

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2368

2001 SENATE JUDICIARY

SB 2368

2001 SENATE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. 2368

Senate Judiciary Committee

Conference Committee

Hearing Date 19 February 2001

Tape Number	Side A	Side B	Meter #
1	x	x	0-end/0-7.5
Tape 1 20 Feb. 2001		x	8.9-22

Committee Clerk Signature

Minutes: **Senator Traynor**, opened the hearing on SB 2368: A BILL FOR AN ACT TO PROVIDE FOR A PEACE OFFICERS' BILL OF RIGHTS; AND TO PROVIDE A PENALTY.

Senator Watne, representing district 5. (testimony attached)

Representative Mahoney, representing district 33. In real life I have been a city attorney and a state attorney. Since signing the bill there has been a lot of turmoil. I know from experience that law enforcement has a tough job. Every case is unique. Law officers need protection. They deserve equal treatment of rights across the state.

Senator Lyson, do you feel law officers should have more rights than a normal citizen?

Representative Mahoney, I don't know what you consider a normal citizen. There are different social structures such as union rights groups.

Senator Lyson, what I mean to say is, do law officers have less rights?

Representative Mahoney, I don't believe it is equal across the state.

Senator Traynor, did this bill come from grievances?

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Representative Mahoney, there was a lack of uniformity in the state.

Chad Hagen, State President of the ND Fraternal Order of Police, supports SB 2368. (testimony attached) Also presented is Jason Dvorak's testimony of the Grand Forks Police Department.

Senator Lyson, has your local federation of police organization asked for any support from the ND police chiefs or sheriffs organization.

Chad Hagen, we haven't spoken to any of those organizations directly, basically we put it out to our members for feedback and didn't any.

Senator Lyson, can you give us any other cases that could give us reason to pass this bill.

Cases where police officers were segregated against.

Chad Hagen, we had a case where an officers' financial records were disclosed during an internal investigation. We have also had cases throughout the state where an officer wasn't given the same rights as officers would be in larger cities. This bill helps smaller organizations.

Senator Lyson, income is public information.

Chad Hagen, we don't feel that administrators should just give out this information, a request should be made.

Senator Lyson, that's not what it says here. This says you can't give out information. My next question is, don't you think that peace officers enjoy our current bill of rights?

Chad Hagen, no I don't.

Senator Lyson, do you think there is recourse if it is not available.

Chad Hagen, yes there are. But they are afraid of losing their jobs.

Senator Lyson, is it true that the National Federation of Police has unsuccessfully for several years tried to get this passed to the Supreme Court?

Chad Hagen, this bill has never come before the US Congress or the Senate. Not to my knowledge.

Senator Trenbeath, this bill is anything but simple. Are you sure your clear on fine line between criminal rights and administrative privileges.

Chad Hagen, there is an area that is confusing. I'm not a supreme court expert. We are trying to get that clear in this bill.

Senator Trenbeath, your main emphasis is with respect to the criminal?

Chad Hagen, That is what this bill is dealing with mostly.

Senator Dever, this bill is important. Are there sections that have a higher priority.

Chad Hagen, yes there are.

Senator Trenbeath, in section three of the bill, subsection five: "No promise of reward may be made as an inducement to answering a question." The very practices you use on a daily basis, you will not allow others to use on you. Don't you on investigations promise rewards?

Chad Hagen, yes.

Senator Trenbeath, so your saying if their is an incidence of rotten cops. Who were profiting from their jobs, to inducing them to turn on the rest. Do you think that is fair?

Chad Hagen, no, I don't think that is fair.

Senator Trenbeath, so public interest takes second place.

Senator Lyson, how many members do you have?

Chad Hagen, I don't have that information.

Senator Bercier, which sections are important to this bill?

Chad Hagen, 7, 8.

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Senator Traynor, it would seem the public agency have any varieties of retaliation, I don't know if you want that language there.

Paul Hendrickson, Sheriff of Cooperstown and Griggs county, would like to kill the bill. Good content, however, it needs to be worked on before in the law community. It must be dealt with in the law enforcement community instead of a lone wolf approach.

Senator Traynor, are you suggesting a study resolution?

Paul Hendrickson, no, but it needs to be resolved within the law enforcement community. We need to work together instead of as opposing forces.

Senator Dever, are there sections you could live with?

Paul Hendrickson, there are many aspects to where they speak on small agencies. If there is a need for a state board that needs to look at person interests then we would certainly look at that. There is a lot of lacking definitions in here, what is an interrogation. Senator Trenbeath had a fantastic question as far as where is the line between criminal and civil administratively. Most of these laws are already in place.

Senator Dever, is there a form of this bill that could serve has a basis for your groups to get together, or is that necessary?

Paul Hendrickson, I don't believe it is necessary. However, there is a lot of good content in the bill. But none of us have been contacted.

Darel Vance, Chief of Police for Watforford City and President ND Chief of Police Association. Reads testimony from LeRoy McCann

Senator Trenbeath, I know LeRoy very well.

Senator Nelson, is there a willingness for you to sit down with these people?

Darel Vance, yes.

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Senator Nelson, we want something to get done.

Keith Tornes, Deputy Chief of Fargo, believes bill needs to be revamped. Opposed to the bill.
This bill would be detrimental to administrative process.

Senator Trenbeath, you don't think an officer should be given a say as to the release of his picture on the web?

Keith Tornes, no.

Bill Broer, retired law officer, doesn't believe the bill is necessary. Opposed to the bill.

Senator Traynor, closed the hearing on SB 2368.

SENATOR WATNE MOTIONED TO AMEND THE BILL, SECONDED BY SENATOR DEVER. VOTE INDICATED 2 YEAS, 4 NAYS AND 1 ABSENT AND NOT VOTING.

SENATOR LYSON MOTIONED TO DO NOT PASS, SECONDED BERCIER. VOTE INDICATED 6 YEAS, 0 NAYS AND 1 ABSENT AND NOT VOTING. SENATOR LYSON VOLUNTEERED TO CARRY THE BILL.

Date: 2/20/01
Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2368**

Senate Judiciary Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number

Action Taken Move Amendment 101

Motion Made By Watne Seconded By Dew

Total (Yes) 2 No 4

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2/20/01

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2368**

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Lysen Seconded By Betzier

Total (Yes) 6 No 0

Absent)

Floor Assignment Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 20, 2001 6:14 p.m.

Module No: SR-31-4105
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

**SB 2368: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2368 was placed on the
Eleventh order on the calendar.**

2001 TESTIMONY

SB 2368

Speech before Senate Judiciary Committee

February 19, 2001

9:00 AM

Chad Hagen, NCLEO

President, ND Fraternal Order of Police



PEACE OFFICERS' BILL OF RIGHTS

SB 2378

Good morning Mr. Chairman and members of the Judiciary Committee. My name is Chad Hagen, and I am the State President of the ND Fraternal Order of Police. We are an organization of over 500 members in ND, and 300,000 members throughout the United States. We are the largest professional police organization in the Untied States, and the only progressive police organization in this state that actively fights for law enforcement in all fields and of all ranks.

I am here today to express our organizations support of SB 2368, the peace officers' bill of rights. I urge this committee to take action today to pass this item, and send it to the Senate floor.

Our organization would like to thank Senator Watne and Dever for supporting this legislation. We realize that this bill has driven some controversy in the law enforcement field. The reason for this is simple. ND is starting to come out of the dark ages in this area, and it has a lot of people scared. Scared for the future. I am here today to tell this committee that the future of law enforcement in ND is looking up, and the passage of this bill is a step in the right direction. We need to ensure that officers are not apprehensive about doing the right thing over fear that they may be punished or reprimed against. This is where the bill of rights comes into play. A perception that the rights of law enforcement officers are not always observed, in the internal investigations process, has led to the adoption of procedural protections. These protections are commonly known as a bill of rights.

Comprehensive bills of rights exist in numerous states, such as Florida, Illinois, Louisiana, Nevada, California, and Wisconsin. In more than half of the states, bills of rights are included in collective bargaining agreements between employers and employees of government organizations.

I think we can all agree that effective law enforcement depends upon the maintenance of stable employer-employee relations. In order to insure that these relations are continued throughout the state, and to further assure that effective services are provided to all people in ND, it is necessary that this bill apply to all law enforcement officers. This is the era of lawsuits, civil rights claims, and increased tensions between the public and police. As we work in this field, we have enough to worry about, and don't need the added stress of wondering how every call we go on will be interpreted by the public, and the administration alike. This bill will lay out specifications on what the employer and employee expect when it comes to interrogations, interviews, personnel files, photographs, and financial data. Why should either party have to be surprised by what the course of action will be when a complaint against an officer is received. This bill does nothing more than to lay out due process rights for officers.....the same due process as you, citizens of this state, would expect if you were being questioned by the police. In the words of a federal court, a law enforcement officers' bill of rights is designed to protect officers from any impairment of their rights when their conduct is questioned.

One thing that I believe needs to be clarified is that this will not protect the officer that deserves disciplinary action. This bill merely lays out the course that needs to be followed for every occurrence in which disciplinary action may need to be handed down. This bill is fair, it is simple, and it is the correct way to treat employees of a professional, progressive law enforcement agency.

Another clarification that needs to be made is that this bill will cost agencies absolutely no funding to implement. The only possible way an agency may lose with this bill, is if the administrators violate these provisions. There should be absolutely no reason why this should happen, as these practices should be simple enough to follow.

I will briefly cover each section of this bill and give a few short examples of why these are needed in North Dakota. I have provided for each member of this committee a brief synopsis sheet that covers each section of this bill.

Section 1 of this bill covers definitions

Section 2 covers political activity. This section merely addresses the fact that no officer may be prohibited from engaging in political activity, unless

they are on duty or in uniform. It also addresses that no officer may be coerced or required to engage in political activity. This section merely covers what is inherently right and what this country is founded upon.

Section 3 covers interrogation and investigative rights of officers. Under these provisions, this section lays out how the interrogation may be conducted and under what conditions. It asks that:

- The officer be informed of the nature of the investigation
- That it be conducted at a reasonable hour, preferably when the officer is on duty, or during normal waking hours, unless the seriousness requires otherwise. If it is conducted when off duty, the officer must be compensated for such.
- The officer must be told who is in charge of the investigation, and may not be asked questions by more than 2 people at one time
- The interrogation must take place for a reasonable amount of time, and the officer must be allowed to attend to personal physical necessities
- The officer cannot be subjected to offensive language, cannot be threatened, cannot be subjected to visits by the press without the officers' consent, nor may the address or photo of the officer be given to the media without the officers consent. This is to protect the officer as well as his/her family.
- No statement made during interrogation while the officer is under duress or coercion, or threat will be admissible in a civil proceeding
- The complete interrogation may be recorded, but if this is made, the officer must be permitted access to the tape as well. The officer is also entitled to a transcribed copy of this proceeding. The officer is also permitted to tape record this interrogation with his or her own recording device. The main reason for this section is to ensure that the officer is given access to all the information that is being brought before them, unless it is confidential. It is not intended so the officer can doctor testimony, or make up stories. If any department thinks that this is the case, they have already determined that an officer is at fault for whatever the charge. If an officer is present, and it is that officer that is giving the answers, then why not allow the officer to record their own statements?

-If during the interrogation, it is determined that the officer may be charged with a criminal offense, that officer must be given their constitutional rights. The Supreme Court has ruled that the use of officer's statements in criminal proceedings or investigations violated the Fifth Amendment's guarantee that citizens cannot be compelled to be witnesses against themselves. In particularly strong language, the Supreme Court also held that "policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Continuing "the Fifth Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil, or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." (Lefkowitz v. Turley, 414 us 70 (1973) This section of the bill has been addressed by the Supreme Court, and has been held to be the standard. This is not a higher standard than the law requires be applied to anyone else. This is the law.

-The last portion of this section merely states that an officer may not be reassigned or loaned to a duty assignment if another officer would not normally be sent to that location or assignment. Why degrade the officer further by a department undertaking this activity? It is a bad situation for both the officer and the department that this investigation is taking place to begin with.....why makes it worse?

Section 4 deals with administrative appeal. This allows that administrators may not deny an officer a promotion, give officers adverse treatment etc due to the provisions listed in this bill. This section also allows that a Chief of Police may not be removed from his/her position without informing the Chief of the reason behind the removal. This section also covers time constraints that an officer has to file an appeal under this section, and the provisions that allow for this to occur.

Section 5 is about the freedom from retaliation while an administrative appeal is being conducted, and this appeal will be conducted in conformance with rules and procedures adopted by the local agency.

Section 6 involves entries in personnel files. Before any letter or comment that is adverse to the officer is entered into a personnel file, the officer must be allowed to read the item, and sign off on it stating that they have read the item. If the officer refuses to sign, then that must be noted on the form.

This section also gives the officer 30 days to respond to the adverse comment, and this response must be attached to the original paper. An officer should not be surprised about what they will find in their file, nor should they be denied the right to explain and defend their actions.

Section 7 involves the use of photographs. In a nutshell, this section is simple. The employing agency may not use the officers' photograph on the internet, or release a photograph for any other purpose, without consent of the officer, if that officer reasonably believes that the disclosure may result in threat, harassment, intimidation or harm to the officer or the officers family. This section says nothing about department ID cards, or other official photographs. I am going to read to you a letter from a Grand Forks police officer. **READ LETTER**

This is the book that is in question. What possible need would a department have for publishing an officer's picture in a book like this, in specific if they are not even a member of this group? This does nothing for enhancing relationships with the public. And, furthermore, what possible benefits would be gained by displaying photos of officers? Would it be a benefit that offenders would now have access to what very officer looks like? Would it be a benefit to have undercover, or plain-clothes officers identified for the public? Would it be a benefit for an officer ,when they are out with their family to be recognized in a restaurant setting....to be harassed because they are an officer? Where does the public service stop and the right to privacy begin?

This section does lay out a penalty for this action. This penalty is here because this issue has become such an area of concern, that it needs to be stopped immediately.

Section 8 involves financial disclosure of the officers' property, assets, income, and other related items without due cause of this to occur.

Section 9 covers legal remedies if an agency violates the provisions in the bill of rights.

Section 10 simply states that if an agency has adopted other provisions that are similar in nature to this bill, then that department may use those provisions.

Section 11 handles mutual aid agreements between jurisdictions.

In some agencies in North Dakota, some of these protections already exist. This bill would assist those officers and departments that currently do not have protections such as these, and it would level out the playing field between an employer and employee. This bill does nothing to threaten management practices. This bill is only giving rights to police officers that citizens already posses. If anything, this will open the door for further communications between administrators and their employees.

Again, I would like to reiterate to this committee that this bill does not tie the hands of administrators in ND. This bill will merely make things spelled out for both officers and for the employer. I have read many of the arguments against the passing of this bill. I have not seen one complaint or request for non-passage from any officer, deputy sheriff, and BCI agent. These are the officers that this bill will effectively serve. My organization has read emails from the Sheriffs of ND. Some say throw this bill in the trash where it belongs, others say it will make it harder to remove questionable employees. This bill is not for the benefit of the County level administrator. This bill is giving due process to the officers, the same as any other citizen in this state. Administrators should not be afraid to disclose the reasons behind the investigation of officers. They should be willing and required to disclose to the officer information that is contained in an investigation that could affect their careers as a law enforcement officer. This bill will assist in leveling the playing field.

I will stand for any questions at this time.

MEMORANDUM

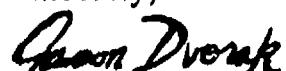
TO: Legislative Delegation
FROM: LeRoy McCann
DATE: 2-19-01
SUBJECT: Senate Bill # 2368

1. *GENERAL – The peace officers' BILL of RIGHTS bill being considered is bad legislation, in my opinion, and I would ask that you vote against it. The bill protects the bad officer but really does nothing for a good officer except put him in jeopardy working with the bad officer while the governing body goes through the dismissal process which is already too long without adding more steps to the process.*
2. *CURRENT LAW – There is currently enough labor laws along with local policies to handle most situations and some of the procedural matters should be left to the local jurisdictions. Remember, local jurisdictions have employees other than peace officers and all employees should be afforded due process. If we have a separate set of rules for peace officers, another for sanitation workers, another for the street department, etc. it will make a difficult task more difficult.*
3. *PERSONNEL – The biggest part of a law enforcement agencies budget is personnel. Our people are our most important asset and should be recognized as such. The money spent to enforce this legislation would be better spent on peace officer recruitment and training rather than investigating jurisdictions who address personnel problems to be assured that the I's were dotted and the T's were crossed.*
4. *PERSONAL OBSERVATION – Senate bill 2368 reads more like a labor union contract than legislation.*
5. *PUBLIC – I understand that when dealing with the public, especially in negative situations, there is the risk that subjects will wrongfully accuse an officer of a misdeed to put themselves in better light. I think this type of situation is recognized and addressed as such in most cases and this bill won't change that.*

To Whom It May Concern:

Hi, my name is Jason Dvorak and I am a Police Officer with the Grand Forks Police Department. I am assigned to the Uniform Patrol Bureau. During one of my shifts, another officer and I were at a residence attempting to serve an Arrest Warrant. We made contact with the subject inside his residence and it was during that time when we observed a magazine laying on a table in the living room area. The reason we recognized it was because it was the same copy we have at the Grand Forks Police Department. The magazine is published by the North Dakota Peace Officers Association. We asked the home owner who the book belonged to and he stated he had gotten it from a friend of his who didn't want it anymore. The subject we were speaking to also said he really had no reason to keep it and that we could have it. Later on while looking through the magazine (which has pictures of most Police Officers in the State of North Dakota) we discovered that some officers who work for the Grand Forks Police Department had their pictures "circled". A few of the officers also work patrol but the majority of the pictures that were circled were our detectives and people who work for our Task Force. A short time later another book was found in a residence with similar circumstances.

Sincerely,


Jason Dvorak

Jason Dvorak
Grand Forks Police Department
122 So. 5th St.
Grand Forks, ND 58201

(701) 787-8000



NORTH DAKOTA SENATE



Senator Darlene Watne
District 5
520 28th Avenue SW
Minot, ND 58701-7065

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES:
Judiciary, Vice Chairman
Political Subdivisions

Chairman Traynor, Members of the Senate Judiciary:

We sit in session and pass laws, but every one of those laws must eventually be enforced by our peace officers. Those peace officers work year around to protect the residents in our state, often with long hours and always with an element of potential personal danger. I believe you feel as I feel that what they do is exceptionally admirable.

This bill includes our police, our sheriffs, the Bureau of Criminal Investigation and everyone in those departments. I believe it covers all law enforcement officers in our state except Marshalls, who are under Federal jurisdiction. It is estimated that we have 1800 officers alone in our state. Other states have this type of legislation and it is time for North Dakota to join those states. I assure you from the start that this is not a "union bill." This is a bill for every worker in every law enforcement department.

Our new Attorney General was working with a group of police officers when he took office to help them establish what we have here, a Peace Officer's Bill of Rights. I am honored to be able to continue to work with that group to further that cause. Such a law is needed.

When the initial bill was proposed, some of the city leaders, administration personnel of these departments, etc. had some reservations about certain sections of the proposed bill. Detective Paul Olson of the Bismarck Police Department has worked with those entities to try to meet their objections and answer their questions, and the original bill was revised in this bill to take care of some of their objections. I hope we can perfect a bill that can be agreed to by all parties. There is one group that does object quite strongly to this bill, and I'm sure you know that by your e-mails, and that group is composed of sheriffs. The objections I have received have been from the county level administrators. I have had no objections from deputies, the police officers, or members of BCI, the main people who benefit from these requested rights and from whom whose ranks the request for this bill was born.

I will briefly give you a guided tour of what I understand this new law to contain and other witnesses will go into it more deeply:

Section 1 defines what a "Peace Officer" is and what "Punitive Action" means.

Section 2 allows a peace officer to be politically active without repercussion.

Section 3 establishes interrogation and investigative rights for an officer. These are rights that any normal citizen has -- such as, tell the officer the nature of the investigation (which is back to the Miranda Right: You have a right to remain silent). Also, with officers sometimes working 12 hour shifts, a reasonable hour for interrogation is requested. Then it establishes basic principles such as limiting threats and so forth. It also limits the use of statements and gives access to any tapes, being informed of constitutional rights. As I said, these are basic rights that I believe any normal citizen has. And in this instance an officer does not want to be loaned or temporarily assigned during this process. Imagine being on a job and just because you are being interrogated, your job is suddenly changed or you are demoted! You are, remember, under a presumption of innocence until proven guilty under our laws.

Section 4 outlines the process for administrative appeal. I'm sure Paul will go into further detail of this section.

Section 5 is very important because it is freedom from retaliation.

Section 6 specifies what goes into personnel files, and this is a very KEY element of this bill. I hope you read this very carefully. I believe this section is logical, fair, and what any citizen would demand of an employer.

Section 7 deals with photographs and the release of photographs. It is titled "Polygraph examinations - use of photographs," but the portions on polygraphs were removed before the bill was signed and filed, so that reference, those words "Polygraph examinations" should be removed by amendment.

Section 8 concerns personal financial disclosures. If such information is needed and important in an investigation, we have laws to properly attain it.

Section 9 outlines legal remedies in district court.

Section 10 simply states that if a department or agency already has laws that cover these matters and they provide the same rights and procedures, then that department or agency is not subject to this Act.

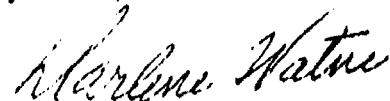
And Section 11 allows multijurisdictional mutual aid agreements.

This is a brief outline of the bill, but you now have a general idea of the type of testimony and the subject of the testimony you will hear today. You will hear the reasons for requesting such a bill.

There is one thing I must say and that is that it is my sincere hope, my prayer, that any and all officers who have worked hard to bring this bill before you are not subject to any repercussions on their jobs because of their actions to get this bill passed. I'm afraid some of them have already felt some pressures and that is not the way of a free society, a compassionate society, a government entity in our wonderful state.

I am convinced this is a good bill, needed legislation, and I urge a DO PASS to help the peace officers in North Dakota.

Respectfully,



Darlene Watne
Senator

P.S. After this testimony was prepared, I received the attached from Paul.

Senator Watne, could you please read this paragraph during your opening speech at the hearing for me, and share my express concerns about not being there.

"Chairman Traynor, Senators and guests:

The bill you have before you is not a bill designed to cause turmoil within our state. It is not a bill that splits officers and their commanders. It is not a bill designed to give officers greater protection than citizens. This bill was drafted to give equal rights to officers throughout North Dakota. We, as police officers, complete a unique job. We work as social workers and help in family crises. We work as enforcers of traffic code to save the lives of numerous people. We work as criminal investigators to help solve and prevent criminal activity. We also work in adverse weather conditions. We will even risk our lives to protect and save others. Yet we are always challenged and judged by people. We are under constant scrutiny by all. We are expected to work under the most extreme stresses, and then go home and pretend we had a good day in front of our families. Then when you think that stress can't get worse, someone complains about the way you handled a situation. I, as an officer, am judged by administration and the public for a decision I had to make in seconds, and they take weeks to analyze if I made the right decision. I can then be forced to make statements to a review board, which in return could hurt my family and the department. I ask you to protect those that protect you. Thank you for your time."

Paul Olson
NDFOP