



IDAHO STATE POLICE

TO: Colonel Powell

FROM: Lt. Colonel Wills, Major Richardson

SUBJECT: STATESMAN ARTICLE FOLLOW UP

DATE: June 4, 2015

This memo contains information that is not currently available to the public due to pending litigation, but we felt it was important you had the necessary information in reference to the May 31, 2015 article as well as the June 2, 2015 editorial, both found in The Idaho Statesman. This memo has been jointly completed by Lt. Colonel Wills and Major Richardson.

Responses ref. May 31, 2015 Idaho Statesman Article

1. "Rice approved it." - Rice did approve it (the Dec. 20, 2011 Rice approved recon. report), but was apologetic that he thought the changes had been made that had been under discussion, and didn't catch that they hadn't been made in that recon. report. He further indicated he didn't read the recon report in detail and had concentrated on or only looked at the formulas/mathematics portion of the Dec. 20 Rice approved recon. report by Carmack.

The article says "The report concluded that Sloan was traveling 115mph on a two-lane 55-mph rural highway while responding with lights and sirens to a 911 call." Actually, the following statement was added to the final (Dec. 28, 2011 Rice approved report) since it wasn't in the Dec. 20, 2011 Rice approved recon. report and the absence of the missing, but critical and highly relevant factual information, was pointed out to Carmack in the Dec. 21, 2011 meeting between Carmack, Rice, Kelley and Richardson. The statement added to the Synopsis of the Collision on Page 3 was "The Ford was a marked sheriff's department patrol car with its lights and siren activated as it responded to a 911 call."

2. "Carmack said he could not determine that Johnson's blood alcohol caused or even contributed to the accident, so he didn't list it as a causal factor." – Per Carmack, the most accurate BAC for Johnson was assessed to be the .08 BAC for the femoral artery sample. Under Idaho law, a driver with a .08 BAC is presumed to be under the influence and national studies show impairment being present at .05 BAC and above. While the exact level of influence may not be able to be determined, it certainly can't be ruled out, and should be considered a relevant fact.

3. As recalled, the conversation/meeting with Eller was a stand-up one in Richardson's office with Eller, Kelley and Richardson and revolved around Eller's basic contention that alcohol had nothing to do with the crash and specifically, if field sobriety evaluations (FSTs) can't be carried out, impairment can't be determined. By extension, DUIs could not feasibly be charged without FSTs including those for those drivers injured and hospitalized from crashes. This thinking was counter to ISP's and public safety organizations long-held, scientifically supported stance on the detrimental effects of alcohol on driving abilities. Furthermore, the Idaho Vehicle Collision Report (IVCR) lists "Alcohol Impaired" as one of many "Contributing Circumstances" that can be listed for crashes.
4. "Three days later, Richardson and Kelley called Carmack to a meeting and "made it abundantly clear they were unhappy with Cpl. Carmack's conclusions that the deputy was responsible for the accident, which put him in a position where he might face prosecution," Carmack attorney Erik Strindberg wrote in a December 2013 claim serving notice to ISP that a lawsuit was forthcoming." – The purpose of the meeting, which consisted of Carmack, Rice, Kelley and Richardson, was to discuss and identify factual, relevant information that was missing from the first recon. report which created a substandard report that was not as thorough, complete or accurate as it should have been. Missing information could well have been exculpatory in nature for either driver. Kelley and Richardson clearly stated that adding factual, relevant information to the first recon report, did not take anything away from the actions of Sloan.

Factual, relevant information/statements not contained in the original recon report but which were included in the final recon report include the following:

- "The Ford was a marked sheriff's department patrol car with its lights and siren activated as it responded to a 911 call." (Page 3, first paragraph)
- Light bulb examination to include the right rear and left front bulbs. (see Page 5, top section)
- "The Ford is equipped with interior, emergency, deck lights to the front and rear. The in car video icon indicates the lights were active." (Page 5, bottom section)
- "This section of Highway 30 is relatively flat and both vehicles could see each other at this point." (Page 7, last paragraph)
- "Using the above listed video I noted the Ford began its passing maneuver three seconds prior to the collision. This places the Ford approximately 509 feet west of the Jeep." (Page 8, first paragraph)

Statements listed below under the "Conclusions" section (Page 9)

- "Sloan was operating an authorized emergency vehicle at an approximate speed of 115 miles per hour on a posted 55 mile per hour rural highway while attempting to pass another vehicle.
- Sloan was traveling a minimum of 101 miles per hour when he began to brake. (This statement was present in the first recon report)
- Johnson turned left in front of an emergency vehicle, which had its emergency lights and siren activated.
- Johnson had a femoral artery blood alcohol level of .080."

All of the above information are facts as determined in the investigation and are relevant to the recon report.

Concerning the statement “Richardson and Kelley also asked Carmack to include information about the Jeep’s turn signals in the report, according to court documents. Carmack explained that the left turn signal had been destroyed, so it was impossible to determine whether it had been operational.” – In this case, Carmack had only examined the obvious and determined the left rear turn signal had been destroyed in the crash and could provide no useful information. He should have and Richardson requested previous to the Dec. 21 meeting that he look at other lights such as the left front turn signal light to determine, if possible, whether a turn signal (or braking) was being utilized by Johnson at the time of the crash. Potential results of these examinations could have been exculpatory for either driver. After further examination, Carmack found the bulb conditions to be inconclusive, but to not examine them at all would have resulted in a less thorough and lower quality investigation, and unanswered questions.

5. See the response to 4. above (first section). As to the statement of “Carmack believed that changing the report to reach a predetermined outcome or conclusion was wrong and unethical, even though he was effectively being ordered to do so.” The issue was that relevant facts were being left out in the first recon report and thorough analysis not being conducted in some areas such as bulb examination and time/distance issues. As to being “ordered,” we met as a group, discussed the issues involved and formulated a path forward. Notes indicated we continued some further discussion over lunch immediately following the Dec. 21, 2011 meeting. At the time of the meeting, Rice did not express disagreement with the path forward from the meeting and brought up in the meeting and that he should not have listened to someone else and changed to summary section of recon. reports to “Causational Factors” and would change it (to “Conclusions” in the Dec. 28 Rice approved recon report and for future recon reports).
6. “Despite his reservations, after the meeting Carmack did as ordered and made the changes, removing statements about Sloan’s unsafe driving and unsafe pass...” – The removal of those two statements largely resulted from discussion in the Dec. 21, 2011 meeting between Carmack, Rice, Kelley and Richardson which revolved around keeping the conclusions factual and not based on interpretation of the writer/reconstructionist, i.e. Carmack. By recollection, this concept was generated by Rice, and likely resulted in part from the fact that no one in the meeting could really say what *was* a safe speed for Sloan to respond at.
7. Trooper Klitch had no choice but to testify for the defense because he was subpoenaed to do so. To characterize this as his decision and a way he disagreed with the prosecutor is inaccurate at best. ISP is not aware of any evidence the defense had access to that the prosecutor did not have.
8. “Linville said conflicting crash reports – the two ISP reports and two independent reviews, one commissioned by Linville and the other by Filicetti – and Klitch’s conduct undermined his ability to prosecute the Sloan case. He dismissed the charges against Sloan in March 2013, less than two months before trial.” – The media release ref. the dismissal of charges came shortly after one-on-one interviews by Sloan attorney Filicetti and Linville of certain ISP personnel (Rice, Kelley, Richardson, and Snell). By the end of the week, a media release was issued stating the charges were being dropped against Sloan.

Linville coordinated an earlier meeting with multiple people through Stephanie Altig (ISP Legal) which was held on February 15, 2013. During that meeting, which was held in the ISP District 3 Multi-Purpose Rm., it was no doubt very clear to Linville that numerous ISP commissioned

personnel had substantial disagreements and/or concerns about the original recon report and the direction of the case. Attendees included Linville, Kelley, Richardson, Carmack, Klitch, Snell, Bakken, and a Dep. Prosecutor from Gem Co. and for the initial portion of the meeting, and a victim assistance coordinator who appeared to have accompanied Linville.

As I recall, during the Feb. 15, 2013 meeting, Linville expressed concern about why he wasn't notified earlier about the issues and/or concerns within ISP and I responded that I/we had attempted to meet with him and he refused. The refusal or declination occurred during an April 17, 2012 phone call Kelley and I had with him when I asked Linville if Major Hudgens and I could meet with him about the case. I believe during the Feb. 15 meeting, Linville indicated he couldn't/didn't feel it appropriate to meet because of the ISP internal investigation(s) underway. (To my knowledge, the OPS investigations didn't start until sometime after our phone call. – SR)

9. The article correctly states the “Brady Rule requires the prosecution to turn over to the defense any information that may be useful, or exculpatory, in a defendant’s case.” This is absolutely correct, and has been the issue in the Sloan case from the beginning in that ISP command staff required that all information be included in the case that was left out by investigators such as a BAC, the fact that Sloan was in a marked patrol vehicle, running code to a 911 call, etc. The Brady issue is exactly why ISP takes so serious our obligation to include all pertinent information in a criminal as well as any other case. Whether the BAC was a contributing factor to the crash is not the issue from the standpoint of including it in the report. It is part of the case, and therefore must be included in the report if the Brady obligation is going to be followed.
10. Colonel Powell
11. The statement that “ISP officers told Rice that Linville should not have received both reports” is accurate. There has been a long standing practice within ISP as well as within any law enforcement agency with which we are aware that drafts copies of reports are not kept but are destroyed once the final report is complete. This is done to avoid any confusion on the part of the officer completing the report, the defense, the prosecutor and witnesses. There is a marked difference between not saving draft copies of a report that is our work product and not saving field notes, sketches, witness statements, etc. A report is not evidence, but rather our work product, where the other items mentioned should be part of the case file.
12. “The changes in the Sloan recon report, which Lt. Kelley and Capt. Richardson ordered to be made, created exculpatory evidence required by law, policies and procedures to be disclosed to Sloan, according to Rice’s lawsuit” – Yes, as stated, the additional factual information included in the final recon report should have been and was disclosed to Sloan.

Reference the paragraph pertaining to “the policy of destroying draft reports,” as a general practice, draft reports, for which there can be many, have not been typically retained within ISP. The final, approved reports are what are typically retained in the files and provided to prosecutors, the courts, etc.

13. That statement that “Rice says he remained tainted with the ‘Brady dead’ label” may certainly be his opinion, however ISP had nothing to do with this issue, but rather the Idaho Supreme Court ruled in the Ellington case that Sgt. Rice’s credibility could be in question.

14. The statement that “Rice, Eller and Carmack claim that after the Sloan case, ISP retaliated against them in myriad ways- reassignment from crash reconstruction to night and weekend patrol duty, rejected pay increases, denied promotions and poor evaluations” is misleading at best. These three employees were not reassigned from the ISP District 3 Crash Reconstruction Unit. The unit was disbanded due to training and other cultural concerns found within the ISP District 3 CRU that this case highlighted. In fact, currently ISP has changed the training standard in our reconstruction program from one organization, IAARS, to another standard, which is ACTAR. Due to the need for change, the district program as it existed was disbanded and these employees were assigned to patrol teams in accordance with their current rank and standing within ISP. All ISP patrol teams work rotating shifts including night and holiday shifts. ISP does not have a shift bidding system in place and all patrol shifts rotate on a fair basis. We are not aware of any pay increases being denied, in fact because these employees started working shift work, they were eligible for a pay increase of 5% shift differential as well as had access to more holiday pay that they may have had previous. Any promotional opportunities they may have been eligible for had not changed due to this or any other case of which we are aware. I cannot speak to their employee evaluations, but would expect any employee actions, positive or negative, that rose to the level of being documented in the annual employee evaluation, including a letter of reprimand, would have been so documented.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The article states this OPS case was “dropped when Rice resigned after a 31-year career at ISP.” This statement is completely inaccurate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Note: In the middle of Page 6, the statement is made “Richardson’s and Kelley’s decision to order Carmack and Eller to change the Sloan crash report was the subject of an internal investigation, but neither were disciplined, according to court documents.” – The first two reviewers determined Richardson to be “Exonerated” of both allegations and the third-level reviewer reached a finding of “Unfounded.” (I believe the same findings were determined in Kelley’s OPS investigation, but records can confirm that – SR)

Responses reference the June 2, 2015 editorial

1. The editorial that appeared in the June 2, 2015 issue of The Idaho Statesman focuses on a couple of different aspects of the Sloan case that I believe are worthy of further information. “Some present and former ISP troopers and officers say that a final crash report that was critical of Sloan’s actions was rejected by their bosses. An investigator alleges that he was forced to alter the Sloan crash report.” A final crash report very well could have been critical of Sloan’s actions. That was not the focus of the required changes to the report. The report failed to include very pertinent information to this case such as the following:

- “The Ford was a marked sheriff’s department patrol car with its lights and siren activated as it responded to a 911 call.” (Page 3, first paragraph)
- Light bulb examination to include the right rear and left front bulbs. (see Page 5, top section)
- “The Ford is equipped with interior, emergency, deck lights to the front and rear. The in car video icon indicates the lights were active.” (Page 5, bottom section)
- “This section of Highway 30 is relatively flat and both vehicles could see each other at this point.” (Page 7, last paragraph)
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- Johnson turned left in front of an emergency vehicle, which had its emergency lights and siren activated.
- Johnson had a femoral artery blood alcohol level of .080.”

At no time was an employee “forced to alter” a report, but rather was instructed to include all pertinent information. Failure to do so would violate the very trust the public has placed in us and the important work we complete.

- The editorial also states that “the July 2013 ISP mandate that, henceforth, draft crash investigation reports would be destroyed. Why? Isn’t this evidence?” The July 2013 mandate to crash investigators was sent out to simply clarify the practice that has

existed throughout ISP and most other law enforcement agencies for decades. Draft reports are our work product and not evidence. To classify them as evidence is extremely misleading. Draft reports are destroyed once the final report is complete. This is done to avoid any confusion on the part of the officer completing the report, the defense, the prosecutor and witnesses. There is a marked difference between not saving draft copies of a report that is our work product and not saving field notes, sketches, witness statements, etc. A report is not evidence, but rather our work product, where the other items mentioned should be part of the case file.

Conclusion: As we examined both the article and the editorial, it became obvious to me that reporting one side of an issue without waiting for the other side to be able to present information to the court of public opinion would not be accepted in other parts of our society. How different would our area feel, for example about the Boise State football team if all we ever knew about them was what was said by their competitor well in advance of the game, knowing that the results of the actual game would not be reported until several months away, if at all. I think society would demand that type of reporting not be accepted, but yet for some reason, we allow this type of reporting to occur when The Idaho Statesman knows full well that not only can ISP not provide the information to complete the story, but that we will be able to do so through court documents in the near future. Rather than wait until the entire story is available, these types of articles are inflammatory and misleading.