

MINUTES OF CIVIL SERVICE BOARD  
CITY OF SACRAMENTO  
REGULAR MEETING                      APRIL 6, 1976

EXECUTIVE SESSION RE APPEAL OF ROBERT D. BRILL, POLICE OFFICER

Present: Oreitha Eggleston-Hausey, Alba Kuchman, Ronald Wright, Jimmie Yee.  
Absent: Wilfred Street.

The Civil Service Board met from 1:45 p.m. in the Personnel Department Conference Room 203, 801 Ninth Street, in executive session, to consider and deliberate the matter of the appeal of Robert Brill, whose hearing concluded on March 30, 1976.

Acting President Ronald Wright called the open meeting to order at 2:55 p.m. in the Personnel Department Conference Room 103. It was the unanimous vote of the Board, in executive session, to deny the appeal of Robert Brill. The findings of the Board concerning each charge cited in the termination letter of April 23, 1975 are included within the Findings and Conclusions, attached.

Attorney Savage requested clarification concerning the Board's findings that oral reprimands are not appealable to the Board as they are not recognized as a disciplinary action under the provisions of Rule 17.3. After a brief discussion, Attorney Savage indicated that he would bring the matter before the Board at a later date in a specific case which may occur.

Mr. Wright indicated that, during executive session, discussion was held with Deputy City Attorney Elizabeth Hassard concerning the right of the City in a case where an appeal is granted by a two-to-two tie vote: 1) whether the City has a right to include, in a subsequent disciplinary action letter, the alleged violation which appellant had previously appealed, and 2) whether the City has the right to include the alleged violation as evidence, along with evidence of other alleged violations, in a subsequent disciplinary action hearing. Motion was made by Mr. Yee, seconded by Mrs. Kuchman, and carried by unanimous vote to request legal opinion concerning this question.

The meeting concerning the appeal of Robert D. Brill concluded at approximately 3:05 p.m.

*William F. Danielson*                      *Ronald H. Wright*  
 \_\_\_\_\_  
 William F. Danielson                      Ronald H. Wright  
 Secretary                                      Acting President

Mary Amemiya



1 the agreement between the Sacramento Police Officer's Association  
2 on the condition that Mr. CoBen would stipulate to be bound by  
3 the standards against disclosure contained in said agreement.  
4 Mr. CoBen agreed. The Board took notice of said agreement by  
5 stipulation of the attorneys. The material was delivered to Mr.  
6 CoBen. The motion was denied. No evidence was presented. The  
7 Board members present were: Wilfred D. Street, Chairman; Alba  
8 Kuchman; and, Jimmie R. Yee.

9 On September 16, 1975, a hearing date for Robert Brill was  
10 set for November 18, 1975 at 2:30 P.M. No evidence was presented.  
11 Board members present were: Wilfred D. Street, Chairman; Alba  
12 Kuchman; Ronald H. Wright; and, Jimmie R. Yee.

13 On November 18, 1975, Attorney CoBen moved that Robert Brill  
14 be reinstated to employment on the grounds that Skelly v. State  
15 Personnel Board mandated reinstatement. Attorney Savage opposed  
16 the motion on the grounds that the Board did not have jurisdiction  
17 to reinstate an employee until it had held a hearing on the  
18 disciplinary action. The motion was denied. No evidence was  
19 presented. Board members present were: Ronald H. Wright, acting  
20 chairman; Alba Kuchman; and Jimmie R. Yee.

21 On November 25, 1975, a hearing date for Robert Brill was  
22 set for January 27, 1976, at 1:30 P.M. No evidence was presented.  
23 Board members present were: Wilfred D. Street, Chairman; Alba  
24 Kuchman; Ronald H. Wright; and, Jimmie R. Yee.

25 The hearing on the matter of the appeal of Robert Brill  
26 was held on the following dates: January 27, 1976; February 3,  
27 1976; February 10, 1976; March 16, 1976; March 30, 1976; and  
28 April 6, 1976. The hearing was convened for continuation on

1 February 18, 1976; however, Attorney Savage was ill, and the  
2 hearing was continued to March 16, 1976. The presentation of  
3 evidence was completed on March 30, 1976, and the Board convened  
4 in Executive Session to deliberate; however, no decision was  
5 made. The Board reconvened in Executive Session on April 6,  
6 1976 to continue its deliberation. The findings and conclusions  
7 of the Board were announced in public session on April 6, 1976.

8 A true and correct copy of the letter notifying Robert Brill  
9 that he was dismissed from employment by the City of Sacramento  
10 is attached hereto marked Exhibit A (hereinafter referred to as  
11 the "Letter"). A true and correct copy of the joint stipulation  
12 of the parties made pursuant to Rule 17.11 is attached hereto  
13 marked Exhibit B (hereinafter referred to as the "Stipulation").  
14 Exhibit A and Exhibit B are incorporated herein by reference  
15 as if set forth in full at this place.

16 From the evidence, the Board finds:

- 17 1. During the hearing, the City dropped the charges set  
18 forth in Paragraph A, H, and the first two paragraphs on page 4  
19 of the Letter.
- 20 2. The charges in paragraph B of the Letter as modified by  
21 the Stipulation are a matter of record and sustained.
- 22 3. The charges in paragraph C of the Letter as modified by  
23 the Stipulation are a matter of record and sustained.
- 24 4. Three Board members accepted the charges set forth in  
25 paragraph D of the Letter as Stipulated and a matter of record.  
26 One Board member was of the opinion that the charges set forth  
27 in paragraph D of the Letter were not proper as cause for  
28 disciplinary action. The charges set forth in paragraph D were  
not a factor in arriving at the Board's final decision in this

1 matter.

2 5. During the hearing, the Board granted the Appellant's  
3 motion to dismiss the charges set forth in paragraph E of the  
4 Letter.

5 6. The charges set forth in paragraph F of the Letter are  
6 sustained.

7 7. The charges set forth in paragraph G of the Letter are  
8 sustained.

9 8. On its own motion, the Board dismissed the charges set  
10 forth in paragraph I of the Letter. Oral reprimands may not be  
11 appealed to the Board, since they are not recognized as a dis-  
12 ciplinary action pursuant to Rule 17.3. Therefore, oral  
13 reprimands may not be used in any accumulative case for  
14 disciplinary action.

15 9. The charges set forth in paragraph J of the letter are  
16 sustained.

17 From the foregoing findings, the Board concludes:

18 1. The appeal of Robert Brill should be, and is, denied.

19 2. The disciplinary action taken by the appointing authority  
20 was based on good cause and therefore is sustained.

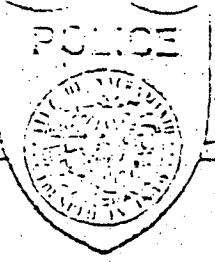
21 DATED: April 13, 1976.

22 Ronald H. Wright  
RONALD H. WRIGHT, Chairman

23 Oreitha Eggleston-Hausey  
OREITHA EGGLESTON-HAUSEY

24 Alba Kuchman  
ALBA KUCHMAN

25 Jimmie R. Yee  
26 JIMMIE R. YEE  
27  
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CITY OF SACRAMENTO

DEPARTMENT OF POLICE

813 Sixth Street

WILLIAM J. KINNEY  
CHIEF OF POLICE

SACRAMENTO, CALIFORNIA

95814

23 April 1975

Robert D. Brill  
447 Rimmer  
Sacramento, California

Dear Mr. Brill:

The purpose of this letter is to inform you that you are hereby terminated from your position as police officer with the Sacramento Police Department as of 24 April 1975.

This disciplinary action is based upon the facts set forth below and rule 17.5 of the Rules and Regulations of the Civil Service Board. This disciplinary action is based on the following facts:

- A. On November 27, 1970, while working with a recruit, you visited a female juvenile and had coffee with her. During this time you left the recruit in the car. A charge of conduct unbecoming an officer was sustained, and you were given an oral reprimand for misuse of city time.
- B. On March 18, 1972, you took a city owned polaroid camera to your home without authorization and left it there. This caused a delay in an investigation because the camera was not available. Subsequently a charge of conduct unbecoming an officer was sustained against you and you were given a written reprimand.
- C. On February 16, 1973, your home was burglarized. On February 26, 1973, while off duty, you lured a suspect to your home on the pretext of looking at photographs. The suspect was then allegedly slapped and kicked by you. The suspect did have bruises and claimed you threatened him with a gun. After the suspect confessed, you went to a private residence and without consent or a search warrant, searched the residence and recovered your stolen property. You were given a 30 day suspension for violation of Civil Service Rule 17.5, subsection V.
- D. On May 19, 1973, you refused to make an arrest as directed by your Sergeant. A charge of insubordination was filed against you and you were dismissed from the police department. The Civil Service Board reinstated you after a formal hearing was conducted.

*Exhibit A*

Robert D. Brill  
23 April 1975  
Page - 2 -

- E. On November 25, 1974, while investigating a false alarm, you had occasion to place a telephone call to an answering service. The female operator gave you her first name but refused to give her last name stating it wasn't material. You wanted to include her name in the premise report and told the female that if she didn't give her full name over the phone that you would have a warrant issued for her arrest. She refused and you wrote an offense report requesting a warrant for violation of 647e P.C. Sgt. Lamkin voided the report and informed you that an officer with your years of experience should have known the elements of 647e P.C. and that the woman had not committed a crime. This is a violation of Section 37.02, Police Department Rules and Regulations, police action based on legal justification. You were given an oral reprimand.
- F. On January 27, 1975, you were attempting to arrest a male, white subject, 45 years of age, for drinking in public. The subject attempted to strike you, and you knocked the subject unconscious. During the fight, a delivery truck driver parked nearby had watched the fight. You noticed the driver, but did not say anything to the driver. After you subdued the drinker, you summoned a second unit and arrested the truck driver who had observed the fight for 150 P.C. (Refusing to Aid or Assist officers in arrest). The driver was booked at the County Jail and Sgt. Lamkin became aware of this action. He contacted you and reprimanded you for the arrest. Sgt. Lamkin pointed out to you that a person must have been directed or ordered by a peace officer to assist before he is guilty of refusing or neglecting to aid an officer. The driver was subsequently released under P.C. 849b. This action is a violation of Police Rules and Regulations Section 37.02, Police Action based on Legal Justification.
- G. On February 5, 1975, you were attempting to arrest a subject for 23102a CVC. The subject, Gerald Todd, resisted the use of handcuffs. You had the subject, Todd, in a wrist-lock which Todd pulled out of. You then hit Todd with a left jab, knocking him to the ground. You then put a knee in Todd's back and allowed him to sit up because you wanted to handcuff the subject in a seated position. The subject tried to get up and attempted to swing at you. You then got a choke hold on Todd and pulled your service revolver, put it to Todd's head and told him to cease struggling. Todd quit struggling, and then you tripped and threw him to the ground. You then holstered your weapon and went to the squad car to call for assistance. After calling for assistance, you removed your

baton from the car and returned to Todd who had gotten to his feet again. You have stated that Todd did not attack you at this time and he did not attempt to flee. You then began to strike Todd with the baton because you wanted to effect the arrest before Todd's companion could come to his aid. You have stated that the companion did not say or do anything that would cause you to fear intervention. After you had struck Todd at least 7 times on the shoulder, arms and legs, he began to run and was subsequently arrested by assisting units. This is a violation of Section 37.22 of Police Rules and Regulations regarding Treatment of Prisoners.

- H. On February 18, 1975, you were investigating an accident, and while walking back to your car, you heard a subject tell two large dogs "sic em". The dogs did nothing at that moment, but in less than a minutes time began to bark at you and bare their fangs. You drew your gun and pointed it at the dogs. The owner of the dogs came out of the house and began to shout at you. The owner eventually took the dogs inside, and you and the owner got into a very bitter argument. Sgt. Lamkin was called to the scene, and the incident was resolved without arrests being made or further action being taken. One week later, you observed the same owner and the dogs. You stopped and ordered the owner to put leashes on the dogs or be cited. This subject stated that he was being harassed by you and that you did not stop or take action against other dogs who were running loose. This action on your part is a violation of 36.02 of Police Rules and Regulations regarding Impartial Attitudes by a Police Officer in the performance of his duties.
- I. On February 19, 1975, you used mace to arrest and take a suspect into custody and failed to make a report to the Chief as required by General Order 2-2. You were given an oral reprimand. This is violation of Section 32.26 of the Police Department Rules and Regulations regarding Submission of Report.
- J. On March 11, 1975, you responded to a "sick man" call and got into an argument with the individual who originated the call. At the scene of this call, you used vulgar and profane language toward the reporting person. This is a violation of Civil Service Rules and Regulations 17.5 (0), Discourtesy.

Robert D. Brill  
23 April 1975  
Page - 4 -

On April 16, 1975, you were assigned to the radio communications section between the hours of 0000 and 0800. At 0330 hours you were observed by the Supervisor, Sgt. A. Marquez, to be sleeping at your desk. Sgt. Marquez woke you and verbally reprimanded you for sleeping on duty. Sgt. Marquez ordered you to stay awake or face charges and your reply to him was, "I don't care if you write me up, I could use some time off so long as I don't lose my job completely. I made too much money last year anyway." Sgt. Marquez replied, "Do you mean that?" and you replied, "Yes, I do! I'm not putting up with anyone that tries to intimidate me - you nor anyone else in this police department!"

These actions on your part are in direct violation of General Order 34.42, Sleeping on Duty; 31.14, Dereliction of Duty and 31.32, Respect between Rank.

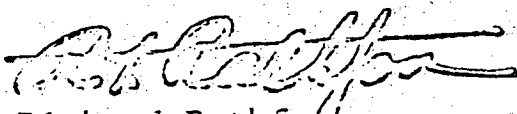
The aforementioned conduct on your part constitutes cause for disciplinary action pursuant to Rule 17.5, subsections b, c, e, o, q and v, of the Civil Service Rules and Regulations of the City of Sacramento.

A copy of this letter is being sent to the Personnel Department. You may, if you wish, reply to me in writing within ten (10) days and a copy of your reply will also be sent to the Personnel Department. However, if you wish to appeal this termination to the Civil Service Board, it will be necessary for you to make a written request to the Board for such hearing within five (5) days.

Very truly yours,

  
William J. Kinney,  
Chief of Police

APPROVED:

  
Richard Rathfo,  
City Manager  
City of Sacramento

JW:WJK:al

COBEN, COOPER & ZILAFF  
ATTORNEYS AT LAW  
817 JAY STREET  
SACRAMENTO, CALIFORNIA 95814  
TELEPHONE 442-0403

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Attorneys for Robert Brill

CIVIL SERVICE BOARD, CITY OF SACRAMENTO

In the Matter of )  
the Appeal of ) STIPULATION RE: ISSUES  
ROBERT BRILL )

Through their respective counsel of record herein, CITY OF SACRAMENTO and ROBERT BRILL stipulate:

1. All references to the "letter" shall mean and refer to the letter from William J. Kinney, Chief of Police to Robert Brill dated April 23, 1975, which letter is attached hereto as Exhibit A and is by this reference incorporated herein.

2. City shall offer no proof of the facts set forth in paragraph A of the letter and agrees to drop said charge.

3. The facts set forth in paragraph B of the letter are true except that during period involved it was common practice for police department equipment to be taken home by officers, and Brill acquired possession of said camera for the proper purpose of taking pictures of suspects and then returned to work forgetting the camera at home resulting in a delay of not more than 18 hours.

4. The alleged facts set forth in paragraph C of the letter are not true, but rather the charges and responses of Brill are contained in the letter of March 27, 1973 from Chief Kinney, and Brill's response of March 30, 1973, attached hereto. Brill admits

1 he was given a thirty (30) day suspension for violation of Civil  
2 Service rule 17.5, sub section V.

3 5. Brill admits he was charged with insubordination and pre-  
4 viously dismissed on May 19, 1973 by the police department. That  
5 that dismissal was heard by the Civil Service Board and reinstatement  
6 was ordered on a two to two vote. To the extent permitted  
7 by law, the parties agree that the Civil Service Board may take  
8 notice of their records on file herein, but Brill objects to any  
9 further testimony or evidence on this matter.

10 6. Insofar as paragraph E of the letter sets forth factual  
11 incidents, the facts are true. City contends that there was no  
12 justification to seek criminal prosecution of the telephone  
13 operator. Brill contends that there was justification to seek  
14 criminal prosecution of the telephone operator. Brill further  
15 contends that the proper section under which the parties should  
16 have been charged was 150 P.C., and that Sgt. Lamkin did not  
17 characterize his action as an oral reprimand, nor was Brill inform-  
18 ed that the action of Sgt. Lamkin would be considered disciplinary  
19 matter.

20 7. Insofar as paragraph F of the letter sets forth factual  
21 incidents, the facts are true. City contends that the truck  
22 driver did not violate Penal Code Section 150. Brill contends  
23 that the truck driver did violate Penal Code Section 150. If there  
24 was no violation of Penal Code Section 150, there was no legal  
25 justification for criminal charges against the truck driver. Sgt.  
26 Lamkin, at that time, did not indicate that this was a reprimand  
27 nor that it was considered a disciplinary action.

28 8. The statement Brill made in writing to IIS dated February

1 12, 1975 is true. Brill contends that paragraph G of the letter  
2 is in some regards inconsistent with said statement and alleges  
3 that the February 12, 1975 statement is a correct statement of  
4 the facts referred to in paragraph G, rather than paragraph G which  
5 is an attempt to paraphrase.

6 9. City will offer no evidence concerning the facts set  
7 forth in paragraph H of the letter and agrees to drop said charge.

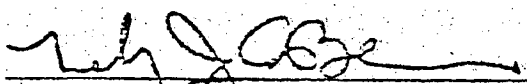
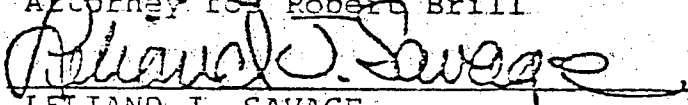
8 10. The facts set forth in paragraph I are true except that  
9 the use of Mace was disclosed on the arrest report, the offense  
10 report and the casualty report, but a special Mace report was inad-  
11 vertently not prepared.

12 11. <sup>As To paragraph J</sup> Brill contends that his actions were justified by the  
13 requirements of police department procedures. City contends that  
14 Brill's actions were not justified.

15 12. Insofar as the incident related in the first paragraph  
16 on page 4 of the letter is concerned, Brill contends that he did  
17 not fall asleep on duty and that the quoted words are not precise.  
18 City contends that the facts related in the first paragraph on  
19 page 4 of the letter are accurate and that the quoted material  
20 is an accurate portrayal of the conversation which took place and  
21 that any variance or slight inaccuracy is immaterial. Further  
22 Brill contends that at the time of the action of April 16, the  
23 City had already decided to undertake disciplinary action against  
24 him and that incident did not have any effect on discipline being  
25 undertaken in this case.

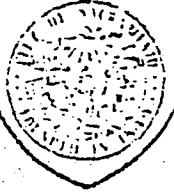
26 DATED: January 27, 1976

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28 DATED: January 27, 1976

  
MELVYN J. COBEN  
Attorney for Robert Brill  
  
LELIAND J. SAVAGE  
Attorney for City of Sacramento

COBEN, COOPER  
& ZILAFF  
ATTORNEYS AT LAW  
617 JAY STREET  
SACRAMENTO,  
CALIFORNIA 95814  
TELEPHONE 442-0403

POLICE



CITY OF SACRAMENTO

DEPARTMENT OF POLICE

813 Sixth Street

WILLIAM J. KINNEY  
CHIEF OF POLICE

SACRAMENTO, CALIFORNIA

95814

23 April 1975

Robert D. Brill  
447 Rimmer  
Sacramento, California

Dear Mr. Brill:

The purpose of this letter is to inform you that you are hereby terminated from your position as police officer with the Sacramento Police Department as of 24 April 1975.

This disciplinary action is based upon the facts set forth below and rule 17.5 of the Rules and Regulations of the Civil Service Board. This disciplinary action is based on the following facts:

- A. On November 27, 1970, while working with a recruit, you visited a female juvenile and had coffee with her. During this time you left the recruit in the car. A charge of conduct unbecoming an officer was sustained, and you were given an oral reprimand for misuse of city time.
- B. On March 18, 1972, you took a city owned polaroid camera to your home without authorization and left it there. This caused a delay in an investigation because the camera was not available. Subsequently a charge of conduct unbecoming an officer was sustained against you and you were given a written reprimand.
- C. On February 16, 1973, your home was burglarized. On February 26, 1973, while off duty, you lured a suspect to your home on the pretext of looking at photographs. The suspect was then allegedly slapped and kicked by you. The suspect did have bruises and claimed you threatened him with a gun. After the suspect confessed, you went to a private residence and without consent or a search warrant, searched the residence and recovered your stolen property. You were given a 30 day suspension for violation of Civil Service Rule 17.5, subsection V.
- D. On May 19, 1973, you refused to make an arrest as directed by your Sergeant. A charge of insubordination was filed against you and you were dismissed from the police department. The Civil Service Board reinstated you after a formal hearing was conducted.

Exhibit A

- E. On November 25, 1974, while investigating a false alarm, you had occasion to place a telephone call to an answering service. The female operator gave you her first name but refused to give her last name stating it wasn't material. You wanted to include her name in the premise report and told the female that if she didn't give her full name over the phone that you would have a warrant issued for her arrest. She refused and you wrote an offense report requesting a warrant for violation of 647e P.C. Sgt. Lamkin voided the report and informed you that an officer with your years of experience should have known the elements of 647e P.C. and that the woman had not committed a crime. This is a violation of Section 37.02, Police Department Rules and Regulations, police action based on legal justification. You were given an oral reprimand.
- F. On January 27, 1975, you were attempting to arrest a male, white subject, 45 years of age, for drinking in public. The subject attempted to strike you, and you knocked the subject unconscious. During the fight, a delivery truck driver parked nearby had watched the fight. You noticed the driver, but did not say anything to the driver. After you subdued the drinker, you summoned a second unit and arrested the truck driver who had observed the fight for 150 P.C. (Refusing to Aid or Assist officers in arrest). The driver was booked at the County Jail and Sgt. Lamkin became aware of this action. He contacted you and reprimanded you for the arrest. Sgt. Lamkin pointed out to you that a person must have been directed or ordered by a peace officer to assist before he is guilty of refusing or neglecting to aid an officer. The driver was subsequently released under P.C. 849b. This action is a violation of Police Rules and Regulations Section 37.02, Police Action based on Legal Justification.
- G. On February 5, 1975, you were attempting to arrest a subject for 23102a CVC. The subject, Gerald Todd, resisted the use of handcuffs. You had the subject, Todd, in a wrist-lock which Todd pulled out of. You then hit Todd with a left jab, knocking him to the ground. You then put a knee in Todd's back and allowed him to sit up because you wanted to handcuff the subject in a seated position. The subject tried to get up and attempted to swing at you. You then got a choke hold on Todd and pulled your service revolver, put it to Todd's head and told him to cease struggling. Todd quit struggling, and then you tripped and threw him to the ground. You then holstered your weapon and went to the squad car to call for assistance. After calling for assistance, you removed your

baton from the car and returned to Todd who had gotten to his feet again. You have stated that Todd did not attack you at this time and he did not attempt to flee. You then began to strike Todd with the baton because you wanted to effect the arrest before Todd's companion could come to his aid. You have stated that the companion did not say or do anything that would cause you to fear intervention. After you had struck Todd at least 7 times on the shoulder, arms and legs, he began to run and was subsequently arrested by assisting units. This is a violation of Section 37.22 of Police Rules and Regulations regarding Treatment of Prisoners.

- H. On February 18, 1975, you were investigating an accident, and while walking back to your car, you heard a subject tell two large dogs "sic em". The dogs did nothing at that moment, but in less than a minutes time began to bark at you and bare their fangs. You drew your gun and pointed it at the dogs. The owner of the dogs came out of the house and began to shout at you. The owner eventually took the dogs inside, and you and the owner got into a very bitter argument. Sgt. Lamkin was called to the scene, and the incident was resolved with- out arrests being made or further action being taken. One week later, you observed the same owner and the dogs. You stopped and ordered the owner to put leashes on the dogs or be cited. This subject stated that he was being harassed by you and that you did not stop or take action against other dogs who were running loose. This action on your part is a violation of 36.02 of Police Rules and Regulations regarding Impartial Attitudes by a Police Officer in the performance of his duties.
- I. On February 19, 1975, you used mace to arrest and take a suspect into custody and failed to make a report to the Chief as required by General Order Z-2. You were given an oral reprimand. This is violation of Section 32.26 of the Police Department Rules and Regulations regarding Submission of Report.
- J. On March 11, 1975, you responded to a "sick man" call and got into an argument with the individual who originated the call. At the scene of this call, you used vulgar and profane language toward the reporting person. This is a violation of Civil Service Rules and Regulations 17.5 (0), Discourtesy.

Robert D. Brill  
23 April 1975  
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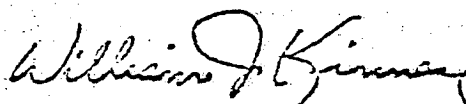
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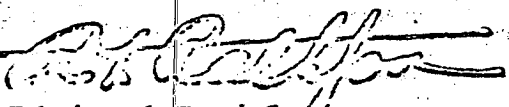
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A copy of this letter is being sent to the Personnel Department. You may, if you wish, reply to me in writing within ten (10) days and a copy of your reply will also be sent to the Personnel Department. However, if you wish to appeal this termination to the Civil Service Board, it will be necessary for you to make a written request to the Board for such hearing within five (5) days.

Very truly yours,

  
William J. Kinney,  
Chief of Police

APPROVED:

  
Richard Rathfo,  
City Manager  
City of Sacramento

JW:WJK:al