

County of San Mateo

Investigation of County Actions
re: Mark Racop dba Fiberglass Freaks

CONFIDENTIAL INVESTIGATIVE REPORT

Hon. Winifred Y. Smith (ret.)

ADR Services, Inc.

February 2023

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I. Introduction

The County of San Mateo through the County Attorney, John Nibbelin, retained The Honorable Winifred Y. Smith (ret.) of ADR Services to conduct an independent investigation into facts surrounding (1) the decision by the Sheriff to order an investigation into a complaint of fraud in connection with the purchase of a replica Batmobile and (2) the District Attorney's decision to file a felony complaint after declining to do so a year earlier.

Sam Anagnostou, the complainant, called then Sheriff Carlos Bolanos and alleged that he'd been the victim of fraud because Mark Racop accepted payment for a contract to build a 1966 replica Batmobile in 2017 and did not deliver the car. The Sheriff ordered an investigation into the complaint that resulted in four sheriff's deputies travelling to Indiana to arrest Racop and extradite him to California for prosecution. After declining to do so a year earlier, the District Attorney filed a complaint alleging two counts of felony fraud.

II. Scope of Investigation

Based upon the ensuing publicity and public concern over the decision to pursue the investigation, the author was asked to conduct interviews of the parties involved and to create an accurate factual record of these decisions.

Pursuant to the California Constitution, the California Attorney General has authority to exercise direct supervision authority over the State's county sheriffs and district attorneys in matters pertaining to the duties of their respective offices. However, the County seeks to gather all possible information with respect the above-referenced matter without infringing upon that authority.

The author was invited to share her observations and make recommendations for best practices and policy consideration. They appear in the conclusion of this report.

III. Methodology

This report contains detailed information about the case, accounts of persons involved in the “Batmobile” investigation, and recommendations from the author.

Prior to conducting interviews, the author informed the interviewees of the investigation and notified them that their participation was strictly voluntary. Quotations in this report are cited as accurately as possible from interview notes and summaries created from those notes, unless otherwise stated.

IV. Witnesses¹

<u>Name</u>	<u>Title</u>	<u>Date of Interview</u>
Sean Gallagher	Chief Deputy District Attorney	Nov. 1, 2022
Stephen Wagstaffe	District Attorney	Nov. 1, 2022
Mark Racop	CEO, Fiberglass Freak	Nov. 4, 2022
Carlos Bolanos	Sheriff	Dec. 6, 2022
Michael Leishman	Lt. Commander	Dec. 22, 2022

¹ Sam Anagnostou did not respond to a request for an interview. Marie McLaughlin declined to be interviewed.

V. Documents

Atherton Police Report (August 31, 2021)

Sheriff's Investigative Report (September 13, 2022)

1966 Batmobile Replica Building Agreement (January 1, 2017)

Sam Anagnostou Addendum #1 (January 1, 2017)

Search Warrants issued by San Mateo County Superior Court for:

Bank Records of Mark Racop

Electronic Communications of Mark Racop

Search of Wire Transfers using GoDaddy.com

Search Warrant issued by Cass Circuit Court, Indiana for:

Premises of Fiberglass Freaks

Felony Complaint

Motion to Dismiss Complaint

County of San Mateo Administrative Memo A-5

County of San Mateo Administrative Memo B-16

San Mateo County Sheriff's Office Travel Expense Report (July 27, 2022)

San Mateo County Sheriff's Memorandum re: Information Related to
Batmobile Replica Investigation (August 8, 2022)

Cass County Sheriff's press release re: California Investigation Information
(not dated)

News Articles about the Batmobile Investigation

Emails, letters, and written comment to the San Mateo County Supervisors
from the general public about the Batmobile Investigation

VI. Summary of Facts

On August 31, 2021, Sam Anagnostou (Anagnostou), a San Mateo County businessman and resident of Atherton, filed with the Atherton Police Department a complaint claiming he was defrauded by Mark Racop (Racop) in the amount of \$210,000 in connection to his purchase of a replica 1966 Batmobile. Anagnostou alleged he wired the money to Racop between January 2017 and August 2020 but did not receive the car as promised.

Racop is the only person licensed by DC Comics to build and sell replica Batmobiles, which he does at his business, Fiberglass Freaks, in Logansport, Indiana. The cars are made of fiberglass and built exclusively by hand. They require approximately 3000 hours to build. The 3000 hours can be stretched out over many months depending upon the effect of the temperature and humidity on the fiberglass during production. Racop's customers are from all over the world.

On January 1, 2017, Anagnostou and Racop entered into a contract for the purchase of a replica Batmobile. Anagnostou paid a \$40,000 down payment and agreed to make payments when certain production benchmarks were met. The estimated date of completion was June 30, 2018. However, automatic extensions due to labor actions, delay of parts from third parties, or Acts of God were built into the contract.

What is not mentioned in the contract is that Anagnostou wasn't sold a specific car but a place in the delivery queue which would eventually result in him receiving title to a car but only after it was built and assigned a Vehicle Identification Number (VIN). Anagnostou was assigned "number 29."² However, this number 29 did not represent a specific car, nor did it represent

² Anagnostou's car is referenced as number 28 and number 29 in witness interviews and e mail correspondence. There is no reference to a number in the contract or the addendum to the contract.

that Anagnostou was 29th in line to receive a completed car. This mode of operation is possible because DC Comics requires that each car be an exact replica of the 1966 model. The only exceptions are for some interior features. Thus, any car in production can be sold to any customer. Customers often go to Indiana to check the progress of their cars. When Racop shows them a car, it is a car that could be or will likely be the customer's car but is not necessarily their car. It is unclear whether Racop will tell customers about the delivery queue when they sign the contract.

In December 2019, Racop asked Anagnostou to make the \$20,000 payment required by the contract when the car is ready for its first coat of primer. By this time, Anagnostou had made payments totaling \$170,000. According to Racop, before he requested the \$20,000 payment, Anagnostou had not been concerned by Racop's failure to complete the car per the contract, telling Racop to take as much time as he needed. Anagnostou said he would make the payment, but he did not. Racop recalls little or no communication from Anagnostou for the next eight months. Email correspondence obtained by Lt. Michael Leishman (Leishman) of the San Mateo County Sheriff's Office suggests that Anagnostou had been inquiring about the progress of his car and was anxious about the delays in completing car. On August 17, 2020, Racop informed Anagnostou that production on his car had been suspended for nearly a year due to non-payment. He warned Anagnostou that he would not resume working on the car until Anagnostou made a payment. On August 20, 2020, Anagnostou wired to Racop \$40,000 which represented the remaining balance on the contract.

By August 2021, the car was still not completed. Anagnostou went to the Atherton Police Department and reported that he'd been the victim of fraud. The Atherton Police Department took Anagnostou's statement and

investigated the case. They contacted the Logansport Police Department for information about Racop, googled Racop's business, and contacted a customer who had sued Racop over the sale of a replica Batmobile. They spoke to Racop's attorney (Racop's brother, Scott) who stated that Racop and Anagnostou had a business dispute about payment for the car which was the cause of the delay. After the Atherton Police Department completed its investigation, the final report was sent to the San Mateo County District Attorney's office. The District Attorney's office declined to file a criminal complaint.

Anagnostou also filed in the San Mateo Superior Court a civil lawsuit against Racop alleging fraud. The civil complaint was dismissed because the court determined that a court in Indiana was the proper venue for resolution of the dispute.

Thereafter, in late 2021, Anagnostou directly called San Mateo County Sheriff Carlos Bolanos (the Sheriff) and made the same complaint of fraud.³ He went to the Sheriff because he thought the case was complex and exceeded the expertise of the Atherton Police Department. The Sheriff took Anagnostou's call because he is acquainted with him; Anagnostou is a local businessperson and a friend of the Sheriff's brother.

Anagnostou told the Sheriff that in 2017, he contracted for the purchase of a replica Batmobile due to be completed in 2018 and there was still no car. He gave the Sheriff a brief history of the transaction but not much more. The Sheriff asked Anagnostou if he had reported this to the Atherton police, and Anagnostou responded that he had. The Sheriff referred the complaint to Leishman, head of the Sheriff's Vehicle Theft Task Force, and asked him to follow up with Anagnostou. The Sheriff does not recall

³ Former Sheriff Carlos Bolanos was succeeded in office in January 2023 by Sheriff Christina Corpus

whether he knew the District Attorney's office had declined to prosecute the case when he referred the case to Leishman, who was not given any particular instructions on the scope or limitations of the investigation.

Leishman began his investigation by meeting with Anagnostou and his attorney, Majeed Samara (Samara), to learn the facts underlying the complaint. After meeting with Anagnostou, he believed there was “something to his complaint.” Samara and a private investigator hired by Anagnostou provided additional documentation which included the contract and addendum for the purchase of the car, copies of email and text correspondence between Anagnostou and Racop, photos documenting the production of the car, bank documents regarding wire transfers for payment of the car, and the San Mateo County civil case file. After reviewing the documents provided by Anagnostou’s investigator, Leishman thought if he “wrote some affidavits and looked into email communication, the facts would support criminal fraud.” He focused his investigation on the wire transfer of \$40,000 made in August 2020 and payments made at the same time by another customer, Danny Glasser (Glasser), to whom he believed Anagnostou’s car had been delivered.

Leishman was aware that the San Mateo County District Attorney’s office declined to prosecute the case earlier in the year, but Leishman believed that he had additional information and that it was his job to get to the bottom of the case. He called Deputy District Attorney Marie McLaughlin (McLaughlin) who had been earlier assigned to the case. Although he does not recall the specifics of the conversation, they came to an understanding that Leishman would coordinate his investigation with the District Attorney’s office. Leishman says he wouldn’t have proceeded further with the investigation had he been discouraged from doing so.

Leishman spent the next six months working on getting warrants for Racop's financial information and email communication and looking for additional evidence that might support a criminal charge of fraud. Leishman had access to email correspondence between Racop and Anagnostou and Racop and Glasser, as well as documentation of Anagnostou's payment history between January 2017 and August 2020, when Anagnostou made the final \$40,000 payment. The email correspondence attached to the affidavit in support of the warrant chronicled Racop asking Anagnostou for payment he believed was past due and Anagnostou's frustration with lengthy delays in completing his car under the terms of the contract. The e mail correspondence between Anagnostou and Racop established that Racop solicited a \$20,000 payment on the representation that Anagnostou's car, number 29 was in first prime. On August 18, 2020 Racop wrote the following "I have kept my end of our agreement: your car is in first prime." Anagnostou relied on that representation and on August 20, 2020 sent Racop \$40,000, the balance of the contract price.

At the same time, Racop was in a dialogue with Glasser about purchasing the same car. On July 27, 2020, Racop approached Glasser and told him about a a customer who may not be able to complete the purchase of his car because of a divorce (Anagnostou) and asked Glasser if he was interested in "taking over" the car. The conversation about the specifications of the car and whether they met Glasser requirements ensued almost daily until August 14, 2020 when Racop confirmed that "...You are taking over car No.29." Thus, Leishman concluded that fraud had been committed when Racop accepted Anagnostou's \$40,000 payment for car No. 29 after he confirmed that car No. 29 was Glasser's.

During the investigation, Leishman periodically updated the Sheriff and Samara on his progress.

On July 19, 2022, McLaughlin filed a felony complaint alleging one count violation of Penal Code section 532 (obtaining money by false pretenses) and a violation of Penal Code section 484, subdivision (B) (diversion of Construction funds) against Racop. Neither District Attorney Stephen Wagstaffe nor Chief Deputy District Attorney Sean Gallagher (Gallagher) were aware of the decision to file the complaint. Nothing about the case, including extraditing Racop to California for prosecution, raised red flags.

Once he obtained the warrants and the complaint was filed, Leishman organized the trip to Indiana. He lined up three other deputies to accompany him and contacted Dale Campbell (Campbell), a local law enforcement officer in Logansport, to assist him once they arrived. Leishman's decision to travel to Indiana did not require prior authorization from the Sheriff. He informed the Sheriff he was going and taking three deputies. The Sheriff was also aware the arrest warrant for Racop was extraditable. The Sheriff fully expected Leishman to return with Racop in custody. When asked his thoughts on the propriety of four deputies going to Indiana, the Sheriff responded that seeking the warrants and the trip to Indiana was Leishman's decision and it was not the Sheriff's place to micromanage. The Sheriff thought Leishman's decision to go to Indiana was justified by the fact that three different judges found probable cause to issue warrants.

On July 22, 2022, Leishman and three deputies went to Logansport. It took two days to get a search warrant from the Cass County court, and on July 24, 2022, Leishman and company went with Campbell to Fiberglass Freaks to execute the search and arrest Mark Racop. When they arrived,

Leishman introduced himself to Racop and explained why he was there.⁴ Leishman led the search and was the only person from the San Mateo County delegation to address Racop directly. Racop's lawyer was informed of the search and called Leishman. Leishman informed Racop's lawyer they were there to search the premises and would not interview Racop. According to Racop, Leishman refused to allow Racop to talk to his lawyer, which upset him. Racop was not interviewed, but Leishman reported that he talked nervously throughout the search.

Racop offered to show Leishman "car No. 28." There were five or six cars on the premises, all in the early stages of production. Racop told Leishman that any of the cars could be No. 28. Leishman knew the car was fully paid for and was looking for a nearly completed car. He concluded No. 28 did not exist. After completing the search, Leishman formally arrested Racop and transported him to the Logansport Police Department. At some point, Racop disclosed that he had a heart condition. Once Leishman learned Racop had heart problems, he made the decision not to extradite Racop. He was concerned for Racop's health and did not want to risk his having a heart attack en route to California. Once the group arrived at the Logansport Police Department, Racop was told he would not be extradited to California but that he would have to get a lawyer and arrange to appear before the San Mateo Superior Court for his arraignment.

Leishman and company returned to California the following day. He called his direct supervisor, Captain Mark Duri, to report that car No. 28 was not in Indiana and explained that he did not extradite Racop because of his

⁴ Racop recalls that Leishman did not introduce himself until 15 or 20 minutes after Leishman's arrival.

heart condition. He also called Samar and told him they did not recover Anagnostou's car. The following day, Leishman left for vacation.

While on vacation, Leishman learned his investigation had become the "Batmobile" case and everything had "blown up." Once the Bay Area press started reporting that four deputies from San Mateo County had travelled to Indiana to recover a replica Batmobile, community response was negative and intense. By this time, District Attorney Wagstaffe (Wagstaffe or the District Attorney) and Gallagher were involved and considering dismissing the complaint; they requested more information from Leishman before deciding. One thing they wanted to know was whether Glasser had, in his possession, the car for which Anagnostou paid. They learned that neither Anagnostou nor Glasser were in possession of a car.

Dan Noyes (Noyes) of Channel 7 News extensively covered the investigation. The news coverage focused on the county agencies' decisions to send to Indiana four sheriff's deputies to arrest a man in a contract dispute with a wealthy San Mateo County businessman; Noyes characterized the decision as a favor for a friend of the Sheriff, payback for a political donor, a waste of public funds, and corruption of county government. It was revealed that Anagnostou Investments, a business in which Anagnostou is part owner, contributed \$1,000 to both the Sheriff's and Wagstaffe's political campaigns. Neither the Sheriff nor the District Attorney was aware of the contributions during the investigation. Noyes also obtained the receipts submitted to the Sheriff's office for Leishman's team's travel to Indiana which totaled a little over \$10,000.

Noyes requested interviews from all involved, and responses varied; Leishman declined to be interviewed. The Sheriff issued a statement outlining the reasons for the course of action taken by his office. He stressed

that the facts indicated Anagnostou was the victim of criminal fraud in the amount of approximately \$200,000 and that his acquaintance with Anagnostou had no impact on the investigation. The Sheriff explained that he referred the matter to Leishman because Leishman is the head of the Vehicle Theft Task Force and has experience conducting complex financial investigations. The Sheriff insisted he would not apologize for investigating a white-collar crime, as the District Attorney had prosecuted similar crimes. As for the investigation itself, the Sheriff's office coordinates with the District Attorney in seeking warrants to ensure probable cause. The reviewing Deputy District Attorney determined there was probable cause to issue an arrest warrant for Racop for two felonies and search warrants for his emails and financial information. Three different judges reviewed and signed the warrants. Leishman and the three deputies were sent to Indiana to ensure that there were sufficient personnel to execute the warrants and because they did not know how much assistance they would get from Cass County law enforcement.

McLaughlin spoke to the press once. She was asked why criminal charges were filed after the case was rejected the first time it was presented. Without going into detail, McLaughlin replied, "Additional investigation. Detectives were able to obtain search warrants and obtain additional evidence."

District Attorney Wagstaffe was contacted for comment but did not know anything about the case, as, from the beginning, it had been routinely assigned to deputies in his office. However, once Wagstaffe got involved, he ordered a review of the case to understand what happened. Wagstaffe acknowledged he was not involved in the decision to file the complaint but that he would conduct further investigation before making a final decision to

go forward. He stated, “What I am really looking for is to see if the evidence would show that Mr. Racop promised him something and didn’t deliver it. It pretty much boils down to that. I want to see what their communications were and what their emails were. Mr. Anagnostou’s lawyer went and met with Mr. Racop. I want to hear what those communications were about. What were those discussions? Is this a civil dispute or what he really defrauded? That is what I want to know.”

Further investigation was conducted and Wagstaffe learned that Glasser did not receive a completed car from Racop. On September 16, 2022, the complaint was dismissed. The dismissal was based, in part, on whether going forward with the case would inspire trust and confidence in the District Attorney’s Office. Wagstaffe believes impact counts and the question “‘are important rights of the defendant be vindicated?’ must be answered, ‘yes,’ when making the decision to go forward.” He didn’t think San Mateo County constituents wanted any more tax dollars spent on the case and that pursuing the case was not consistent with the community’s values.

Initially, Racop was reluctant to speak to the press but was eventually interviewed by the press in both California and Indiana. He expressed outrage that law enforcement in California would get involved in a business dispute, particularly, a contract centered in Indiana. His bank accounts were frozen for over a month, which caused him to halt operations, and he thought the Sheriff’s department was carrying out Anagnostou’s threat to run him out of business.

The Board of Supervisors sent correspondence to California’s Attorney General Rob Bonta, referring the matter for any inquiry or actions that the Attorney General determined were warranted. Bonta declined to investigate.

VII. Summaries of Interviews

A. *Sheriff Carlos Bolanos*

Former Sheriff Carlos Bolanos was interviewed for this investigation on December 6, 2022.

The Sheriff is an elected official and commands a department of 800 employees. Former Undersheriff Mark Robbins oversaw the day-to-day operation of the department. Directly below Robbins were three Assistant Sheriffs in charge of (1) operations: patrol and investigations; (2) support services: human resources crime lab, records, and civil enforcement; and (3) corrections, comprising two facilities with an average daily population of 1000. The sheriff's office is responsible for, among other things, the narcotics, bomb squad, and vehicle task forces, which are staffed by agency personnel, as well as personnel from other county, state, and federal agencies.

Lt. Michael Leishman, who investigated the Batmobile case, heads the Vehicle Theft Task Force. The mission of the Vehicle Theft Task Force is to reduce the number of cars stolen or abandoned in the county after being stolen elsewhere. The team has specialized knowledge about cars, chop shops, and gang activity involving car theft. Routine auto thefts are generally not handled by the task force, as its mission involves larger operations, including organized car theft operations and favored locations for the sale of stolen cars, as well as identifying trends in car thefts (which cars are the current targets). This work involves the task force partnering with other agencies and law enforcement in surrounding jurisdictions.

The Sheriff had an open-door policy. The office accepts complaints from anyone. Most complaints are from 911 calls reporting a crime or someone coming to a station or sub-station. People called his office directly, and the Sheriff would take the calls from complainants he personally knew. For

those he didn't know personally, he'd ask an assistant to direct the complaint to the right person or department.

The complaint leading to this investigation came to him when he accepted a call directly from Anagnostou in November 2021. The Sheriff and Anagnostou are acquainted, but they do not socialize. Anagnostou told the Sheriff that in 2017 he contracted to have a replica Batmobile built for \$210,000. The car was supposed to be completed in 2018, but Anagnostou hadn't received the car. The Sheriff contacted Leishman, head of the Vehicle Theft Task Force, to follow up with Anagnostou. The Sheriff "does not recall whether he knew the District Attorney had declined to prosecute the case when he referred the case to Leishman." The Sheriff didn't place limits on the scope of the investigation or resources used to support it.

Leishman occasionally updated the Sheriff on this and other investigations, but the Sheriff did not expect Leishman to update him on the investigation and did not give Leishman any directions. The Sheriff stated he "does not get involved in investigations and leaves them to staff and their immediate supervisors to manage." There was no expectation that the Sheriff would keep Anagnostou apprised of the investigation. Once the Sheriff handed the case over to Leishman, Anagnostou did not contact the Sheriff again and he did not contact Anagnostou.

In July 2022, shortly before leaving for vacation, Leishman informed the Sheriff that he and three deputies were going to Indiana to execute search warrants and extradite Racop to California. Leishman's decision to go did not require prior authorization from the Sheriff, and telling the Sheriff was informational only. The Sheriff was aware the arrest warrant for Racop was for extradition and fully expected Leishman to return with Racop.

When asked his thoughts on the propriety of four deputies going to Indiana to execute the warrants, the Sheriff responded that seeking the warrants and the trip to Indiana to execute them was "Leishman's decision, and it was not his place to micromanage." He thought Leishman's decision to go to Indiana was justified by the fact that "three different judges found probable cause to issue the warrants." The Sheriff did not think that Leishman's travelling to Indiana for the investigation was unusual, recalling that the department has sent deputies out of state for investigations in the past. He recalled that since becoming sheriff, deputies have travelled to Arizona to investigate a burglary and to Oklahoma for a cold case investigation. Authorization for travel goes through the chain of command and is approved at the executive management level. "Approvals are given verbally and do not require any paperwork."

When asked if there was any consideration given to the expense of sending four deputies for a search and arrest in Indiana on a case involving a contract for the sale of a car, the Sheriff responded that executive staff know what resources are available for the work of the office and approve projects accordingly. He went on to say, "San Mateo County is well funded, and the department has always had sufficient resources to conduct investigations when it deems them necessary."

When Leishman returned from Indiana, he contacted the Sheriff and his supervisor, Duri, and reported that he and the deputies did not bring back Racop because of Racop's health and they did not find the car allegedly sold to both Anagnostou and another customer.

As soon as Leishman returned from Indiana, the Sheriff received press inquiries about the decisions to investigate the complaint about the purchase of a replica Batmobile for a wealthy man and spend county funds to send

deputies in search of the car. It also came to light that a business in which Anagnostou had an interest contributed to the Sheriff's campaign for re-election. The reports that Anagnostou personally contributed to the campaign were untrue. The Sheriff does not know when the contribution was made but believes it was after he spoke to Anagnostou in November 2021.

The Sheriff spoke to Wagstaffe who, after reviewing the case, informed the Sheriff he was dismissing the criminal complaint. The Sheriff was asked for interviews about the investigation but declined. Instead, on August 8, 2022, he issued a formal statement to "clarify the factual record he believed had become distorted because the case involved a \$210,000 Batmobile purchased by a wealthy man."

In hindsight, the Sheriff "would not have done anything differently." He would not change the way investigations are conducted or the approval process for those investigations and attendant travel. He trusts his Assistant Sheriff and captains who have the responsibility of managing the investigations and the budgets. "The responsibilities they have are commensurate with their albitites and compensation and he trust their judgement." Information filters up through the command, as the Sheriff doesn't believe he should micromanage investigations. "There are no written limits on discretion and no policies or guidelines for how investigations are supposed to be carried out—decision makers are expected to exercise discretion and common sense." In this case, the Sheriff's subordinates did what he expected of them: "Follow the evidence where it leads, and work with the sheriff's partners to do the job the public expects."

He did not think there was a reason to decline to investigate, and he believes "no one would have paid attention to the investigation of the allegations of fraud if it had been about something else." But for the fact that

an expensive Batmobile was the subject of the investigation, the investigation and money spent were “unremarkable.”

B. Lt. Michael Leishman

Lt. Michael Leishman was interviewed on December 22, 2022.

Leishman has been in law enforcement in San Mateo County for about 15 years. He started his law enforcement career at the San Mateo Police Department and served five years in special investigations before moving on to the Sheriff's Department where he has been for the last 10 years. His tenure at the sheriff's department includes serving as an undercover agent for the narcotics task force and supervisor of the crime suppression unit. He is now Commander of the Narcotics Task Force, the Vehicle Theft and Recovery Task Force, and the Gang Intelligence Task Force.

There is no single way Leishman gets involved in investigations. The Sheriff may tell him there is a problem and to “figure it out,” or, perhaps, his direct supervisor, an assistant Sheriff, may tell him to solve a problem. Leishman reacts to community trends, anonymous tips, and informant tips. He also receives information from deputies on patrol. He finds the cases challenging, but he considers himself a “problem solver in the community.”

Leishman got involved in this investigation because the Sheriff asked him to look into “a case of interest where someone may be the victim of a crime.” The case was referred to him because the crime involved fraud in the purchase of a car and Leishman is the Commander of the Vehicle Theft and Recovery Task Force. The Sheriff shared the details of the case and directed Leishman to call Anagnostou for more information.

Leishman met with Anagnostou and his lawyer, Samara, to learn more about the case and reviewed the Atherton Police Department's report. After meeting with Anagnostou, he believed there was “something to his

complaint.” Samara and the private investigator working for Anagnostou provided additional documentation which included the contract and an addendum for the purchase of the car, copies of email and text correspondence between Anagnostou and Racop, photos documenting the production of the car, bank documents regarding wire transfers for payment of the car, and documents of a civil case for fraud filed in San Mateo County Superior Court by Anagnostou against Racop.

When he began his investigation, Leishman was aware that the District Attorney’s office declined to prosecute the case. He spoke to the Deputy District Attorney assigned to the case, Marie McLaughlin, in late 2021 but does not recall the specifics of the conversation. He does recall that they came to an understanding that he would continue the investigation and work with McLaughlin. Leishman thought there was more to the case than had been presented to the District Attorney’s office and thought if he “wrote some affidavits and looked into emails communication,” the facts would support a case against Racop for criminal fraud. Leishman believed the fraud occurred when Anagnostou wired \$40,000 to Racop and the car built for Anagnostou was sold to someone else. Thus, to Leishman’s thinking, Anagnostou paid for the Batmobile in full, there was a car, and Leishman was tasked to find it.

He proceeded with the investigation in consultation with the District Attorney. His objective was to gather sufficient evidence to support search warrants for Fiberglass Freaks, Racop’s financial information and communications, and an arrest warrant for Racop. Leishman was in contact with Anagnostou and his lawyer to update them on his progress. Leishman did not see himself as pursuing Anagnostou’s personal agenda or his own agenda. Rather, he thought he was pursuing a righteous case of fraud. He

approached the investigation as he would any other, creating investigative binders and the affidavits to support the search warrants. He didn't want to go down a rabbit hole, so he relied on the continued involvement of the District Attorney's office to build the case. The investigation was narrowly focused on the last \$40,000 wire transfer to Racop and his subsequent actions. Had the District Attorney told Leishman he should not pursue the case further, he wouldn't have.

Leishman did not interview Racop in advance of getting the warrants. He had information of Racop's version of events from Anagnostou's private investigator. He also had documentation that Racop tried to delete emails, suggesting he was trying to cover up something. Leishman did not want to tip Racop off about the investigation because he thought Racop might destroy important evidence.

The investigation and securing warrants took about six months. Once Leishman had the warrants, he made plans for himself and three deputies to travel to Indiana to execute the warrants. He did not expressly request permission to go to Indiana, but his supervisor, Duri, and the Sheriff were aware of his plans and agreed he should go. Before leaving, Leishman contacted Campbell, a local law enforcement officer in Logansport to assist while they were in Indiana. Campbell served as their point of contact and liaison to local law enforcement.

Leishman and company flew to Indianapolis then drove one-and-a-half hours to Logansport, a very small, rural town. Leishman had to obtain the search warrant from the local court, but court resources were scarce, so it took two days for the court to act. The San Mateo deputies attracted attention; in the local diner, everyone knew who they were and why they were there. Ordinarily, Leishman would conduct a threat assessment and

develop a strategy for the search by surveilling the place to be searched. However, once they arrived, news travelled fast and they lost the element of surprise, making surveillance moot.

Campbell accompanied Leishman and the three deputies to Fiberglass Freaks and waited for Racop; everyone was in uniform with identifying badges. When Racop didn't show, Campbell called him and asked him to come to Fiberglass Freaks. Racop arrived with a woman and a man. Leishman immediately separated Racop from his two passengers, as Racop was the subject of the arrest warrant and the deputies were searching his place of business. The male passenger was one of Racop's employees, and the woman was Racop's daughter. Both were informed they could stay or leave because they were not involved with the search. Racop's employee left; Racop's daughter stayed, but she was separated from Racop during the search. Leishman introduced himself to Racop and gave him copies of the warrants. Leishman explained why he was there and asked for Racop's cooperation. He did not interview Racop, but Racop seemed nervous and talked throughout the search.

Leishman and the other deputies did a preliminary search of the large warehouse to be sure there were no employees at work. Racop asked if he could call his brother who is also his lawyer, and Leishman said yes.⁵ Shortly thereafter, Racop's brother, Scott Racop, called and Leishman informed him they were there to search the premises and would not interview Racop. Racop offered to show them the car No. 28. When they went into the warehouse, Racop told Leishman that any of the cars on the premises could be No. 28. There were five or six cars on the premises but all in the early stages of production. Leishman was taken aback by this both because he

⁵ Racop's counsel was contacted by his daughter who in turn called Leishman

expected to find a nearly completed car and by Racop's representation that any of the cars in the warehouse could be Anagnostou's.

In addition to searching for car No. 28, Leishman searched for documents related to the contract between Anagnostou and Racop. They found in Racop's files a couple documents that fit the description in the warrant and completed the search.

After the search was completed, Leishman left a receipt for the items he seized, and he returned to the Logansport Police Department. During the course of the search, Racop disclosed that he had heart problems. Once Leishman learned Racop had heart problems, he made the decision not to extradite him to California. He was concerned for Racop's health and did not want to risk his having a heart attack en route to California. Once the group arrived at the Logansport Police Department, Racop was formally taken into custody and released after approximately an hour. He was told his counsel would have to arrange with the California court for his appearance at an arraignment.

Leishman and the deputies returned to California the following day. He called Duri and the Sheriff and told them about the trip and that car No. 28 was not there. He also explained that he did not extradite Racop because of his heart problems and Racop's lawyer would arrange for his appearance at arraignment. He followed up with Racop's banks to ensure Racop's accounts would be frozen per the warrant. Leishman called Samar to inform him he'd returned from Indiana and that they had not recovered a car. He informed Samar that the District Attorney's office would proceed with the prosecution. After wrapping up the Indiana trip, Leishman went on vacation.

While Leishman was on vacation, the Channel 7 news story about the Batmobile investigation and the trip to Indiana broke. His phone was

“blowing up,” and he was frustrated by the fact that “the case was being tried in the press.” He thought the stories were inaccurate and that Noyes was “unnecessarily sensationalizing an ordinary fraud case.” Leishman believed the case “supported a criminal prosecution for fraud and that the press wasn’t focused on any of the underlying facts.”

Leishman returned from vacation at the end of July and finalized his investigative report. Before completing the report, he called Danny Glasser, the second customer to whom Leishman thought Racop had sold car No. 28. Leishman didn’t call Glasser before going to Indiana because he didn’t want Glasser to call Racop about the investigation. Glasser told Leishman that “[I] did buy it” but that he understood he was buying “a build” or a “position for the car”. He said he planned to go to Indiana to check on the progress of the build later on to check on the progress of the car.

After speaking with Glasser, Leishman had a clearer understanding of Racop’s business model; Racop entered into contracts for the sale of the Batmobiles without committing to sell the customer a particular car and without disclosing that to the customer at the signing of the contract. The customer might receive an identifying number for a car Racop initially intends to sell the customer, but the customer’s place in line may change depending upon any number of circumstances. Leishman came to understand that Anagnostou’s place in line, so to speak, changed because of contract disputes with Racop and No. 28 was somewhat random as it was not attached a few documents to a physical car. Leishman remained convinced it was fraud.

After completing his report and turning over the investigation to the District Attorney’s office, Leishman received a call from Assistant District Attorney Gallagher, his new point of contact in the office. Gallagher

informed Leishman that Racop's arraignment was postponed so that the District Attorney's office could investigate the case further. Gallagher's next call to Leishman was to inform him that the District Attorney's office was dismissing the complaint. Once the complaint was dismissed, Leishman worked to get the bank warrants withdrawn. His work was done.

Leishman considers this case a routine investigation for the Sheriff's office which can "happen for anyone in San Mateo County." He thought it was his job to complete the investigation no matter who it was for and where it went. He was only "motivated by the facts of the case." When the Sheriff said there was a problem and Leishman started the investigation, he was "obligated to follow through." Leishman thought the \$40,000 payment to Racop was wire fraud, and he was going to find answers. He did not think he was doing the personal bidding of Anagnostou.

The policy decisions regarding whose case is investigated are "above [Leishman's] pay grade, and it is not his job to second guess those decisions." He considers the cost of investigations, but he didn't think the money spent on this investigation was out of line with other investigations. In his view, this case was "selected and magnified" because the idea of a wealthy man purchasing a Batmobile captured everyone's imagination.

C. Mark Racop

Mark Racop, owner of Fiberglass Freaks, was interviewed on November 4, 2022.

Racop is 57 years old and resides in Logansport, Indiana. He has been married for 35 years, has a daughter in college, and has been a Batman fan since he was two years old. His parents divorced when he was seven, and Adam West's 1966 Batman was a "surrogate father," as his own father was not around very much.

Racop saw his first full-scale Batmobile in 1976 when he was 11 and made two Batman fan films in high school. He learned to make Batmobiles through trial and error, starting at age 17. Racop built his first replica Batmobile in college at Ball State University where he majored in filmmaking. The replica was built as a prop for a Batman fan film. Other than making replica Batmobiles, he films a variety of things, including documentaries, commercials, weddings, and depositions. In addition to his businesses, he is a minister at a local church.

He started making full scale replica Batmobiles in 2003, under the name Fiber Freaks (also referred to as Fiberglass Freaks). He is the only person licensed by DC Comics to make replica 1966 Batmobiles for public purchase. He became licensed when a representative of DC Comics pretending to be a customer came to his shop. The representative said he liked the quality of the cars Racop produced and that he would be a good ambassador for the brand. He has no other license or business relationship with DC Comics other than building replica 1966 Batmobiles and making licensed parts for Batmobile enthusiasts. Racop plans to build a Batman Museum in downtown Logansport.

Racop averages five to seven employees working in the shop. He has had as many as 22 working at a time, but that is rare. The cars are built in stages, and the number of employees needed depends upon the stage of production. An upholsterer may work for a couple of weeks, while electricians work for about a month. It takes approximately 3000 hours to build a car, which Racop describes as "50 percent art and 50 percent science." When working with fiberglass, the length of time it takes to complete a car depends upon the temperature and humidity when it comes out of the mold; temperature and humidity can increase completion time by two to three

months. He had six cars in production at the time of the interview, but usually only had four in production at one time. He has two adjacent buildings where the cars are produced so the workers are not crowded. Customers pay for the cars in six or eight payments during the production period.

The cars are completely hand made using a Batmobile mold built by Racop. He first sprays mold release on the mold, followed by a coat of spray gel which constitutes the outside layer of the car. He strengthens that base with layers of fiberglass, sanding and painting after each layer. Racop uses “donor cars” for their engines and chassis. He started out using a 1974 Monte Carlo as a “donor car,” but the chassis was too small. He then used Lincoln Town cars, which worked well, however, Racop now uses General Motors cars with custom-build chassis. Replica Batmobiles must all have the same exterior features to comply with the license from DC Comics. The paint jobs are identical, but buyers can order custom features for the interior.

Racop announced his retirement in 2020 and allowed five more orders. One reason he limited the list to five was that his father was sick and Racop needed to take care of him. Racop’s father died sometime after his retirement announcement. Racop has since continued to build cars beyond the five orders he filled when he announced his retirement. At this point, he is deciding whether he wants to sell the business, close it down, or maintain it but not work on the cars himself. The license with DC is granted only to him and is not transferable.

Racop has never actively advertised in the media. When he first started building cars, he made a video that he posted online. Now he has a website and Facebook page and takes cars to ComiCon conventions.

Racop met Anagnostou when Anagnostou contacted him about purchasing a car. In January 2017, Racop and Anagnostou entered into a contract for Racop to build a car for \$210,000; the estimated completion date was June 30, 2018. There are caveats in the contract that address third party delays. The car was not ready in June of 2018, but Anagnostou told Racop to “take all the time he needed so the car would be the best it could be.” Everything went well until December 2019 when Racop asked for an interim payment of \$20,000. Anagnostou said he would make the payment, but he did not. After Anagnostou did not make the payment as promised, Racop made the decision to change the “build order” for Anagnostou’s car which meant that Anagnostou’s car dropped to the bottom of the priority list.

During the eight months Anagnostou didn’t make a payment, he had very little communication with Racop except to ask when his car was going to be ready. Racop warned Anagnostou he was in danger of being in breach of contract. On August 24, 2020, Anagnostou paid Racop \$40,000, the balance owed on the contract. That final payment did not include late payment fees or storage fees.⁶ After making the final payment, Anagnostou called Racop, asking when his car would be completed. Racop told him he’d gone to the back of the line because Anagnostou had disappeared for eight months. Racop describes Anagnostou’s reaction as “livid.” Once Racop told Anagnostou he’d changed the build order, the tone of their communication changed. Racop thought Anagnostou’s divorce and the death of his mother may have affected his attitude as well.

Racop “do[es]n’t change the build order frequently or lightly.” He sometimes finds it necessary if a customer requests additional features as the

⁶ Storage fees are assessed because once Racop starts production of a car for a customer, the car requires storage.

car is being built or a supplier is delayed in sending parts. He also changes the build order if he is in a contract dispute with a buyer or a customer fails to make a payment. When a customer contracts for the production of a car, the customer is assigned a number which represents a place on a list, not a physical car. The number assigned to a customer is only attached to a completed car immediately before a VIN is assigned and Racop transfers title to customer. The number a customer receives when they enter into the contract is interchangeable unless there are custom interior features. This has been Racop's policy for eight or ten years.

Anagnostou's attorney Samara came to Logansport to see Anagnostou's car. Racop showed him several cars in production, identifying one which he told Samara "could be Anagnostou's car." It was 33 percent to 50 percent complete (molded, chassis attached, and engine installed). Samara called Anagnostou while he was at Fiberglass Freaks and reported that "there was no car." This turn of events infuriated Anagnostou. Racop overheard Anagnostou threaten to "destroy him and his business." Samara told him that he was "likely to be arrested for fraud."

Racop believes he may have been visited by an investigator sent by Anagnostou in June or July 2021, but he isn't certain. Campbell, a local sheriff's deputy, came unannounced with a person he identified as a friend of his from out of town for a tour of the facility. Racop didn't think anything of it because his facility is a local tourist attraction. It isn't unusual for him to conduct four to five tours a week. Tours are free, and after a tour, visitors can go to the gift shop to buy hats, T shirts, and other souvenir items. The only reason Racop thought the visit was odd was that Campbell was in uniform. He does not recall whether this incident was before Samara's visit or after.

Racop did not know that, at that time, a civil lawsuit had already been filed in California. After Samara's visit, Racop heard from the Atherton police requesting an interview. He referred them to his local attorney. The Logansport Police Department also called him about the criminal investigation in California. Thereafter, he was informed that Atherton Police determined there would be no criminal action. On September 14, 2021, Racop received a letter from San Mateo County Deputy District Attorney McLaughlin that criminal charges would not be filed. He was surprised that law enforcement in California considered filing a criminal action. During this time, he was served with the civil lawsuit and hired counsel to represent him. Even though Anagnostou's car was paid-in-full, Racop's attorney advised Racop that as long as there was a pending legal action, he should stop working on the car.

The civil lawsuit was dismissed, but Racop expected Anagnostou to file a civil suit in Indiana, which Anagnostou did not. In fact, nothing happened until July 2022 when Leishman and three deputies came to search his facility.

On July 19, 2022, Racop received a call from Campbell who told him to go to his shop right away. He did so, and when he arrived, there were four men he did not recognize with Campbell in the shop. The four men wore what looked like beachwear and did not identify themselves as San Mateo County Sheriff's Deputies for 15 or 20 minutes. The workers were ordered to leave, and Racop was told where he could and couldn't go in the building. When Racop learned the men were from San Mateo County, he realized this visit was about Anagnostou. He asked them why they were there, and they told him they were going to arrest him. Leishman did all the talking and didn't want to hear anything Racop had to say. They didn't give him any

paperwork when they started the search, but Racop was told they had a warrant to search the premises. Racop asked if he should have his attorney present, and Leishman said he could be present. Racop's daughter Abby called his attorney, but once the attorney was on the phone, Leishman wouldn't let Racop talk to him. Racop was shocked that Campbell wouldn't step in and tell Leishman and his team to stop the "harassment, bullying, and intimidation."

Racop knew that the reason for the search was that Leishman didn't think Anagnostou's car existed, so Racop offered to show the car earmarked for Anagnostou. He took the entourage into the production area and showed them a car mounted to its chassis with doors, hood, and trunk in place and on the main block for sanding; Racop said, "This is Sam's car." Leishman didn't believe him and replied, "No, it isn't." Leishman constantly was on the phone during the search, and Racop was not sure to whom Leishman was talking. Racop thought it could be Anagnostou or his attorney, but he didn't know. After seeing the car that Racop identified as Anagnostou's, Leishman disappeared with Campbell. When they came back in, Leishman told Racop that he was arresting him for fraud and misuse of funds because he sold the same car to two different people. Racop explained that selling the same car to two people was impossible because the cars belong to him until the cars are assigned VINs and title passes to the customer, which had not occurred with either Anagnostou or Glasser. This information upset Leishman; he told Racop he was under arrest and read him his Miranda rights.

Leishman told Racop he was going to be extradited to California. After Racop's rights were read to him, he was placed in the front seat of a police car and transported to the Logansport jail. When Racop left his business, he

thought he would be taken directly to California. Racop described the search as “something out of a Hollywood movie.”

During the search of Racop’s office, Leishman confiscated Racop’s files for both Anagnostou and Glasser. Racop and his attorney thought this was odd because Leishman already had all of the information in the Anagnostou file. Additionally, looking at the files would not tell the whole story of the sale or the priority system which put Anagnostou at the bottom of the list and pushed Glasser up in line.

Leishman told Racop that \$40,000 in his bank account would be frozen. However, it turned out that his entire balance of \$79,000 was frozen. Racop’s funds remained frozen for the next four weeks. Racop describes those four weeks as “the longest of his life.” He didn’t have access to his funds for payroll, ongoing work on the building, or parts for cars. Freezing his assets interfered with his making progress on cars for eight other customers.

When Racop, Leishman, and the San Mateo deputies arrived at the police station, Racop was placed in an interrogation room with two of the San Mateo deputies, but no one asked him questions. Racop didn’t think he was really arrested: From his perspective, he wasn’t taken into custody, didn’t wear an orange jump suit, and his mug shot wasn’t taken. Leishman entered and told Racop he would not be extradited to California and that he would be released. Leishman gave him partial copies of three warrants: Two were bank warrants, and the third was for his emails. Racop also received a copy of the Cass County warrant.

After Racop was released, he hired an attorney who arranged for him to “turn himself in in California.” His attorney obtained copies of the warrants issued in California. The affidavits in support of the warrants were completely inaccurate and based on the civil suit filed by Anagnostou. The

remaining facts were just speculation. Racop appeared remotely before a California judge who continued his arraignment to August 19. After the remote appearance, Racop was told he would have to appear in person in California for the arraignment. Racop purchased tickets to California but was afraid his bond would be revoked and he would be taken into custody once he appeared in California.

After the search Racop was in complete despair and felt he had been railroaded. He couldn't figure out how Anagnostou had gotten San Mateo deputies to come to Logansport for a civil matter. Further, Racop wanted to know how a case that had been investigated and rejected for criminal prosecution was then reinvestigated and filed by the District Attorney. Racop resigned himself to going to court in San Mateo County and not having a fair trial. The following week, he was contacted by Noyes of ABC Channel 7 News in California. He was reluctant to talk to the press, but Noyes called him repeatedly, mentioning details about the "raid." Racop agreed to talk to Noyes.

Noyes told Racop that his source of information was a whistleblower inside the sheriff's office. Noyes said that Anagnostou went to the Sheriff for "a personal favor to go after Racop to take him down." He also said the warrants were written by three different judges, "one of whom owed the Sheriff a favor," and that Anagnostou contributed to the campaigns of both the Sheriff and District Attorney. In short, Noyes painted a picture of a conspiracy among government officials to take Racop down at the behest of Anagnostou. Noyes then said there were "three more whistleblowers who corroborated first person's story." Racop felt vindicated and stronger about his defense, and he believed he would not be convicted if he had to go to court.

Racop did not regain access to his bank accounts until August 16, 2022. The San Mateo County warrants were sealed, but Noyes obtained a copy of the affidavit supporting the bank warrants, in which Leishman represented his current position as “Commander of the Narcotics Task Force.” Racop believed Leishman intentionally left out any mention of the Vehicle Theft Task Force to give the impression the warrant was about narcotics.⁷ Noyes told Racop that he spoke to someone at Racop’s bank who told him that “the warrant was about narcotics.” Racop began to wonder if the San Mateo deputies were in Logansport about narcotics and not the replica Batmobile he was building for Anagnostou.

After the initial hearing, Leishman started calling Racop’s customers. Glasser called and told Racop that Leishman called him, asking about his car. Glasser said Leishman referred to Anagnostou as “the guy he worked for.” Glasser said he asked Leishman whether he was working directly for Anagnostou, and Leishman corrected himself to say, “the guy who was wronged in all of this.” Glasser told Racop that Leishman asked him whether “he had his car,” and Glasser told Leishman that he did not.

When asked when Anagnostou’s car would be delivered, Racop replied that his attorney would have to speak to Anagnostou’s attorney to find out whether Anagnostou wanted a completed car or his money back. Racop doubts Anagnostou wants the car, considering that Anagnostou tried to destroy his business. If Anagnostou wants his money back, Racop would refund the purchase price minus the non-refundable deposit, storage fees,

⁷ The affidavit in support of the warrant alleged that Racop committed Embezzlement of Property and Theft Under False Pretenses. In the affidavit, Leishman described his history with the Sheriff’s Department as follows: “In my 15 years in law enforcement I have been assigned of the Corrections Division as deputy and supervisor, the Patrol Division as a deputy and supervisor, the Narcotic Task Force as a Special Agent, the Special Investigations Bureau as a Detective, the Investigations Division as a Detective Sergeant and I now serve as the Commander of the San Mateo County Narcotics Task Force.”

late fees, and attorney's fees; Racop doesn't think Anagnostou will be willing to accept a refund minus the fees. Racop wants to complete Anagnostou's car and have a happy customer, but he doesn't anticipate that happening. The car is still only 30 percent to 35 percent complete. With the delays Anagnostou has caused, Racop is about three to three-and-half years from completing Anagnostou's car.

From Racop's perspective, after August 2020, nothing changed that warranted the investigation, warrants, criminal filing, or his arrest. Racop wants to complete the car and may be willing to waive the fees owed if he and Anagnostou can come to an agreement.

D. Sean Gallagher

Chief Deputy District Attorney Sean Gallagher was interviewed for this report on November 1, 2022.

Gallagher was not aware of the fraud case filed against Racop until the Sheriff's deputies returned from Indiana. The case was assigned routinely which does not include review by the executive staff. Case submission to the District Attorney's office is all electronic. The District Attorney's office receives a complaint, then redirects the complaint to a clerk who sorts cases into designated categories. From there, the clerk refers the complaint to the unit assigned to review cases of that type and decide whether a complaint will be filed.

On August 31, 2021, the District Attorney's office received the Atherton Police Department's report on Anagnostou's complaint. Because the report was about a complaint of felony fraud, the file was referred to the felony unit headed by Senior Deputy District Attorney McLaughlin. On September 1, 2021, McLaughlin rejected the file for prosecution but requested for further

information. At some point, she received the additional information but rejected the file for prosecution again.

In November 2021, Leishman contacted Crystal Chau in the Deputy District Attorney's Consumer Environmental section, asking whether anything that occurred with the contract could fall within the mission of that section; there was not. Around the same time, Leishman contacted McLaughlin and she noted that the case had been rejected by the office. Leishman said he had received information beyond what was in the Atherton police report and that he would continue to investigate the case. The District Attorney's office was not involved in the investigation conducted by the Sheriff's office until May 2022, when the Sheriff presented the case to the District Attorney for filing consideration.

Gallagher was not aware there was an investigation by the Sheriff's office into the purchase of the Batmobile nor did he know about the trip to Indiana until the District Attorney was contacted by Noyes on July 22, 2022. McLaughlin told Gallagher that Channel 7 News wanted to interview someone about the case—up to that point, executive staff had not been involved.

Gallagher saw the “hook” about the Batmobile and the resulting media attention and realized the executive level of the District Attorney's office would need to get involved. He asked McLaughlin for a summary of the case which revealed the case had gone through the usual process and McLaughlin felt comfortable filing the criminal complaint. Gallagher was not acquainted with Anagnostou but knew of him because Anagnostou owns commercial property near the courthouse and advertised his real estate business. Gallagher was leaving for a weeklong vacation and couldn't dive deeper into the case at that time.

While Gallagher was on vacation, the news story was extensively broadcasted. Given the attention the case was getting in the press and the fact that the District Attorney's office had filed the criminal complaint, Gallagher knew he and District Attorney Wagstaffe would have to craft a public response to the news stories and the public's response to them.

When Gallagher returned from vacation, he organized a meeting with staff involved in the case. Before the meeting, Gallagher reviewed the case file which included the Atherton police report and attachments and Leishman's report and attachments. Gallagher's first impression was that the actions of both Anagnostou and Racop made little sense. The contract was very poorly written. It was executed in 2017 with a delivery date of 2018, but the delay couldn't be explained by the pandemic. The documents in the file didn't tell the whole story but did reveal the case was narrowly focused on a single wire transaction for \$40,000 made at the end of the parties' communications. It appeared that Anagnostou was in arrears on the contract payments and Racop solicited the \$40,000 payment. It also appeared that four days before Anagnostou made the \$40,000 payment, Racop struck a deal with a second customer, Glasser, for the car intended for Anagnostou. Gallagher wasn't sure who had the car or whether there was a car. He was aware that Anagnostou's investigator travelled to Indiana to see if there was a car near completion and didn't find one—there was no apparent explanation for the discrepancy. As messy as the relationship was between the contracting parties, the case appeared to be a classic civil dispute. However, Gallagher did not discount the evidence pointing to Racop selling "the car out the back door" before receiving the \$40,000 payment from Anagnostou. He thought there was colorable case for criminal fraud.

It is not unusual for the District Attorney's office to reject a case and tell a complainant that if they come up with more evidence or continue the investigation, the office will review the case for sufficiency again. The District Attorney does not have authority over any other department or governmental body to decide what gets investigated and what doesn't. Gallagher was not in a position to discuss why Leishman continued working on the case. The District Attorney's office always has the ability to rethink the case after it is filed, play devil's advocate, and look at the case with a critical eye.

On August 4 or 5, 2022, Gallagher, Wagstaffe, McLaughlin, and a senior deputy, Morris Maya (Maya), met to discuss the case. McLaughlin was asked questions about her work on the case and analyzed it from broader perspective. More specifically, they considered how potential jurors might look at the evidence, what defenses would be offered, and how the trial might play out. At the end of the discussion, McLaughlin was asked to contact Leishman, ask him for additional evidence, and ask him respond to additional questions. One of the questions Gallagher wanted answered was whether customer No. 2 (Glasser) received Anagnostou's car. Leishman contacted the Glasser and learned that he hadn't received a car. This fact was the major consideration in making the decision whether to continue prosecuting the case. To this point, it was assumed that there was a single car that had been sold to both Anagnostou and Glasser and that Glasser had it. However, that was not the case. The prosecutor would not be able to show the jury a picture of the car and tell them that Racop accepted the full price for the car under the contract but sold it to Glasser instead. The prosecutor would have to rely on evidence of the parties' messy contractual relationship and Racop's byzantine business model to make the criminal case.

Gallagher appreciated that the pitfalls of the case were clearer in hindsight. He acknowledged that the decision to file after having rejected the case would have benefitted from a more robust and critical analysis higher up the office hierarchy than was had. The warrants were supported by evidence establishing probable cause, and it could be argued that the basic elements of fraud were objectively met. The case they would have to take to trial was a different story. The evidence that the parties were in a messy contractual relationship over a \$210,000 replica Batmobile might be a hard sell to a jury. Also, considerable time and resources had been spent forcing the defendant to come to California to face criminal fraud. After a hard second look by more seasoned staff, Gallagher, Wagstaffe, and Morris Maya, a senior deputy, the District Attorney's office concluded that a jury was not likely to convict and made the decision to dismiss the case.

E. District Attorney Stephen Wagstaffe

Stephen Wagstaffe, District Attorney for San Mateo County, was interviewed on December 1, 2022.

District Attorney Wagstaffe learned of what had become the "Batmobile" case in late July, when he was contacted by Noyes for an interview. Wagstaffe promised Noyes someone from his office would respond the following Monday. He asked Gallagher, his second on command, to respond on his behalf because Wagstaffe was leaving for a family vacation. Gallagher gave him a thumbnail description of what was going on.

Noyes reached Wagstaffe just as he was returning from vacation, and Wagstaffe agreed to be interviewed after he had a chance to meet with his staff. Wagstaffe wanted an opportunity to understand the case and the office's role in it before making a statement. Wagstaffe met with Gallagher and McLaughlin and requested that they "tell him everything about the case

“from A to Z.” Wagstaffe asked: “What are we doing in the middle of it, why isn’t this a civil case, why did we decide it was a criminal case, why did the office approve the warrants and why was a criminal complaint filed?” After Gallagher and McLaughlin briefed Wagstaffe on the details of the case and answered his questions, he was satisfied that the foundation of the case met the applicable legal standards and there were no ethical violations.

Although satisfied no ethical violations were involved in the handling of the case, Wagstaffe thought there was a lot more they needed to learn before deciding to continue with the prosecution. By then, there was a court date and Wagstaffe had seen the interview Noyes conducted with Racop. He delegated to Gallagher the responsibility for the follow-up investigation. The case had moved beyond an ordinary prosecution into the political arena, and allegations against the sheriff were being made. Wagstaffe was focused on getting facts so the office would be prepared to respond appropriately.

Gallagher and McLaughlin made 12 separate requests for evidence and answers to questions to find out where the money went, whether there was a completed car, and, if so, did the “customer in referring to Glasser” have it. Wagstaffe knew Anagnostou and/or his attorney had gone to Indiana to see if there was a car, and Wagstaffe wanted them interviewed. Wagstaffe wanted a complete picture before he made decision about whether the case belonged in the criminal system. The two questions he needed to answer to make that decision were: “Is there evidence to prove the case and can a prosecutor convince 12 jurors to convict?” The latter consideration was the most important.

Wagstaffe knew Racop had heart problems and would try to paint a picture of a victimized businessman in poor health. At the same time, Wagstaffe received calls from people Indiana who criticized Racop, calling

Racop a cheat and scumbag. In the final analysis, Wagstaffe became convinced that a jury would not convict Racop of a crime and would send the message that the parties should sue each other in civil court.

Wagstaffe also thought there hadn't been enough consideration given to the fact that Anagnostou had filed a civil complaint before approaching the sheriff's office about investigating Racop for criminal violations. There is a general philosophy in the District Attorney's office that if a party files in civil court to resolve a business dispute and the case is not successful, they cannot use the District Attorney as a tool to go after the person criminally. There are exceptions, but they are rare and involve egregious acts by the perpetrator. That philosophy was drilled into Wagstaffe by his predecessors, and he thinks it is a good policy.

The "Batmobile" case fell into the category of cases that should have remained in civil court. The focus of the warrants and criminal case was the \$40,000 transaction only, not the entire contractual relationship, but Wagstaffe thought a jury would not find the facts convincing enough to convict. Wagstaffe thought the jury would think that Anagnostou had pursued a civil case that didn't work out so Anagnostou pushed for criminal prosecution. Wagstaffe acknowledged the fact that Anagnostou's dissatisfaction with the outcome of his civil case likely was his motivation for pursuing criminal investigation which wasn't taken into consideration as much as it should have before the decision to file was made. Nonetheless, that aspect of the case came into sharper focus as they learned more facts about the Anagnostou's and Racop's relationship.

Wagstaffe was asked, "who gets the access to criminal justice system when they feel they have been a victim of a crime?" He replied, "everyone in the county." Wagstaffe frequently receives personal calls from people

reporting crimes. The key for him is that once he receives a complaint and asks his staff to follow up, he never gets involved again. Wagstaffe tries to convey to all citizens that they are deserving of access to the system.

As he reconsidered the case, Wagstaffe was conscious of the facts that it had political ramifications and that the Sheriff was being criticized for that office's role in the case. Neither the politics nor the public opinion of the investigation influenced Wagstaffe's decision itself, but both were factors in how he delivered the message. He did not think justice called for the case being in the criminal system. When asked whether the time effort and cost in extraditing Racop from Indiana for a fraud trial were part of the decision to dismiss, Wagstaffe said they were. It is the District Attorney's policy not to put an extraditable warrant into the law enforcement data base unless they are confident prosecution will win a state prison sentence.

When asked if he would have made the decision to file a criminal case with the same information presented to his prosecutors after rejecting it initially, Wagstaffe replied that he would not have filed the case. The case hardly changed from the original case that the Atherton Police Department referred to the second case which was filed. There was more information, but at its core, the case was a business dispute. Wagstaffe thought that adequate consideration was not given to what a jury would do with the case. Trying a 60 year old with heart problems over performance under a contract for the sale of a \$200,000 Batmobile was not going to be viewed favorably a San Mateo County jury.

Wagstaffe acknowledged that he was looking at the case in hindsight but that it looked different to the experienced prosecutors who were making decisions in real time.

The decision to dismiss was based in part on whether going forward with the case would inspire trust and confidence of San Mateo County residents in the District Attorney's office. By the time Wagstaffe needed to make a decision about filing, it had already become a high-profile case and the focus of public attention. Pursuing the case further was not consonant with the community's values. Values vary from jurisdiction to jurisdiction, and public institutions have to respond to the constituency their serve, although there is room for different opinions about how tax dollars are spent. Wagstaffe is a lifetime resident in San Mateo County and believes he has his finger on the pulse of the community. He didn't think pursuing the case was something on which the constituents in San Mateo County wanted the District Attorney's office to spend tax dollars. He believes impact counts and the question, "Are important rights of the defendant be vindicated?" must be answered, "Yes," when making the decision to move forward with a case. In this instance, the Anagnostou case was only questionably a criminal matter, and, as he demonstrated by filing in civil court, Anagnostou has resources and options to resolve the dispute. The core of the prosecutorial function isn't just to meet the law school elements but to exercise judgment on behalf of and in the best interest of the community.

By dismissing the case, Wagstaffe "stopped the bleeding"; he thinks his office exercised judgment in the best interest of the community.

VIII. Conclusion

This investigation was prompted by the public's response to decisions made by public officials in San Mateo County and the County Board of Supervisors' desire for an accurate factual record. This report does not contain any legal conclusions or opinions about civil or criminal liability.

Liability notwithstanding, examination of facts surrounding the county officials' decisions offers an opportunity to examine their impact on the public's trust and confidence in the officials and the institutions they lead.

Consideration should be given to the following:

Access to Power

The Sheriff's admission that he directly responds to the concerns of people he knows and reroutes the concerns of those he not, denies equal access and treatment to the San Mateo County public as a whole. The fact that anyone in the county can lodge a complaint with the sheriff's office does not level the playing field.

Appearance of Conflicts of Interest

The facts do not suggest a conflict of interest for either the Sheriff or District Attorney. The fact that a company in which Anagnostou has an interest contributed to both officials' political campaigns gives the appearance of a conflict and suggests favoritism in the treatment of his complaint. Delegating to qualified staff decision making involving campaign contributors eliminates the appearance of conflict or favoritism.

Screening Cases for Operational Integrity

The Sheriff referred this case to Leishman because Leishman is in charge of the Vehicle Theft Task Force and the complaint allegedly involved a stolen car. However, this case did not fall within the mission of the Vehicle Theft Task Force. The task force focuses on car theft rings, multi-jurisdictional operations, and understanding trends in car thefts. This case would have benefitted from an objective assessment before Leishman proceeded with an investigation. Having a process for screening investigations that fall outside the mission of a department or task force

might prompt closer scrutiny of the need for the investigation or suggest parameters for the scope of an investigation.

Risk/ Benefit Analysis

There was never a consideration by the Sheriff that ordering an investigation of a case that the District Attorney declined to prosecute might deserve closer scrutiny than was given here. The case attracted the attention of the press because Anagnostou is wealthy and the alleged theft was of a replica Batmobile. However, the bare facts are that significant resources of man hours and money were expended to understand a messy contractual relationship compounded by the byzantine business practices of one of the contractors. Whether the budget of a government department can absorb the cost of such an endeavor is immaterial. Ensuring the appropriate expenditure of public funds should always be of the highest priority.

Case Evaluation

The District Attorney's office reviewed the case in depth before deciding to dismiss the complaint. They considered how the jury might view the case, the evidence it would hear, and the likelihood of a conviction. While the amount of evidence available to conduct an evaluation may vary from case to case, the essential facts upon which this case was dismissed were known or could have been known before filing. The contract dispute was well documented, and whether Racop delivered a car just after Anagnostou made the final payment was knowable. Evaluation of the likelihood of success in trial could have occurred before the complaint was filed. Moreover, a more robust pre-filing review would serve as a dragnet for cases that would benefit from a review at a higher level, e.g., cases involving extradition for prosecution, felony cases filed after a previous rejection, or felony cases filed after a failed attempt in civil court.

Prosecutorial Discretion

Prosecutorial discretion is broad and can only be challenged in limited circumstances. The policies and best practices that applied to this case were in place but not communicated to the line deputies handling the case. That is, the policy that complainants like Anagnostou who choose to resolve their disputes in civil court can not avail themselves of the criminal justice system. This can be solved by training deputies to identify this type of conflict and exercise the discernment to either have the case reviewed by executive staff or not file it at all.

Community Values/ Trust and Confidence

Incorporating community values and instilling trust and confidence in public institutions should always be a high priority. Hindsight always offers a clearer vision of events, however, alignment and consistency with the community's best interest and its values should be a consideration at the outset of all investigations and prosecutions.

Respectfully submitted,
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