

**DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM**

TO: Mike Scott, Chief, Criminal Law Enforcement

DATE: 07-25-97

FROM: Walter C. Eeds, Commander, Narcotics Service

SUBJECT: Complaint Investigation C96-076

Personnel Complaint C96-076 was filed by Commander Eeds on 09-06-96 against Lieutenant Jaime Adan Ballesteros. Complaint C96-076 was investigated by Captain James Brubaker. The complaint alleged five Counts of misconduct on the part of Lt. Ballesteros.

After reviewing Captain Brubaker's investigation and evaluation of the facts I concur with Captain Brubaker's findings as to the following:

COUNT IA - Not Sustained

COUNT IB - Sustained

COUNT II - Sustained

COUNT III - Sustained

COUNT IV - Sustained

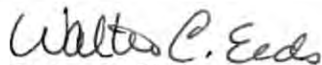
COUNT V - Sustained

EVALUATION

I believe that Lieutenant Ballesteros developed the attitude "the ends justify the means", that he was willing to disregard Department policy and law with the hopes of seizing a much larger load.

It is also apparent that he lost sight of the requirements of being a police officer and developed the idea that he was owed a financial benefit from his informant. It is my belief that Lt. Ballesteros has proven himself unfit to continue with this Department and that he be terminated.

Respectfully



Walter C. Eeds

Commander

Narcotics Service

RECEIVED

MAY 20 1999

INTERNAL AFFAIRS

**DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM**

DATE: July 25, 1997

TO: Mike Scott, Chief, Criminal Law Enforcement

FROM: James W. Brubaker, Captain, Narcotics Service, HQ

SUBJECT: Complaint of Commander Walter C. Eeds concerning
Lieutenant Jaime Adan Ballesteros
Narcotics Service
District 6 - Austin
D. O. E.: 01/10/79

In compliance with your instructions, I have conducted an Investigation and submit this report:

COMPLAINT:

Assistant Commander Walter C. Eeds alleged in the C-1 Complaint on Lieutenant Jaime Adan Ballesteros:

- I. It is alleged that while working in the Narcotics Service, as a Sergeant Investigator, in the McAllen District, Lieutenant Ballesteros permitted the importation of a total of approximately 1,350 pounds of marihuana on at least four (4) separate occasions into the United States by a smuggling organization known as the LAMAS Organization.

It is further alleged that Lieutenant Ballesteros made no effort, whatsoever, to prevent the importation of that substance into this country even though Lieutenant Ballesteros knew sufficient information at the time of each event to have prevented it.

It is further alleged that Lieutenant Ballesteros' enforcement efforts, relative to the said organization, were undertaken through the use of techniques and methods inconsistent with established departmental procedures. For example: two search warrants indicated under file number N7A-90-009 did not articulate probable cause. In addition, they omitted critical pieces of information.

This activity occurred between the latter part of 1990 and the latter part of 1992.

(AUSA) Melissa Annis. AUSA Annis advised Captain Brubaker the reason none of the defendants were prosecuted in this investigation was that Lieutenant Ballesteros did not want Chacon to have to testify. It appears Lieutenant Ballesteros unilaterally made the decision not to have the case prosecuted thus allowing major traffickers to continue their operation.

In File Numbered Investigation N7A-90-009, Lieutenant Ballesteros seized approximately 8700 pounds of marihuana. The marihuana was seized pursuant to two search warrants and a consent to search. The affidavits prepared by Lieutenant Ballesteros do not contain any probable cause. (Tab 26) In addition, vital information was omitted from the affidavits. For example, there is no mention of information being provided by an informant, however Lieutenant Ballesteros paid Chacon \$5,000.00 for the information in this file. Lieutenant Ballesteros makes conflicting statements during the sworn interview as to whether or not Chacon provided information for the search warrant. (Tab 8) The affidavit, under the description of person in charge of suspected place, indicated that Juan LAMAS, "no description available" was in charge of the suspected place. Lieutenant Ballesteros had previously reported numerous descriptions of LAMAS. In addition, Lieutenant Ballesteros had just completed a six- (6) day surveillance, which detailed LAMAS' every move. Yet Lieutenant Ballesteros did not provide the court any description of LAMAS at all. Lieutenant Ballesteros failed to notify the court that the two residences had been entered and secured by officers prior to applying for a search warrant. Pursuant to this seizure, only lower echelon members of the organization, left to guard the marihuana, were arrested. Neither LAMAS nor any of the more important members of the organization were arrested.

It should be noted that Lieutenant Ballesteros later reported that Lieutenant Ballesteros was awaiting a letter from the United States Attorney's Office, who was handling the prosecution of this case, for authorization to destroy the evidence. There is no such letter in the investigative file. Later in the file, Sergeant [redacted] Lieutenant Ballesteros' [redacted], petitioned a Justice of the Peace for a Destruction Order and had the evidence destroyed without authorization from the federal prosecutor and closed the file. Sergeant [redacted] has not been interviewed and it is unknown why this action was taken and authorization was not obtained from the proper authority. (Tab 26)

In File Numbered Investigation N7A-91-007, Lieutenant Ballesteros seized approximately 550 pounds of marihuana and arrested Estevan LAMAS, brother of Juan LAMAS. Estevan LAMAS plead guilty to Misprision of a Felony. The original charges were never dispositioned as required by departmental policy. Lieutenant Ballesteros indicated that the most probable reason for the reduction in charges was for the defendant to plead guilty and allow the investigation to continue with additional charges being filed at a later date. Additional charges were never filed and none of the suspects identified as major traffickers were ever arrested or prosecuted on Lieutenant Ballesteros' investigation. (Tab 44)

As in the previous file, Lieutenant Ballesteros later reported that Lieutenant Ballesteros was awaiting a letter from the United States Attorney's Office, who also prosecuted this case,

For example, Lieutenant Ballesteros reported addresses and physical descriptions of LAMAS that varied from one report to another with no explanation for the discrepancies. The descriptions of LAMAS vary greatly in physical characteristics as well as addresses reported. (Tabs 24, 25, 26, 44) One such description of LAMAS included a driver's license and social security number as well as telephone numbers. This individual remains indexed in the Department's criminal database, however there is no evidence that this LAMAS is in any way involved in narcotics trafficking. Lieutenant Ballesteros was questioned to ascertain if Lieutenant Ballesteros utilized established investigative methods. For example, Lieutenant Ballesteros was asked if Lieutenant Ballesteros ever attempted to obtain information from the leasing agent or the Highway Department that would help identify LAMAS. Lieutenant Ballesteros responded "Not that I recall." (Sworn Affidavit of Lieutenant Ballesteros Page 31, line 4) Lieutenant Ballesteros stated under oath "...we could never tell who he (LAMAS) was" (Sworn Affidavit of Lieutenant Ballesteros Page 30, line 18), yet Lieutenant Ballesteros never utilized this basic investigative technique. Lieutenant Ballesteros advised the court via an affidavit that a "Traffic stop was to be conducted to possibly identify Lamas." When asked why the stop was not made, Lieutenant Ballesteros stated "It wasn't me. We had other units out there. They wanted to do a traffic stop. I don't know why it wasn't done. I know we wanted to identify them because we really never had an identification on them." (Sworn Affidavit of Lieutenant Ballesteros Page 34, line 3) Lieutenant Ballesteros was then asked why Lieutenant Ballesteros did not avail himself of this opportunity. Lieutenant Ballesteros reversed Lieutenant Ballesteros' position and responded "We can't. Because if we did, then he would know we were looking at him". (Sworn Affidavit of Lieutenant Ballesteros Page 34, line 13) When confronted with the discrepancies in the physical descriptions of LAMAS, Lieutenant Ballesteros stated under oath "there was about two, three or four different Juan Lamas...So I never really knew which Juan Lamas it was." (Sworn Affidavit of Lieutenant Ballesteros Page 30, line 5). If there were indeed several suspects named Juan LAMAS in this investigation, Lieutenant Ballesteros never made Department supervisors aware of that information nor did Lieutenant Ballesteros ever include that information in the investigative reports. According to Chacon, there was only one Juan LAMAS and Chacon personally showed Lieutenant Ballesteros where LAMAS resided and also provided a telephone and pager number for LAMAS. There is no documented evidence that Lieutenant Ballesteros utilized established investigative techniques to further identify LAMAS or any co-conspirators via business records, telephone records, utility records, or any other methods commonly utilized by narcotics investigators. Failure to follow established procedures was instrumental in the unsuccessful enforcement efforts of Lieutenant Ballesteros.

In File Numbered Investigation N7A-89-080, Lieutenant Ballesteros seized approximately 1558 pounds of cocaine from the LAMAS Organization. No one was ever arrested. Lieutenant Ballesteros submitted status reports on this file, through several changes in supervisors, that on the surface indicated that the case was progressing normally. (Tab 25) Lieutenant Ballesteros then submitted a series of status reports with conflicting information that indicated there were legal problems with the case and that it could not be tried. The Federal Prosecutor involved with the investigation was Assistant United States Attorney

To Disprove
Statement of Jaime Adan Ballesteros

CLASSIFICATION

Count IA - Not Sustained

Count IB - Sustained

EVALUATION

A review of the investigative files revealed that Lieutenant Ballesteros did conduct an investigation involving Juan LAMAS. Lieutenant Ballesteros' investigation of Juan LAMAS encompassed four File Numbered Investigations, namely N7A-89-035, N7A-89-080, N7A-90-009, and N7A-91-007.

In Count IA, Chacon alleged that Chacon, pursuant to authorization from Lieutenant Ballesteros, imported some 1350 pounds of marihuana that was not interdicted, in order to further the LAMAS investigation. During this investigation, there was no independent evidence developed beyond the information provided by Chacon and McLean to substantiate the allegations involving the importation of the marihuana. It seems unlikely that Juan LAMAS would continue to work with Chacon if the only loads Chacon had ever been involved with had been seized. It would be more likely that Chacon had established a good record with the Juan LAMAS group involving multiple loads that had been delivered without any problems which offset the seizures being made. When asked during the sworn interview about the usual course of events involving the seizure of contraband delivered by an informant, Lieutenant Ballesteros' response was that when a load was seized and the informant had delivered the load, "Well usually, when one gets taken down, that's it. It ends." Yet in this investigation, Juan LAMAS continued to deal with Chacon for a period of approximately fifteen months. It would appear that the allegation in Count IA is true, however, due to the lack of corroboration; Count IA should be classified not sustained.

In Count IB, Lieutenant Ballesteros failed to utilize established techniques and methods, consistent with departmental procedures, in conducting the investigation and preparing the necessary investigative reports and as a result LAMAS and other major traffickers associated with LAMAS were never arrested or prosecuted pursuant to this investigation.

Lieutenant Ballesteros authored numerous reports involving LAMAS and LAMAS' associates through four (4) numbered investigative files. LAMAS and the upper echelon members of the organization were never arrested or prosecuted even though approximately 1558 pounds of cocaine and approximately 8700 pounds of marihuana were seized. No viable prosecutions were ever developed by Lieutenant Ballesteros due to poor investigative techniques and methods inconsistent with established departmental procedures.

approximately 1,350 pounds of marihuana on at least four (4) separate occasions into the United States by a smuggling organization known as the LAMAS Organization.

It is further alleged that Lieutenant Ballesteros made no effort, whatsoever, to prevent the importation of that substance into this country even though Lieutenant Ballesteros knew sufficient information at the time of each event to have prevented it.

B. It is further alleged that Lieutenant Ballesteros' enforcement efforts, relative to the said organization, were undertaken through the use of techniques and methods inconsistent with established departmental procedures. For example: two search warrants indicated under file number N7A-90-009 did not articulate probable cause. In addition, they omitted critical pieces of information.

This activity occurred between the latter part of 1990 and the latter part of 1992.

EVIDENCE

To Prove

- Statement of Oto Vilmer Chacon
- Statement of Robert McLean
- CLE-1 dated 10-09-89, File Number N7A-89-035
- CLE-1 dated 11-27-89, File Number N7A-89-080
- CLE-1 dated 12-06-89, File Number N7A-89-080
- CLE-1 dated 01-15-90, File Number N7A-89-080
- CLE-1 dated 01-12-90, File Number N7A-89-080
- CLE-1 dated 09-14-90, File Number N7A-89-080
- CLE-1 dated 02-20-91, File Number N7A-89-080
- CLE-1 dated 08-26-91, File Number N7A-89-080
- CLE-1 dated 03-18-92, File Number N7A-89-080
- CLE-1 dated 11-20-92, File Number N7A-89-080
- CLE-1 dated 05-25-93, File Number N7A-89-080
- CLE-1 dated 12-02-93, File Number N7A-89-080
- CLE-1 dated 07-18-94, File Number N7A-89-080
- CLE-1 dated 03-15-95, File Number N7A-89-080
- CLE-1 dated 02-16-90, by J. Guzman, File Number N7A-90-009
- CLE-1 dated 02-16-90, by R. Brooks, File Number N7A-90-009
- Surveillance notes of Federal Bureau of Investigation Agents
- Affidavits for Search Warrants, File Number N7A-90-009
- CLE-1 dated 02-19-90, File Number N7A-90-009
- CLE-1 dated 03-20-92, File Number N7A-90-009
- CLE-1 dated 08-18-92, File Number N7A-90-009
- Statement of Jaime Adan Ballesteros
- Drivers License Photograph of Juan Rios Lamas

INVESTIGATION

This investigation was initiated by the Drug Enforcement Administration Office of Professional Responsibility (OPR) in Washington, D. C. pursuant to a letter dated January 13, 1995 written by Assistant United States Attorney (AUSA) Gloria A. Bedwell of the Southern District of Alabama. AUSA Bedwell, during trial preparation for United States v. Eduardo Quesada Ruiz, Criminal No. 94-000152 (S. D. Ala.), received information from debriefings of at least three (3) defendants in the instant case that indicated that Oto Vilmer Chacon, who was to be a witness, participated in a five hundred (500) kilogram delivery of cocaine. Pursuant to the information received, United States Customs Service Special Agent James C. Tanner, case investigator for the Ruiz investigation, interviewed Chacon relative to Chacon's participation in the five hundred (500) kilogram cocaine delivery. Special Agent (S/A) Tanner approached Chacon with a standard proffer letter from AUSA Bedwell. Chacon indicated that the five hundred (500) kilogram cocaine delivery was part of a larger two thousand (2000) kilogram delivery of cocaine that had been sanctioned by Drug Enforcement Administration Special Agent Thomas K. Solis and Texas Department of Public Safety Narcotics Service Lieutenant Jaime Adan Ballesteros. AUSA Bedwell requested assistance from the Drug Enforcement Administration, Office of Professional Responsibility, in investigating the allegations prior to a trial date. The Drug Enforcement Administration requested that the Department become involved in the investigation due to allegations against Lieutenant Ballesteros. An investigation was conducted and the information is hereby presented for your review.

The following persons were contacted during the course of this investigation:

Sworn Affidavit of Terry D. Bowers, Captain, Narcotics Service, Retired
Sworn Affidavit of Floyd Goodwin, Captain, Narcotics Service, Austin HQ
Sworn Affidavit of Tony Garcia, Captain, Narcotics Service, Austin, District 6
Sworn Affidavit of Urbino Martinez, Sergeant/Investigator, Narcotics Service, District 7
Sworn Affidavit of James Weaver, Sergeant/Investigator, Narcotics Service, District 5
Sworn Affidavit of Larry Hensley, Investigator, 329th Judicial District Attorney's Office
Sworn Affidavit of Oto Vilmer Chacon
Sworn Affidavit of Robert McLean
Sworn Affidavit of Thomas K. Solis, Special Agent, Drug Enforcement Administration
Sworn Affidavit of Armando Ramirez, Special Agent, Drug Enforcement Administration
Interview of James Tanner, Special Agent, U. S. Customs Service, Mobile, Alabama
Interview of Mike Turner, Special Agent, Drug Enforcement Administration
Interview of Enrique Casas

COUNT I.

A. It is alleged that while working in the Narcotics Service, as a Sergeant Investigator, in the McAllen District, Lieutenant Ballesteros permitted the importation of a total of

- II. It is alleged that Lieutenant Ballesteros, in conjunction with Special Agent Thomas K. Solis of Drug Enforcement Administration, permitted the importation of 1,055 kilograms of cocaine into the United States and that Lieutenant Ballesteros was aware of such intended criminal conduct prior to the time that Lieutenant Ballesteros reported it to Lieutenant Ballesteros' supervisors and that Lieutenant Ballesteros misrepresented the facts relative to the activities of the smugglers when Lieutenant Ballesteros did report it to Lieutenant Ballesteros' supervisors. This importation occurred on or about July 6, 1991.
- III. It is alleged that Lieutenant Ballesteros permitted, allowed, and participated in the importation and distribution of 2,000 kilograms of cocaine. It is alleged that such activities took place on July 26 and July 27, 1991 and culminated with Lieutenant Ballesteros' activities on July 30 and 31, 1991 in Wharton, Texas. It is alleged that not only did Lieutenant Ballesteros direct the smugglers to bring the load into the country, Lieutenant Ballesteros arranged for its transportation into Wharton and traveled to Wharton for the purpose of preventing the local police from interfering with the transaction.
- IV. It is alleged that Lieutenant Ballesteros has accepted money from an individual by the name of Oto Vilmer Chacon. It is alleged that Lieutenant Ballesteros received \$2,000 from him in the early part of 1990. It is further alleged that Lieutenant Ballesteros received \$3,000 from him and used it to purchase a computer on March 6, 1990. It is further alleged that Lieutenant Ballesteros received \$15,000 and used it in part to finance a portion of the acquisition of a new suburban from a Chevrolet dealership in San Antonio, Texas on April 27, 1990. It is further alleged that Lieutenant Ballesteros used Lieutenant Ballesteros' knowledge as a member of the Department to avoid running afoul of the federal banking laws, which would require the reporting of transactions in certain cash amounts. It is alleged that Lieutenant Ballesteros received \$50,000 from Chacon shortly after Lieutenant Ballesteros facilitated the importation and distribution of 2,000 kilograms of cocaine. This is alleged to have been a gift as opposed to a bribe.
- V. It is alleged that during the period of times Lieutenant Ballesteros was involved in the activities set out in Counts I through IV, Lieutenant Ballesteros failed to keep Lieutenant Ballesteros' supervisors apprised of Lieutenant Ballesteros' activities. It is further alleged that Lieutenant Ballesteros failed to take up matters affecting Lieutenant Ballesteros and Lieutenant Ballesteros' position with Lieutenant Ballesteros' supervisors. It is alleged that Lieutenant Ballesteros failed to make timely, accurate, and complete reports of Lieutenant Ballesteros' activities. It is alleged that Lieutenant Ballesteros failed to make timely, accurate, and truthful reports of Lieutenant Ballesteros' activities to Lieutenant Ballesteros' supervisors. It is alleged that Lieutenant Ballesteros misrepresented material facts to Lieutenant Ballesteros' supervisors to avoid revealing Lieutenant Ballesteros complicity with and involvement in this controlled substance smuggling organization.

authorizing destruction of the evidence in this file. There is no such letter in the file. Sergeant _____ later petitioned a Justice of the Peace for a Destruction Order and had the evidence destroyed and closed the file without authorization from the federal prosecutor in the case. Again, Sergeant _____ has not been interviewed and it is unknown why this action was taken and authorization was not obtained from the proper authority. (Tab 44)

The failure to follow standard procedures and the utilization of techniques and methods inconsistent with established departmental procedures by Lieutenant Ballesteros allowed major traffickers to go unprosecuted. The reports were haphazardly prepared with continued references to the filing of charges at a later date. The proper follow up investigation was never undertaken and the targets of this investigation were never arrested. Count IB is sustained.

COUNT II.

It is alleged that Lieutenant Ballesteros, in conjunction with Special Agent Thomas K Solis of the Drug Enforcement Administration, permitted the importation of 1,055 kilograms of cocaine into the United States and that Lieutenant Ballesteros was aware of such intended criminal conduct prior to the time that Lieutenant Ballesteros reported it to Lieutenant Ballesteros' supervisors and that Lieutenant Ballesteros misrepresented the facts relative to the activities of the smugglers when Lieutenant Ballesteros did report it to Lieutenant Ballesteros' supervisors. This importation occurred on or about July 5 or 6, 1991.

EVIDENCE

To Prove

- Sworn statement of Urbino Martinez, Sergeant/Investigator, Alice
- Sworn statement of Floyd Goodwin, Captain, Austin, H. Q.
- Sworn statement of Antonio Garcia, Captain, Austin District Office
- Sworn of Statement of Oto Vilmer Chacon
- Sworn of Statement of Robert McLean
- Weekly reports of Lieutenant Ballesteros
- DEA-6 dated 07/08/91, File Number
- CLE-1 dated 09/06/91, File Number N7A-91-009 by Sgt./Inv.
- Interview of Jaime Adan Ballesteros, DEA-6 dated 05/19/95 by Inspector Bruce
- Interview of Thomas K. Solis, DEA-6 dated 05/19/95 by Inspector Bruce
- Telephone records of Oto Vilmer Chacon
- DPS telephone credit card records

To Disprove

- Sworn Statement of Jaime Adan Ballesteros, Lieutenant, Narcotics Service
- Sworn Statement of Thomas K. Solis, Special Agent, DEA

CLASSIFICATION

Sustained

EVALUATION

Lieutenant Ballesteros directed two informants, namely Chacon and McLean, unilaterally without input from Department supervisors, to store approximately 1055 kilograms of cocaine without police supervision. By misrepresenting material facts when reporting to supervisors, Lieutenant Ballesteros was able to completely control the investigation. For example, the two informants, answering only to Lieutenant Ballesteros, were allowed to go into Mexico and smuggle 1,055 kilograms of cocaine into the United States without proper authorization, store the cocaine with no police presence, and completely plan the transfer of the cocaine to the intended recipient. The only person arrested was a courier for the smuggling organization. Lieutenant Ballesteros failed to write a complete and accurate report of this investigation as required by departmental policy. (Tab 37) Evidence shows that the 1055 kilograms of cocaine seized in File Numbered Investigation N7A-91-030 was brought into the country several days prior to it being seized and was stored in a hanger at the Weslaco Airport with no police presence. There is no way to determine the actual amount of cocaine brought into the country as no law enforcement official ever examined the cocaine prior to its seizure on July 10, 1991.

Weekly reports submitted by Lieutenant Ballesteros and telephone records obtained indicate that the load was brought in on July 6, 1991. (Tabs 27,46) According to Chacon and McLean, a meeting was held with Lieutenant Ballesteros and Special Agent Solis prior to making the trip to Mexico to pick up the 1055 kilos of cocaine. Chacon also stated that PARDO had definitely set a deadline on picking up the cocaine due to prior arrangements having to be made in Mexico for security on the airstrip. Chacon does not recall what date PARDO had set as the deadline. Special Agent Solis authored a DEA-6 dated 07/08/91 in reference to the debriefing of Chacon on 07/05/91. (Tab 28) Special Agent Solis stated, in part, in detail five of that report "SM9900017 (Chacon) lastly stated that PARDO was attempting to have the larger load entered into the United States on July 6, 1991." Lieutenant Ballesteros' weekly report for the period indicated in the narrative portion "Travel to Brownsville and met with CS-6 (McLean) and 22 (Chacon) and DEA Solis" on 07/05/91 from 8:00 A. M. until 5:00 P. M. (Tab 27) Department supervisors were not made aware of the load until 07/09/91 or 07/10/91. (Tabs 13, 37)

During Lieutenant Ballesteros' interview of May 16, 1995 (Tab 7) concerning the 1055 kilo load, Lieutenant Ballesteros was inconsistent in his account of the incident. Lieutenant Ballesteros stated that Lieutenant Ballesteros received a call in Austin, Texas at the DPS Academy from Chacon advising that the load was in Weslaco. Lieutenant Ballesteros went on to say that Lieutenant Ballesteros contacted then Lieutenant Floyd Goodwin and Special Agent Solis. Lieutenant Ballesteros indicated that the reason Lieutenant Ballesteros remembered the incident so well was that Lieutenant Ballesteros had to contact then Lieutenant Goodwin who was at a party with other supervisors, possibly at the King Ranch.

Records obtained and information received from Captain Goodwin and Captain Antonio Garcia indicated that there was a tri-area meeting being conducted at the King Ranch. Telephone records (Tab 39) indicate that the call from Lieutenant Ballesteros to the King Ranch was not made until 07/09/91, three days after the cocaine arrived in the United States. The information provided by Chacon is also consistent with a statement taken by U. S. Customs Special Agent Tanner from defendants in the Mobile, Alabama case.

Lieutenant Ballesteros appeared confident in his recollections of how the investigation took place and only changed his story after reading the DEA-6 prepared by Special Agent Solis which detailed a much different story. Lieutenant Ballesteros appeared to feel comfortable prior to being confronted with the DEA-6 written by Special Agent Solis about the cocaine being brought in prior to being moved to El Campo and the fact that it was left unguarded until it was moved by Chacon and McLean. Lieutenant Ballesteros reported in CLE-1 dated 09/06/91 that "On Saturday, 07-07-91, Sgt. _____ received information that a shipment of cocaine was to be air smuggled into the U. S. by Javier PARDO organization." Lieutenant Ballesteros reported that Special Agent Solis was contacted and plans were made to seize the cocaine. (Tab 37) The information provided by Chacon and McLean along with the statements of Lieutenant Ballesteros and Special Agent Solis combined with the reports and telephone records indicated that the cocaine was already in the country and being stored at the Weslaco Airport when Lieutenant Ballesteros misrepresented the events in the report. Lieutenant Ballesteros reported that "On Tuesday, 07-09-91, Sgt. _____ contacted Lieutenant Floyd Goodwin (now Captain Goodwin) and advised that the probability of the cocaine shipment arriving into the U. S. was imminent and requested assistance in following the cocaine to Houston, Texas and seizing the cocaine shipment." (Tab 37) This reported information is contrary to what Lieutenant Ballesteros had stated to Inspector Bruce and Captain Brubaker during the interview of May 16, 1995. Lieutenant Ballesteros was allowed to examine the report detailing the above referenced information. Lieutenant Ballesteros studied the report an inordinate amount of time as if searching for an explanation for the discrepancy between what Lieutenant Ballesteros had told Inspector Bruce and Captain Brubaker and what actually happened. The evidence clearly indicates that the information provided to Department supervisors by Lieutenant Ballesteros was in conflict with the factual account of the events. Count II is sustained.

COUNT III.

It is alleged that Lieutenant Ballesteros permitted, allowed, and participated in the importation and distribution of 2,000 kilograms of cocaine. It is alleged that such activities took place on July 26 and July 27, 1991 and culminated in Lieutenant Ballesteros' activities on July 30 and 31, 1991 in Wharton, Texas. It is alleged that not only did Lieutenant Ballesteros direct the smugglers to bring the load into the country, Lieutenant Ballesteros arranged for its transportation into Wharton and traveled to Wharton for the purpose of preventing the local police from interfering with the transaction.

EVIDENCE

To Prove

Sworn Affidavit of James Weaver, Sergeant/Investigator, Narcotics Service, District 5
Sworn Affidavit of Larry Hensley, Investigator, 329th Judicial District Attorney's Office
Sworn Statement of Oto Chacon
Sworn Statement of Robert McLean
Interview of Mike Turner, Special Agent, Drug Enforcement Administration
Interview of Enrique Casas
Polygraph exam of Oto Vilmer Chacon
Polygraph exam of Robert McLean
Polygraph exam of Thomas K. Solis, Special Agent, Drug Enforcement Administration
Post-Polygraph interview of Thomas K. Solis, Special Agent, Drug Enforcement Administration
Weekly reports of Lieutenant Ballesteros
State of Texas travel vouchers
Cellular telephone records of Oto Vilmer Chacon
Cellular Telephone records of Thomas K. Solis, Special Agent, Drug Enforcement Administration
Cellular Telephone records of Lieutenant Ballesteros
DPS telephone credit card records
Sprint telephone records of Oto Chacon
Weslaco Aviation aircraft fuel receipt
General Aviation Center aircraft fuel receipt
Southwest Airlines receipt, American Express bill of Oto Chacon
Sheraton Grand Hotel receipt, American Express bill of Oto Chacon
Westin Hotel receipt, Oto Chacon
Fax copy of Houston Chronicle newspaper article

To Disprove

Sworn Statement of Jaime Adan Ballesteros, Lieutenant, Narcotics Service
Sworn Statement of Thomas K. Solis, Special Agent, DEA

CLASSIFICATION

Sustained

EVALUATION

Chacon and McLean both have asserted that Lieutenant Ballesteros and Special Agent Solis authorized two back to back flights into Mexico for the purpose of importing two thousand kilograms of cocaine in furtherance of the investigation of the PARDO

Organization. (Tabs 19, 20) Based on the interviews of Chacon and McLean and telephone records (Tab 46), the flights to Mexico were made on July 26 and July 27, 1991. McLean stated that McLean always personally contacted Lieutenant Ballesteros prior to traveling to Mexico just to protect himself (McLean). McLean indicated that after each of the two back to back trips that McLean and Chacon met with Lieutenant Ballesteros and Special Agent Solis. Lieutenant Ballesteros' weekly report (Tab 27) for July 26 and 27, 1991 indicated that Lieutenant Ballesteros traveled to Weslaco to meet with Special Agent Solis and Chacon and McLean. It should be noted that during July and August 1991 when the cocaine came into the country and was ultimately distributed, the only Saturday Lieutenant Ballesteros worked was July 27, 1991.

Lieutenant Ballesteros directed Chacon and McLean to transport the 2000 kilograms of cocaine from the Weslaco Airport to the Wharton Airport, in two back to back loads of 1000 kilograms, on July 30 and 31, 1991. Lieutenant Ballesteros then traveled to Wharton to keep the local law enforcement officials from interfering with the cocaine shipment. Lieutenant Ballesteros' weekly report for July 30, 1991 indicated that Lieutenant Ballesteros traveled from McAllen, departing at 6:00 A. M., to Wharton in reference to an air smuggling investigation on PARDO. Special Agent Solis stayed in the Weslaco area in case of any problems on the valley end of the trips. During the interview of May 16, 1995, Lieutenant Ballesteros was unable to state a valid reason for being in Wharton on July 30 and 31, 1991.

During 1991, Lieutenant Ballesteros worked exclusively with a local Wharton officer named Larry Hensley. (Tab 18) At the time, Hensley was a deputy sheriff. Hensley is now an investigator with the District Attorney's Office. Captain Brubaker and Special Agent Mrock interviewed Hensley; however, Hensley was unable to recall the specific dates that any of the investigations were done by Lieutenant Ballesteros. When asked by Captain Brubaker and Special Agent Mrock if there were any incidents that stuck out in Hensley's mind, Hensley recalled that on one of the investigations Lieutenant Ballesteros requested that Hensley keep all local police away from the Wharton Airport during the investigation. The Wharton Airport is under the control of the City of Wharton. Hensley did as Lieutenant Ballesteros requested and personally contacted the local police and made sure the local police remained away from the airport. According to Hensley, this was the only time Lieutenant Ballesteros ever made that type of request during any of the investigations. To the best of Hensley's recollection, this incident happened during the last investigation that Hensley ever coordinated for Lieutenant Ballesteros at the Wharton Airport. As far as Hensley remembered, Hensley's assistance to Lieutenant Ballesteros ended in the latter part of 1991 when the investigations stopped. As Hensley remembered it, the incident where Lieutenant Ballesteros requested that Hensley keep the local police away from the airport occurred the only time Lieutenant Ballesteros ever spent the night in Wharton. Travel records obtained indicated that the only time Lieutenant Ballesteros ever spent the night in Wharton while Chacon was an established informant was on July 30, 1991. (Tab 32)

Chacon and McLean were both given polygraph examinations as to the substance of this allegation to determine if the officers knew about the cocaine, had authorized the importation and distribution of the cocaine, and had Lieutenant Ballesteros traveled to Wharton to "clear the way" with the local law enforcement. The polygraph results indicated

(Tabs 29, 30) In addition, Special Agent Solis was given a polygraph examination, at the request of Attorney Alan Brown who was acting as counsel for Special Agent Solis, relative to Special Agent Solis' knowledge of the 2000 kilograms of cocaine and the involvement of Special Agent Solis, Lieutenant Ballesteros, Chacon, and McLean as follows:

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(Tab 31)

1.

COUNT IV.

It is alleged that Lieutenant Ballesteros had accepted money from an individual by the name of Oto Vilmer Chacon. It is alleged that Lieutenant Ballesteros received \$2,000 from him in the early part of 1990. It is further alleged that Lieutenant Ballesteros received \$3,000 from him and used it to purchase a computer on March 6, 1990. It is further alleged that Lieutenant Ballesteros received \$15,000 and used it in part to finance a portion of the acquisition of a new suburban from a Chevrolet dealership in San Antonio, Texas on April 27, 1990. It is further alleged that Lieutenant Ballesteros used Lieutenant Ballesteros' knowledge as a member of the Department to avoid running afoul the federal banking laws, which would require the reporting of transactions in certain cash amounts. It is alleged that Lieutenant Ballesteros received \$50,000 from Chacon shortly after Lieutenant Ballesteros facilitated the importation and distribution of 2,000 kilograms of cocaine. This is alleged to have been a gift as opposed to a bribe.

EVIDENCE

To Prove

Sworn Statement of Oto Vilmer Chacon

Receipt from OnLine Computers in McAllen
Records from Edinburg Teachers Credit Union
Records from Nueces County
Department Insurance Enrollment Forms

To Disprove

Statement of Jaime Adan Ballesteros

CLASSIFICATION

Sustained

EVALUATION

Chacon alleged that the first time Chacon gave money to Lieutenant Ballesteros was sometime in early 1990, specific date unknown, after Lieutenant Ballesteros had requested money from Chacon. According to Chacon, Lieutenant Ballesteros telephoned Chacon and requested a meeting in Brownsville. During the meeting, Chacon was asked by Lieutenant Ballesteros for a two thousand-dollar loan. Chacon advised that Chacon gave Lieutenant Ballesteros the money the same day. The money was never repaid. There has been no definitive evidence developed to prove or disprove that Lieutenant Ballesteros took the two thousand dollars.

Approximately two to three months after the first request for money in early 1990, Chacon stated that Lieutenant Ballesteros again met Chacon in Brownsville and requested three thousand dollars. Chacon advised that Lieutenant Ballesteros told Chacon that Lieutenant Ballesteros needed the money to purchase a computer to keep track of the information from their current investigations. On July 17, 1995, Captain Brubaker contacted Mr. Jerry King who had owned OnLine Computer Center in McAllen prior to it going out of business. Mr. King searched through the business records and gave Captain Brubaker receipt #23295 that documented the cash sale of a computer to Lieutenant Ballesteros for \$ 2702.60 on March 6, 1990. (Tab 34) Lieutenant Ballesteros, after examining the receipt, acknowledged that the receipt was for a computer that Lieutenant Ballesteros had purchased. Lieutenant Ballesteros was unable to explain how Chacon could have known the dollar amount of the computer if the allegation was untrue.

Sometime later in 1990, Chacon stated that Lieutenant Ballesteros contacted Chacon and requested another meeting in Brownsville. The meeting was held the next morning at which time Chacon stated that Lieutenant Ballesteros asked for a loan to purchase a new vehicle. Chacon advised that Lieutenant Ballesteros wanted fifteen thousand dollars. Chacon stated that Lieutenant Ballesteros told Chacon that Lieutenant Ballesteros needed to go to San Antonio and buy a suburban. Chacon cautioned Lieutenant Ballesteros about moving that much money. Chacon stated that Chacon told Lieutenant Ballesteros that if Lieutenant Ballesteros tried to purchase a vehicle utilizing that much cash that a CTR would be filled out. Chacon advised that Lieutenant Ballesteros told Chacon that Lieutenant Ballesteros dealt with those kinds of transactions on a regular basis and knew

how to take care of the situation without causing a problem. Chacon advised that Chacon went home, got the money and then met Lieutenant Ballesteros and passed the money between the two vehicles. The purchase of the suburban has been established through records provided by the Edinburg Teachers Credit Union. (Tab 41) The vehicle was purchased from Ancira-Winton Chevrolet in San Antonio. The methods used to purchase the suburban seem out of the ordinary. At delivery time, Lieutenant Ballesteros paid \$3,000.00 by check, \$1580.47 in cash, and received a \$1500.00 rebate leaving a balance of \$20,000.00 which is the amount of the Edinburg Teachers Credit Union draft. Prior to signing the final note, another \$9,000.00 was transferred to pay the balance down to \$11,000.00 bringing the total cash payment to \$13,580.47 (not including the rebate). It would almost appear as if Lieutenant Ballesteros was attempting to structure the transaction to avoid the \$10,000.00 threshold amount which financial institutions are required to report to the Internal Revenue Service.

According to Chacon, the next time Lieutenant Ballesteros asked Chacon for money was shortly after the 2000 kilo delivery. Chacon believes that this occurred within a month of that delivery which would have been in August or September 1991. Chacon stated that Lieutenant Ballesteros told Chacon that Lieutenant Ballesteros was having financial problems. Chacon advised that Lieutenant Ballesteros had told Chacon it was because his (Ballesteros) had been increased from three hundred to five hundred dollars a month. According to Chacon, Lieutenant Ballesteros also said that Lieutenant Ballesteros did not want Lieutenant Ballesteros' to find out about the increase

Chacon indicated that there were several remarks made by Lieutenant Ballesteros like "Don't forget me" and " You are going to take care of me..?" after Chacon returned from Houston. Chacon advised that Chacon took these statements to mean that Lieutenant Ballesteros wanted money. According to Chacon, a meeting took place at Chacon's house a short time later. Chacon stated that Chacon told Lieutenant Ballesteros that Chacon had something for Lieutenant Ballesteros. Chacon stated that Chacon then gave Lieutenant Ballesteros a brief case, which contained \$ 50,000.00. Chacon said Lieutenant Ballesteros responded by saying something like "I was expecting \$ 100,000.00, \$ 50,000.00 for each trip." Chacon responded by telling Lieutenant Ballesteros that \$ 50,000.00 was all Chacon could provide at the time. Chacon stated the incident occurred not more than two weeks after Chacon returned from Houston. Chacon indicated that these were the only payments that Chacon made to Lieutenant Ballesteros.

There has been no definitive evidence obtained to corroborate the \$2,000.00 or the \$50,000 paid to Lieutenant Ballesteros. The computer was purchased with cash as per the invoice obtained. The purchase price of \$ 2702.60 is close to the \$ 3,000.00 amount Chacon stated that Chacon gave to Lieutenant Ballesteros. The purchase of the suburban was made in San Antonio, as stated by Chacon, and purchased with a cash down payment of \$13,580.47 (not including the rebate) which is close to the fifteen thousand dollar figure given by Chacon. Lieutenant Ballesteros did have Lieutenant Ballesteros' raised from three hundred dollars a month to five hundred dollars a month. (Tab 35) Lieutenant Ballesteros, in his sworn statement (Tab 8), acknowledged the cash

expenditures and attempted to explain the source of the funds as money that Lieutenant Ballesteros had been saving at home. When questioned as to how much money Lieutenant Ballesteros had saved at home, Lieutenant Ballesteros responded by saying "About \$17,600 something". (Sworn Statement of Lieutenant Ballesteros, Page 138, line 3) Coincidentally, that figure is close to the amount of the cash expenditures that Captain Brubaker has been able to corroborate. When asked why the money was being saved at home, Lieutenant Ballesteros stated that Lieutenant Ballesteros was saving the money at home in case [redacted] from a previous marriage got [redacted] Lieutenant Ballesteros indicated that Lieutenant Ballesteros' [redacted] died from [redacted]. Lieutenant Ballesteros went on to say how mad Lieutenant Ballesteros was at having to go to court for a hearing on the increase in [redacted]. Lieutenant Ballesteros stated "... And I really got mad because I put [redacted] from [redacted]) on my insurance when I didn't have to. And that was just in case she got [redacted]. And then, when I got ordered to that and dental and medical, I said--well, I got mad. I said, "Well, I'm just going to use the money I was saving just in case something happened and use it on me." Lieutenant Ballesteros' explanation of why Lieutenant Ballesteros was allegedly saving money for [redacted] is untrue. According to Lieutenant Ballesteros' [redacted] the [redacted] as well as the [redacted] were tested right after [redacted] as born. The tests indicated that the [redacted] were merely carriers of the genes and would never develop the disease. The [redacted] stated that Lieutenant Ballesteros knew this. The [redacted] also stated that [redacted] has been on Lieutenant Ballesteros' insurance since birth, which was verified by the Department's insurance office. It is unlikely that Lieutenant Ballesteros cared enough about [redacted] to save any money for any reason. According to Lieutenant Ballesteros' [redacted] and Lieutenant Ballesteros' [redacted] Lieutenant Ballesteros has not seen or talked to [redacted] or even given a birthday or Christmas present or card, since [redacted] was born. Count IV is sustained as to the \$3,000.00 and the \$15,000.00.

COUNT V.

It is alleged that during the period of times Lieutenant Ballesteros was involved in the activities set out in Counts I through IV, Lieutenant Ballesteros failed to keep Lieutenant Ballesteros' supervisors apprised of Lieutenant Ballesteros' activities. It is further alleged that Lieutenant Ballesteros failed to take up matters affecting Lieutenant Ballesteros and Lieutenant Ballesteros' position with Lieutenant Ballesteros' supervisors. It is alleged that Lieutenant Ballesteros' failed to make timely, accurate, and complete reports of Lieutenant Ballesteros' activities. It is alleged that Lieutenant Ballesteros failed to make timely, accurate, and truthful reports of Lieutenant Ballesteros' activities to Lieutenant Ballesteros' supervisors. It is alleged that Lieutenant Ballesteros misrepresented material facts to Lieutenant Ballesteros' supervisors to avoid revealing Lieutenant Ballesteros' complicity with and involvement in this controlled substance smuggling organization.

EVIDENCE

To Prove

Statement of Jaime Adan Ballesteros
Statement of Floyd Goodwin, Captain, Narcotics Service, HQ
Statement of Oto Chacon
Statement of Robert McLean
Memo from Thomas Telles
CLE-1 dated 02/02/91, File Number N7A-91-009
CLE-1 dated 04/23/91, File Number N7A-91-009
CLE-1 dated 05/22/91, File Number N7A-91-009
CLE-1 dated 09/06/91, File Number N7A-91-009
CLE-1 dated 10-09-89, File Number N7A-89-035
CLE-1 dated 11-27-89, File Number N7A-89-080
CLE-1 dated 12-06-89, File Number N7A-89-080
CLE-1 dated 01-15-90, File Number N7A-89-080
CLE-1 dated 01-12-90, File Number N7A-89-080
CLE-1 dated 09-14-90, File Number N7A-89-080
CLE-1 dated 02-20-91, File Number N7A-89-080
CLE-1 dated 08-26-91, File Number N7A-89-080
CLE-1 dated 03-18-92, File Number N7A-89-080
CLE-1 dated 11-20-92, File Number N7A-89-080
CLE-1 dated 05-25-93, File Number N7A-89-080
CLE-1 dated 12-02-93, File Number N7A-89-080
CLE-1 dated 07-18-94, File Number N7A-89-080
CLE-1 dated 03-15-95, File Number N7A-89-080
CLE-1 dated 02-16-90, by J. Guzman, File Number N7A-90-009
CLE-1 dated 02-16-90, by R. Brooks, File Number N7A-90-009
Affidavits for Search Warrants, File Number N7A-90-009
CLE-1 dated 02-19-90, File Number N7A-90-009
CLE-1 dated 03-20-92, File Number N7A-90-009
CLE-1 dated 08-18-92, File Number N7A-90-009
Statement of Jaime Adan Ballesteros

To Disprove

Statement of Jaime Adan Ballesteros

CLASSIFICATION

Sustained

EVALUATION

During this investigation it was determined that Lieutenant Ballesteros failed to keep Lieutenant Ballesteros' supervisors apprised of Lieutenant Ballesteros' activities. Lieutenant Ballesteros also failed to take up matters affecting Lieutenant Ballesteros and Lieutenant Ballesteros' position with Lieutenant Ballesteros' supervisors and Lieutenant Ballesteros failed to make timely, accurate, and complete reports of Lieutenant Ballesteros'

activities. In addition, Lieutenant Ballesteros failed to make timely, accurate, and truthful reports of Lieutenant Ballesteros' activities to Lieutenant Ballesteros' supervisors and misrepresented material facts to Lieutenant Ballesteros' supervisors to avoid revealing Lieutenant Ballesteros' complicity with and involvement in this controlled substance smuggling organization.

For example, during the investigation involved in Count II, Lieutenant Ballesteros was directing Chacon and McLean in the procuring of the 1,055 kilograms of cocaine unbeknownst to Department supervisors. The unilateral decisions being made by Lieutenant Ballesteros could have had catastrophic results subjecting the Department to severe public criticism and/or civil liability. The actions taken by Lieutenant Ballesteros in Count III resulted in 2000 kilograms of cocaine being distributed on the streets all in the alleged furtherance of an investigation. Lieutenant Ballesteros concealed these activities from Department supervisors.

Lieutenant Ballesteros' stated purpose for working these investigations with the Drug Enforcement Administration (DEA) was to obtain the proper clearances for Chacon and McLean to work in Mexico. Lieutenant Ballesteros unilaterally authorized the two informants to go into Mexico without proper authorization and concealed this information from Department supervisors by falsifying investigative reports. For example, reports in File Numbered Investigation N7A-91-009 (Tab 37) falsely reported information about negotiations in Mexico by an individual identified only as "CHEMO". According to Chacon, as verified by receipts, the person described as "CHEMO" was in fact Chacon. Lieutenant Ballesteros admitted in his sworn statement that "CHEMO" was indeed Chacon. Lieutenant Ballesteros stated that Lieutenant Ballesteros was given permission to falsely refer to Chacon as "CHEMO" by then Lieutenant Goodwin. Captain Goodwin denies any such authorization. DEA did not have authorization for Chacon to be in Mexico at this time. The only likely explanation for the use of the name "CHEMO" instead of Chacon's real name would be to conceal the fact that Chacon was in Mexico without authorization.

Another example of misleading reporting by Lieutenant Ballesteros is an update of file numbered investigation N7A-89-080 (Tab 25), dated 11/20/92, which stated that the defendant NIETO was "incarcerated in connection to the 1558 pounds of cocaine in a conspiracy investigation which was conducted by the McAllen DEA." In a previous CLE-1 dated 03/18/92, Lieutenant Ballesteros indicated that NIETO had been arrested on a case involving "negotiations where NIETO attempted to have a DEA agent deliver 500 pounds of cocaine to the Houston, Texas area" and not the case involving the fifteen hundred fifty eight (1558) pounds of cocaine. These two statements are inconsistent. Lieutenant Ballesteros went on to say that NIETO could not be prosecuted on the fifteen hundred fifty eight (1558) pounds of cocaine due to double jeopardy. This information is in direct conflict with information obtained from AUSA Annis.

Lieutenant Ballesteros stated that Lieutenant Ballesteros was unaware of any problems Chacon had involving Special Agent Tanner's investigation in Mobile, Alabama until

Lieutenant Ballesteros was asked to talk with Chacon about testifying in Special Agent Tanner's case. (Sworn Statement of Lieutenant Ballesteros, Page 99, line 22) Special Agents Solis and Turner both stated that a debriefing took place in Houston after their meeting in Mobile, Alabama with Special Agent Tanner and that Lieutenant Ballesteros was present at that meeting. (Tab 10, 22) The case in Mobile was discussed as well as the issue of continuing to use Chacon. Lieutenant Ballesteros is the one who set up the meeting as it was held at the ATF office where Lieutenant Ballesteros' works as an ATF Agent. Lieutenant Ballesteros went on to state that Lieutenant Ballesteros did not know what the problem was in Mobile. (Sworn Statement of Lieutenant Ballesteros, Page 100, line 5) Lieutenant Ballesteros then acknowledged that Lieutenant Ballesteros did learn about the Mobile problem at the meeting in Houston. (Sworn Statement of Lieutenant Ballesteros, Page 104, line 12) Lieutenant Ballesteros was then asked if Lieutenant Ballesteros reported Chacon's problem in Mobile to Department supervisors after returning from the Houston meeting. Lieutenant Ballesteros reversed Lieutenant Ballesteros' position and responded by saying, "I don't even know what the problem in Mobile was. It was that he was associated with some people there, as I understood it." (Sworn Statement of Lieutenant Ballesteros, Page 105, line 3) Lieutenant Ballesteros continued to make conflicting statements and denied any knowledge of the 500-kilogram cocaine case in Mobile, Alabama. Special Agents Turner and Solis, as well as Chacon and McLean all agreed that the problems with the Mobile, Alabama case were discussed at the meeting in Houston. According to Chacon, outside the presence of Special Agent Turner, Special Agent Solis and Lieutenant Ballesteros advised Chacon that Chacon had been identified as a participant in the Mobile, Alabama investigation. Chacon stated that Special Agent Solis and Lieutenant Ballesteros were very concerned about the Mobile, Alabama case. Chacon indicated that Special Agent Solis made a statement to the effect "I beat cancer and I'm not going to let this get me." Lieutenant Ballesteros failed to advise Department supervisors of the Mobile, Alabama investigation or the potential problems to avoid revealing Lieutenant Ballesteros' complicity in the smuggling of the 2000 kilograms of cocaine. Instead, Lieutenant Ballesteros attempted to cover up Lieutenant Ballesteros' involvement and that of Special Agent Solis. Lieutenant Ballesteros attempted to intimidate Chacon into not talking about the 2000 kilograms of cocaine.

Another example of not keeping supervisors informed and taking up matters affecting Lieutenant Ballesteros and Lieutenant Ballesteros' position, was failing to notify Department supervisors about the problems caused with Mexico over the load in Count II. After the 1055 kilogram cocaine seizure from Count II, the DEA Mexico City Country Office (MCCO) was extremely upset over violations of the DEA policy requiring domestic offices to first obtain country clearance from the MCCO for all cooperating individuals entering the Republic of Mexico in furtherance of operational domestic investigations. The MCCO was extremely worried about the ramifications of Chacon and McLean getting caught in Mexico and the effect that would have on relations with the Government of Mexico. Lieutenant Ballesteros, when asked if Lieutenant Ballesteros was aware of the problems with Mexico over the 1055 kilogram seizure, replied "Yes, they came and talked to me and T. K. (Solis)." (Sworn Statement of Lieutenant Ballesteros, Page 81, line 18). This information was never reported to Department supervisors. In a memo from Thomas M. Telles, Acting Country

Attache, DEA Mexico City, to James Morgan, Associate Special Agent in Charge, DEA Houston, Telles stated "It is my understanding that the C/I (Chacon) is controlled by Texas DPS and that DEA is having difficulties coordinating the C/I's (Chacon) control by the State agency. It is imperative that the heads of DPS, at the highest levels, are made aware of the sensitivity of their informant conducting operations in Mexico. If you feel it necessary that we intervene with Texas DPS, we can convene a meeting or request Headquarters or the Ambassador to assist." Lieutenant Ballesteros by his actions could well have caused the Department to become involved in an international incident. No Department supervisors were ever made aware of these problems by Lieutenant Ballesteros.

ADDITIONAL INFORMATION

During the course of this investigation, it was determined that Lieutenant Ballesteros made extraneous remarks in a report that should not have been part of a professionally prepared investigative report in violation of the Narcotics Service Manual. In File Numbered Investigation N7A-89-080 (Tab 25), CLE-1 dated 03/18/92, detail number four, Lieutenant Ballesteros reported, in reference to a request from FBI Special Agent Mitchell for reports from this file, "Sgt. _____, not having any reason to believe Mitchell would attempt to interfere with any ongoing investigation that the informant was presently working with the DPS and FBI agents, permitted Sgt. Davis to make copies of the reports Mitchell had asked for." In detail number six, Lieutenant Ballesteros stated "Sgt. Davis indicated to Sgt. _____ that Mitchell had a dry sense of humor, but Davis felt that Mitchell was trustworthy." These remarks had no place in a professionally prepared report and could have caused problems with the FBI had the remarks ever become public. Later in the same file, CLE-1 dated 11/20/92, detail number six, Lieutenant Ballesteros reported that "Upon the culmination of the task force investigation, _____ Ballesteros **will consider** the use of the 1558 pounds of cocaine to facilitate the task force investigation." This statement is another example of an unprofessional remark in a report that had nothing to do with the information being reported. It is also indicative of the unilateral decision making process employed by Lieutenant Ballesteros in conducting investigations.

Throughout the interviews of Lieutenant Ballesteros, Lieutenant Ballesteros made conflicting statements. Lieutenant Ballesteros reversed Lieutenant Ballesteros' position many times throughout the interview in an effort to explain away inadequacies in investigative technique and failure to keep supervisors informed of Lieutenant Ballesteros' activities.

OVERALL EVALUATION

While investigators involved in this investigation have been unable to corroborate all aspects of the information provided by Chacon and McLean, there have been no instances where case investigators have been able to disprove any of the information provided by Chacon and McLean. In addition, Lieutenant Ballesteros has made numerous conflicting statements as well as untrue statements. The failure to utilize accepted investigative techniques caused several major traffickers to go unprosecuted. In addition, Lieutenant

Ballesteros is responsible for 2000 kilograms of cocaine being distributed. The Department could have been embarrassed and subjected to civil litigation had Lieutenant Ballesteros been operating in an area of the State where Judicial oversight was more prevalent. Although the United States Attorney's Office has declined to prosecute Lieutenant Ballesteros, AUSA DeGabrielle stated in a letter to the Department "Nevertheless, because of the evidence of his (Ballesteros) involvement which does exist, it would be difficult, if not impossible, for this office to sponsor Ballesteros as a witness in future criminal cases without providing this information to defense counsel as Giglio or impeachment material against him (Ballesteros)." The Government's Notice of Impeachment Material filed by AUSA Bedwell in the Mobile, Alabama case is another source of concern should Lieutenant Ballesteros be required to testify in court. Any future court proceedings involving Lieutenant Ballesteros would require notification of these incidents to prosecuting attorneys as well as defense counsel thus effectively precluding Lieutenant Ballesteros from testifying in criminal proceedings which is an integral part of Lieutenant Ballesteros duties as a commissioned officer with the Department. Considering all the information obtained through interviews and business records, all counts, with the exception of Count IA should be sustained.

Respectfully submitted,



James W. Brubaker, Captain
Narcotics Service Technical Unit HQ
Austin, Texas