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 ORAN GRUNDY and
 JORDAN DEVON GRUNDY

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ORAN GRUNDY, individually and as)
 Guardian Ad Litem for JORDAN DEVON)
 GRUNDY, a minor,)
)
 Plaintiffs,)
)
 v.)
)
 CITY OF OAKLAND, RICHARD WORD,)
 individually, LOUIS N. CRUZ, JAMES)
 RULLAMAS, individually, GARY)
 SHERRER individually, MICHAEL EARL)
 SCOTT, individually, and DOES 1 - 25,)
)
 Defendants.)
 _____)

NO. C02-5642 WHA
**DECLARATION OF REGINALD F.
 ALLARD, JR. IN OPPOSITION TO
 CITY DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT**

 DATE: APRIL 8, 2004
 TIME: 8:00 A.M.
 CTRM: 10
 HON. WILLIAM H. ALSUP

I, REGINALD F. ALLARD JR., hereby declare that:

1. I am an expert witness for Plaintiffs ORAN and JORDAN GRUNDY, employed for the last nineteen years by the State of Connecticut as a Training Officer for the Police Officer Standards & Training Council (P.O.S.T.C.) at the Connecticut Police Academy. (A full and complete *curriculum vitae* is included in the expert witness reports attached hereto as Exhibits A and B.) I make this Declaration on personal knowledge in Opposition to the City Defendants' Motions for Summary Judgment.

2. In addition to the materials I reviewed for the preparation of my reports and identified therein, I have read the declarations of Defendants LOUIS CRUZ, JAMES RULLAMAS, Ursula Jones Dickson, John Brouhard, Michael Oppido, Larry Robertson, Ralph Lacer and Harold Boscovich in support of Defendant City's Motion for Summary Judgment. I have also reviewed the Declaration of ORAN GRUNDY in Opposition to Defendants' Motions for Summary Judgment. Finally, I have again reviewed *Preventing Gang and Drug Related Witness Intimidation*, a comprehensive report published in 1996 by the National Institute of Justice (hereinafter, "NIJ"), an official arm of the United States Department of Justice. (True and correct copies of my expert witness report of February 13, 2004 and my Reply to Defendants' Rebuttal Expert Witness Report in the above-captioned case are attached hereto and fully incorporated herein by reference as Exhibits A and B, respectively.)

3. In my professional opinion, this case primarily involves four related issues touching on witness intimidation of CHANCE GRUNDY: (1) Defendants' solicitation of MR. GRUNDY to cooperate in the criminal investigation of Michael Scott for the murder of Eugene Abraham and the special relationship thereby created; (2) the nature of the conduct and the credibility of threats made by Michael Scott against MR. GRUNDY; (3) Defendants' acts and omissions that placed MR. GRUNDY in a greater state of peril than he would otherwise

have been in; and (4) whether Defendants provided warnings and/or protection to MR. GRUNDY from the harm that was thereby created.

4. Defendants CRUZ and RULLAMAS solicited and obtained the cooperation of MR. GRUNDY when they came to his house after the murder of Eugene Abraham and conducted a photographic line up. (See Deposition of Defendant CRUZ, attached hereto as Exhibit C @ 29:21-25; 30:4-21.)

5. Defendants CRUZ and RULLAMAS elicited further cooperation from CHANCE GRUNDY when they undertook a second photographic line up and subsequently took three taped statements wherein MR. GRUNDY implicated Michael Scott in the killing. They affirmatively increased the risk of harm to MR. GRUNDY when they subsequently played MR. GRUNDY'S taped statement for Michael Scott without having previously informed MR. GRUNDY or his father that they were planning to do so.

6. Michael Scott's threats against MR. GRUNDY were serious and credible. For example they included code words such as "*serve*" which Defendant CRUZ termed "a physical assault" in the report he filed after listening to Scott's taped jailhouse phone call. Another term used by Scott is "*mark*" which indicates a person who is a target. (See Exhibit 50 to *People v. Michael Scott*, California Superior Court Case No. 142334/142578A, attached hereto as Exhibit 18 at page 11.) The credibility of such threats is not diminished by the circumspect language in which they are couched. On the contrary; aware that his phone calls are being monitored, Scott uses a criminal lexicon to convey instructions while attempting to avoid detection. A trained professional police officer would be able to discern the credible threats thereby conveyed and warn the party to whom the threats were directed.

7. In a phone call placed on November 20, 2001, Michael Scott states that he is aware of a "Mexican" whose eyewitness statement was used against a criminal defendant

even after the eyewitness was killed. (See Exhibit 50 to *People v. Michael Scott*, Alameda County Superior Court Case No. 142334/142578A, attached hereto as Exhibit 18.) This is a coded message indicating that Scott understood and wanted confederates to similarly understand that if MR. GRUNDY were killed, any statement he had made could still be used against Scott. A reasonable police officer could discern that Scott had the sophistication to know that killing MR. GRUNDY would not be enough, so long as his statement remained unchanged. Reasonable jurors could conclude that at various points in time Scott had a two stage plan: first, get MR. GRUNDY to change his statement and, second, have him killed. The result, insofar as Scott contemplated one, would be that MR. GRUNDY'S changed statement could serve only to *exonerate* Scott while MR. GRUNDY, himself, would be conveniently out of the way and unable to recant. Such an interpretation is just as plausible, if not more so, than Defendants' "theory" that Scott's threats were mere ranting and raving. Reasonable police officers with experience and training comparable to that of Defendants CRUZ and RULLAMAS should have taken such threats seriously and relayed them to the intended victim at once.

8. Between November, 2001 and January 2002, Michael Scott's telephoned threats against MR. GRUNDY increased in frequency and severity. On January 16, 2002, days before MR. GRUNDY was killed, Michael Scott instructed a confederate "Chance [Grundy] needs to sleep with the fishes with a weight tied around his neck." (Ex. 18 @ 10.) A person who "sleeps with the fishes," a term of criminal slang widely popularized in "The Godfather," is someone who is dead. In the specific context of this case a reasonable police officer would not regard Michael Scott's utterance of these words as "mere" ranting. Scott was in jail facing charges of first degree murder; *that fact alone*, provides sufficient context for a reasonable police officer to take this particular threat seriously. Although the exact date on which MR. GRUNDY might be killed could not be known in advance, it would not have been

unforeseeable to a reasonably prudent, experienced police officer that the object of such a statement was in imminent danger of great bodily harm from criminal confederates of Michael Scott and, accordingly, the intended victim needed to be warned.

9. Defendants CRUZ and RULLAMAS undertook affirmative acts and made inexcusable omissions that placed MR. GRUNDY in a heightened state of peril. For example, Defendant CRUZ told MR. GRUNDY and ORAN GRUNDY that they “had no reason to fear” Scott because CRUZ had warned Scott’s criminal associates not to “mess” with MR. GRUNDY. (See Declaration of Oran Grundy In Opposition to CITY Defendants’ Motions for Summary Judgment filed and served concurrently at 3:7-11.) By so doing, however, CRUZ actually *increased* the risk to MR. GRUNDY by signaling to Scott’s confederates that MR. GRUNDY was fully cooperating with police and thereby falsely reassuring MR. GRUNDY that he was safe on the streets. Reasonable, trained police officers would have taken *affirmative* steps to warn and protect MR. GRUNDY rather than attempting to “scare off” would-be intimidators and hit-men.

10. Defendant CRUZ admits that he ordered that Scott be kept away from Manuel Adrow, another eyewitness to the Abraham killing, while Adrow and Scott were both in Santa Rita Jail. At his deposition, Defendant CRUZ testifies that he made the “keep apart” order “*for [Adrow’s] own safety.*” (Ex. C @ 128:22-25; 129:1, emphasis added.) Defendant CRUZ’s stated concern regarding the possibility of harm coming to eyewitness Adrow contrasts sharply with his lack of concern for the physical safety of MR. GRUNDY. Adrow was in jail, in custody, under 24-hour armed guard and surveillance by the Alameda County Sheriffs Department. MR. GRUNDY was on the street with nothing in between Michael Scott’s criminal confederates and him except Defendant CRUZ’s assurances that he had told said confederates not to “mess” with MR. GRUNDY.

11. Under Oakland Police Department GENERAL ORDER O-7, Defendants CRUZ and RULLAMAS were *required* “[to] advise the witness about what to do in the event the suspect (or suspect’s friends or relatives) threatens or otherwise intimidates him.” In addition, as General Order O-7 states, “[a]dvisement is required by Penal Code Section 293 and is documented in any written report of the incident.” (Emphasis added.) Here, there is no record of anyone having made such advisements to MR. GRUNDY, nor is there a record of MR. GRUNDY’S purported refusal to accept assistance with regard to witness protection. (See City of Oakland Departmental General Order O-7, of which a true and correct copy is attached hereto as Exhibit D,).

12. Any reasonably trained and experienced Detective would have understood the “coded” threats made by Michael Scott as direct and specific threats to the life of MR. GRUNDY. In his report detailing a phone call recorded on December 4, 2001, Defendant CRUZ writes “Note: The term ‘serve’ is used to describe *a physical assault.*” (See, Ex. 18, emphasis added.) It is difficult to reconcile this statement with Defendants’ oft-repeated mantra that no direct, credible threats were ever made against MR. GRUNDY. A reasonable police officer in CRUZ’s position would have understood Scott’s statement to be a credible and direct threat to MR. GRUNDY and taken immediate steps to warn and protect the intended victim.

13. MR. GRUNDY was also contacted numerous times by Oakland police officers who came to his house on many occasions after MR. GRUNDY implicated Michael Scott. For example, Officer Foreman testified at the Preliminary Hearing in the criminal case against William Edwards that he (Foreman) was the responding officer in that case and recognized the decedent, MR. GRUNDY because he had between 10 and 15 contacts with MR. GRUNDY in the time period after MR. GRUNDY had implicated Michael Scott in the murder

of Eugene Abraham. (See Reporter's Transcript of Preliminary Hearing, *People v. William Edwards*, Alameda County Superior Court Case No. 475911, attached hereto as Exhibit E @ 102:20-25; 107:4-10.)

14. Officer Foreman's contacts with MR. GRUNDY include at least one occasion when Foreman came to MR. GRUNDY'S home to tell him that he needed to contact investigators in the Abraham case. (Ex. E @ 107:14-27.) These frequent visits, inasmuch as they signaled MR. GRUNDY'S cooperation with police, greatly exacerbated the risk of physical harm to MR. GRUNDY.

15. The National Institute of Justice is the "research" arm of the United States Department of Justice. *The Preventing Gang and Drug Related Witness Intimidation* report published in 1996 by the National Institute of Justice (hereinafter, "NIJ"), focused on efforts to prevent victim and witness intimidation in gang and drug-related cases. (True and correct copies of excerpts from the NIJ report are herein attached as Exhibit F.)

16. One of the individuals who helped prepare the comprehensive NIJ report was Captain Ralph Lacer of the Oakland Police Department (See Ex. F @ ix, "Acknowledgments," *Preventing Gang and Drug-Related Witness Intimidation*, 1996 by the National Institute of Justice.) Also singled out for his contributions to the report is Harold Boscovich, the Director of the Alameda County Witness Protection Program. (Ex. F @ ix.)

17. Although a formal witness protection program may be administered by an entity other than the police department, law enforcement is, in the words of the National Institute of Justice, "[t]he *indispensable partner* in the witness security effort." (Ex. F @ 69, emphasis added.) The NIJ lists responsibilities of the police department including, "the escort and transportation of witnesses in a secure manner," "the swift response of officers to calls for help from intimidated witnesses", and "in extreme cases, the guarding of witnesses for short

periods.” (*Ibid.*)

18. The NIJ lists the following additional functions of law enforcement in witness protection, all of which were disregarded by Defendants here as discussed above:

- “Avoid using formal business cards so that potential witnesses are not compromised if the telephone numbers or cards are found in their possession;”
- “Don't appear at the door of potential (or actual) witnesses, which may label them as "snitches" and increase their reluctance to cooperate with the investigation.
- “Arrange interviews away from the community in a neutral place, such as on a boat, in a church whose clergy you know, or in an unmarked van;”
- “Although the majority of witnesses may have criminal backgrounds or associates and they may be scorned as "snitches," treat them with respect and concern.” (Ex. F @ 69-70.)
- “All claims of intimidation must be taken seriously enough at least to conduct a threat assessment.”
- “Document all offers of assistance and all efforts to protect the witness, as well as the witness’s acceptance or refusal of security and assistance.”

19. The NIJ advises that “explicit threats of physical violence” which occur in “gang- and drug-dominated communities” *are credible*,” (Ex. F @ 7, emphasis added) and “most explicit intimidation occurs *only* when there is a *previous relationship* or other connection between the defendant and the victim *and they live relatively close to each other*.”

(Ex. F @ 7-8, emphasis added.)

20. Most important, the NIJ report advises that “the primary intimidators [of witnesses] will most likely be the *gang, family, or friends of the defendant rather than the defendant himself*.” (See Ex. F @ 7.) Consequently, when Defendants CRUZ and RULLAMAS assured MR. GRUNDY that Michael Scott was a “nobody” who, was, in any case, in custody, they falsely reassured him and thereby greatly increased the danger to him.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. If called as a witness in this matter, I could and would testify competently to facts stated herein.

Executed in Southington, Connecticut on March 18, 2004.

REGINALD F. ALLARD, JR., Declarant