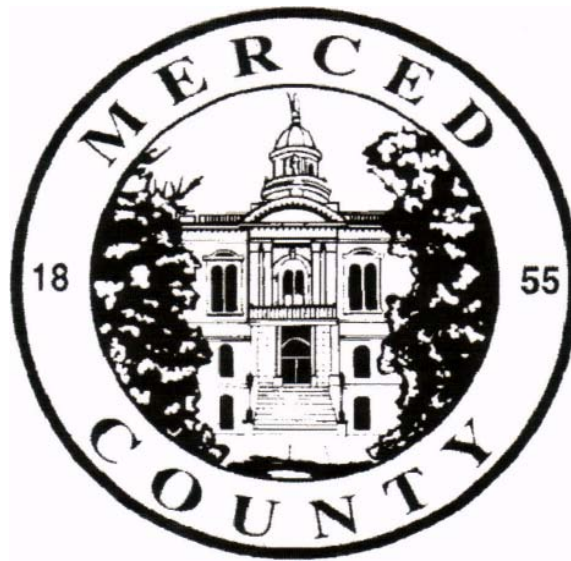


Merced County

GRAND JURY FINAL REPORT



2009-2010

**MERCED COUNTY GRAND JURY
2009-2010 FINAL REPORT**

Table of Contents

Transmittal Letter	iv
Merced County Grand Jury Members	v
Grand Jury Committee Members	vi
Mandated Annual Inspections	1
Iris Garrett Juvenile Justice Center.....	1
John Latorraca Correctional Center.....	2
Los Banos Police Department	5
Merced County Sheriff's Department Main Jail	7
Selected Inspections	9
Atwater Police Department	9
Gustine Police Department.....	11
Livingston Police Department.....	13
Merced Police Department.....	14
Complaints.....	15
Complaint 09-10-01.....	15
Complaint 09-10-02.....	15
Complaint 09-10-03.....	15
Complaint 09-10-04.....	16
Complaint 09-10-05.....	16
Complaint 09-10-06.....	16
Complaint 09-10-07.....	17
Complaint 09-10-08.....	20
Complaint 09-10-09.....	20
Complaint 09-10-10.....	20
Complaint 09-10-11.....	21
Complaint 09-10-12.....	21
Complaint 09-10-13.....	21
Complaint 09-10-14.....	22
Complaint 09-10-15.....	23

Complaint 09-10-16.....	25
Complaint 09-10-17.....	25
Complaint 09-10-18.....	25
Complaint 09-10-19.....	26
Complaint 09-10-20.....	26
Complaint 09-10-21.....	26
Complaint 09-10-22.....	27
Complaint 09-10-23.....	27
Complaint 09-10-24.....	27
Complaint 09-10-25.....	28
Complaint 09-10-26.....	28
Complaint 09-10-27.....	28
Responses to the 2008-2009 Final Report	29
City of Livingston.....	30
Merced County	38
Merced County Board of Supervisors	56
Merced County Office of Education	59



MERCED COUNTY GRAND JURY

PO Box 2034
Merced, California 95344
<http://www.co.merced.ca.us/grandjury>

June 15, 2010

The Honorable Donald Proietti
Presiding Judge of the Civil Grand Jury
Merced County Superior Court

Dear Judge Donald Proietti:

In accordance with California Penal Code Section 933, the 2009-2010 Merced County Civil Grand Jury presents the Final Report to the Court and the citizens of Merced County. This report cites the work of the members who have served on the Civil Grand Jury for Merced County for the past twelve months. These members have dedicated countless hours of hard work evaluating local government operations and making appropriate dispositions of citizen complaints.

The Grand Jury was accorded respect and a spirit of cooperation by nearly all officials and employees of Merced County government agencies. This cooperation of public employees and elected officials has enabled the Grand Jury to complete this report. The acceptance of the findings and the implementation of our recommendations will now be in the hands of the public agencies identified in the 2009-2010 Civil Grand Jury Report.

The Merced County Civil Grand Jury, as required by law, made mandated inspections of the jails and juvenile facility in Merced County. The jury visited Merced, Atwater, Los Banos, Dos Palos, Gustine, and Livingston Police Departments.

Of the twenty-seven complaints we received, the Grand Jury investigated seven, declined seventeen, and voted to defer three to the 2010-2011 Grand Jury.

I, as well as the other members of the 2009-2010 Civil Grand Jury, have been honored to have had the privilege and opportunity to serve the citizens of Merced County. It has been an educational, as well as, challenging, and rewarding experience.

Sincerely,

Linda Lee Roland
Foreperson for Merced County Civil Grand Jury

Merced County Grand Jury Members

*Linda Lee Roland, Foreperson
Gary Prine, Foreperson Pro Tem
Katie Luxon, Recording Secretary*

Evelyn Eagleton*

Barbara Ellington

Joe Frontella*

Russ Lowe

Katie Luxon

Nicole Madril

Richard Mercado

Jane Ornberg

Gary Prine

Babs Ratzlaff

Travis Richard Jr.

Linda Roland

Ray Sterling

Christiane Traub

Dennis Troxell

Douglas Widner

Bee Xiong

Shane Ross

Agustin Sandoval

Note:

**Grand Jurors reside in the following cities within the County of Merced:
Atwater, Hilmar, Livingston, Los Banos, Merced, and Winton**

***Unable to complete the full term**

Merced County Grand Jury Committees

*Linda Lee Roland, Foreperson
Gary Prine, Foreperson Pro Tem
Katie Luxon, Recording Secretary*

COMMITTEES

LAW, JUSTICE, AND PUBLIC SAFETY

Gary Prine, Chair
Barbara Ellington
Travis Richard, Jr.
Nicole Madril

AUDIT AND FINANCE

Babs Ratzlaff, Chair
Evelyn Eagleton*
Richard Mercado
Christiane Traub

COUNTY ADMINISTRATION/COUNTY SERVICES

Dennis Troxell, Chair
Joe Frontella*
Douglas Widner
Agustin Sandoval
Bee Xiong

HEALTH, EDUCATION, AND WELFARE

Jane Ornberg, Chair
Russ Lowe
Ray Sterling
Shane Ross

***Unable to complete the full term**

**Merced County Probation Department
Iris Garrett Juvenile Justice Center**

Mandated Annual Inspection

Introduction

On August 24, 2009, pursuant to Penal Code Section 919b, the Merced County Grand Jury visited the Merced County Juvenile Hall facility located at 2840 W. Sandy Mush Road, Merced. The purpose of the visit was to inspect the operation and methods of performing the duties of the County of Merced, Juvenile Hall.

We were met by Jeff Kettering, the assistant supervisor for the Merced County Probation Department. He gave a very informative tour of the complex.

The maximum capacity for this detention facility is 120 juveniles. During our visit the facility was housing 109, but Mr. Kettering indicated that this number fluctuates constantly. The week prior to our visit, one wing of the complex was totally vacant.

There is one staff member for every 10 inmates and there has never been an escape. The department has a computerized identification system serviced by a camera with facial recognition, as well as, fingerprints.

The inmates do not have television, but have access to a video library. The inmates also have a recreation area to play basketball and volleyball.

The medical needs of the inmates are serviced by a registered nurse on duty 24/7 and a mental health clinician, available 40 hours a week. A doctor visits the facility twice a week and there is an alcohol-substance abuse clinician on duty 40 hours a week.

Mr. Kettering stated that the facility meets A.D.A. requirements in that the double cells are wheelchair accessible and the showers are equipped with handicap bars for the disabled.

There is a juvenile court room located at the facility with Judge David Miranda assigned full time to service the Court.

Commendations

The Grand Jury has no recommendations and observed that Mr. Kettering and his staff are doing an excellent job.

John Latorraca Correctional Center

Mandated Annual Inspection

Introduction

The Merced County Grand Jury inspected the John Latorraca Correctional Center facilities located at 2584 W. Sandy Mush Road, Merced, on November 16, 2009. California Penal Code Section 919b mandates that the Grand Jury annually inspect correctional facilities within Merced County.

The Merced County Sheriff's Office, under the command of Sheriff Mark Pazin, is responsible for the operation of the facility. The site is under the direct supervision of Commander Joe Scott, who provided a power point presentation. A tour of the facility was conducted by Sergeant Salacup and Correctional Officer O'Brien.

Findings

Staffing at the jail continues to be a problem. The past Grand Jury Reports indicate that staffing continues to be at crisis levels, as it has for the past eight or more years. On average, the inmate population is 80% male and 20% female. A large percentage of the inmate population is charged with serious or violent crimes. Inmates are confined mostly to their dorms and are largely unsupervised there. As a consequence, one inmate soon becomes a de-facto leader in each dorm, with his own band of followers. In jail slang, the leader is called a "shot caller", because he dictates behavior among the other inmates. This type of environment increases the danger for more vulnerable inmates and beatings are frequent.

Individuals with severe mental health problems, who are beyond the control of the Mental Health Department, are housed within the jail until they can be transferred to a state facility or are released. This procedure adds more difficult responsibilities to an already overburdened staff.

During the 2008 Grand Jury inspection, members were informed that in order to maintain the required standards, overtime was utilized, and officers often worked 16-hour shifts. The reasoning was that it was cheaper to pay overtime than hire additional staff. Members of the Grand Jury were informed that the amount of overtime paid out became an issue and was partially resolved by hiring a number of part-time employees, who are paid by the hour and receive no benefits.

The daily jail population averages 650 inmates with an approximate housing and feeding cost of \$127 per day. The majority of this cost is paid from the County's general funds. The facility is currently staffed by two Commanders, 12 Sergeants, 82 full-time, and 15 part-time Correctional officers. Fourteen clerks are employed, as well as, one Food Service Supervisor and seven Food Service Workers.

Commander Scott reported that Merced County had 12,746 bookings per year, with the average daily jail population, due to the amount of daily bookings, of 1,123. Many of these bookings do

not result in an overnight stay in the Center. Commander Scott described an accelerated release program in which 73 inmates were screened and allowed to participate. As a result of that program 1,243 days were not served in jail. Commander Scott described an alternative sentencing program, Work in Lieu, where inmates pay a fee to participate. These inmates are screened and if they qualify are allowed to continue their outside employment; and support their families. The fees paid amounted to approximately \$316,026 which assists in the cost of housing other inmates.

The jail has inmate services and custodial programs to assist the inmates. These programs include the GED program, which was not currently available, and Drug Treatment Programs in which 50 inmates participate.

The facility maintains the classification unit comprised of one sergeant and four officers. This unit is necessary because of different gangs within the population. Each gang is identified by the color of clothing and must be kept segregated.

The 2008 Grand Jury Report indicated that a water filtration system was required because the water supply is high in arsenic and other minerals. However, the water filtration system is often in need of repair and bottled water is used for drinking water. Again this year, Commander Scott reported that the filtration system does not meet current state requirements, therefore, bottled water is provided at a cost of \$4,000 to \$5,000 per month. Plans for a larger, more efficient system is planned for the future when funding becomes available.

The facility maintains a transportation unit comprised of one sergeant, seven officers, and three part-time employees. The unit transports inmates from the Los Banos Jail to the Merced facilities. The unit also transports inmates to court hearings and mental health appointments; last year they transported 1,225 inmates to state prisons.

Past Grand Jury reports indicated that in December of 2007, the Merced County Sheriff's Department established a policy which made it difficult to strip search prisoners; now when a prisoner is booked, he or she must be allowed to change their clothes and shower in complete privacy. This policy creates a huge potential for concealed contraband to enter the facility. Other county and state facilities continue the practice of strip searching inmates as a matter of routine.

Due to current policy changes affecting overtime, Correctional Officers no longer are able to conduct searches of the dorms which were done periodically to collect contraband and make-shift weapons. The last search or shake down of the dorms was conducted about six months prior to the grand jury visit. Not having dorm searches tends to increase the danger to correctional officers and other inmates.

The Grand Jury members also inspected the kitchen area, where two hot meals and one cold meal are served daily. The kitchen also prepares meals for the main jail downtown and the Juvenile Hall facility which is nearby. This amounts to about 3,000 meals per day.

The facility also maintains a Correctional Core Academy which is run through Merced College and is taught at the center. The Academy trains the center's officers, as well as, other valley agency personnel.

The facility was built to house 564 inmates, but the population fluctuates; currently, averaging about 650 inmates. Some of the dorms are now fitted with triple-decker bunks to ease the overcrowding and more are anticipated in the future. Furthermore, there are still some inmates who must utilize a mattress on the floor under the double-decker bunks.

One Grand Jury member reported that the metal detector near the entrance was not being used and was reportedly not in operating condition.

Recommendations

Funding for adequate staffing and added building capacity must be sought by County Officials at every level to relieve the staffing and overcrowding crisis.

The Sheriff's administration should reconsider their allocation of overtime. While a School Resource Officer was paid more than \$42,000 in overtime to complete his duties and a Legal Advisor was paid more than \$25,000 in overtime to do research, the overtime necessary to complete dorm searches by the correctional officers was not made available.

The Sheriff's administration should also reconsider their policy prohibiting or severely limiting strip searches. Other county and state correctional facilities continue the strip searches as a matter of routine. Other agencies may be able to provide some assistance to the Merced Sheriff's Office in how they deal with the same issues that brought about this policy. After the Grand Jury visit, an article appeared in the Merced Sun Star describing how an inmate concealed a 5-inch weapon in his body cavity for three weeks. The weapon was later surgically removed with the cost of the medical procedure incurred by the County. The administration should make every effort in an attempt to make the facility safer for the correctional officers and inmates.

Commendations

The staff and supervisory personnel at the John Latorraca Correctional Center are again to be commended for their efforts under trying and dangerous conditions.

Los Banos Police Department and Jail

Mandated Annual Inspection

Introduction

On October 27, 2009, the Merced County Grand Jury inspected the City of Los Banos Police Department and Jail located at 945 5th Street, Los Banos. The inspection was mandated by Section 919b of the California Penal Code which requires a yearly inspection.

Grand Jury members were met at the facility by Commander Gary Breese. Commander Breese informed the Grand Jury members that the Los Banos Police Department is currently searching for a new Chief of Police. Retired Commander Knapp is acting as the interim Chief of Police, but is limited to the number of hours he may work. Commander Breese provided a thorough tour of the jail and the police department facilities.

Los Banos operates a Type I jail facility which allows the department to house no more than 20 inmates for up to 96 hours, excluding holidays. At the time of the Grand Jury's visit, there were no inmates being held in the facility. The California Highway Patrol, Dos Palos Police Department, California Department of Fish and Game, the Merced County Sheriff's Department, and the Gustine Police Department all use the Los Banos jail for booking purposes.

The jail is part of the police department facility and was designed according to the standards in effect at the time of its construction in 1969. As such, it no longer meets the criteria in effect today and cannot be modified to meet current construction standards. The jail has passed all required inspections, including those of the Health Department, Fire Department, and Juvenile Justice Agencies. There is one cell designed to hold inmates who may be in danger of injuring themselves. Due to its age, the materials used in the cells construction are no longer available, and repairs to the surfaces are difficult to accomplish, expensive, and only minimally satisfactory. There is a kitchen area where sandwiches and other snacks are prepared for inmates.

Los Banos officials will not hold violent or mentally disturbed detainees, who are considered unique inmates. These inmates are immediately transported to the appropriate Merced County facility in Merced. The Los Banos jail has demonstrated its efficient use of its facility by keeping a large number of inmates out of the County facilities. Generally, these inmates have been "cite and release" or "bailed out" detainees. When the facility nears capacity the Merced County Sheriff's Office transports them to County facilities.

Community Service Officers (CSOs) are used as jail monitors under the supervision of the on-duty sergeant. When a CSO is not available, the jail area is under constant surveillance by police dispatch personnel.

The Los Banos Police Department is authorized for 48 officers. However, due to the economy, its police force is now down to 38 full time officer positions.

Commander Breese stated that the Los Banos Police Department is pleased with the cooperation it receives from other Westside agencies and the Merced County Sheriff's Office.

Recommendations

The 2010-2011 Grand Jury should meet with the new incoming Los Banos Chief of Police during their tenure. The incoming Chief should be given time to settle into the new position before the Grand Jury visits.

Commendation

Commander Breese provided an informative tour and projects a positive presence and attitude. The Grand Jury also commends the Los Banos Police Department for providing services to other Westside Agencies.

Merced County Sheriff's Main Jail and Office

Mandated Annual Inspection

Introduction

The Merced County Grand Jury inspected the main Merced County Jail at 700 W. 22nd Street, Merced on September 15, 2009. This inspection is to be performed annually as prescribed by California Penal Code Section 919b.

Members of the Grand Jury met with officers Gina Saldana and Jeff Miller who conducted the tour. They provided a quick overview of the jail operations and a report of the jail's employment and equipment needs. They expressed a concern for the shortage of personnel at the outdated facility.

Findings

Upon inspecting the jail, we found the interior to have been completely repainted. Officer Gina Saldana, who used inmates to provide the labor, coordinated this job. All of the interior ceilings and walls had been scraped of peeling paint and mildew and repainted. The interior looked and smelled much better, since the previous inspection in 2008-2009. It was learned that inmates appreciated the change and at present are caring for the interior cleanup. The use of officer and inmate labor saved the County \$200,000.00.

A room is set up for video court arraignments to establish probable cause on newly arrested inmates to determine if they should be held over for trial in court. A secure exercise yard is maintained with video surveillance and a guard armed with a pepper ball gun to stop fights should they occur. All meals are prepared at the John Latorraca Correctional Center facility and dispersed to prisoners by trustee inmate labor.

The jail maintains a registered nurse on duty 24/7 to handle complaints of illness and minor injuries. The nurse's station is equipped with an x-ray machine. The inmate population on the day of inspection was 255.

The Sheriff's office is composed of two divisions. One division is the patrol division which has sworn law enforcement officers that work crimes on the street; the other is the jail division which does not have the same police powers as the sworn law enforcement officers. The correctional officers stated that they are restricted from conducting strip searches of prisoners. Officer Miller believes that management can change this policy, but the request has fallen on deaf ears to date.

Although the department has recently installed two new colored monitors and cameras to watch various areas, the other monitors are monochrome, which renders poor quality images. The new cameras have zoom capability and produce very clear images. There is also one area of the jail near the front door, which has a blind spot to the camera's monitoring of this area. Another camera is needed to provide complete observation of the area leading to the lobby.

Officer Miller also stated that they have an evacuation plan in place in case of emergency, but that the plan has never been practiced. It was also learned that the department does not have a secure area for employees to park their personal vehicles while on duty.

Recommendations

Sheriff Administration should budget for more new cameras and monitors. It would enhance correctional officers' ability to monitor the activity inside the jail. The problem of correctional officers not being able to conduct strip searches of inmates should be corrected, as this would improve officer safety by protecting them from hidden weapons.

Officers also need a secure area to park their personal vehicles while on duty. Walking to a vehicle after dark could be hazardous to the officers.

Commendation

It should be noted that the personnel are doing a good job in an old, overcrowded jail, which needs improved equipment.

Atwater Police Department

Inspection

Introduction

On February 17, 2010 the Merced County Grand Jury contacted Atwater Chief of Police, Richard Hawthorne and conducted an inspection of the facilities located at 350 E. Bellevue Road, Atwater, California. The inspection of the department and its operation was conducted pursuant to Section 925a of the Penal Code.

Findings

The Chief has been employed by the City of Atwater as C.O.P. for seven years. At the present time he has 34 sworn police officers and a 5 officer reserve force. He hopes to build the reserve force to 15 officers. It is very difficult to recruit reserves, as they must have the same type of training as the regular sworn personnel (which are 680 hours of Academy training). He has 53 cadets that serve in the department. They are utilized mostly for traffic control during city functions such as parades and 4th of July celebrations.

The department has an officer that is involved in a county-wide Gang Task Force. He also has an officer assigned to a country-wide narcotics task force that is supervised by an officer from the California Bureau of Narcotics Enforcement.

The Chief has been able to remodel some areas of the building which helps the department's efficiency.

The patrol cars were inspected and all were equipped with new computers which enables an officer to do anything in his car that used to be done inside the office. The dispatch center in the building has been remodeled and upgraded with new equipment.

The Atwater Police Department can now answer 911 calls directly from calls originating in the city limits. They can also locate cell phone calls for help with a GPS locator. This helps answer calls with greater speed.

The City installed two cameras within the City limits to monitor high incident areas. They also installed several dummy cameras so people never know which ones are active. There are also cameras at the two high schools should major disturbances occur. The patrol cars on the street are also able to view the activity from their cars.

A complaint log is maintained for any complaint that is logged against an officer. The complaints are then investigated and found to be either sustained, unsustained, unfounded, or exonerated.

The detective division has acquired 1500 sq. ft. of space in the new fire station on Buhach Road to utilize as office space.

Commendation

The Police Department is cramped for space, but operates very effectively and is lead by a very capable leader. The department is involved in numerous programs to assist them in keeping a safe community for their citizens.

Gustine Police Department

Inspection

Introduction

The Merced County Grand Jury, under the authority of Section 925a of the Penal Code, made an appointment with interim Chief of Police, Jeff Schindler on Tuesday, October 13, 2009. The purpose of the inspection, facility is located at 682 3rd Avenue, Gustine, was to review and report on the operations and methods in which the department performed its duties.

Findings

Present at the interview were Chief Jeff Schindler and Lt. Vince Inaundi

It was learned that the department is composed of the Chief, a lieutenant, two sergeants, four officers, and four reserve officers. There are two other officer positions authorized, but these positions are vacant due to budget constraints.

The officers operate on a 4-11 plan, which provides the city with 24 hour coverage. Presently, the city population is 5500. Because of budgetary problems, the department lost a school resource officer position. This officer's primary responsibility was to work with the schools on student problems and be a presence on campus. Because of budget cuts the department would have lost two more officers, but received money from a Stimulus Grant and maintained their present strength.

The department also received grant money for crime-mapping software. This software enables them to determine problem areas, types of crime, and times when crimes are most prevalent. The department has a Code Red Warning System, which is a reverse 911 call system. It enables the department to notify citizens of major problems or emergencies in their area. Radio communication is dispatched through Turlock. In cases of emergency, they can be patched in with other agencies in the area, so they can communicate with cars involved in emergency situations. The department cars are equipped with computers that enable access to the State System regarding checks on stolen vehicles, serialized equipment, and warrants and records on persons of interest.

The department is still housed inside the City Hall building and they are cramped for space. It was learned that the City has purchased property in order to build a new city hall. If this occurs, the Police Department would have all of the now-existing building to expand into.

Recommendations

With the department experiencing a 400% increase in gang crimes, the vacant positions should be filled as soon as possible. The officers of the department are doing a good job for their community. However, if

they had their own building with adequate space, they could better serve the citizens, especially if the department is up to its full strength of officers.

Livingston Police Department

Inspection

Introduction

On March 16, 2010, the Merced County Grand Jury contacted the new Livingston Chief of Police, Doug Dunford, and conducted an inspection and interviewed him. Also included in this Grand Jury review were Lieutenant Sharon Silva and Brenda Geary; who is in charge of administrative services. The inspection of the department, located at 1446 C Street, Livingston, and its general operation was conducted pursuant to section 925a of the Penal Code.

Findings

Chief Dunford had been on the job in Livingston for only 11 days as of this inspection date. He indicated a pride in heading the department and believes the department is one of the finest in the County. He also feels that it was left in excellent condition by the prior chief. The police department has 20 sworn officers; the Chief, two Lieutenants, three Sergeants, and 14 officers, two of which work in the detective division. The department also has an animal control officer and a contract employee who works the Livingston High School campus two days a week.

A tour of the facility was made, and it was found to be modern, with adequate space for the department. The department maintains a 24-hour dispatch service. The dispatch answers 911 and business and emergency calls; maintains communication with officers on the street; and monitors feed of the high school campus. The department also has an evidence control officer that maintains control of the evidence seized and stored at the police department.

The department has adequate, secure, and fenced parking for police cars and employee vehicles. The police cars are equipped with computers enabling the officers to complete reports and run various criminal checks while on the street. The cars will soon have video and audio systems for collection of statements and officers protection. The department is adequately staffed and each patrol officer works 4-10 hr. shifts per week. The department uses overtime to cover for vacations and sick leave.

Recommendation

As the economic future brightens and the City of Livingston has available funds, the police department building needs to have video monitoring of the facility. The vehicles are older and will also need to be replaced.

Commendations

The Livingston Police Department is well maintained, and its officers and personnel are doing an excellent job and should be commended.

Merced Police Department

Inspection

Introduction

The Merced County Grand Jury pursuant to 925a of the Penal Code, made an appointment on September 22, 2009 with Commander Floyd Higdon of the Merced City Police Department, located at 611 W. 22nd Street, Merced. The purpose of the visit was to investigate and report on the operations and methods in which the department performed its duties.

Findings

Commander Higdon conducted a very information-packed tour of the building and gave an overview of the duties of the many divisions within the police department. He indicated that the building is not in compliance with the American Disability Act. He said that the department is in the planning stages for submitting a plan and request to the City Manager for a new building. The plans will include two new satellite stations in addition to the two they now have.

The patrol division works 12 hour shifts with eleven officers per shift. This division answers approximately 30,000 calls for service per year. The dispatch center monitors all 911 calls and routes them to the proper agency. The dispatch center contains state-of-the-art equipment. The department is currently in the process of installing cameras with monitors for the high schools to be used in case of on-campus emergencies. The department also has a computer lab with two officers to investigate high-tech crimes.

Recommendations

The department was clean and well-run with very effective staff and officers. They have many divisions properly equipped to fight crime in the City of Merced. The only deficiency noted was an old cramped building that needs to be replaced with a new building. A building that would allow the department to grow as the City grows.

COMPLAINT 09-10-01

City Manager, City of Los Banos

The Grand Jury received a complaint that the City Manager of the City of Los Banos had violated Section 3-12.1.070 of the Los Banos Municipal Code since the passage of Measure P.

Chair of Audit & Finance Committee attempted to set up face to face interviews with complainant, but was unsuccessful. Complaint was closed on January 7, 2010.

COMPLAINT 09-10-02

Westside Community Health Care District

The Grand Jury received a complaint alleging misappropriation of taxpayer dollars against personnel of the Westside Community Health Care District.

The Grand Jury declined to investigate this complaint because the Westside Community Health Care District is out of the jurisdiction of the Merced County Civil Grand Jury.

COMPLAINT 09-10-03

Dos Palos Oro Loma Joint Unified School District

The Grand Jury received a complaint alleging misappropriation of district funds against district personnel of the Dos Palos Oro Loma Joint Unified School District.

The Grand Jury declined to investigate this complaint because the allegations were already being investigated by the Dos Palos Police Department.

COMPLAINT 09-10-04

**Merced County Board of Supervisors
County CEO
County Human Resources Director
County Development Services Director**

The Grand Jury received a complaint alleging that the above mentioned parties violated the Merced County employee hiring procedures and County ordinances related to recruitment and selection of a department head.

The Grand Jury declined to investigate this complaint due to the number of years being beyond the statute of limitations since the violation occurred.

Complaint 09-10-05

Dos Palos Police Department

The Grand Jury received a complaint alleging police brutality against an employee of the Dos Palos Police Department.

The Grand Jury declined to investigate this complaint because the allegations had already been sent to internal affairs and the Department of Justice.

Complaint 09-10-06

Complaint against Neighbor

The Grand Jury received a complaint alleging a neighbor had stolen items from Complainant.

The Grand Jury declined to investigate this complaint; the Civil Grand Jury does not investigate private citizens.

Complaint 09-10-07

Merced County Sheriff's Department

Summary

The Grand Jury received a complaint regarding the hiring of a practicing attorney as a Deputy Sheriff (hereinafter "Deputy") who was assigned as the Merced County Sheriff's Department Legal Advisor. The Deputy acted as an attorney representing the department in various legal matters and appeared in court on occasion, representing the Sheriff's Department. The complaint alleges that the Deputy was authorized an amount of overtime which would bring his salary to a compensatory level with County attorneys.

Introduction

On June 19, 2006 an attorney, with prior law enforcement experience, was hired by the Merced County Public Defender's Office as a Deputy Public Defender. On June 23, 2007 the attorney accepted a voluntary demotion and was appointed as a Deputy Sheriff/Coroner II. The complaint alleges that the Deputy was authorized to work 600 hours of overtime, in addition to his Deputy II salary, to compensate him for his services.

The complaint further alleges that the Deputy is not assigned to a shift, but was given an office and a take-home car, although he is not on an on-call status. The complaint further alleges that the Deputy taught classes at college during business hours and used his Sheriff's Department vehicle while doing so.

The complaint alleges that the Deputy also contracted with the Merced County Deputy Sheriff's Association to provide paid legal assistance in civil matters at a reduced rate.

Method of Investigation

The Grand Jury interviewed various county officials and staff members of the Merced County Sheriff's Department. Various documents and correspondence pertinent to the investigation were also reviewed.

Findings

We find that the hiring of the attorney, as a Deputy Sheriff/Coroner II, was appropriate and was completed in compliance with the hiring process established by the Department of Human Resources. The appointment to the elevated position of Deputy II was justified by the applicant's previous law enforcement experience and education level.

We find that the Merced County Sheriff's Department acted inappropriately when a Deputy was appointed as "Legal Advisor" in that it created a new employee classification which required the

department to follow the County's process for the establishment of a new job classification. The County's Management Classification and Compensation Manual outlines the procedures for creating a new employee classification and this process requires approval of the Board of Supervisors. The Deputy Sheriff's job description states, among other things, "and other related duties". However, the duties performed by this particular employee were found to be well outside any related duties and required additional education and certification to perform.

We find that the employee was engaged in practicing law as an attorney when he appeared in court, representing the Sheriff's Department, on occasion. The employee signed asset forfeiture documents as legal counsel to the Sheriff's Department. Inter-department memorandums referred to documentation and advice from the Legal Advisor as covered by the "attorney-client privilege". We also found that the Legal Advisor was actively involved in Internal Affairs Investigations.

We find that although there was no formal contract, it was understood that the employee would receive sufficient overtime compensation to equal the pay scale of other county employed attorneys. Although no set amounts were agreed upon, the employee was authorized "whatever amount of overtime was necessary to complete his assignments". The department's time cards show the reason for the overtime as legal research. However, other deputies are required to show the case number or investigation relating to the overtime. The time cards also show that the employee completed the time card and requested overtime before it was worked. Much of the authorized overtime was completed at home and no documentation was available to determine, if in fact, it was worked or if it was job related. The employee received on average 23.25 hours of overtime bi-weekly, accounting for this employee's 2008 annual salary of \$88,017.

We find that supervision of this employee was outside of the normal "chain of command". Although assigned to training and background, the supervisor of that unit was unable to exercise supervision due to the fact that the employee responded directly to the Undersheriff and the supervisor was "out of the loop". Documentation shows that the employee volunteered to do legal research for Police Officers Standard of Training (POST) and researched recent court decisions and reported his findings to a board which used the information to complete legal update training. The same employee sat on the legal update panel and appeared in the POST telecommunications courses.

We find that the allegation of the employee teaching college classes on duty time and using the county vehicle for this purpose was unfounded. Documentation showing the times and dates of the classes were compared to timecards and no regular or overtime was applied for during those dates or times. There was no evidence that the department's vehicle was used for this purpose.

We find that the complaint's allegation that members of the administration were present during the Deputy Sheriff's Association (DSA) vote to hire the employee as a legal representative was unfounded. The employee approached the association with a proposal to assist the members with civil legal issues after repeated requests for legal advice by members of the association. The proposal was presented to the membership during a regular business meeting and members of the administration were invited to speak at the meeting on behalf of the employee. Members of the administration told of their experiences with the employee and then excused themselves from the

meeting, prior to any further discussion or vote. The DSA membership voted unanimously to go forward with the business proposal. The employee told members that he had made arrangements with the administration to allow him to flex the hours necessary if a court appearance was necessary.

We find no wrongdoing with the employee seeking outside employment either by teaching at the college or representing the DSA members in issues unrelated to work. The department of Human Resources has no rules specifically related to outside employment and that issue is left up to the department head. Although there may be some ethical issues with a DSA member who confides in the employee, who may later be involved in an internal affairs investigation, the issue has not yet arisen. If such were the circumstances, the employee may have to excuse himself from the investigation.

Recommendations

The Sheriff's job is demanding and requires an individual who can effectively administer hundreds of employees within multiple divisions; law enforcement, corrections, and coroner, as well as, the political aspect. However, administering to the department, including the personnel issues, is the sole responsibility of the Sheriff. The old saying goes "the buck stops here" should apply. Although others must be appointed to assist in day to day tasks, the issue of creating a new position of legal advisor or department attorney requires the Sheriff's specific attention, as does the compensation for that position.

The Sheriff and his administration should take greater care to ensure that the department is compliant with existing County rules and regulations in regards to personnel issues.

The Sheriff's administration should make more use of the resources outside their department; Human Resources, County Counsel, and other departments, so issues such as this and any related civil suits can be avoided.

Commendations

Before the conclusion of this investigation, a change occurred within the Sheriff's administration. Due to a retirement, a new Undersheriff and Commander were promoted. Both men stepped forward and agreed "this is not going to happen on my watch". They took immediate action, enacting changes to return the employee to the Deputy II duties and ended the overtime as compensation for the position.

Complaint 09-10-08

Merced County Child Support Office

The Grand Jury received a complaint that the Merced County Child Support Office was not returning calls made by complainant.

The Grand Jury declined to investigate this complaint because complainant had already sent letters to the Merced County District Attorney's office, California Child Support Office, Arizona Child Support Office, and the Arizona Attorney General's office.

Complaint 09-10-09

City of Los Banos Manager City of Los Banos Chief Financial Officer City of Los Banos Mayor

The Grand Jury received a complaint that the City of Los Banos has been mismanaged and has had two embezzlement cases in the last 16 months under the current administration.

There was insufficient time to investigate this complaint thoroughly, so it was referred to the 2010-2011 Grand Jury.

Complaint 09-10-10

John Latorraca Correctional Facility

The Grand Jury received an anonymous letter to investigate the John Latorraca Correctional Facility for overcrowding.

The Grand Jury declined to investigate this complaint, since the John Latorraca Correctional Facility is mandated to receive an annual inspection according to California Penal Code Section 919b.

Complaint 09-10-11

Dos Palos Oro Loma Joint Unified School District

The Grand Jury received a complaint alleging misappropriation of district funds against district personnel of the Dos Palos Oro Loma Joint Unified School District.

The Grand Jury declined to investigate this complaint because the allegations were already being investigated by the Dos Palos Police Department.

Complaint 09-10-12

Merced City Police Merced County Public Defender's Office

The Grand Jury received a complaint alleging police brutality against the Merced City Police and not receiving fair representation by appointed public defender.

The Grand Jury declined to investigate this complaint because the allegations were already being investigated by the Merced City Police Department.

Complaint 09-10-13

City of Los Banos Manager City of Los Banos Chief Financial Officer City of Los Banos Mayor

The Grand Jury received a complaint that the City of Los Banos has been mismanaged and has had two embezzlement cases in the last 16 months under the current administration.

There was insufficient time to investigate this complaint thoroughly, so it was referred to the 2010-2011 Grand Jury.

Complaint 09-10-14

Workforce Investment Board of Merced County

The Grand Jury received a complaint of discrimination against the Workforce Investment Board of Merced County.

The Grand Jury declined to investigate this complaint because complainant had already filed a complaint with the United States Department of Justice Office for Civil Rights Division, Disability Rights Section.

Complaint 09-10-15

Delhi Unified School District Board of Trustees

Complaint

The Merced County Civil Grand Jury received a request for an investigation in a complaint regarding the Delhi Unified School District Board of Trustees, alleging there was a violation of the Brown Act.

Method

Members of the Grand Jury interviewed members of the Delhi Unified School District Board of Trustees, the Superintendent of the Delhi Unified School District, and the individual who made the original complaint.

Findings

No violation of the Brown Act was observed or proven. Testimony given by the witnesses indicates a breakdown in communication between school board members, teachers, parents, and students. The perceived "serial meeting" of board members discussing agenda items via e-mail prior to the November 2009 board meeting appears unfounded. A week prior to this meeting, a board member came onto the Delhi High School campus unannounced to visit a math class. This created awkwardness for the classroom, as the regular teacher was out sick and there was a substitute teacher who did not know this board member. The teacher that day was an English-speaking teacher, and the board member introduced himself in Spanish, and spoke to the class in Spanish about violations of their rights. This is specific to the Brown Act, as it indicates that future policy needs to be developed to determine when communications have been used to develop concurrence of action. The Delhi Unified School District has hired an outside investigator to investigate this matter. The investigator will speak to students and their parents, and make a ruling as to whether any of the students' rights have been violated.

Recommendations

The Delhi Unified School District Board of Trustees needs to develop a formal policy for protocol when board members visit school sites. It is recommended these policies have a time, date, and notice requirement.

Summary

Members of the 2009-2010 Grand Jury were in agreement that the Delhi Unified School District has made an outstanding effort to provide a variety of options that will address the academic needs of all (underperforming) students. The hiring of a private investigator to objectively evaluate the validity of the grievances that surfaced appears to demonstrate a responsible and

equitable solution to the perceived issues reported. (The agenda item in question can be resubmitted six months after the original filing. The original filing was September 8, 2009.)

Complaint 09-10-16

City of Livingston

The Grand Jury received a complaint to review a third time the complaint filed against the City of Livingston in 2007.

The Grand Jury declined to investigate and review the original complaint made against the City of Livingston in 2007.

Complaint 09-10-17

Hair Cut Conspiracy

The Grand Jury received a complaint that there was a conspiracy by the hairdressers in the City of Los Banos to give the complainant a short hair cut.

The Grand Jury declined to investigate this complaint; the Civil Grand Jury does not investigate private business.

Complaint 09-10-18

Merced County Human Services Agency Employees of Merced County Child Protective Services

The Grand Jury received a complaint that the complainant had been wrongfully accused by the Merced County Human Services Agency and employees of the Merced County Child Protective Services.

The Grand Jury declined to investigate the complaint because it was apparent from the written documents submitted as part of the complaint, that the agency's acted appropriately.

Complaint 09-10-19

Merced County Human Services Agency

The Grand Jury received a complaint that the complainant had been slandered and reputation defamed by the Merced County Human Services Agency.

The Grand Jury declined to investigate the complaint because it was apparent from the written documents submitted as part of the complaint, that the agency acted appropriately.

Complaint 09-10-20

City of Livingston City Manager, City of Livingston

The Grand Jury received a complaint alleging that the City of Livingston and its City Manager had misused the City's restricted funds for improper purposes.

The Grand Jury declined to investigate the complaint due to the complainant having already filed a monetary claim against the City of Livingston and the City Manager of Livingston.

Complaint 09-10-21

City of Merced Finance and Citation Department

The Grand Jury received a complaint against the City of Merced Finance and Citation Department for penalties attached to citation issued by Merced City Police for expired registration tags.

The Grand Jury declined to investigate the complaint because it was apparent from the written documents submitted as part of the complaint, that the City of Merced Finance and Citation Department had been entirely proper.

Complaint 09-10-22

City of Livingston City Manager of Livingston

The Grand Jury received a complaint alleging that the City of Livingston and the City Manager of Livingston awarded projects and contracts without following the required bidding procedures required by the law and the City's Municipal Code, which requires a sealed bid procedure for purchases made in excess of \$10,000.

The Grand Jury declined to investigate the complaint due to the complainant having already filed a monetary claim against the City of Livingston and the City Manager of Livingston.

Complaint 09-10-23

Merced County Director of Human Resources

The Grand Jury received a complaint alleging that the Merced County Human Resources Rules and Regulations Reduction in Force (RIF) guidelines have not been applied properly by the Director of Human Resources.

The Grand Jury declined to investigate the complaint because it was apparent from the written documents submitted as part of the complaint, that the actions taken by the Merced County Director of Human Resources had been entirely proper.

Complaint 09-10-24

Merced County Superintendent of Schools Merced County School Board of Trustees

The Grand Jury received a complaint alleging that the Merced County Superintendent of Schools and the Merced County School Board of Trustees is involved and covering for school districts violating federal law within the County of Merced.

The Grand Jury declined to investigate the complaint due to complainant having already filed an appeal to the California Department of Education.

Complaint 09-10-25

**City of Los Banos
City of Los Banos Manager
City of Los Banos Chief Financial Officer
City of Los Banos Mayor**

The Grand Jury received a complaint that the City of Los Banos and the current administration has mismanaged and misused the RDA funds.

There was insufficient time to investigate this complaint thoroughly, so it was referred to the 2010-2011 Grand Jury.

Complaint 09-10-26

Member of Atwater City Council

The Grand Jury received an anonymous complaint against a member of the Atwater City Council alleging misuse of the Atwater Fire Department kitchen equipment.

The Grand Jury declines to investigate this complaint as the complainant already submitted their letter to the lead investigator in the Merced County District Attorney's office.

Complaint 09-10-27

Merced County Fire Department

The Grand Jury received an anonymous complaint alleging corruption in the Merced County Fire Department in regards to overtime and unauthorized expenses.

There was insufficient time to investigate this complaint thoroughly, so it was referred to the 2010-2011 Grand Jury.

**Responses to the
2008-2009 Final Report**



City of Livingston

1416 C Street
Livingston, CA 95334

June 16, 2009

Merced County Grand Jury
P.O. Box 2034
Merced, California 95344-2034

Re: City of Livingston Response to Postscript to Fiscal Year 2007/2008 Grand Jury Report on the City of Livingston

Dear Members of the Grand Jury:

The City Council of the City of Livingston has reviewed the findings and recommendations of the Postscript to the Fiscal Year 2007/2008 Merced County Grand Jury Report on the City of Livingston. After careful consideration of the report and Livingston's review of the facts, the City Council has authorized the Mayor to sign this letter on behalf of the City Council and the City Council responds to the Grand Jury's findings and recommendations as follows:

Findings 1 and 2: City staff members once again testified to micro management and intimidation by some members of the City Council. However, they do agree that last year's Grand Jury report has caused these Members to be more circumspect in their demands for special treatment. Rather than directly approaching staff, these Members work through 'at will' Supervisors to achieve those ends. In most instances, revealing specific details of these demands would cause the City employees involved to feel even more threatened and fearful of their jobs than they do already. The exception concerns pressure applied by [former] Mayor Samra and Councilmember Espinosa upon Police Chief William Eldridge to tow more automobiles. Chief Eldridge agreed that his name and the circumstances of this questionable behavior could be cited in this Report. He stated that on several occasions, the Mayor and the Councilmember met with him and insisted that he direct his officers to cause more automobiles to be towed. The fact that Councilmember Espinosa owns a towing company did not seem to register as an obvious conflict of interest to the two gentlemen. Finally, Chief Eldridge had to send a memo to the City Manager indicating the legal guidelines he and his officers must follow as regard the towing of automobiles.

All public employees have a right and a need to believe that if they follow the rules of their agency and treat all members of the public they serve with equal fairness they will not get in trouble with their governing board. When this belief is shaken, the employees get frustrated, fearful and, sometimes indecisive. This new culture permeates their agency and creates a work environment detrimental to what is best in public service. Moreover, when members of a governing board serve the public only half as well as they serve themselves and insist on micromanaging the City, it is left to the City Manager, who is the Council's "at will" employee,

CITY OF LIVINGSTON

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to tidy up after them. His position then becomes akin to that of the circus worker who dutifully trails after the elephant parade with a wheeled bucket and shovel.

City Response: The City Council has seen significant change as a result of the November 2008 election, which occurred just prior to the issuance of the Grand Jury Report. Former Mayor Samra was not reelected and the City Council now consists of a new Mayor and two new City Council Members. After receiving the Grand Jury Postscript, this new City Council directed the City Attorney to solicit bids from individuals and/or firms to conduct an independent administrative and operational inquiry into these allegations. Ms. Tripoli was retained and a copy of her reports are attached. Ms. Tripoli interviewed Police Chief Eldridge and other City Staff. Former Mayor Samra did not respond to requests for an interview made by the City Attorney nor Ms. Tripoli. Councilmember Espinoza declined to be interviewed.

The City Council has reviewed and adopted Ms. Tripoli's report relating to the allegations against former Mayor Samra and Councilmember Espinoza and agrees with her findings and conclusions, which are as follows:

1. Former Mayor Samra contacted Livingston Police Chief Bill Eldridge approximately nine (9) times by telephone and one time in person in order to attempt to influence the Police Chief to change his directive about not towing the cars of persons found to be driving with a suspended driver's license. Former Mayor Samra was aware of the adverse financial consequences to the personal business of Councilmember Espinoza because of the Police Chief's towing directive when he made the contacts. Former Mayor Samra attempted to use his position as Mayor to get the Police Chief to change his directive because the type of contact Samra had, as Mayor, with Chief Eldridge, an employee of the City, is inherently coercive as evidenced by the Police Chief's concern about retaliation for not changing his towing directive. Even after the Police Chief explained the legal reason for his directive in the very first phone call (attempting to avoid potential monetary liability for the City), former Mayor Samra contacted the Chief nine additional times to attempt to influence the Police Chief to change his decision because of the adverse personal financial consequences to Councilmember Espinoza. Even after the Police Chief explained to former Mayor Samra that he believed the Mayor's conduct was unethical and bordered on a conflict of interest, Samra continued to attempt to influence the Police Chief to change his decision because of the adverse personal financial consequences to Councilmember Espinoza. Mayor Samra stopped his contacts with the Police Chief only after the Police Chief threatened to file a complaint with the Attorney General. As such, former Mayor Samra's conduct was inappropriate and violated Section 1-6-4 of the Livingston Municipal Code as none of his contacts with Chief Eldridge were inquiries made for "the purpose of compiling facts and data for possible future action by the Council."
2. Councilmember Espinoza contacted Livingston Police Chief Bill Eldridge one time in person in order to attempt to influence the Police Chief to change his directive about not towing the cars of persons found to be driving with a suspended driver's license. Councilmember Espinoza was motivated to make the contact by the adverse financial consequences to his personal towing business resulting from the Police Chief's towing directive. Councilmember Espinoza attempted to use his position on the City Council to get the Police Chief to change his directive because the type of contact

Councilmember Espinoza had, as a member of the City Council, to Chief Eldridge, an employee of the City, is inherently coercive as evidenced by the Police Chief's concern about retaliation for not changing his towing directive. As such, Councilmember Espinoza's conduct was inappropriate and violated Section 1-6-4 of the Livingston Municipal Code as his contact with Chief Eldridge was not an inquiry made for "the purpose of compiling facts and data for possible future action by the Council.

3. Councilmember Espinoza coerced Community Development director Donna Kenny to approve the Building Worksheet for a front patio structure at 2005 Park Street despite the fact that Ms. Kenney told Councilmember Espinoza that she could not sign the document because the front patio constituted a 'non-conforming structure' under Livingston Municipal Code Section 5-6-5(D).
4. Former mayor Samra coerced City Staff to provide the owner of 2740 Colleen Court with preferential treatment with regard to helping the owner turn an unlawfully built patio cover into a lawfully built patio cover so that the owner's bank would approve refinancing of his house.
5. Councilmember Espinoza voted to amend the City of Livingston Design Guide with regard to an area of Town which included property he owned at the time of his vote.
6. Councilmember Espinoza coerced City Staff to delay normal abatement procedures with regard to rubbish and non-operational vehicles at 2741 Colleen Court. As a result of Councilmember Espinoza's directions to City Staff, the property occupant avoided the normal, lawful consequences of his failure to comply with the City's zoning requirements.

The City Council also adopts Ms. Triopli's recommendations as follows:

1. The City Council hereby directs Councilmember Espinoza that any and all contacts by him with any City employee, including the City Manager, regarding his personal towing business be in writing and copied to the City Council. This will enable the City Council to attempt to ensure Councilmember Espinoza's compliance with Section 1-6-4 of the Livingston Municipal Code with regard to his personal towing business.
2. The City Council of Livingston should, by Resolution, formally reaffirm the provisions of Livingston Municipal Code Section 1-6-4, specifically: 1) that City Councilmember shall only deal with the administrative services of the City through the City Manager, except for the purpose of inquiry, 2) should any Councilmember make an inquiry to a staff member, it shall only be for the purpose of compiling facts and data for possible future action by the Council and in no event shall action be taken after completion of the inquiry without Council approval, 3) the City Manager shall take his orders and instructions from the City Council as a body, and 4) individual Council Members shall not give any orders or instructions to the City Manager or his subordinates. The Resolution shall include a signature line for each Councilmember to confirm that Councilmember's commitment to comply with Section 1-6-4 of the Livingston Municipal Code.

3. The City Manager should provide copies of the Council's Resolution to each City employee and inform each City employee that they should immediately notify him in writing in the event that any Councilmember contacts the employee directly regarding any matter of City business, whether it is to request information or to give directions, suggestions or opinions regarding how City business is to be conducted. The City Manager should also inform all employees in writing that they are to take no action as a result of any such contact but rather proceed in the manner they were proceeded before such contact.

4. At the request of the City Council, the City Manager shall report to the City Council regarding instances where a member of the City Council has contacted City Staff regarding any matter of City business, whether it is to request information or to give directions, suggestions or opinions regarding how City business is to be conducted.

5. The City Council should consult with the City Attorney to determine the appropriate course of action with regard to the non-conforming front porch at 2005 Park Street and the unpaid invoices for the abatement work performed by the City at 2741 Colleen Court.

In addition, the City Council adopts the attached memorandum by the City Attorney dated June 9, 2009, and concurs with the findings and conclusions of the memorandum, which are as follows:

Councilmember Espinoza's contacts with Chief Eldridge, and his vote to amend the City's Design Guide regulations applicable to a limited area in the City in which he owned real property, violated the Political Reform Act. However, based on the facts we have been given, former Mayor Samra's actions described in the Investigation Report did not violate the Political Reform Act because former Mayor Samra had no economic interest in Councilmember Espinoza's towing business or Councilmember Espinoza within the meaning of the PRA. For the same reason, unless the former Mayor received some sort of non-financial personal benefit from Councilmember Espinoza as a result of his actions, his actions also did not create a common law conflict of interest.

However, if there are facts that we do not know, such as former Mayor Samra's receipt of non-financial or personal benefits from Councilmember Espinoza as a result of his conduct, or some sort of quid pro quo arrangement between the officials, then this analysis could change. Based on the Investigation Report, no such benefits have been identified.

The City Council has completed numerous trainings on ethical laws and responsibilities, the City Council's role, and the City Manager form of government. The City Council takes its ethical responsibilities seriously and does not condone the inappropriate conduct cited in the City's reports, memorandum, and the Grand Jury Postscript.

The City Council will continue to educate itself on its role and responsibilities through training sessions to ensure that the past conduct of the former Mayor and Councilmember Espinoza will not repeat itself.

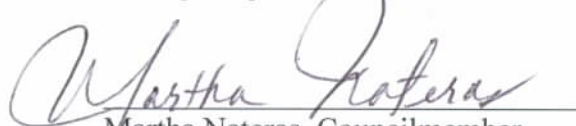
Finding 3: Testimony was given by several witnesses that at a 2007 City Council meeting, without public discussion, three Council Members voted to scale down a previously voted on capital improvement project to pave the City's alleyways. This decision came as a complete

Passed and adopted this 16th day of June 2009 by the following vote:

AYES: Mayor Varela and Council Members Nateras and Vierra
NOES: Council Members Aguilar and Espinoza
ABSENT: None
ABSTAIN: None


Daniel Varela, Sr., Mayor
Frank Vierra, Mayor Pro Tem

Margarita Aguilar, Councilmember

Rodrigo Espinoza, Councilmember
Martha Nateras, Councilmember

ATTEST:

I, hereby certify that the forgoing resolution was regularly passed and adopted at a regular meeting of the City Council of the City of Livingston this 16th day of June 2009.


Donna Barnes, City Clerk



Administrative Services

Mark A. Cowart
Chief Information Officer

2222 "M" Street
Merced, CA 95340
(209) 385-7690
(209) 725-3535 Fax
www.co.merced.ca.us

Equal Opportunity Employer

Date: August 10, 2009
From: Mark A. Cowart
Administrative Services, CIO
To: Angelo Lamas
Cc:
Subject: 2008/2009 Grand Jury Report

This is to acknowledge I have received and reviewed the 2008/2009 Grand Jury Report.
Administrative Services has no issues to report.

MAC/amm

STRIVING FOR EXCELLENCE



DEPARTMENT OF AGRICULTURE

David A. Robinson
Agricultural Commissioner
Director of Weights and Measures
Director of Animal Control

2139 Wardrobe Avenue
Merced, CA 95341-6495
Phone: (209) 385-7431
Fax: (209) 725-3536
Los Banos Office: (209) 827-2030

Animal Control: (209) 385-7436
www.co.merced.ca.us

Equal Opportunity Employer

DATE: July 10, 2009

TO: Angelo Lamas

FROM: David Robinson, Agricultural Commissioner

SUBJECT: **ACKNOWLEDGMENT FO THE 2008/2009 GRAND JURY REPORT**

I have received and reviewed the 2008/2009 Grand Jury Report. I find no issues in the report which pertain to matters under my control.



COUNTY ASSESSOR-RECORDER

Kent B. Christensen
Assessor-Recorder

2222 "M" Street
Merced, CA 95340
(209) 385-7631
(209) 725-3956 Fax
www.co.merced.ca.us

Equal Opportunity Employer

7/13/2009

Presiding Judge – Kiriara

This is to inform you that I have received a copy of the 08-09 Grand Jury report. Having read it I am happy to report that there is nothing relating to either the Assessor's Office or the Recorder's Office.

Sincerely,

Kent B. Christensen
Merced County Assessor-Recorder



AUDITOR-CONTROLLER

Lisa Cardella-Presto, CPA
Auditor-Controller

2222 "M" Street
Merced, CA 95340
(209) 385-7511
(209) 725-3900 Fax
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Equal Opportunity Employer

July 14, 2009

TO: Presiding Judge
Merced County Superior Court

FROM: Lisa Cardella-Presto, CPA
Auditor-Controller

SUBJECT: 2008-2009 Grand Jury Report

I have received the 2008/2009 Grand Jury Report. There were no issues in the report that pertain to the Auditor-Controller's Office and, therefore, I am submitting this letter to indicate that I have reviewed the report.

LCP/ln



DEPARTMENT OF
CHILD SUPPORT SERVICES

Rhonda L. Walton
Director

Physical Address
780 Loughborough Drive
Merced, CA 95348
(866) 901-3212
(209) 722-0556 Fax
www.mercedcss.com

Mailing Address
P.O. Box 3199
Merced, CA 95344

Equal Opportunity Employer

INTEROFFICE MEMORANDUM

TO: Angelo Lamas, County Executive Office

FROM: Rhonda L. Walton, Director 

DATE: July 13, 2009

RE: ACKNOWLEDGEMENT AND/OR RESPONSE TO THE 2008/2009 GRAND JURY REPORT

The Merced County Department of Child Support Services acknowledges that we have received and reviewed the 2008/09 Grand Jury Report and there are no issues associated to our department, therefore no response is indicated.

If you have any further questions, please feel free to call Jen Frederick, Secretary III at 381-1317.

Thank you.

MEMORANDUM

TO: MR. DEE TATUM, COUNTY EXECUTIVE OFFICER

FROM: MARK J. HENDRICKSON, DIRECTOR OF COMMERCE, AVIATION AND ECONOMIC DEVELOPMENT

RE: 2008/2009 GRAND JURY REPORT

DATE: JULY 10, 2009

I received the 2008/2009 Grand Jury Report on July 9, 2009 via electronic mail and have reviewed the report in its entirety. There are no matters under the control of the Merced County Department of Commerce, Aviation and Economic Development listed in the 2008/2009 Grand Jury Report.



FIRE DEPARTMENT

735 MARTIN LUTHER KING JR. WAY
MERCED, CA 95341
TELEPHONE (209) 385-7344
FAX (209) 725-0174

DALE A. HUTCHINSON
Fire Chief
(209) 966-3622

SCOTT NEWMAN
Division Chief
(209) 385-7450

September 1, 2009

To: Presiding Judge John Kiriara

From: Dale Hutchinson
Fire Chief

Subject: 2008/2009 Grand Jury Report

I have reviewed the 2008/2009 Grand Jury Report and there are no issues involving the Merced County Fire Department that need to be responded to.

Should you have any further questions or comments, please contact Division Chief Scott Newman at 209-385-7450 or scott.newman@fire.ca.gov.

Thank you.

ls



COUNTY EXECUTIVE OFFICE
Human Resources

Demitrios O. Tatum
County Executive Officer

Robert A. Morris
Director of Human Resources

2222 "M" Street
Merced, CA 95340
(209) 385-7682
(209) 385-7375 Fax
www.co.merced.ca.us

Equal Opportunity Employer

July 17, 2009

John Kiriara
Presiding Judge
Superior Court of California
627 W. 21st Street
Merced, CA 95340

RE: 2008/2009 GRAND JURY REPORT

Dear Honorable Judge:

I have received and reviewed the 2008/2009 Grand Jury Report and have found no issues in the report that pertain to the Human Resources Department.

Sincerely,

Robert A. Morris
Director of Human Resources



**DISTRICT ATTORNEY
LARRY D. MORSE II**

2222 M Street
Merced, CA 95340
Phone (209) 385-7381
Fax (209) 725-3669

Assistant District Attorney
JOSEPH M. TRESIDDER

Chief Deputy District Attorney
HAROLD L. NUTT

Chief Deputy District Attorney
MARK V. BACCIARINI

Director of Administrative Services
JEANNETTE PACHECO

**INVESTIGATIONS
(209) 385-7383**

Chief Investigator
PATRICK N. LUNNEY

**VICTIM WITNESS
(209) 385-7385**

Victim Witness Program Director
LISA DeSANTIS

LOS BANOS DIVISION
445 I Street
Los Banos, CA 93635
Phone (209) 710-6070
Fax (209) 827-2029

August 7, 2009

Honorable John Kiriara
Presiding Judge
Merced County Superior Court
2260 "N" St.
Merced, CA 95340

Re: Grand Jury Response

Dear Judge Kiriara,

The Merced County District Attorney's office has **no** responsibility for the administration of the warrant system in the County of Merced. That responsibility lies entirely with the Merced Superior Court and the Sheriff's warrant system. We are, however, mindful of the importance of maintaining proper procedures to ensure that accurate warrant information is entered. To that end, in response to concerns expressed by Gustine Police Chief Richard Calderon, Chief Deputy District Attorney Harold Nutt offered to make inquiries into the operation of the warrant system. These inquiries were conducted in an effort to assist a law enforcement colleague, **not** because we had any jurisdiction in the matter. Again, we have no authority whatsoever to make the changes requested by Chief Calderon. Chief Deputy Nutt contacted various law enforcement personnel regarding problems with the warrant system, but the solutions are beyond our ability to control. Our goal had been to help facilitate a solution to Chief Calderon's and the Gustine Police Department's problem.

I have my own complaint with this finding by the Grand Jury. Before issuing a public document castigating the District Attorney's office for an alleged failure, the Grand Jury would have been well served by conducting an interview with either myself or members of this office. We would have pointed out that we have neither the responsibility for the system nor the authority to make the changes requested by Chief Calderon and were merely trying to assist a local law enforcement agency as a professional courtesy. It is a shoddy practice, to say the least, to publish conclusions critical of a public agency without seeking any information from that agency beforehand.

Sincerely,

Larry D. Morse II
District Attorney



HUMAN SERVICES AGENCY

Ana Pagan
Director

2115 W. Wardrobe Avenue
(209) 385-3000
(209) 354-2501 Fax
www.co.merced.ca.us

Mailing Address
P.O. Box 112
Merced, CA 95341-0112

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MEMORANDUM

To: Angelo Lamas, Management Analyst III
County Executive Office

From: Ana Pagan, Director 

Date: July 10, 2009

Regarding: Merced County Grand Jury Report

I have received and reviewed the Grand Jury Report for 2008/2009.

There are no issues in the report which pertain to matters under my control.



MERCED COUNTY LIBRARY

Jacque Meriam
County Librarian

2100 "O" Street
Merced, CA 95340
(209) 385-7484
(209) 726-7912 Fax
jmeriam@co.merced.ca.us
Equal Opportunity Employer

TO: Presiding Judge
Merced County Superior Court

FROM: Jacque Meriam
Merced County Librarian

SUBJECT: 2008-2009 Merced Grand Jury Report

DATE: July 9, 2009

I, Jacqueline M. Dodd Meriam, Merced County Librarian, via e-mail, have received and reviewed the 2008-2009 Merced Grand Jury Report. There are no issues in the report which pertain to the Merced County Library System.



DEPARTMENT OF MENTAL HEALTH

Manuel J. Jiménez, Jr., MA, MFT
Director

Administration
3090 M Street
Merced, CA 95348-3212
(209) 381-6813
(209) 725-3676 Fax
www.co.merced.ca.us

Mailing Address:
P.O. Box 2087
Merced, CA 95344

Equal Opportunity Employer

August 17, 2009

The Honorable John Kiriara
Presiding Judge
Superior Court of California
County of Merced
2260 N Street
Merced, CA 95340

Your Honor:

I have received and reviewed the 2008-2009 Grand Jury report. I have no issues to report on at this time.

If you require any further information, please contact me.

Respectfully,

Manuel J. Jiménez, Jr.
Director

cc: Angelo Lamas

08-19-09P01:27 RCVD



**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

Robert A. Lewis
Development Services Director

2222 "M" Street
Merced, CA 95340
(209) 385-7654
(209) 726-1710 Fax
www.co.merced.ca.us

Equal Opportunity Employer

DATE: September 1, 2009
TO: John Kiriara, Presiding Judge
FROM: Robert A. Lewis, Development Services Director
RE: 2008/2009 Grand Jury Report

The Merced County Planning and Community Development Department has reviewed the 2008/2009 Grand Jury Report and there are no issues in the report that pertain to matters under the control of our department. If I can be of further assistance, please feel free to contact me at your earliest convenience.



PROBATION DEPARTMENT



Brian L. Cooley
Chief Probation Officer

July 21, 2009

To: Honorable John Kiriara, Presiding Judge
Merced County Superior Court

From: Brian L. Cooley 
Chief Probation Officer

RE: Acknowledgement/Response to Grand Jury Inspection 08/09

This memorandum is to acknowledge the fact that the Merced County Grand Jury toured the Iris Garrett Juvenile Justice Correctional Complex on January 14, 2009, and that there were no recommendations made.

wre

cc: Deidre F. Kelsey, Chairperson, Board of Supervisors
Demetrios Tatum, County Executive Officer
James Brown, Assistant County Executive Officer

☐ Merced Office
(Administration and
Juvenile Services)
2150 "M" Street, 2nd Floor
Merced, CA 95340
(209) 385-7494
(209) 725-3999 Fax
www.co.merced.ca.us

☐ Merced Office
(Adult Services)
3191 M Street
Merced, CA 95348
(209) 381-1380
(209) 725-3737 Fax

☐ Atwater Office
1691 3rd Street
Atwater, CA 95301
(209) 357-7610
(209) 357-7661 Fax

☐ Los Banos Office
445 "I" Street
Los Banos, CA 93635
(209) 826-7990
(209) 826-2811 Fax

☐ Iris Garrett Juvenile Justice
Correctional Complex
2840 W. Sandy Mush Rd.
Merced, CA 95341
(209) 381-1400
(209) 725-3505 Fax

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PUBLIC DEFENDER

Michael L. Pro
Public Defender

2150 "M" Street
Merced, CA 95340
(209) 385-7692
www.co.merced.ca.us

July 24, 2009

Presiding Judge, Merced Superior Court
2222 M Street
Merced, CA 95340

RE: 08/09 Grand Jury Report

The Public Defenders Office have read and review the 08/09 Grand Jury Report and has no comment.

Very truly yours,

MICHAEL L. PRO
Public Defender

MLP:jh



DEPARTMENT OF PUBLIC HEALTH

John Volanti, M.P.H.
Director of Public Health

Administration
260 E. 15th Street
Merced, CA 95341-6216
(209) 381-1200
(209) 381-1215 (FAX)
www.co.merced.ca.us/health

Equal Opportunity Employer

August 24, 2009

Angelo Lamas
County Executive Office
2222 M Street
Merced, CA 95340

Dear Mr. Lamas,

The Department of Public Health has reviewed the 2008/2009 Grand Jury Report and there are no issues in the report that pertain to matters under the control of our department. If I can be of further assistance, please feel free to contact me at your earliest convenience.

Sincerely,

John Volanti, M.P.H.
Director of Public Health



DEPARTMENT OF PUBLIC WORKS

Paul A. Fillebrown
Director

715 Martin Luther King Jr. Way
Merced, CA 95340-6041
(209) 385-7602
(209) 725-3989 Fax
www.co.merced.ca.us

Building Services
Countywide Transit
Parks and Recreation
Road
Fleet Management
County Surveyor
Solid Waste
Professional Services
Building & Safety
Castle Airport

Equal Opportunity Employer

DATE: July 17, 2009
TO: Presiding Judge Carol Ash
FROM: Paul A. Fillebrown, *PAF* Director of Public Works
SUBJECT: Comments/Responses to the 2008-2009 Grand Jury Report

MEMORANDUM

The following is the response by the Public Works Department to the 2008-2009 Grand Jury Report:

John Latorraca Correctional Center:

Since completion of the arsenic treatment system in April 2008, bottled water has been ordered to be used three (3) times. Two (2) of the bottled water orders occurred during scheduled media replacement servicing and only one (1) bottled water order was unplanned due to an anomalous increase in arsenic levels in the potable water system. The system has been operational and properly removing arsenic for 15 months, except for the two (2) instances when the treatment media needed to be replaced. The infrequent need to use bottled water is caused by the lag time between sampling and test results since there aren't any accurate, instant arsenic test methods. Variations in arsenic levels from the three (3) wells is a naturally occurring event that can not be controlled and treatment processes are adjusted when discovered. Upon completion of the permanent infrastructure improvements, significant increases in storage capabilities of treated water will likely eliminate the further need for even occasional use of bottled water at the facility.

PAF:II

cc: Dee Tatum, County Executive Officer



MARK N. PAZIN
COUNTY OF MERCED
OFFICE OF THE SHERIFF-CORONER

In accordance with the Penal Code, the Sheriff's Office is responding to the "Inspection of Gustine Police Department" and specifically to the comments Chief Richard I. Calderon made regarding "refused service."

Two points must be immediately made prior to reviewing the history of communications service prior to 2006.

First, members of the Merced Grand Jury never attempted to speak with me and should have concerning the "radio communication" and second, Chief Calderon is absolutely wrong if he stated or inferred to the Merced County Grand Jury that the "Merced County Sheriff's Office removed their radio communication" as written on Page 7 of the Grand Jury Report.

Chief Calderon should have given the Grand Jury a document, dated February 27, 2006, in which then Chief of Gustine, Don Hutchins executed the City of Gustine's "right" and issued to the Merced Sheriff's Office a written thirty (30) day notice to "terminate the contract" as it pertains to "radio communication."

Chief Calderon either neglected, disregarded or is unaware of the fact once Turlock Police Department became Gustine Police Department's Public Safety Answering Point (PSAP), all services such as, but not limited to, warrant checks, inputting, regular radio inquiries, etc., were transferred to Turlock Police Department per contracted services.

Further, Chief Calderon failed, by not explaining to the Grand Jury the necessity and proper usage of a 24/7 PSAP, how this interfaces with the Original Reporting Agency Identifier (ORI) and Time Activated Message Forwarding (TAMF) as it relates to "radio communication."

Another point which needs clarification, but not placed in the Grand Jury Report, was the fact there was Department of Homeland Security money set aside for Gustine Police Department to purchase radio equipment at no expense to the City of Gustine at Sheriff Pazin's request. The strategy was for Gustine Police Department returning to interoperability within Merced County and OES/Region V. It should be noted, the "interoperability" issue was explained to Chief Calderon and all his predecessors, since 2006. Not only is the City of Gustine radio service out of county, it is also out of region, as it pertains to the Office of Emergency Services (OES) and is in conflict with the Department of Homeland Security (DHS) Interoperability guidelines.

Another point, not mentioned in the Grand Jury Report was the cost associated with "radio communication." When (then) Chief Hutchins terminated the service in February 2006, Merced County was reimbursed \$68,680.56 per fiscal year for "dispatch" services, which also

included certain IT functions. Also discussed with all the Gustine Police Chiefs these past years were usage charges for Merced County IT services. The Sheriff's Office absorbed such costs with Gustine Police Department via the "radio communication" contract. This point was made repeatedly to Chief Calderon, who finally understood, and were in the final stages of placing a monetary figure for these IT services so our Office could take a contract to the Board of Supervisors for final approval.

It is now understood that Turlock Police Department, in three years of having this contract, have increased Gustine's fee by \$40,000, for a total fiscal year contract of \$108,000, with a net increase of over 50% in less than three years time. Our Office realizes the very difficult economic times, and for example, since 2006, has charged Dos Palos Police Department, approximately \$68,000 per fiscal year for "radio communication" with a negligible increase for the aforementioned service.

Chief Calderon is also wrong when he mentioned "wanted persons" are "not entered into NCIS" (actually a typo on Grand Jury Report, should be NCIC) when actually Chief Calderon was not aware or did not mention to the Grand Jury, the Merced County Courts involvement, how warrants are generated and how the ORI and PSAP's are intertwined to ensure information is entered properly.

The Grand Jury used the word "reprehensible" as it pertains to "cooperation from county law enforcement to Gustine Police Department." What is actually appalling is an official "one sided" document from the Grand Jury written and submitted to the Superior Court, without speaking with the other principals in this matter.

The Sheriff's Office takes its law enforcement role seriously within the County as evidenced by these facts of "cooperation", which Chief Calderon conveniently omitted or neglected to share with the Grand Jury.

Over the past three years, the Merced Sheriff's Office has, at the request of one of the many Gustine Police Department Chiefs (whoever was in this position at the time) responded to death inquiries, conducted laborious internal affairs investigations and assisted in patrol, during a difficult time of recruitment and retention in Gustine over the years. These investigations required overtime absorbed by the Sheriff's Office as part of "mutual assistance" to another law enforcement agency. Documents can be reviewed upon request attesting to this fact.

In conclusion, our Office has cooperated at every level with the Gustine Police Department over the past months as evidenced by a series of "thank-you letters" from Chief Calderon for law enforcement work done within the City of Gustine.



MARK N. PAZIN
COUNTY OF MERCED
OFFICE OF THE SHERIFF-CORONER

As required per the California Penal Code, the Merced County Sheriff's Office is responding to the Merced Grand Jury's Review of the "Main Jail" located at 700 W. 22nd Street.

Our Office concurs with the recommendation of the Grand Jury and will work closely with the Board of Supervisors to implement positive changes.

As required per the California Penal Code, the Merced County Sheriff's Office is responding to the Merced County Grand Jury's Review of the John Latorraca Correctional Facility located at 2584 W. Sandy Mush Road.

Again, our Office agrees with the findings as it relates to the Correctional Facility on Sandy Mush Road and decisions are based on "the almighty dollar."

Our Office has explored expansion of the Correctional Facility, reviewed "sprung structures," applied for AB 900 financing and secured our internal recreation yard with added fencing. Our Office will continue to review innovative funding sources and work with the Board of Supervisors in the upcoming fiscal year.



**MERCED COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION**

3199 "M" Street
Merced, California 95348

MARIA L. AREVALO
Plan Administrator

Telephone 209-725-3636
Fax 209-725-3637

July 9, 2009

To: Presiding Judge, Merced County Superior Court.
From: Maria L. Arevalo, Retirement Plan Administrator
Re: 2008/2009 Merced Grand Jury Report

Dear Judge Carol Ash,

I have received and reviewed the Merced 2008/2009 Grand Jury Report and have determined that there are no issues requiring a response by the Merced County Employees' Retirement Association.

Sincerely,

Maria L. Arevalo
Retirement Plan Administrator

Cc. County Executive Office



403 "F" STREET ★ LOS BANOS, CA 93635

209-826-5166 ★ FAX 209-826-8737

DATE: July 10, 2009

TO: Honorable John Kiriara
Presiding Judge, Merced County Superior Court
Merced County Executive Office
2222 M Street
Merced, CA 95340

SUBJECT: Acknowledgment of 2008/2009 Grand Jury Report

Please note I have received and reviewed the 2008/2009 Grand Jury Report. There are no issues in the report which pertain to matters under my control.

Thank you,

A handwritten signature in blue ink, appearing to read "Ron Brandt".

Ron Brandt
Manager



Karen D. Adams, CPA
Treasurer-Tax Collector-Clerk

2222 "M" Street
Merced, CA 95340
(209) 385-7307
(209) 725-3905 (Fax)
<http://www.mercedtaxcollector.org>

August 11, 2009

TO: Honorable Judge John Kiriara, Superior Court Presiding Judge
FROM: Karen D. Adams, CPA., Treasurer-Tax Collector-Clerk
SUBJECT: 2008-2009 GRAND JURY REPORT

I received and read the 2008-2009 Grand Jury Report. I have no comments regarding any of the findings or recommendations contained in the report.

Thank you!



DEPARTMENT OF
WORKFORCE INVESTMENT

Andrea T. Baker
Director

Joanne Presnell
Assistant Director

1880 Wardrobe Avenue
Merced, CA 95341-6407
(209) 724-2000
(209) 725-3592 Fax
www.co.merced.ca.us/index.asp?NIB=92

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MEMORANDUM

July 15, 2009

To: Honorable Carol Ash, Presiding Judge
Merced County Superior Court

Attn: Angelo Lamas, Management Services Analyst

From: Andrea T. Baker, Director, Department of Workforce Investment *ATB*

Subject: Acknowledgement of the 2008/2009 Grand Jury Report

I am acknowledging receipt of the Grand Jury report of 2008/2009. I have reviewed the report and have concluded that there are no issues that pertain to matters under my control included in the report.



September 29, 2009

The Honorable John Kiriara
Presiding Judge of the Superior Court
Superior Court of California, County of Merced
670 West 22nd Street
Merced, CA 95340

RE: Board of Supervisors Grand Jury Response dismay

Dear Presiding Judge Kiriara:

The Board of Supervisors appreciates the Merced County Grand Jury's responsibilities and commitment to public service. Pursuant to Penal Code 933, responses from elected and appointed officials have been received and appropriately forwarded. The following acknowledgements and information is respectfully submitted relating to matters under the jurisdiction of the Board of Supervisors.

Mandated Inspections – Main Jail and John Latorraca Correctional Facility

The Grand Jury conducted an inspection of the Main Jail located at 700 W 22nd Street in Merced. The Grand Jury recommended that the Board of Supervisors consider the shortage of correctional officers and the dangerous conditions that the officers work in.

The Board respects the responsibilities that these officers have to face in their line of duty regarding dangerous inmates and disturbances, and the difficulties that they face in these positions, which safeguard the general public. The Board also commends the efforts of the Correctional staff that serve at the Main Jail and John Latorraca Correctional facilities

Safety for these officers and for the public have always been important to this Board, and it is of concern to us that the Grand Jury considers adding 10 Deputies, 12 Correctional Officers, and 5 Sergeants (3 Operations, 2 Corrections) to the Sheriff's Department during the past five years to be "negligible." In fact, these increases, which come at a cost to the County of \$2.46 million per year, represent a 16% increase to the number of full-time operational deputies and sergeants that we have on the street, and a 17.7% increase to the number of full-time correctional officers and sergeants that we have in our jail facilities.

In addition to these full-time staff increases, the extra-help budget has increased by more than \$700,000 in the past five years from \$55,000 in FY 2004/05 to \$800,000 in FY 08/09. In FY 08/09, the actual expenditure for these extra-help staff totaled \$825,326, a \$450,000 increase from the previous year. Using this funding, the Sheriff's Department has been able to hire staff for the facility equivalent to 10 additional full-time officers and 5 additional staff.

In the future, if staffing concerns are a question for the Grand Jury, County representatives would like an opportunity to address the Grand Jury's questions prior to the completion of the Grand Jury's investigation to offer a full background on the staffing issues that face the County.

The Grand Jury also recommended that the Latorraca facility be remodeled to accommodate increases in the prison population. The Board of Supervisors will work with the Sheriff to identify how the John Latorraca facility can be expanded and identify funding

**Board of
Supervisors**

John Pedrozo
Supervisor, District One

Hubert "Hub" Walsh, Jr.
Supervisor, District Two

Michael G. Nelson
Supervisor, District Three

Deidre F. Kelsey
Supervisor, District Four

Jerry O'Banion
Supervisor, District Five

Demitrios O. Tatum
County Executive Officer

Merced County
Administration Building
2222 "M" Street
Merced, CA 95340
(209) 385-7366
(209) 726-7977 Fax
www.co.merced.ca.us

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**Striving for
Excellence**

alternatives. In March of 2008, the Merced County submitted a proposal and funding application to the California State Department of Corrections and Rehabilitation for an additional ninety six beds and associated support facilities at the John Latorraca Correctional Center, however, Merced County's was not among the counties awarded.

The Board hopes that the Grand Jury understands the totality of the County's budget situation, as it heads into a multiple-year decline in resources. The County has several revenue sources which are local, and which fund the public safety departments such as the District Attorney, Public Defender, Sheriff, Corrections, and County Fire, as well as other County departments including Public Works, Planning Department, Agriculture Commissioner and Administration, including the Treasurer-Tax Collector, Auditor-Controller, and Assessor. All of these departments, including our public safety sector, are mainly the responsibility of our local jurisdiction and are funded through property tax, sales tax and other local revenue sources. These local resources must also fund part of other departments which get the bulk of their funding from the state and federal government, including the Human Service Agency and Public Health Department.

For Fiscal Year (FY) 2008/09, local resources totaled \$122.3 million, including \$40.2 million in our fund balance, which is one time funding. For FY 2009/2010, local resources total \$97 million, prior to the use of any reserves directed by the Board of Supervisors. That represented a 20% drop in our local resources, including a \$5 million loan to the State, as required by Proposition 1A.

With the foresight of the Board of Supervisors, the County has a reserve, which has been used this year to help cover the cost of the loan to the State, as well as to ensure that the cost of local responsibilities are covered. The Board is proud to say that despite the 20% decline in revenues this year, the Sheriff's Department including Corrections staff at the jail facilities, the District Attorney's Office and the Public Defender's office were not asked to reduce their staffing levels. Thanks to the ongoing fiscal discipline of the Board, we were able to maintain all of our employees in this important public safety sector, which remains a top priority of the Board of Supervisors.

The Grand Jury also mentioned the water filtration system and that the system was off-line much of the time. The water filtration system has been in operation for 15 months, and during that period bottled water has been ordered three times; twice for scheduled media replacement. Infrastructure improvements for the water filtration system should be completed in the March 2010, which would permit the system to store significantly more treated water and eliminate the need for bottled water at the facility.

Mandated Inspections – Iris Garrett Juvenile Justice Correctional Complex

The Grand Jury also conducted a mandated inspection of the Iris Garrett Juvenile Justice Correctional Complex. The Grand Jury seemed to be satisfied with their visit to the facility. No written report of the Grand Jury's findings were included in the final Grand Jury report, despite the visit and the item being listed in the report's table of contents.

The Merced County Board of Supervisors commends the men and women who serve at the Juvenile Correctional Complex and is proud to have such dedicated staff and strong management at the facility.

Complaint 08-09-09

The Grand Jury investigated a complaint regarding the Housing Authority of the County of Merced where there was a complaint alleging appointees were biased and had conflicts of interest.

Response

The Board of Supervisors takes great care in its appointment of all members to all of the more than 150 Boards, Commissions and Committees where the Board has appointment responsibilities. For this reason the Board has put into place an open and transparent appointment public appointment process. Members of the

public are permitted to see any and all persons who are interested in serving in these positions, as well as watch the public interview process in person, on television, and online. The scores of the individual applicants are posted at the meeting, and the Board takes final action in open session to make appointments. As part of the process, applicants are asked to list any potential conflict of interest so that the Board of Supervisors can evaluate this aspect of the application as part of the appointment process.

The Grand Jury has criticized the County for appointing two members to the Housing Authority Board who were previously employees of the Housing Authority. Although the Report implied at least that the County should remove the members, the County is only permitted to remove Housing Authority Board members pursuant to the statute. The Board of Supervisors may only remove members from the commission due to inefficiency, neglect of duty or misconduct in office pursuant to Health & Safety Code § 34282.

In regard to the Grand Jury's comments finding that the Board "erred in judgment" by appointing a member to the Housing Authority, it is understood that the Grand Jury can criticize the Board's appointment process in terms of legality and prejudice. Outside of those parameters, the electorate is responsible for judging elected officials decisions and decision making ability, in a democracy and under the law. The Grand Jury has not found the Board's decision-making process to be illegal, so we have no further comment in regards to this unfounded statement.

In response to the Grand Jury's final recommendation about sufficient safeguard to "stacking" the Housing Authority, the County stands by the application and interview process for its at-large Boards, Commissions and Committee members. We vehemently disagree that this process does not offer sufficient safeguards. Instead, we believe that the democratic process, by which 5 separately elected members of the Board individually cast a public vote for appointments, is a long-standing and well-regarded safeguard to any "stacking" of Boards, Commissions or Committees. It is disconcerting and concerning that the Grand Jury included this statement in its recommendations, since there is no evidence or discussion of the aforementioned "stacking" anywhere in the complaint or in the findings by the Grand Jury, but solely in the recommendations. The Board of Supervisors disagrees with this statement in its entirety.

Inspection of Gustine Police Department

In the Grand Jury's report involving the Gustine Police Department, it was reported that the Merced County Sheriff's Office removed Gustine Police Department from its radio communication system and that service to Gustine has been refused. In addition, it was reported that felony warrants obtained by Gustine are not being entered into the County-wide warrant database. Included in the Grand Jury's recommendation were recommendations to work with the Sheriff's Department and District Attorney to resolve these concerns.

Response

The Board of Supervisors was surprised in the findings indicated in this portion of the report and was disappointed that neither the Sheriff's Department nor the District Attorney's Office was contacted by Grand Jury representatives to ensure a complete investigation was conducted. In fact, the District Attorney's office has stressed to the Grand Jury in its departmental response that the office has "no responsibility for the administration of the warrant system in Merced County." The Sheriff also responded to this issue separately, detailing the timeline of events which lead to the current separate radio communications systems used by the Sheriff's Department and the Gustine Police Department. Of particular importance is the Sheriff's response indicating that it was the City of Gustine, not the Merced County Sheriff's Department who initiated the termination of the contract with the County for radio communication, not the County or the Sheriff's Department.

In addition, the Board is aware that the Sheriff's Department and Gustine Police Department have been working together to ensure that the citizens of Gustine are provided with proper law enforcement to their

community, and the Grand Jury's report does not reflect the positive efforts being made by both organizations. The relationship between Gustine Police Department and the County is very much appreciated, and it has provided a vehicle to effectively resolve concerns that come up. The County has attempted to assist the Gustine Police Department in a number of ways, but many of the issues are beyond the County's scope of control. When the Gustine Police Department entered into its contract with the City of Turlock for Public Safety Answering Point services, entering warrants, doing warrant checks and other services became the responsibility of the new contractor.

Conclusion

In closing, the Board would also like to express a concern that several County departments had with this year's Grand Jury and its investigations. Specifically, the Grand Jury issued the report and findings based on single interviews or presentations without meeting with any other impacted group to get a full picture of the situation from multiple parties. It is essential for any effective investigation process to be impartial and for the investigation and fact-finding process to support this. Proper investigations ensure that all involved parties would be contacted and interviewed before presenting any findings and recommendations. The Board requests that in the future that the Grand Jury to speak to all of the affected parties as part of their official investigation process to ensure that the examination of the issues facing our community is thorough and not biased in any way to either the complainant or the respondent.

Again, the Board of Supervisors appreciates the responsibilities of the Grand Jury to provide thoughtful recommendations to improve our County and community.

Respectfully submitted,


Gerald R. O'Banion, Vice-Chairman
Board of Supervisors

cc: Harlan Dake, 2008-2009 Merced County Grand Jury Foreman
Mr. Demitrios O. Tatum, County Executive Officer

Merced County Office of Education

Lee Andersen, Superintendent



Equal Opportunity Employer

July 17, 2009

Mr. Harlan Dake, Foreperson
Merced County Grand Jury
PO Box 2034
Merced, CA 95344

RE: Response from the Merced County Office of Education (MCOE) to the Grand Jury Report Issued July 2009, on the relationship between the Merced County Office of Education and the non-profit organization known as Firm Build.

Dear Mr. Dake,

On July 15, 2009, the Grand Jury of Merced County released its Report entitled "Relationship between the Merced County Office of Education and the Non-profit Organization known as Firm Build."

OVERVIEW OF DISTRICT RESPONSE

The Merced County Office of Education ("MCOE") appreciates the Grand Jury's interest and review of the MCOE's Work Place Learning Academy's ("WLA") program. We believe the program is a worth-while effort to train at-risk students in occupations that would assist them in obtaining employment after graduation.

MCOE agrees that there were areas where better oversight could have been provided. Actions to strengthen MCOE's internal procedures and controls have been taken to ensure that proper oversight will be provided on all similar projects in the future. MCOE follows good business practices and complies with all laws and regulations. The situation with Firm Build happened because of the close relationship between Firm Build and MCOE in operating the Work Place Learning Academy and training of our students.

DISTRICT'S RESPONSE TO GRAND JURY'S FINDINGS AND RECOMMENDATIONS

Grand Jury Finding 1: The MCOE violated the California State Education code by not putting the ATC out to bid and instead allowing Firm Build to construct the project.

Response to Grand Jury Finding 1: The MCOE agrees that the ATC project should have been put out to bid in accordance with the California Education Code. The ATC was seen by many as part of the WLA student's educational program. It afforded the students an opportunity to gain

real world construction experience. It was not considered to be a typical public works project that would normally be let out to a competitive bid. Unlike all such projects today, the ATC project was not run through the MCOE Business Department facilities staff. MCOE's internal procedures have been changed to insure that every project now goes through the MCOE facilities department.

Grand Jury Recommendation 1: The MCOE should follow proper procedures as outlined in the California Education Code. All projects should be put out to bid as the law requires.

Response to Grand Jury Recommendation 1: The MCOE will follow proper procedures and put all projects out to bid as prescribed in the Education Code and Public Contract Code. All departments have been briefed on the proper procedures to follow. Internal policies are in place to ensure that proper procedures are followed.

Grand Jury Finding 2: The MCOE and Firm Build did not get the necessary permits from the County of Merced for the construction of the ATC.

Response to Grand Jury Finding 2: Firm Build was the oversight contractor for the ATC project and responsible for the permitting process. Unlike all such projects today, the ATC project was not run through the MCOE Business Services Department facilities staff. MCOE's internal procedures have been changed to insure that every project goes through the MCOE facilities department.

Grand Jury Recommendation 2: The MCOE should obtain the required building permits for future construction projects and should have the projects inspected as required.

Response to Grand Jury Recommendation 2: MCOE's internal procedures have been changed to insure that every construction project goes through the MCOE Business Services Department facilities department staff who have expertise to insure proper contractual oversight of all construction projects.

Grand Jury Findings 3: The MCOE allowed students to use the ATC when it had neither passed inspection nor been approved for occupancy.

Response to Grand Jury Finding 3: MCOE was not aware of the lack of formal approval until after the fact. Once notified, immediate action was taken to quickly correct all deficiencies. The program was allowed to continue, with County of Merced approval, as no health or safety threats were ever involved. The expertise of the MCOE facilities department staff was also utilized at this point to ensure that the inspection process was completed and occupancy permit received.

Grand Jury Recommendation 3: For all future projects, the MCOE should have a contract signed by both parties to ensure the specifications of the contract are followed to the letter of the contract.

Response to Grand Jury Recommendation 3: MCOE has policies in place to ensure that contracts are always signed by both parties before any action can be taken on the contract.

Grand Jury Finding 4: The MCOE, in its relationship with Firm Build, ignored a conflict of interest when it allowed its coordinator for the ATC project to serve on the Firm Build Board of Directors.

Response to Grand Jury Finding 4: MCOE did not believe a conflict of interest existed at the time as MCOE understood that its coordinator did not have a financial interest in Firm Build.

Grand Jury Recommendation 4: The MCOE should provide more supervision and oversight when it enters new projects. There was clearly a lack of both in the construction of the ATC and the MCOE and Firm Build needed to communicate more often and effectively.

Response to Grand Jury Recommendation 4: At the outset of MCOE's partnership with Firm Build, agreements were executed in a timely manner. Over time, it took longer for subsequent agreements to be executed by Firm Build. When this lack of supervision and communication was identified related to the ATC project, funding to Firm Build was discontinued and the expertise of the MCOE Business Services Department facilities staff was utilized to finalize inspection and occupancy permit requirements.

Grand Jury Finding 5: The Grand Jury investigation of the relationship between the MCOE and Firm Build and the operation of the WLA unveiled there was not clear oversight and supervision of the connection between WLA and Firm Build. The Grand Jury commends the MCOE for its efforts in working and aiding at-risk students in Merced County and hopes the WLA will continue with the good work it has been doing.

Response to Grand Jury Finding 5: MCOE agrees that oversight of the operation of the WLA as it related to Firm Build was not as effective as it should have been. MCOE has implemented oversight procedures and policies it believes will strengthen the oversight of the WLA and all MCOE programs. MCOE intends to continue the important work of the WLA with improved oversight in place.

Grand Jury Recommendation 5: The MCOE should ensure there is no conflict of interest when it enters into agreements with outside entities who desire to become involved in its operations.

Response to Grand Jury Recommendation 5: MCOE has adopted policy number 2150 that effectively insures that conflict of interest possibilities related to contractual agreements are prevented.

Grand Jury Finding 6: The MCOE followed proper procedures when it approved expenditures for attendees at the International Home Builders Conference in 2005, acquiring written authorization for those who attended the conference. This authorization is required before any follow-up payment may be made for conference expenses.

Response to Grand Jury Finding 6: MCOE concurs that it followed proper procedures when making payment for attendees at the Home Builders Conference.

Grand Jury Recommendation 6: The MCOE is encouraged to continue to look for funding and contributions with the local community to aid in funding for the WLA.

Response to Grand Jury Recommendation 6: The MCOE utilizes appropriate educational funding to maintain the continued operation of the WLA and welcomes local community support for this purpose.

Grand Jury Finding 7: The MCOE paid only for those documented charges on the Firm Build First Equity credit card, which amounted to \$8,496.64.

Response to Grand Jury Finding 7: The MCOE agrees that it paid only documented charges on the Firm Build credit card for the Home Builder's Conference.

Grand Jury Recommendation 7: The MCOE should follow good accounting practices for all recordkeeping, keeping careful records of all incurred expenses involving outside parties, such as the case with Firm Build.

Response to Grand Jury Recommendation 7: The MCOE follows good accounting practices for all record keeping and keeps careful records as was the case with Firm Build.

Sincerely,


LEE ANDERSEN
Merced County Superintendent of Schools

LA:yc

cc: Honorable Carol Ash, Presiding Judge of the Grand Jury