

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

CASEY GWINN  
CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**Casey Gwinn**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4199  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

April 28, 2003

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

SUCCESSFUL DEFENSE OF LITIGATION:  
ESTATE OF CLIFFORD POE v. CITY OF SAN DIEGO, ET. AL.  
U.S. DISTRICT COURT CASE NO. 01cv0127 JM (JFS)

**INTRODUCTION**

In this case, a federal court jury returned a unanimous defense verdict in favor of the City and San Diego Police Officer Elias Rodriguez. Plaintiffs, the Estate of Clifford Poe and Marguerite Poe, Clifford Poe's mother, sued the City and three San Diego Police Officers for constitutional rights violations on a number of different theories, including wrongful death, battery, and negligence, following the in-custody death of Mr. Poe. The City Attorneys' Office contested Plaintiffs' complaint at each stage of the case, and was successful at reducing the causes of action and parties by Request for Dismissal, Motion for Summary Judgment, Non-Suit, and Motion for Directed Verdict. By the time the case went to the jury only one officer, one plaintiff (Mrs. Poe) and two causes of action remained. The jury returned its unanimous defense verdict after four hours of deliberation following a four-day trial.

**FACTS**

At approximately 4:30 a.m., while responding to a vandalism call, Officers Fleming and Rodriquez of the San Diego Police Department saw Clifford Poe put a baggie in his mouth, apparently to destroy evidence of his drug activities. When the officers tried to place Mr. Poe in custody, he violently fought with them for approximately five minutes before cover arrived. At one point, Poe hit his head on a pipe in a flower bed and sustained a minor cut over his eye, which bled profusely. Officer Rodriquez noticed the blood while they were still fighting, but could do nothing about it at that time. Officers Sharp, Broussard, and Davis arrived to assist and, as they were handcuffing Mr. Poe, Rodriquez was able to contact dispatch and request an ambulance for Poe's cut. A couple minutes later, Rodriquez observed that Poe appeared to have stopped breathing. Immediately, he and Sergeant Orduno began CPR, as well as abdominal thrusts, in case the baggie was obstructing Poe's breathing. Officer Neal Browder contacted dispatch and asked that paramedics be expedited. Within a minute, Engine Company 14 arrived. Engineer/Paramedic John Wilson immediately tried to put an oxygen tube down Mr. Poe's throat. He was unable to do so because the baggie of drugs (which measured 3½ by 1½ inches) was

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lodged in the back of Poe's throat. Mr. Wilson needed to use forceps to remove the baggie. Engine Company 14 was joined and assisted by Medic Company 60. In spite of these heroic efforts by both the San Diego Fire Department and the San Diego Police Department, Mr. Poe was pronounced dead at Mercy Hospital about an hour later.

On October 12, 2000, Dr. Glenn Holt of the County Medical Examiner's Office issued an Autopsy Report which listed the cause of death as "asphyxia" due to "restraint by law enforcement personnel" and the airway obstruction. The City of San Diego retained a nationally recognized expert pathologist, Dr. Charles Wetli, to review the Autopsy Report. After he reviewed all of the records, including the Mercy Hospital records, Dr. Wetli concluded that the large quantity of methamphetamine that Mr. Poe had ingested caused cardiac arrest. Indeed, the blood tests at Mercy Hospital conclusively showed that Poe had not suffered from asphyxiation.

### **LITIGATION**

Plaintiffs, relying on Dr. Holt's conclusions, contended that the actions of the police in arresting Poe constituted excessive force in violation of the Estate's Fourth Amendment rights and Mrs. Poe's Fourteenth Amendment rights. In addition, Plaintiffs claimed that the officers did not properly attend to Mr. Poe's medical needs by not removing the baggie of drugs from his throat. The City argued that the force used was at all times reasonable, that none of the force could have caused asphyxia, that the officers did everything that they were medically capable of doing in trying to save Poe, and that the actions of Poe himself were the sole causes of his death.

Plaintiff did not make a settlement demand and the City did not make an offer. At trial Plaintiff did not request a specific amount of damages.

The jury trial was conducted before U.S. District Court Judge Jeffrey Miller. Benjamin Pavone represented Plaintiffs, and Deputy City Attorney Penny L. Castleman represented the City and all of the officers. The two claims that went to the jury were: 1) Officer Rodriguez' use of force had caused Poe's death and, 2) in the alternative, that Mr. Poe was not properly monitored after he was handcuffed, causing his death. The jury unanimously rejected both claims.

Respectfully submitted,

CASEY GWINN, City Attorney

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