olier, 254 Cal.Rptr 336, 340 (1989), "not done in good faith" is defined as a case that is 1) brought without probable cause, 2) initiated with malice, 3) pursued to a legal termination in suspect's favor.

What was the outcome of the suit? At the trial on 12/18/03 (Case #03CS007196 at Orange County, CA, Superior Court), Judge James H. Poole BROKE legal precedents and IGNORED key facts and thereby ruled in favor of the Irvine Police.

Did you elect to have a jury trial? No

Complaint purposes and recipients

Do you want this complaint to be promptly and thoroughly investigated by the proper authorities? Yes

Do you want the authorities to keep you informed regarding the status of your complaint ? Yes

If these allegations are determined to be well-founded, do you want the offending officer(s) to be appropriately disciplined? Yes

If applicable, do you want an injunction to be issued requiring the cessation of any alleged pattern of misconduct? Yes

Cc:

* This complaint, along with a cover letter on our official letterhead, will automatically be e-mailed to the following parties:

- **www.copwatch.com:** Copwatch.com International Database
- **CHIEF MICHAEL BERKOW** via e-mail to ps@ci.irvine.ca.us
- **FBI,** via e-mail to: info@fbi.com
- **Attorney General, U.S. Department of Justice,** via e-mail to: info@attorney-general.com
- **President Bush,** via e-mail to: bush@hotmail.com
- **State Bar Association Disciplinary Board:** via e-mail to: teresa.cloney@calbar.ca.gov
- **Prosecutors Office:** via e-mail to: tony.rackauckas@da.ocgov.com

- The Honorable Larry Agran Mayor of the City of Irvine via e-mail to: cc@ci.irvine.ca.us
- Your local City or Country clerk, Jeri L. Stately via e-mail to: clerk@ci.irvine.ca.us
- The Honorable Arnold Schwarzenegger Governor of California via e-mail to: governor@governor.ca.gov
- Senator Dianne Feinstein of California via e-mail to: <http://www.senate.gov/~feinstein/email.html>
- Representative Christopher Cox of California via e-mail to: christopher.cox@mail.house.gov
- Bill Lockyer, State Attorney General of California via e-mail to: [PIU \[PIU@doj.ca.gov\]](mailto:PIU@doj.ca.gov)
- City Desk, Steve Berry, and Claire Luna at Los Angeles Times via e-mail to: metrodesk@latimes.com AND steve.berry@latimes.com AND claire.luna@latimes.com
- Jim Crogan at L. A. Weekly via e-mail to: editor@laweekly.com
- Assignment Desk at CBS 2 News via e-mail to: <http://cbs2.com/feedback>
- Local L A News Desk at KNBC-TV via e-mail to: <http://www.nbc4.tv/contact/> AND story@nbc4.tv
- Local L A News Desk at KTLA TV via e-mail to: <http://ktal.trb.com/about/site/feedback/ktal-contact.htmlstory?track=footer>
- Local L A News Desk at ABC 7 via e-mail to: <http://abclocal.go.com/kabc/aboutus/stationinfo.html>
- Local L A News Desk, and David Goldstein at KCAL 9 via e-mail to: <http://kcal9.com/feedback/>
- Local L A News Desk at KTTV FOX 11 via e-mail to: <http://fox11la.com/home> AND newsdesk@fox11la.com
- Local L A News Desk at CNN via e-mail to: <http://www.cnn.com/feedback>
- John Walsh at NBC TV via e-mail to: www.johnwalsh.tv

Additional Information

If you would like to submit any additional information or comments, please do so in the space provided below. This groundless maliciously prosecuted charge of making annoying phone calls culminated a long period of bias against us by the Irvine Police Department (IPD). When we filed police report DR 02-06198 against a violent next door neighbor, and repeatedly requested the IPD contact him, they refused. On 4/5/02 we filed police report DR 02-06198 against the violent next door neighbor who tried to batter my wife, vandalized our property and continued to harass us. We found a photo on our car warning that our car was going to be vandalized or stolen. We repeatedly contacted the IPD for assistance. An Ofcr Peasley refused to contact the violent next door neighbor. Ofcrs William Russell and Hung warned us that WE would get arrested if we didn't stop harassing the violent next door neighbor! We elicited one last cry for help but the IPD refused respond. We shared the same stairwell to our front and only doors with this violent next door neighbor. Because the IPD refused to do their job, we moved out of duress on 4/16/02. We accumulated emergency moving costs of \$2,392.64 per hotel and storage invoices. We requested a proper copy of DR 02-06198 but received a stamped "Controlled Document" by IPD, which contained ONLY our own narrative. It did not contain any record showing that a police officer had contacted the suspect, or the name and address of the suspect, which is required by law per CA Govt Code Section 6254(f). In letters of 9/19/02, 9/27/02, and 10/18/02, we requested a PROPER COPY of DR 02-06198. In letter of 9/25/02, Lt. Sam Allevato refused to give us a proper copy of DR 02-06198, in which we were the VICTIMS, and to which we were legally entitled, according to CA Govt Code Section 6254(f). And the IPD refused to refund us the \$15.00 processing fee for a proper copy of report DR 02-06198. Because the IPD refused to give the us a proper copy of DR 02-06198, we had to use other means to discover the identity of the violent next door neighbor. On 9/24/03, we learned that the violent next door neighbor's full name is Sean Robert Norton, who has a criminal record! On 5/8/99, Officer Hutchcraft of the IRVINE POLICE DEPARTMENT arrested Sean Robert Norton for being under the influence of Methamphetamine: see IPD

report DR 99-05576. On 9/30/99 Sean Robert Norton entered a plea of guilty; see the docket report for Case #99HM03522, from the Orange County Superior Court (Harbor Justice Center, Newport Beach, CA). ON 5/8/99 THE IPD ARRESTED THIS VIOLENT NEXT DOOR NEIGHBOR, SO THEY KNEW HE HAD A CRIMINAL RECORD; YET THEY REFUSED TO CONTACT HIM AND THEREBY SIDED WITH HIM AGAINST US, WHO HAVE NO CRIMINAL RECORD. DID THE IPD DO THIS IN ORDER TO FORCE US TO MOVE OUT OF OUR HOME THAT WE OWNED FOR 16 YEARS? DID THE IPD REFUSE TO GIVE US A PROPER COPY OF REPORT DR 02-06198 SO THAT NO ONE WOULD KNOW THIS?

I, _____, of County _____, State
of _____, being of sound mind, do hereby swear under penalty of perjury of the
laws of the State of Washington and the United States that the above information is true and correct to the
best of my knowledge and belief.