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performance. It appears to have elements of cronyism, abuse of authority and a sense of entitlement. It appears dishonest. It appears unethical.

- The Grand Jury read a series of news reports⁷⁴ about a present Board member's proposal⁷⁵ (and subsequent December 2011 adoption⁷⁶) to expand the size of the CalOptima Board of Directors and significantly alter the balance of power in favor of medical service providers over patients.⁷⁷ Only *two months later*, the hospital industry organized a \$250-per-person campaign fundraising event ostensibly billed as a "Tribute" to that supervisor.⁷⁸ A review of campaign finance documents⁷⁹ revealed that in 2012 the supervisor raised \$189,302 in cash donations, of which \$42,522 (or 24%) came from businesses or individuals associated with the healthcare industry. *Within five months* of the board reorganization, CalOptima suffered a slew of "controversial ousters and resignations" as the supervisors played a pivotal role in the oversight of the \$1.4 billion dollar managed health care program.⁸⁰

While this may be allowable under campaign finance laws, it may give the appearance of impropriety ("pay to play" or an abuse of authority) to the general public where a politician places his or her own political interest above the public good.

This is not simply a listing of individuals that have chosen to act (or appear to act) unethically. Each of the aforementioned people worked closely with others in government – a fact that has the Grand Jury concerned about a continued culture of indifference. It is evident to the Grand Jury that some *employees at all levels of county government* are unable or unwilling to learn from the mistakes of the past.

The Importance of Independence from Political Interference

Orange County has demonstrated a pell-mell approach to government ethics reform – usually as a result of scandal and the resultant negative public opinion. Several units of county government provide an oversight function – some with unclear direction or competing areas of responsibility.

1. The Internal Audit Department

Following the county bankruptcy in 1994, both the Grand Jury and a Blue Ribbon Commission made recommendations that the *internal audit* function of the Auditor-Controller's Department needed independence and should report directly to the Board of Supervisors. County Resolution 95-271 was adopted in 1995 creating the

⁷⁴ Voice of OC articles

⁷⁵ Agenda Staff Report, *OC Health Authority Ordinance Amendments* (10/2011)

⁷⁶ Regular Meeting of the Orange County Board of Supervisors (12/2011)

⁷⁷ Hospital Association of Southern California Press Release (2011)

⁷⁸ Voice of OC article

⁷⁹ FPPC California Form 460 documents for calendar 2012

⁸⁰ Voice of OC article

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Internal Audit Department “to ensure for the integrity of the County’s internal audit.”⁸¹

The Director of the Internal Audit Department is dependent upon the Board of Supervisors for an employment contract. While the Grand Jury has found nothing to the contrary, the Director’s reliance upon the Board for his/her employment contract creates a potential conflict of interest. Truly independent oversight requires a situation where the truth is told without concern of retribution or payback.

2. The Office of Independent Review

The Board of Supervisors created the Office of Independent Review in 2008 following the fatal beating of a prisoner at the Theo Lacy Jail. The Sheriff’s Department was also heavily criticized following revelations that deputies encouraged inmates to assault a prisoner wrongly suspected of child molestation.

It was reported by a local news organization on August 25, 2011, that the Board of Supervisors was frustrated with the Office of Independent Review because the Office wasn’t providing the results they expected. Supervisors cited an agency in Los Angeles County that has a similar function to the Office of Independent Review that has released numerous reports to the public.⁸² They “made it clear that the Office of Independent Review is on a short leash” after extending the Director’s contract for only six months.^{83,84}

3. The “Public Integrity Unit”

The District Attorney’s Office identified a need to add staffing due to increased complaints about public officials in Orange County. Moreover, the sexual misconduct probe caused additional strain. As a result, the District Attorney presented to the Board of Supervisors an agenda staff report requesting additional funding to staff a “Public Integrity Unit” on September 11, 2012:

“... Over the last several years, complaints and investigations of crimes involving people holding public office have steadily increased... Some specific types of crimes include, but are not limited to: illegal or inappropriate use of public funds; bribery; election and campaign violations; conflicts of interest [and] malfeasance in office...”⁸⁵

⁸¹ Internal Audit Report, “Historical Origins of OC Internal Audit Department as a Separate, Independent Function Reporting Directly to the Board of Supervisors,” Peter Hughes, Ph.D., CPA (2009)

⁸² The Los Angeles Office of Independent Review has issued 23 reports since 2008, some of which have identified significant areas of concern regarding law enforcement conduct. (www.laoir.com/Reports2.html)

⁸³ Two Voice of OC articles

⁸⁴ Regular Meeting of the O.C. Board of Supervisors, Tuesday, August 23, 2011, Item 55: APPROVED STAFF RECOMMENDATION WITH MODIFICATIONS TO RECOMMEND ACTIONS 1&2 CHANGING THE CONTRACT TERMS TO 1 YEAR FOR THE PERIOD 9/1/11 – 8/31/2012, CONTINGENT UPON AN ACCEPTABLE PERFORMANCE EVALUATION AFTER 6 MONTHS

⁸⁵ OC District Attorney Agenda Staff Report (9/11/12)

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Following concerns raised by the Board of Supervisors and political operatives in Orange County, the language of the agenda staff report was softened and modified to place the requested “Public Integrity Unit” positions into the existing “Special Prosecutions and Special Assignments Unit.”^{86,87} One Supervisor expressed concern about the title and worried that the unit would seek work in order to justify its existence.⁸⁸ The Board of Supervisors approved the report on September 25, 2012.

The District Attorney and Auditor-Controller are elected officials. As such they enjoy a higher level of independence from political interference than the appointed Directors of the other oversight departments. The Board of Supervisors’ ability to leverage the terms and duration of employment contracts has a chilling effect on freedom of action to fulfill the oversight mission and guard the public trust. The threatened (or implied) loss of employment to influence an oversight authority is tyranny. It is hard to imagine the effectiveness of the Sheriff-Coroner if she were retained “on a short leash” while executing her law enforcement duties.

While the Grand Jury applauds the hard work and effort of present-day oversight units, the Grand Jury recommends that county officials embrace comprehensive ethics reform to reduce incidents of corruption in the future.

What are the Goals of an Effective Ethics Program?

“There is nothing wrong with America that cannot be cured by what is right with America.” – President William Clinton’s 1993 Inauguration Address.⁸⁹

The Grand Jury met with a well-respected professor at a local university and discussed the issue of corruption and ethical lapses by Orange County officials. He provided the Grand Jury with great detail about Orange County in the post-World War II era – an era defined by large-scale development and the influence of those development dollars on local politicians. He spoke of special districts formed decades ago that are largely unaccountable to anyone and the fact that Orange County is lacking in effective civilian oversight.⁹⁰

When voters go to the polls to elect public officials, they are informed of the candidates’ qualifications and positions on issues of the day. Unfortunately, they are often uninformed regarding the character of those that run for local office. Buena Park voters, for example, elected a city council member later arrested for using a false social security number and driver’s license to avoid paying child support.^{91,92} In another

⁸⁶ OC District Attorney Revised Agenda Staff Report with Related Documents (9/19/2012)

⁸⁷ Voice of OC article

⁸⁸ Orange County Register article

⁸⁹ Clinton, W. (1/20/1993) Inaugural Address

⁹⁰ Interview conducted on December 5, 2012

⁹¹ Orange County Register article

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example, a member of the Board of Supervisors wondered why a person would seek public office while carrying the baggage of impropriety.⁹³

The Grand Jury cannot control or predict the competence of elected (or appointed) officials. The Grand Jury understands that political ideology will always be part of a politician's decision-making process. The Grand Jury does expect however, that local officials govern with high ethical standards -- always placing the public good ahead of their own.

The Grand Jury believes that the primary goal of an effective ethics program is the enhancement of public trust in government. After corruption, it is the appearance of impropriety that is so damaging to public confidence. When presented with a conflict of interest or obligation situation, officials often seek the advice of an attorney.

Legal advice is an important consideration for public officials, but it is often narrowly interpreted to convey whether a proposed conflict resolution is lawful - with little regard to the appearance of impropriety. When facing allegations of misconduct in office, officials often insist that they sought legal advice and what they did was "legal." It is not appropriate for public officials to use loopholes in ethics laws to their advantage at the expense of the public. What is sometimes technically legal doesn't always equate to what is ethical. Too many bureaucrats take a legalistic approach to government ethics – an approach that may be the biggest problem officials face when dealing with conflicts of interest.⁹⁴

Public officials are *best served* by seeking advice from a neutral ethics professional to see how their conduct would appear to the public.

A secondary goal of an effective program is to prevent unethical conduct and to establish a healthy ethical environment at all levels of County government. The County should serve as a shining example to all other forms of local government. It is in local government where politicians that aspire to higher office "cut their teeth" and experience their first ethical challenges, "learn to play the game," misplace their convictions and "begin to feel a special [sense of] entitlement."⁹⁵ Unfortunately, local government has more ethics scandals than effective ethics programs. Poor ethics environments start at the local level.

The Ideal Ethics Program

The Grand Jury examined ethics commissions in San Diego, Los Angeles, San Francisco and Oakland, California, as well as other oversight bodies across the

⁹² Orange County District Attorney press release

⁹³ Los Angeles Times article

⁹⁴ Wechsler, R. pp. 29-34

⁹⁵ Wechsler, R. pp. 21-22

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country.^{96,97} Grand Jury members attended a meeting of the Los Angeles City Ethics Commission in November 2012. Each of these groups had the following in common: They monitored local ethics ordinances; provided formal and informal advice; conducted ethics training; maintained a whistleblower hotline; ensured compliance through the use of administrative settlements and published annual public reports available on their websites.

Components of an Ideal Ethics Program in Orange County would be:

1. The Creation of a Healthy Ethics Environment

Government and community leaders that believe in the importance of public trust will do everything possible to help public officials (and those that conduct business with the government) deal responsibly with conflicts of interest and obligation, “before they exist, when they become relevant and after mistakes are made.”⁹⁸ In a healthy ethics environment, leaders are not afraid of an independent ethics program because they understand that the best measure is to do everything possible to prevent officials and employees from creating an appearance of impropriety.^(see 94) Department heads should foster an environment where honesty, ethical decision-making, customer service and transparency are openly and frequently discussed at staff meetings, training sessions and other informal settings.

2. Ethics Training

Prevention of unethical conduct is best accomplished through training at all levels of government. Orange County should provide ethics training to all its employees to build a foundation of understanding. The training should be a fusion of individual integrity, ethics law, compliance measures and the relationship between public perceptions and trust in government. Lastly, the County should host an annual ethics seminar for lobbyists and businesses to inform them of the County’s commitment to ethical governance and its expectations of employee conduct – particularly in the area of contracts⁹⁹ and procurement of goods and services.

3. Ethics Advice

President Lyndon Johnson said in his 1965 State of the Union Address: “A *President’s hardest task is not to do what is right, but to know what is right.*”¹⁰⁰

⁹⁶ Office of the Ombudsman, Kings County, Washington and Ethics Reform in Chicago, Illinois

⁹⁷ Source material from ethics commissions studied

⁹⁸ Wechsler, R. p. 52

⁹⁹ A clause about the County’s commitment to ethics should be included in every contract

¹⁰⁰ Johnson, L. (1/4/1965) State of the Union Address

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In addition to the Orange County's fraud hotline,¹⁰¹ employees should be offered the services of an independent ethics advisor to assist them when conflicts arise. Ethics advice differs from legal advice in several ways, one of which is that it focuses on the public's perception of a proposed action and can provide advice on potential conflicts, recusals, disclosures, transparency, gifts, procurements, etc.

Ethics advice should be available in two forms: informal and formal. Informal advice can be provided via a telephone call or meeting when an official needs quick help on an issue at hand or on a minor issue. Formal advice is rendered in writing that is published to support an official's decision and serves as a repository of opinion on ethical issues.¹⁰²

Since the appearance of impropriety is as much a problem as impropriety itself; a government ethics professional will not interpret an ethics code narrowly, as lawyers often do when giving advice. The importance of providing an ethics counselor to County employees cannot be overstated.

4. Effective Ethics Ordinances

Local ethics ordinances complement State law in that they can be crafted to reflect the needs of Orange County and be used by an oversight authority in a civil, administrative capacity. Effective ordinances include provisions on conflicts of interest, preferential treatment, recusals, gifts, confidential information, misuse of government property, patronage, nepotism, transparency, procurement, campaign financing, lobbying and post-employment of government officials. In crafting effective government ethics laws, the Cowan Commission stressed the importance of simplicity and clarity:

*"We have also been guided by the conviction that the goal of any good ethics law is compliance, rather than prosecution, and that the law should be as clear – and as fully understood – as is humanly possible. In short, we have sought to banish the gray: to eliminate those areas of uncertainty that represent loopholes for those who wish to avoid compliance and are confusing traps for those who wish to comply."*¹⁰³

The "Time is Now to Clean Up Politics" (TINCUP) ordinance passed by Orange County voters in 1978 (and updated in 1992) is an example of a local initiative dealing with campaign financing and disclosure. The ordinance is an example of a law that needs continuous "tweaking" to stay abreast of the

¹⁰¹ Orange County's Fraud Hotline is available for the employees and the general public alike to report questionable behavior, waste, and abuse involving County vendors, employees, and processes

¹⁰² Wechsler, R. p. 54

¹⁰³ Cowan Commission Report (11/20/1989) p. ii

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complexities of campaign fundraising.^{104,105,106} Many ethics commissions review and recommend local ordinances to keep them current with changes in the law.

5. Compliance

The Fair Political Practices Commission enforces compliance of California government ethics law. California has the eighth largest economy in the world and is the size of many nations. Consequently, the Commission is limited in its ability to enforce provisions and struggles to provide timely advice. A local ethics program can, if properly constructed, provide better service. Given the dual goals of enhancing the public trust and preventing unethical behavior, the compliance arm of an ethics program should use measures such as warning letters, administrative settlements and annual public reports to encourage appropriate ethical behavior. Compliance measures should be relatively simple and inexpensive, usually ending in settlements that themselves provide guidance to other officials.

6. Disclosure

The disclosure of relationships with individuals seeking benefits from local government accomplishes three things: First, it helps officials recognize potential conflicts and deal with them appropriately. Second, disclosure informs others about potential conflicts. Third, regular disclosure of relationships is proof of commitment to and participation in a healthy ethics program.¹⁰⁷

7. Jurisdiction

Administrators of a County ethics program should have jurisdiction over every County department, agency, commission, board and joint powers authority regardless of whether the head of such a body is elected or appointed. An ethics program, whether it takes the form of a commission, advisory group, ombudsman or other form should also have jurisdiction over the elected leadership of the County.

8. Independent Administration

Officials under the jurisdiction of an ethics program should not be involved in the selection of members serving on an ethics program or oversight authority. *It cannot be emphasized enough* that freedom to act without political interference is paramount to the success of any ethics program.

¹⁰⁴ UCI Guide to Shirley Grindle Papers MS.R.084 (2011)

¹⁰⁵ Los Angeles Times article

¹⁰⁶ Orange County Weekly article

¹⁰⁷ Wechsler, R. p. 59

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9. A Central Point of Contact

An ideal ethics program should serve as a central clearinghouse for the public (as well as officials and government employees) to complain about real or perceived violations of ethics provisions. Complaints could be via telephone hotline, correspondence or the Internet.

10. Public Reports

The ethics program should publish annual reports about complaints, formal advice letters, referrals to the District Attorney and administrative settlements. These reports serve the greater good by informing the public of sustained unethical behavior by public officials. They should be published in writing and available for download from the Internet.

If Madison, Franklin and Jefferson were with us today, they would see a beautiful, vibrant, multi-cultural Orange County much different from their colonial world. They would marvel at modern technology, construction, freeways, beaches and Disneyland. The challenges of creating and nurturing an infant nation are long gone – replaced by the challenges presented to us in the 21st Century. It would be fascinating to hear what they think about government today.

The Grand Jury is determined that a forty-year cycle of repeated ethics violations by officials in Orange County be broken. As the largest form of local government, the County should take the lead in ethics reform as a model for cities, school boards and special districts to follow.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2012/13 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of corruption in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at seven principal findings as follows:

- F1 Public officials are stewards of the public trust and maintain it by placing the civic interest ahead of their own. Even the appearance of impropriety damages public faith in government. Citizens expect its officials to conduct business in a lawful and ethical manner.
- F2 The unparalleled development of Orange County from an agrarian to world-class economy in the post-World War II era led to the creation of a “power elite” of land

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developers and public officials. The influence of “development dollars” in the form of contributions to public officials resulted in a series of public corruption cases over a forty-year period. Other ethics scandals involved the abuse of power.

- F3 Orange County reacted to the 1994 bankruptcy scandal by creating a patchwork of oversight offices to audit financial, performance and professional standards. These offices have varying levels of independence, jurisdiction and legislative support. They need to be accountable as well.
- F4 Unethical behavior at the local government level is not something that “simply fixes itself.” The County needs an independent Ethics Program that provides training, advice and guidance to public officials and private persons seeking to do business with government.
- F5 Citizens need a clearinghouse to voice complaints about actual and perceived incidents of corruption and unethical behavior by public officials.
- F6 In California, the Cities of San Diego, Los Angeles, San Francisco and Oakland have ethics commissions that address similar ethics issues.
- F7 Orange County lacks effective ethics oversight of its public officials.

RECOMMENDATIONS

In accordance with California Penal Code Section 933 and 933.05, the 2012/13 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of corruption in Orange County, the 2012 - 2013 Orange County Grand Jury makes the following three recommendations:

- R1 The Orange County Board of Supervisors creates a Blue Ribbon Commission to study ethics programs in California and around the nation. The Commission shall recommend an ethics reform program and oversight authority to the Board of Supervisors within 12 months. (F1, F3, F6, F7)
- R2 The Orange County Board of Supervisors shall select Blue Ribbon Commission members based upon their knowledge of government ethics, ability to conduct research and desire to make positive change to Orange County government. Their selection should represent a cross-section of Orange County’s population and be free of political influence. Commission applicants should be vetted and randomly selected from an approved pool of candidates. (F2, F7)
- R3 The Board of Supervisors shall require that ethics reform recommended by the Blue Ribbon Commission address the following in their report: (F3, F4, F5, F7)

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A. Goals

- a. The enhancement of public trust in government.
- b. The prevention of unethical conduct.

B. Legislation

The oversight authority has the power to review and recommend County ordinances related to ethics, including but not limited to: Conflicts of Interest, Preferential Treatment, Recusals, Gifts, Confidential Information, Misuse of Government Property, Patronage, Nepotism, Transparency, Procurement, Campaign Financing, Lobbying and Post-Employment of Government Officials.

C. Advice and Training

- a. The oversight authority shall provide formal and informal ethics advice to public officials and employees.
- b. The oversight authority shall plan, develop, implement and facilitate regular ethics training for public officials and employees -- at all levels of Orange County government.

D. Whistleblower Hotline

- a. The oversight authority shall create, maintain, monitor and publicize a hotline for citizens and County employees alike to report real or suspected unethical conduct.

E. Enforcement

- a. The oversight authority shall ensure compliance through the use of administrative settlements and published annual reports that are available on their website.

F. Independence and Jurisdiction

- a. The oversight body shall have the following powers:
 - i. Be free to act without political interference.
 - ii. Have jurisdiction over each County department, agency, commission, and board and joint powers authority – regardless of whether the head of such a body is elected or appointed.
 - iii. Have ethics-related jurisdiction over the elected leadership of the County.

- G. The oversight body must have the authority to enforce compliance through the use of warning letters, administrative settlements and the issuance of annual public reports.

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REQUIREMENTS AND INSTRUCTIONS:

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

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(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

REQUIRED RESPONSES

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

The Board of Supervisors: F1, F2, F3, F4, F5, F6, F7

The Board of Supervisors: R1, R2, R3

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Report Appendix

1. Table-1
2. Case Study – City of Los Angeles Ethics Commission

Grand Jury Listing of Ethics Violations Not Used in this Report

Table-1

Year	City Official	Summary of Ethics Violation ¹
1972	Westminster Mayor and Planning Commissioner	Convicted of soliciting a bribe from a farmer leasing land at Mile Square Park.
1992	Brea Mayor	Convicted of 7 counts of Conflict of Interest. He failed to disclose millions of dollars in loans and other financial interests.
1992	Brea Council Member	Acquitted of 5 counts of misdemeanor conflict of interest. Alleged to have lobbied to give a city contract to a company that employed him as a consultant.
2000	Huntington Beach Mayor	Allegation that the Mayor voted on matters involving companies that paid for advertising in the Local News and the city's visitor guide. County and State documents reveal that the mayor owned the newspaper. Convicted.
2001	Santa Ana Council Member	Council member convicted of extortion and money-laundering in a scheme to take control of the city council.
2002	Seal Beach Council Member	Council member settled with the Fair Political Practices Commission and fined \$25,000 after making governmental decisions in which he had a financial interest, by taking action in closed-session meetings regarding a lawsuit filed against the Redevelopment Agency.
2006	Huntington Beach Mayor	Convicted of scheme to illegally convert apartments into condominiums.
2008	Placentia Public Works Director	Convicted of felony Conflict of Interest Charges -- Public Works Director used his influence to be hired as private consultant on OnTrac Project.
2008	Placentia City Manager	Indicted for Aiding and Abetting OnTrac Director – Overturned on appeal.
2012	Huntington Beach Planning Commissioner	Fair Political Practices Commission settled with the Commissioner after voting on a housing development without disclosing a donation to his/her failed city council campaign.

¹ Source material

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Case Study – The Los Angeles City Ethics Commission

The Los Angeles City Ethics Commission was created after citizens passed Charter Amendment H in the 1989 election with 57% of the vote. The proposition was placed before voters after a series of allegations were leveled against the city's mayor. The Cowan Commission was created to research and propose local ethics legislation and the structure of an oversight body. The Cowan Commission asserted its independence by using private funds to fund its study. Critical early funding came from groups such as Bank of America, the Cedar Fund, 20th Century Fox, and Warner Brothers. Over a six-month period, commissioners studied "dozens of national, state and local laws, read scores of reports and documents and interviewed more than 200 individuals in Los Angeles and around the country."¹

The Cowan Commission issued a report on November 20, 1989, that contained 30 recommendations including:

- The Creation of a City Ethics Commission
- Enforcement of City Ethics Law
- Ethics Education and Training
- Disclosure of Financial Information
- Honoraria, Travel Expenses and Gifts
- Conflicts of Interest

The voter mandate and Cowan Commission Report led to the adoption of local ethics law into the Los Angeles City Municipal Code that are grouped into three broad areas: Government Ethics, Campaign Financing and Lobbying.

The Los Angeles County Ethics Commission was created and consists of five commissioners serving staggered, five-year terms with a support staff of 19 employees. They meet monthly to "consider policy issues, draft legislation for city council consideration, and make determinations regarding violations of the City's ethics laws."²

The "Duties of the Los Angeles City Ethics Commission," as taken from their informational pamphlet are as follows: (See Citation 110)

Advice – To help people understand and comply with City laws, the Ethics Commission provides both informal and formal advice. Informal advice can be provided in person or over the telephone, regarding general guidance about laws. Formal advice is provided in writing in response to a written request, and it applies the law to a requestor's specific facts. A person who receives formal advice and follows it is immune from Commission enforcement actions.

¹ Cowan Commission Report, Ethics and Excellence in Government – The Commission to Draft an Ethics Code for Los Angeles City Government (1989)

² Los Angeles City Ethics Commission Information Pamphlet at www.ethicslacity.org

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Education and Compliance Assistance – Education and compliance assistance are essential to an effective ethics program. In partnership with the Office of the City Attorney, the Commission has developed an online course for city officials who are required to participate in ethics training every two years. The Commission provides general ethics briefings for City agencies, trainings for ethics liaisons in city departments, and trainings for candidates for elective office. The commission also produces publications and other materials to help educate candidates, public officials and the general public.

Audits – Commission staff audits the political committees of city candidates and the fundraising and expenditure statements they file. All committees controlled by city candidates who either raise or spend at least \$100,000 in an election or who receive public matching funds must be audited.

Enforcement – The commission investigates and brings enforcement actions against persons who violate the City’s ethics laws. Many cases begin as complaints to the whistleblower hotline. If a violation has occurred, administrative penalties of up to \$5,000 per violation or three times the amount of money that was unlawfully contributed, accepted, or concealed may be levied. The Commission works closely with both the District Attorney’s office and the Fair Political Practices Commission as needed.

Policy and Legislation – The Commission must regularly evaluate the effectiveness of the City’s ethics laws and make recommendations about the laws to the Mayor and City Council. The Commission staff collects data, identifies trends, and analyzes issues to help the commissioners assess existing policies. The Commission proposes legislation to the City Council and makes recommendations to help shape ethics laws and policies.

Whistleblower Hotline – The commission is required to maintain a whistleblower hotline, through which City officials, employees, and members of the public can report potential violations of the City’s ethics laws. Commission staff independently investigates all complaints, which may be submitted 24 hours a day by phone, or online.

The Grand Jury reviewed documents that showed how the Los Angeles City Ethics Commission wrote a detailed advice letter to a former official asking about post-employment consulting with the City. The advice letter reviewed applicable laws and provided analysis and a conclusion to assist the former official and others with similar questions about post-employment restrictions under their municipal code.³ Advice letters issued by the Commission cover other topics as well: contribution limits, outside employment, post-election fundraising, gifts from lobbying firms, gifts of travel, etc.⁴

The Grand Jury read two press releases by the Los Angeles City Ethics Commission where they announced the imposition of penalties for violations of the City’s ethics laws. In the first release, commissioners approved stipulations for fines in

³ Los Angeles City Ethics Commission Advice Letter

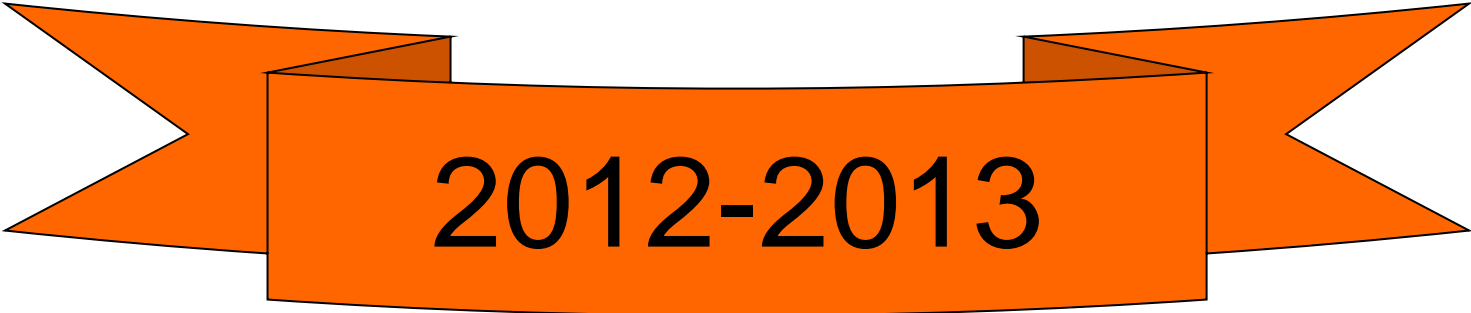
⁴ Formal advice letters published online by the LA City Ethics Commission

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the amount of \$175,000 for two violations of campaign finance laws. In the other release, stipulations were agreed to in the amount of \$185,000 for two violations of political money laundering during an election campaign.⁵

⁵ Los Angeles City Ethics Commission Press Releases

The Culture Of Harassment: Change On The Horizon



The Culture Of Harassment: Change On The Horizon

SUMMARY

During the last few years a number of sexual harassment complaints from Orange County employees have come to light. Two complaints garnered wide media attention with one of them resulting in criminal charges against a senior county employee. The other complaints have remained cloistered in the offices of various County agencies where the alleged harassment occurred.

While hearing the testimony of 21 witnesses, the Grand Jury identified a disturbing pattern of sexual harassment claims being overlooked, ignored, poorly investigated, and even suppressed. The Grand Jury participated in a number of investigative hearings surrounding the events concerning the sexual harassment complaint that led to the criminal charges against an elected City official who was also an executive manager for the County. The witnesses who testified were from all levels of County government – the rank and file as well as elected officials and executive management. The Grand Jury found a severe lack of understanding of what constitutes sexual harassment. Also distressing was a strong tolerance for inappropriate behavior, especially when it concerned high-ranking elected officials and executives. As the Grand Jury listened to the testimonies, it became apparent that this tolerance of inappropriate behavior was “culturally inspired.”

REASON FOR STUDY

This study focuses on the culture, conduct, and action that allowed the tolerance of sexual harassment to rise to the level of alleged criminal conduct. Culture is the essence of how a society, business, or government operates. Such entities normally publish a policy statement regarding what is, or is not, acceptable behavior for those working in each of these venues. Problems arise when leadership fails to enforce these policies, provides inadequate guidance on how to follow the policies, or the leaders display behavior that is contradictory to their published policies.

The Grand Jury would like to point out that the County of Orange is currently undergoing the re-centralization of its Human Resources Department. This report does not address or discuss all of the changes brought about by the re-centralization. The department has been renamed Human Resource Services. Because this report deals with many events which took place before the very recent re-centralization, this study will use the prior name of Human Resources Department (HRD) in this report. The Grand Jury acknowledges that some of the deficiencies that have been identified in this report are being addressed and corrected. However, it is highly probable that these and other deficiencies will continue regardless of any one change in policies and procedures, or change in reporting structure. This is because the *change will not happen with just a well written directive; rather, the change will come by creating a culture that shows by conduct and action by all a commitment to a safe and equitable working environment for all.*

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It is the goal of the Grand Jury that, by reviewing and bringing to light many of the events of the last few years, the County will recognize the need for, and embrace, strong leadership and training in areas of acceptable behavior, and the need for a robust Human Resources Service Department, **free from political influence**, to monitor and enforce County policies.

METHOD OF INVESTIGATION

The 2012-2013 Grand Jury heard testimony concerning the events before and after the filing of criminal charges for sexual harassment from 21 witnesses over a seven month period. All testimony was under oath and documented by a court reporter. Additionally, members of the Grand Jury conducted seven other interviews with County employees and elected officials. The Grand Jury reviewed 210 documents that comprised thousands of pages. Members of the Grand Jury examined the laws regarding the Equal Employment Opportunity Commission's (EEOC) definition of harassment and discrimination, and the Federal and California guidance on model policies comparing them to the County's harassment and discrimination policies. The Grand Jury examined a variety of documents issued by the County Human Resource Service Department, formally Human Resources Department (HRD), and the Memorandums of Understanding (MOUs) currently in effect between the County and Labor.

The Grand Jury heard many different opinions from the witnesses who gave testimony during the investigative hearings about the actions surrounding events that led to the filing of criminal charges. The Grand Jury did not rely on any single statement from a particular witness, or one isolated document, to establish the conclusions of this report. The conclusions in this study were supported by numerous witnesses and documents.

BACKGROUND AND FACTS

Lack of Written Policies, Procedures, and Training:

The County of Orange has a long-standing published policy regarding the laws concerning Equal Employment Opportunity (EEO) and work place discrimination. This policy was refreshed by Board Resolution on October 30, 2012 and meets the legal requirements of Federal and State laws governing EEO. It is distributed to all employees annually by the incoming Chairman of the Board of Supervisors. The policy also includes a procedure that states when a complaint is received the County will take all necessary steps to insure a prompt investigation and that appropriate remedial action is taken. Unfortunately, this was just about the extent of the written policies and procedures existing to guide any County employee assigned to investigate a complaint of harassment or discrimination.

The County of Orange decentralized its human resources agency after declaring bankruptcy in 1994. Most agencies and departments (with very few exceptions) set up

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their own separate human resource departments. The County of Orange maintained a Central HRD which was mandated by policy makers to coordinate and help ensure that the human resource policies of the County were followed. The efforts to coordinate were minimal, especially in the area of EEO. Training of HRD staff was limited to shadowing a peer, meaning a person followed another person to observe how the job was done. Formal instruction from outside firms specializing in human resource matters was most often left to the discretion of the employee, meaning there was no requirement for any manager to attend any training except the on-line biannual training as mandated by law. Except for a one page document referencing the preferred steps to be taken during an investigation, there were no written policies or procedures for how to conduct an investigation of a complaint of harassment or discrimination. The Grand Jury has been advised that the last time training was offered on how to conduct an investigation was five or six years ago and there was no requirement for attendance.

What the Grand Jury found particularly alarming was the lack of knowledge in identifying a violation of EEO laws. The Grand Jury heard testimony from personnel in Central HRD and the departments providing human resource assistance of various County agencies, as well as County executives and elected officials, and each had a different interpretation of sexual harassment as it relates to EEO. The majority of these interpretations were wrong in multiple areas. When presented with the original complaint of sexual harassment against the County employee who was criminally charged, persons from Central HRD said they thought it was from a whiner and would not have forwarded it to the EEO Access Office as prescribed by the County of Orange in their policies and procedures. Similar sentiments were expressed multiple times during other testimonies.

Another problem in each of the various agency human resource departments was the internal recruitment process for senior and mid-level managers. Employees were allowed to transfer from other areas (IT, Social Services, etc.) with no experience in human resource matters. The only requirement was meeting the job classification (i.e. Admin I, Admin II, etc.) for the posted position with no prerequisite for proficiency (or even familiarity) with the department's responsibilities and duties. This system resulted in supervisors and managers with no expertise who were overseeing not only the functions of the HR Departments, but the training of the staff (i.e., "the blind leading the blind").

The lack of written policies and procedures coupled with inadequate EEO knowledge and training resulted in the bungled internal investigation of the original complaint against the County employee who was charged at a later time with felony crimes arising out of his alleged misconduct. Upon review of the internal investigation, the Grand Jury found it lacking in the most fundamental basics of an investigation into behaviors of misconduct by employees, either in the private or public sector. This botched probe allowed this individual to continue his behavior for another six months before he was removed from the workplace. It also resulted in the termination of the senior department executive to whom the individual reported. It has been suggested in the media, and in testimony heard by the Grand Jury, that this termination was due to

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not following policies and procedures, and for not informing Central HRD and the EEO Access Office about the complaint. The Grand Jury has heard convincing testimony that many highly placed County executives and elected officials had a copy of the complaint or knew of its existence, but did nothing. Those that received a copy of the complaint, or otherwise knew of its existence and content, had a duty and responsibility to ensure that a proper and objective investigation took place as outlined in The County of Orange Equal Employment Opportunity Policy and Procedure document. This document applies to every employee and elected official and every employee receives a copy of this document every year. Testimony given to the Grand Jury also confirmed that it was well known by highly placed officials that the original internal investigation was being conducted by a direct subordinate of the accused. Multiple persons gave testimony that they were at a meeting where the original complaint letter was discussed. In regards to this complaint, the County executive who was terminated was told by his superior you can look around, but don't put too much stock in it.

The Grand Jury is aware that some will argue that the events described above were an anomaly and "best practices" are generally followed on all investigations. This is simply not the case. The Grand Jury reviewed a variety of other past investigations of complaints and found a lack of consistency and openness in the reports. During testimony, employees of the County explained to the Grand Jury that it was an unwritten HRD policy that the person writing the report would respond only to specific allegations contained in a complaint. An example given to the Grand Jury of this practice was: if a person is asked to investigate a death caused by a gunshot, they may come back and say the death was unsubstantiated because the death was caused by a knife wound. Also, if additional information or wrongdoing that was not specifically referenced in the complaint was discovered, there was no obligation to include this information in the report. Hence, many violations of County policies in areas other than sexual harassment were buried, or ignored, because these violations had not been "specifically" stated in the original complaint. Such obfuscation reflects a "letter of the law" rather than a "spirit of the law" approach. This lack of written policies and procedures was one reason for the development of a culture that supported silence rather than dealing with events as they unfolded, and taking appropriate action.

This practice of silence rather than reporting was evident to the Grand Jury when it reviewed multiple memos between the Central HRD and the Internal Audit Department (IAD) concerning a second complaint of possible sexual harassment, recruitment violations, and retaliation.

IAD is a stand-alone department reporting to the Board of Supervisors. One of IAD's duties is to operate a "fraud hotline" where employees may report their concerns, and can do so with anonymity. When IAD receives a complaint via its fraud hotline, it passes the complaint to the appropriate department for investigation. IAD will then monitor the progress of the investigation until suitable action is taken and the matter is closed.

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A second complaint letter was received by IAD and various County officials and it contained additional allegations of sexual harassment by the same individual named in the first complaint. IAD sent this complaint to Central HRD and this prompted the County to hire an outside independent law firm to investigate. The firm produced a report verifying the sexual harassment and indicating the possibility of criminal conduct. IAD was tracking the investigation and repeatedly asked Central HRD, via memos and meetings over a six month period, for all documents and information related to all allegations in the complaint. The outside firm's report was withheld from IAD for four months while put under "lock and key" by a highly placed County executive. The responses by Central HRD to IAD's inquiries were intentionally directed to the specific language in the complaint thus perpetuating the silence about extremely relevant information. The additional wrongdoing that was discovered was buried. If not for the dogged efforts of IAD it is highly unlikely the report would have ever surfaced. The withholding of the independent report and its contents appeared to have been a conscious choice - a very wrong choice. This event epitomizes the culture of silence surrounding suppression of negative events, and this culture continues to be nurtured by many.

The Grand Jury heard testimony again and again that Central HRD had no written policy, or procedure that required anyone to detail to the IAD what the independent report contained. *Well written policies, procedures, and guidelines are essential parts of optimizing the efficiencies, practices, and conduct of any department within any organization.* Training employees to execute these policies is a critical part of achieving the goals, mission statements, and ideals of a culture of any organization. The lack of written policy, guidance, and training was very much like piloting a boat without a rudder. The boat floundered because it had no way to steer.

Protectionism and Cronyism:

"The practice of favoritism based on relationships and connections – rather than someone who demonstrates top credentials and well-suited experience – ultimately results in vastly inferior government service to the public."¹

Cronyism, the practice of giving jobs and perks to friends, has been around for a very long time and will probably always be with us. There is nothing wrong with someone wanting to surround themselves with intelligent and supportive people. This makes a job easier and the work results are usually of higher quality. The problem with cronyism arises when people are placed in positions because of political agendas, relationships, and associations, and not because they are qualified for the position. This practice is exacerbated when protectionism is brought in and used to mask skill deficiencies. Even worse is when protectionism is used to cover up unacceptable behavior, and insulate and shield the individual responsible for the incorrect behavior or performance.

¹Daniel Garza "Government Cronyism is back" 03/12/2012

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The Grand Jury heard testimony from many individuals that there is a belief by County employees that elected officials and County executives are immune from discipline for inappropriate behavior and are untouchable due to their connections with other County, State and/or local officials. The Grand Jury was surprised when this was first asserted. However, after hearing testimony from so many on how the events of the recent years unfolded, the Grand Jury found this to be plausible.

The Grand Jury heard testimony from multiple witnesses that complaints of inappropriate behavior and sexual harassment had been known, discussed among peers, and reported for many years. This behavior was not confined to one department, or agency, and involved elected officials, executive management, and rank and file staff. In many instances the repercussions for the individual exhibiting sexual harassment was simply a transfer to another department. The Grand Jury heard testimony that many persons from executive management knew about the inappropriate conduct, but trivialized it to an act of flirting. This trivialization led to a perception by County employees of executives condoning inappropriate behavior. Persons subjected to sexual harassment believed they could not report this behavior to anyone because everyone already knew about the problem and nothing was ever done to correct it. They also feared reporting any incident because of possible retaliation, career curtailment, or job loss. It was believed that friendships and connections could be used to successfully repress the reporting of inappropriate conduct.

The Grand Jury heard testimony regarding other events that supported this perception of protection for the criminally charged individual. Both of the complaint letters discussed in a previous section of this study were given directly to the individual in question before a proper investigation could even begin. These actions destroyed any possible confidentiality for the persons subjected to the sexual harassment. The accused was forewarned and free to confront the persons being harassed. A valid investigation must be conducted in a way that offers the maximum amount of confidentiality for both the victim and the accused.

The perception of protectionism will be also marked by the actions taken following the completion of an investigation. When wrongdoing was confirmed there was an expectation that the behavior in question will be stopped. The greater the frequency and extent of wrongdoing usually leads to a higher degree of discipline. The findings of the independent investigation regarding the sexual harassment of multiple persons by the same individual aggressor occurring over a number of years resulted only in the voluntary resignation with a severance package for the alleged offender. Documents confirming the sexual harassment and possible criminal behavior were suppressed. There was no outreach to the victims; no counseling; and no effort to assess whether retaliation had occurred. The victim's fears were confirmed. They had bravely come forward and it did not matter. Protectionism was working – for the benefit of the accused.

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Personal Protectionism:

During testimony the Grand Jury found that various County executives and elected officials utilized “personal” protectionism. It is a common reaction that a person will try to distance themselves from unpleasant circumstances. This is particularly true in the political arena where associations with questionable people risk the loss of one’s own political capital. It is also true with persons working in the halls of executive County management and those aspiring to executive management. Common methods of handling such situations are: downplaying the knowledge of an event; downplaying one’s relationship with the person under scrutiny; and sequestering as much information as possible surrounding a questionable event.

During testimony the Grand Jury was quite surprised by how many highly placed County executives, elected officials, and peers of the accused professed to not really know the accused and described their relationship as professional only, and with no social interaction. This was expressed many times even though many of those testifying had long supported this individual’s political and County career. Each witness that testified on their distant relationship with the accused was contradicted by another witness, and that witness was contradicted by the next. If the Grand Jury believed each of the witnesses individually, the accused was friendless and had no interaction beyond a “hello” in the hallway. The Grand Jury questions how these witnesses, who supported his political aspirations and rapid rise to executive management, can now profess that any contact with him throughout the years was perfunctory. The Grand Jury views this conduct as a form of distancing, protectionism, and downplaying the relationships.

This study has already addressed the trivialization of the conduct by the accused and its effects. However, the downplaying of this conduct was evident in many areas of County management. Central HRD, having read the outside investigative report, originally relayed to IAD that the allegations contained in the complaint letters were unsubstantiated. After additional queries by IAD, HRD responded that the investigation only substantiated inappropriate language and engaging in inappropriate touching of female employees, such as hugging at inappropriate times. No mention was made of the much more egregious behavior described in the independent report.

When HRD first received the independent report, it did forward it to a member of the Office of County Counsel, the agency that provides legal advice on all County related matters. The report was discussed with at least one other associate, yet this agency, composed of experts in law, only reported on the possible violations of County policy on EEO and whether or not it would serve as the basis of a termination. The experts’ perceived role was to recommend the most immediate and cost effective solution for the County. This agency ignored, did not address, and took no action on the vividly described potential criminal activity by the accused. An agency, most likely schooled in aspects of criminal behavior, chose to ignore the obvious and downplay its responsibility, and to only advise on the cost of termination verses resignation. The Grand Jury has been advised that there are no written policies, procedures, or

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guidelines for a referral of possible criminal conduct to law enforcement agencies. This department relied on what was described as essentially common sense.

The cover-up of information was highly evident in how the outside independent report was handled. The Grand Jury heard testimony that County management hired an outside investigator because one person in the complaint was controversial, important, an executive with the County, and an elected official. Hiring an outside agency seemed to the Grand Jury to be a prudent step which would ensure objectivity, freedom from influence from any area in County government, and make certain the truth concerning all allegations would be discovered. It would also suggest that County government wanted to know the truth. Regrettably, the concept of how much truth should be known carried a very different interpretation by many. The independent firm delivered their report to a select few in the County which the Grand Jury finds as a judicious step. The executives who received the report relayed only enough information to motivate the voluntary resignation of the person that was investigated. After reviewing the exhibits provided by the District Attorney and listening to various testimonies, the Grand Jury found that word-smithing and semantic ruses were frequently used to deflect conversations about the content of the report and deter others from reading it.

Each member of the Board of Supervisors received a copy of the complaint that prompted the hiring of the outside investigative firm. When the outside report addressing all of the issues contained in the complaint was complete and available, each member of the Board of Supervisors was briefed individually. However, the information contained in the report was downplayed to a personnel issue and they were informed that appropriate action was being taken. Each member made their own independent decision to not read the report. What the Grand Jury finds perplexing is that the complaint which impelled hiring the outside firm contained a variety of allegations of policy violations by many people and the majority of the allegations were discussed in the outside report. How all allegations were funneled into a single "personnel issue" should have prompted more questions and curiosity as to the report contents.

Protection of the County:

During the investigative hearings, witnesses from various County departments told the Grand Jury their primary job was to protect the County from lawsuits. Protecting the County from lawsuits is an excellent goal and one that serves the taxpayer well, but not at the expense telling the truth and doing the right thing. The practice of using the County checkbook for the purpose of paying a severance package in exchange for a resignation and a promise not to file a lawsuit is a short term solution and could have even more expensive and far reaching consequences. This really amounts to paying people off. The thinking behind this type of solution is that it solves the problem by exiting a person who has violated County policies and work practices. It also gives the illusion that those in charge took corrective action. This practice circumvents the process of issuing a reprimand and/or termination for cause. It takes away accountability and any need for a pro-active assessment of why events of

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wrongdoing happened. To this point, a County elected official suggested that this report be suppressed because it may affect the costs of anticipated litigation.

During testimony it was explained to the Grand Jury that obtaining a voluntary resignation and a written statement promising not to sue the County from the individual named in the independent report was a “win” for the County. Using a narrowly focused strategy that applies to only one individual for an incident that encompasses many others shows a lack of risk assessment for an entire event. This strategy also reinforced the perception that the conduct of the accused did not warrant a discipline, such as a termination, and served to impugn the credibility of the victims. The Grand Jury is fairly certain that none of the victims think this strategy is a win.

The Grand Jury also believes that protection of the County was one of the reasons the outside independent report was kept out of sight and its existence mentioned only rarely. Many of the findings in the outside report could be viewed as an embarrassment to the County. Reading the outside report confirmed the inefficiencies and lack of effectiveness of various County departments. It also confirmed that fear was a leading reason why victims of sexual harassment were reluctant to come forward. Most people have experienced an incident of fear in the workplace, but the incident was normally short-lived. What the Grand Jury finds alarming is the length of time this prevailing aura of fear was present in County departments. This atmosphere of fear seemed to come from the very top of County government. Many witnesses who testified and persons interviewed by the Grand Jury expressed an aversion to presenting the progress or results of their work product to County elected officials and executive management because they had experienced severe criticism on a personal basis. This type of posturing is demoralizing and fosters insecurity about one’s job longevity. It also shows a lack of respect for the employee and takes away opportunities for necessary and spirited discussions on County projects, overall government, and problems as they naturally arise.

Have Corrections Been Made, Have Lessons Been Learned?:

As previously mentioned in this study, the County is currently re-centralizing its Human Resources Department. This is a very large and challenging endeavor and will take time. More importantly, it is a critical piece that is necessary to advance significant cultural change. Since approximately 1995 until 2013, each County agency had its own human resource department which operated independently and each was free to implement and train to their own interpretations regarding Federal, State, and County policies on EEO. With this re-centralization, the majority of County human resource personnel will report within one department – a good first step. However, the differences in interpretation and training will remain unless proactive measures are taken. Re-training to achieve consistent compliance in matters related to discrimination and harassment should be a priority in this new structure. There are many outside resources available to aid in attaining more in-depth knowledge relating to human resource matters. Local colleges and universities offer classes and certificates in human resource management which follow the guidelines set forth by the Society for Human

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Resource Management, a nationally recognized association devoted to promoting professionalism in the human resource field. In addition, the County provides tuition assistance, so obtaining a certificate, or attending classes, should not be a financial burden for an employee. The Grand Jury also learned that there is reluctance in requiring a new hire for a supervisory or management position in any human resources department to have certifications in human resource management or equivalent experience. Instead, the job posting will list these skills as “preferred” and the only mandated requirement will be based on job classification as it relates to a pay scale. It was conveyed to the Grand Jury that restrictions on posting job requirements are state mandated. The County interpretation of these restrictions needs to be reviewed for accuracy and possible revision. Without a review, this policy continues the problems that grew from having a decentralized HR Department staffed by many managers who had little or no training and little or no experience in human resource matters. This policy reinforces the lack of recognition of human resource management as a specialized discipline and career. Delaying the training of County HR personnel, and the lack of requirements for job experience for managers and supervisors, will delay the successful implementation of the new department and will delay the cultural change necessary to overcome the reluctance and fear of all County employees to come forward and report inappropriate behavior.

As of April 2013, the County has not provided any additional resources for County employees to report discrimination or sexual harassment. If someone wants to report an incident of sexual harassment, and they wish to do so with anonymity, the only currently advertised option is a fax or phone call to the “fraud” hotline operated by IAD. The Grand Jury does not understand how a claim of sexual harassment is related to “fraud”, and the Grand Jury is sure this is a source of confusion for many County employees. Within the Human Resource Services Department there is an EEO Access Office charged with investigating complaints on all harassment and discrimination issues. However, how to access this office and the duties prescribed to this office are still confusing to employees. This office has been chronically understaffed for ten years and there is no way to access this office with anonymity. Contacting this office should be a natural first step for employees to report the possibility of discrimination, harassment, or discomfort. One of the main reasons this office has not been viewed as a safe haven by employees is because they do not know its function. This is largely driven by the fact that employees have not been trained on what constitutes harassment and discrimination, and programs designed to heighten employee awareness of this office have been sporadic and minimal. As of April 2013, the EEO Access Office is staffed by one person. The Grand Jury has been advised that a new Manager for the EEO Access Office has been hired and the person has a strong and credentialed background in EEO law, interpretation, and implementation. Rather than waiting for the new director to settle in, the Grand Jury is in hopes that the County will initiate a program to educate and inform all County employees that the EEO Access Office is a safe haven and its mission is to protect confidentiality to every extent possible and the County will approve additional staffing to accommodate almost 17,000 employees.

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As stated at the beginning of this study, the Grand Jury participated in a number of investigative hearings on complaints of sexual harassment. All witnesses that testified expressed sympathy and support for the victims who had experienced sexual harassment. It appears that kind and caring words behind closed doors were the only actions taken in support of the victims. There has been no coordinated effort to offer counseling and no assessment of retaliation during their ordeals, or after. The Grand Jury recognizes that the victims will want their names to remain confidential, however, that should not preclude the County from setting up an independent and confidential program to support an outreach for those harmed. The Grand Jury questioned many County elected officials and County executives about why no outreach program was available. The response was usually that they didn't know or that some other agency was taking care of it. Management, especially executive and elected management, must take responsibility for initiating curative action when a wrong has been identified. Taking no action sends a message that the events of the last few years are insignificant and not worthy of the time and resources of the County. It also further solidifies the perception that a safe and equitable working environment is, at times, not a priority or a reality.

The Grand Jury has been advised that a new training program on discrimination and sexual harassment will be provided to all employees in the future. Previously, this type of training was only offered to supervisors and management as mandated by EEOC law. The Grand Jury applauds this step and sees it as a sincere commitment to foster a safe workplace. But, training alone will not change the perception of tolerance of inappropriate behavior. That will come only with a change in culture and that change starts at the top. The County's elected officials and executive management must lead by example. There are many, many opportunities every day to communicate their pledge to stop inappropriate behavior in the workplace. This message should be delivered as often as possible when the rank and file are present. If an employee thinks something is important to their boss, it will become important to the employee.

The Grand Jury has heard many presentations by executive management and elected officials during its current tenure. The subject of culture and the atmosphere that allowed some of the egregious behavior to occur was usually a topic of discussion in these presentations. The Grand Jury has heard that many think the culture in the County has changed and inappropriate behavior will never be tolerated, or ignored, as it was in the past. However, the Grand Jury does not find this to be true after hearing testimony and reviewing a series of fairly recent emails that shows the County may not have learned its lesson. The event presented to the Grand Jury is as follows:

An elected official from an Orange County city was being considered for a management position in one of the County agencies. This person had worked for this County agency in years prior and had sexually harassed multiple female employees in the department. When this person's name surfaced as a candidate, one of the females brought this to the attention of executive management. The harassment was confirmed by many others in this department. The hiring process for this person did not stop and continued for

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another two months. The female who had been harassed and frustrated by the continuation of the hiring process within the agency where she worked, contacted the new Human Resource Services Department. Within one day, the hiring process for this person was stopped.

The full exchange in the emails that the Grand Jury read showed fear from many in the department that the political alliances of this candidate would outweigh the fact that he had previously sexually harassed County employees. The disregard, by an agency executive, of confirmed sexual harassment clearly showed an ongoing tolerance for inappropriate behavior for elected officials and potential County managers at the expense of safe and equitable working environment.

This recent event shows two approaches in dealing with sexual harassment in the workplace. One was ignoring and dismissing that there was a problem, and one was enforcing the County written policy on sexual harassment that was done without regard to political repercussions. The Grand Jury believes this event shows the continuation of a culture in their agencies that officials and executive managers have loudly denied was still in existence.

However, the Grand Jury finds that there is a light at the end of a dark tunnel. A change in culture often starts with one step and that step has been taken. It is now up to the leadership in all areas of County government to follow example and take step two. Only speaking to a change in culture will result in no change. The culture will be changed by actions and examples and no elected official or County executive, manager, or supervisor should feel they are exempt from leading by example.

“Example is not the main thing in influencing others, it is the only thing.”²

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of The County of Orange Human Resource Services Department, The County of Orange Chief Executive Officer, County Counsel for the County of Orange and The County of Orange Board of Supervisors, the 2012 - 2013 Orange County Grand Jury has arrived at eight principal findings as follows:

- F1 There is a lack of written policies, procedures, and guidelines relating to EEO laws and employee complaints in the County Human Resource Services Department. The County Human Resource Services Department is currently

²Albert Schweitzer

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personnel constrained due to its efforts in its re-centralization and should look to other ways to produce their policies.

- F2 The training of County employees on matters of discrimination and harassment is inadequate.
- F3 The training of Human Resource Services personnel is not consistent.
- F4 Mandated qualifications for the position of Supervisor or Manager in the Human Resource Services Department lack the job specific requirement for human resource schooling, certifications, or equivalent experience.
- F5 Written policies, procedures, and guidelines for the referral of possible criminal conduct to law enforcement agencies do not exist.
- F6 Currently there is no way for an employee to contact the EEO Access Office with anonymity. If an employee wants to make a complaint and not reveal their name the only County mechanism to do so is the “fraud hotline” which may be confusing to employees who wish to report discrimination or harassment.
- F7 The County did not initiate an outreach to the victims who had experienced sexual harassment over the last few years.
- F8 Other than re-issuing a yearly statement on the County policy regarding discrimination and harassment, County elected officials and executive management have undertaken no pro-active measures to address and change the County culture that allowed the tolerance of inappropriate behavior that was present for years. This culture continues and needs leadership to change.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of The County of Orange Human Resource Services Department and The County of Orange Chief Executive Officer, County Counsel for the County of Orange and The County of Orange Board of Supervisors the 2012 - 2013 Orange County Grand Jury makes the following eight recommendations.

- R1 The County Human Resource Services Department shall prepare and publish policies, procedures, and guidelines related to all employee complaints and how they are investigated. Special attention, or separate policies, should be published for complaints related to discrimination and harassment to ensure they meet the Employer Responsibilities outlined in state and federal statute. If

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necessary, the County Human Resource Services Department should utilize the services of outside companies specializing in human resource matters. The Human Resource Services Department should develop, approve, and publish the policies and procedures within six months. The Board of Supervisors should support this effort with adequate funding. (F1)

- R2 All County employees and elected County officials shall undergo training on discrimination and harassment. At a minimum, all employees classified as supervisors and above should receive in-person training every two years, as well as have access to on-line training. The Board of Supervisors, and any other elected County officials, should participate in the in-person training at a minimum of once every two years. The Board of Supervisors should support this effort with adequate funding. (F2)
- R3 The County Human Resource Services Department should develop specific training schedules for all of its personnel to ensure consistency in addressing County employee issues. The training should be ongoing and include both internal and external sources. Additional and specific training should be given to those in charge of investigating complaints. (F3)
- R4 The County Human Resource Services Department shall re-write the job qualifications for any position of supervisor and above in the Human Resource Services Department to include mandatory certification, schooling, or equivalent experience in the human resource field. (F4)
- R5 The Human Resource Services Department, with input from County Counsel shall draft policies, procedures, and guidelines for all agencies and departments on handling the reporting of potential criminal conduct by County employees. (F5)
- R6 The Human Resource Services Department should install a confidential communication source for employees who want to file complaints relating to discrimination or harassment with anonymity. The system should include multiple access paths such as mail, phone, fax, or email. Notification of this new County service should be accompanied by a vigorous email campaign and announcements by senior County management in meetings and their communications to their staff. Posters identifying how an employee can file a confidential complaint should be permanently posted in appropriate locations. The Board of Supervisors should support this effort with adequate funding. (F6)
- R7 The Board of Supervisors, in conjunction with the office of the CEO, the Human Resource Services Department, and with input on legal perspectives from County Counsel, shall initiate a formal outreach program for persons who have experienced discrimination or sexual harassment. The outreach should include counseling, if wanted, and an assessment of possible retaliation against any of the victims. (F7)

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- R8 The Board of Supervisors and the Office of the CEO will define and implement a series of steps to affirm their leadership in achieving a harassment free workplace: (F8)
- a. Refresh the current board resolution so that it contains clear complaint handling protocols.
 - b. Evaluate whether a policy on office relationships is appropriate for the County especially when it concerns managers and subordinates.
 - c. Display a more pro-active voice, more than once a year, on delivering the message that having a harassment free environment is important.
 - d. Evaluate hiring/training discrimination and harassment contact officers.
 - e. Discontinue negative comments on anonymous complaints.
 - f. Personally attend different County department meetings that provide opportunities to express the County commitment to a harassment free workplace.

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

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(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses requested:

Orange County Human Resource Services Department: F1, F2, F3, F4, F 5, F6, F7

Orange County, County Executive Office: F6, F7, F8

Office of County Counsel: F5, F7

Responses Required:

Orange County Board of Supervisors: F6, F7, F8

Responses Requested:

Orange County Human Resource Services Department: R1, R2, R3, R4, R5, R6, R7

Orange County, County Executive Office: R6, R7, R8

Office of County Counsel: R5 ,R7

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Responses Required:

Orange County Board of Supervisors: R1, R2, R6, R7,R8.

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Opportunity: NO VICTIMS**



2012-2013

The Goal of Equal Employment Opportunity: NO VICTIMS

FOREWORD

The 2012-2013 Grand Jury was sworn in on July 2, 2012. Within two weeks, the Grand Jury learned of allegations of inappropriate behavior which resulted in employee victimization. Whether a spouse, parent, significant other, or friend, the Grand Jury believed strongly that “NO VICTIMS” was the goal for 2012-2013. This concern has resulted in three related studies: *A Call for Ethical Standards: Corruption in Orange County*, *The Culture of Harassment: Change on the Horizon*, and this study comparing Equal Employment Opportunity (EEO) procedures in Orange County cities to County government.

SUMMARY

Under (EEO) protections, sexual harassment is unlawful. Harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment.

Throughout 2011 and 2012, there was intrigue and rumors, and eventually the OC District Attorney filed criminal charges against a high-ranking County executive. News outlets reported that the senior employee sexually battered co-workers in the workplace. The Grand Jury was privy to information concerning the alleged behavior. Although details will not be nor can they be revealed in this study, suffice it to say that each Grand Jury Panel Member was appalled at the alleged behavior and alarmed by the ineptitude of County managers who investigated complaints of sexual misconduct. Clearly these events were traumatizing for the victims and an embarrassment to the County. Subsequently, County leaders made changes to ensure the swift and appropriate handling of future EEO complaints.

The Grand Jury is pleased to report that Orange County cities, as employers, appear to be on the cutting edge in their awareness of the potential tragedies and/or liabilities associated with sexual harassment and discrimination. The Grand Jury commends these municipalities for their vigilance, the seriousness with which they approach these very important topics and the training provided to all employees. Orange County municipalities not only adhere to Federal and State legislation, but honor it.

Since the revelations and the exit of the accused county executive, the County's efforts are worthy of note as well. Recentralization of the Human Resources function, now called the Human Resource Services Department (HRSD), and a significant investment in a broad training initiative will enhance employee protections and reduce liability exposure. The County's continued efforts are critical to achieving these goals.

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Commendations, while satisfying to report, carry with them the obligation to continue the crusade against discrimination, harassment, and retaliation. Consistent attention to fine tuning these efforts will ensure strict adherence to the law.

REASON FOR STUDY

The Grand Jury's role as civil watchdog led the Grand Jury to explore the matter of sexual harassment in public sector government.

How well are the EEO policies, procedures, and practices actually protecting City and County government employees? Realistically, policies and procedures merely define the rules. It is people who enforce the rules that truly protect other people. Some will claim that information in this report is history and old news. It is the opinion of the Grand Jury that this information is not only relevant, but is required in order to raise the public's awareness to the importance of compliance with Federal and State EEO legislation. The goal is to learn from mistakes and to take cautionary action to avoid repeating them.

Sexual harassment, discrimination, and retaliation have no place in any employment setting, particularly those where the entities are expected to respect the value of its employees and the people they serve.

METHOD OF INVESTIGATION

The 2012-2013 Orange County Grand Jury performed the following tasks to collect information:

- Developed and sent questionnaires to all 34 OC cities and to the County's Director of the newly recentralized HRSD regarding topics including training, receipt of complaints and method of investigations;
- Interviewed a sampling of City executives and Human Resource Managers;
- Interviewed all County Supervisors, a number of executives and department heads;
- Reviewed EEO complaint statistics for the past 5 years in both OC cities and the County;
- Documented and reviewed confidential communications with County and City personnel regarding EEO incidents and violations;
- Conducted research on legal regulations and protected classes covered under both State of California and Federal harassment and discrimination laws.¹

In the Beginning – The Genesis of Protections

¹ <http://www.history.com/topics/civil-rights-act>

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The Civil Rights Act of 1964 was passed on July 2nd of that year. The untimely loss of President John F. Kennedy in November 1963 to an assassin's bullet threatened to derail the legislation he had long championed. However, a new champion, an unlikely one in the minds of most civil rights organizations, was found in the person of the new President, Lyndon B. Johnson.



July 2, 1964 LBJ signs Civil rights Legislation as members of Congress look on.

Five days after the assassination, with the nation still grieving, President Johnson eloquently invoked the recent tragedy in an effort to give some meaning to that most senseless of acts. Addressing a Joint Session of Congress, President Johnson stated

*“We have talked long enough in this country about civil rights. It is time to write the next chapter and to write it in the books of law No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long.”*²

From the Civil Rights Act of 1964 to the present, civil rights have expanded from primarily a rural issue (strongly linked to voting rights) to now include many categories/classes to ensure all Americans are afforded equal opportunity, dignity and respect in all aspects of American life. This report focuses on the employment aspect.

² www.quotes.net/authors/Lyndon+B.+Johnson

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The Federal Definition of Sexual Harassment

In 1972, the United States Congress created the Equal Employment Opportunity Commission (EEOC). The EEOC was empowered to enforce Title VII of the Civil Rights Act of 1964. The EEOC created regulations prohibiting sexual harassment and defined harassment as a form of sexual discrimination. Since 1972, the definitions and categories of what constitutes sexual harassment have expanded and now include several areas not originally defined.

It is unlawful to harass individuals because of gender. Harassment can include any unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature only. Harassment does not have to be of a sexual nature and can include offensive remarks about a person's gender. For example, it is illegal to harass a woman by making offensive comments about women in general. Both the victim and the harasser can be either a woman or a man, and the victim and harasser can be the same gender.³

The law doesn't prohibit simple teasing, offhand comments, or isolated incidents that may not be considered serious. But teasing or off-hand comments are illegal when they are so frequent or so severe that they create a hostile or offensive work environment. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, any employee, or someone who is not an employee at all, such as a client or vendor. When a manager or supervisor expects "Quid Pro Quo"^{4, 5} to achieve their goals, it is considered sexual harassment in the eyes of the law.

Sexual harassment is not specifically aimed at protected classes. Federal laws identify legally protected classes as race, color, religion, national origin, age, gender and disability.

Several regulations comprise Federal (EEO) Laws:

- Title VII of the Civil Rights Act of 1964 - prohibits employment discrimination based on race, color, religion, sex, or national origin;
- Equal Pay Act of 1963 (EPA) protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 prohibits employment discrimination against qualified individuals with

³ <http://oag.ca.gov/publications/CRhandbook/ch2>

⁴ www.fs.fed.us/cr/sepm/fwp/correspondence/sex_harassment.html

⁵ "Quid Pro Quo" in Latin refers to a favor or advantage granted in return for something

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- disabilities in the private sector, and in State and local governments; in addition, reasonable accommodation for the disabled was mandated.
- Sections 501 and 505 of the Rehabilitation Act of 1973 prohibit discrimination against qualified individuals with disabilities who work in the Federal government;
 - Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employment discrimination based on genetic information about an applicant, employee, or former employee;
 - The Civil Rights Act of 1991 includes the ability to award monetary damages in cases of intentional employment discrimination;
 - It is legally unlawful to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit;
 - Regulations require that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue burden on the operation of the employer's business.⁶

The Equal Employment Opportunity Commission (EEOC) enforces these laws and provides oversight and coordination of all EEO regulations, practices and policies. Employers are required to post notices to all employees advising them of their rights under the law and an employee's right to be free from retaliation. These notices must be accessible to persons with visual or other disabilities that affect their ability to read.

State of California – Additional Regulations

In California, the Fair Employment and Housing Act (FEHA) is the primary law prohibiting discrimination in employment, housing and public accommodation. At the time of its adoption, the Legislature reaffirmed that it is the public policy of California to protect and safeguard such rights and opportunities.⁷ The Law is administered by the Department of Fair Employment and Housing (DFEH).

Laws related to harassment and discrimination are not automatically duplicative between Federal and State governments. While the basic tenets remain the same, protected classes and the right to sue for monetary damages may differ.

In California, prohibitions against harassment, discrimination and retaliation are based on race, religious creed, color, national origin, ancestry, physical disability (including HIV/AIDS), mental disability, medical condition, marital status, sex (including pregnancy, childbirth, or related medical conditions), age (40 or above), or sexual orientation. The law refers specifically to an affected person in a protected class.

FEHA also protects contract workers from harassment in the workplace. The same protection as outlined above applies to contract workers.

⁶ <http://www.eeoc.gov/facts/qanda.html>

⁷ <http://oag.ca.gov/publications/CRhandbook/ch2>

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State of California - Definition of Sexual Harassment

The State of California defines sexual harassment as any unsolicited or unwelcome sexual advance, requests for sexual favors or other verbal, physical, visual or written conduct of a sexual nature directed to persons of the same or opposite sex when:

1. Submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
2. Submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee; or
3. Such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or otherwise offensive work environment.

Additionally, State court has defined two types of sexual harassment:

1. **Quid Pro Quo:** This form of sexual harassment occurs when a supervisor or manager:
 - a. Demands, as an explicit or implied term or condition of employment or employment-related decisions, a subordinate submit to sexual advances (this may include situations which began as consensual relationships, but which later ceased to be consensual); and/or
 - b. Makes requests for sexual favors or other verbal, visual or physical conduct of a sexual nature that is an explicit or implied term or condition of employment decisions.

Examples of Quid Pro Quo harassment include:

- a. Requests for sexual favors in exchange for a promotion or raise;
 - b. Expressed or implied statements that a person will be demoted or fired if she or he does not submit to a sexual request; and/or
 - c. Carrying out the threat.
2. **Hostile Work Environment:** The courts look at the totality of the circumstances surrounding the alleged incidents of harassment to determine whether unlawful conduct has occurred. Generally, there must be a pattern of unlawful conduct, although a single serious incident in some cases, such as a sexual battery, is enough to constitute sexual harassment. This form of sexual harassment occurs when an individual is subjected to any unwelcome sexual advances or other gender-based conduct that is sufficiently severe or pervasive as to interfere with the individual's work performance or creates an intimidating, hostile or offensive work environment. The harasser can be a manager, supervisor, co-worker, any employee, or in certain circumstances, possibly even a non-employee, such as a supplier or customer. The intent of the person accused of sexual harassment is

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of secondary importance. The impact of the offensive behavior on the offended person is the primary factor in determining if sexual harassment has occurred.⁸

Cities – How They Handle EEO Matters

The 2012-2013 Grand Jury developed and distributed a questionnaire to the Human Resource Managers of the 34 cities in Orange County which included questions related to EEO. All cities responded, with the exception of the City of Westminster. The County's Director of HRSD also responded to the same questions.⁹

The Grand Jury's study is based on responses from 33 cities and the County. Because the Grand Jury cannot presume to interpret or somehow guess at the meaning of an entity's response, the responses have been reported as indicated on the questionnaire. Where partial responses were given, efforts were made to obtain additional clarification.

The following represents feedback from the cities and County HRSD:

Do you have policies and procedures that comply with EEO laws, specifically Harassment, Discrimination and Retaliation prevention?

All cities and the County have established policies and procedures that comply with EEO law.

Are employees given an employee Handbook that includes EEO Anti-Harassment, Anti-Discrimination and Anti-Retaliation materials?

All cities provided materials documenting their comprehensive compliance with Federal and State legal requirements. These materials included Employee Handbooks, Memorandums of Understanding with labor groups and specific city-adopted policies.

The County has policies and procedures governing harassment, discrimination, retaliation, methods for filing complaints which the County updates annually to ensure compliance. The Chair of the Orange County Board of Supervisors sends an annual letter to employees reminding them of their rights and responsibilities. In addition, the New Hire Packet contains EEO information.

Is your Human Resources Department Centralized?

⁸ www.hostileworkenvironmentguide.com/definitionwhostileworkenvironment.html

⁹ Grand Jury Questionnaire, December, 2012

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Because cities have fewer employees than the County, it is no surprise that all cities responded that their HR Department is centralized. Centralization refers to the grouping of all traditional HR functions within one Department.

As a cost-saving measure, the County moved to a decentralized human resources model after the bankruptcy in 1994. Under decentralization most County agencies had their own HR division responsible for the delivery of HR services. Although each agency HR staff could and was encouraged to consult regularly with the County's Human Resource Department, the reality was that communication was limited. Some agency HR departments had issues with compliance, harassment, discrimination, and/or retaliation violations which they often did not recognize. As a consequence, some violations were observed or, at a minimum overlooked, and not reported to Central HRD as mandated by County policy. In addition, there were routine deviations from recruitment and selection processes. HR staff frequently lacked specific HR expertise and experience. The lack of training contributed to some instances of favoritism and recruitment violations.

In the wake of the HRD Performance Audit, the County is currently implementing the recentralization of all HR functions into one department (HRSD). To further reinforce the change in functionality, the former HRD has been renamed the Human Resource Services Department (HRSD). This change will involve additional training of existing personnel and hiring of skilled HR professionals.

Is Anti-Harassment, Anti-Discrimination and Prevention of Retaliation training given to HR staff, with particular attention to conducting investigation of complaints?

All cities indicated that HR personnel receive EEO training with an emphasis on investigatory training. This training includes, but is not limited to, Americans with Disabilities Act (ADA) Compliance, Leave Rights, Preventing Harassment and Discrimination in the Workplace.

County restructuring into HRSD resulted in the implementation of procedures to train HR staff throughout the year.¹⁰

How often is EEO Anti-Harassment, Anti-Discrimination and Prevention of Retaliation training given to management, supervision and line staff?

State and Federal law require training for management and supervision every two years, but defines no specific requirement for line staff. The cities responded to this question as shown in Table 1 – Grand Jury Questionnaire, Question No. 6 .

¹⁰ Presentation by HRSD Director, November 26, 2012

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FREQUENCY OF TRAINING	MANAGEMENT	SUPERVISION	LINE STAFF
County Board of Supervisors	Every 2 Years	Every 2 Years	None
County HRSD	Every 2 Years	Every 2 Years	In late 2013
Aliso Viejo	Every 2 Years	Every 2 Years	None
Anaheim	Every Year	Every Year	Every Year
Brea	Every 2 Years	Every 2 Years	As Needed
Buena Park	Every 2 Years	Every 2 Years	Every 2 Years
Costa Mesa	Every 6 Months	2+ Per Year	None
Cypress	Every 2 Years	Every 2 Years	As Needed
Dana Point	Every 2 Years	Every 2 Years	Every 2 Years
Fountain Valley	Every 2 Years	Every 2 Years	Every 2 Years
Fullerton	Every 2 Years	Every 2 Years	As Needed
Garden Grove	Every 2 Years	Every 2 Years	Every 2 Years
Huntington Beach	Every 2 Years	Every 2 Years	Every 2 Years
Irvine	Every 2 Years	Every 2 Years	As Needed
La Habra	Every 2 Years	Every 2 Years	As Needed
La Palma	Every 2 Years	Every 2 Years	As Needed
Laguna Beach	Every 2 Years	Every 2 Years	As Needed
Laguna Hills	Every 2 Years	Every 2 Years	Every 2 Years
Laguna Niguel	Every 2 Years	Every 2 Years	None
Laguna Woods	Every 2 Years	Every 2 Years	Every 2 Years
Lake Forest	Every 2 Years	Every 2 Years	As Needed
Los Alamitos	Every Year	Every Year	Every Year
Mission Viejo	Every 2 Years	Every 2 Years	As Needed
Newport Beach	Every 2 Years	Every 2 Years	As Needed
Orange	Every 2 Years	Every 2 Years	None
Placentia	Every 2 Years	Every 2 Years	As Needed
Rancho Santa Margarita	Every 2 Years	Every 2 Years	None
San Clemente	Every 2 Years	Every 2 Years	As Needed
San Juan Capistrano	Every 2 Years	Every 2 Years	None
Santa Ana	Every 2 Years	Every 2 Years	As Needed
Seal Beach	Every 2 Years	Every 2 Years	As Needed
Stanton	Every 2 Years	Every 2 Years	Every 2 Years
Tustin	Every 2 Years	Every 2 Years	Every 2 Years
Villa Park	Every 2 Years	Every 2 Years	None
Westminster	NO RESPONSE	NO RESPONSE	NO RESPONSE
Yorba Linda	Every 2 Years	Every Two Years	None

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All cities are compliant with State and Federal law. Best practices and risk management make it prudent to provide training for line staff. Since it is line staff that generally files EEO complaints, it is critical that they understand their rights and their recourse when filing complaints, i.e. being able to make the distinction between acceptable and unacceptable behavior. While a behavior may be annoying, it may not meet the test of unacceptability in EEO terms.

The County provides on-line training for management and supervisors, however, limited training has been offered to line staff in only some departments. In 2013, HRSD will begin classroom training for management and supervisors and, at a minimum, online training for line staff. It is the considered opinion and experience of the Grand Jury that classroom training is far more effective than on-line training which provides limited opportunity for personal interaction.

How soon after promotion to management or supervision is an employee required to attend EEO Anti-Harassment, Discrimination and Retaliation training (AB1825 law requires training within 6 months)?

All cities complete training within six months of a promotion to supervisor.

Historically, County government did not have policies and procedures to comply with AB1825. Recent changes in HRSD address this issue and a policy to train new supervisors within six months as required by law has already been established, yet another example of the proactive efforts of the newly reorganized HRSD.

Do you use outside companies/consultants for EEO training?

All cities in Orange County use highly recognized and respected companies/consultants such as Liebert Cassidy Whitmore, Global Compliance, HR Consortiums, and Willis Training Solutions. Some training firms, in order to make training more cost-effective for public sector employers, invite employers within a geographic area to join training consortiums and share the cost thus enabling more cities to provide training to their employees.

The County has also used Liebert Cassidy Whitmore etc. and has recently solicited a Request for Proposal (RFP) to prospective vendors, seeking bids to expand human resource training for all employees as well as for HRSD staff.

What is your annual budget to comply with EEO mandated laws and regulations?

Cities generally budget annually for training. EEO training expenditures are often included in the Human Resource Services Department budget. HR training budgets range from zero to \$157,000 annually. The range in budgets appears to be proportional to the number of city employees. Smaller cities (Aliso Viejo, Villa Park, Dana Point, and

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Fountain Valley) do not have a dedicated budget line item, where larger cities (Irvine, Anaheim, Orange, etc.) have a dedicated budget line item to cover training expenses.

The County currently has budgeted sufficient funds (\$234,952) to provide training for management and supervision and for expenses to hire outside expertise to investigate EEO complaints and issues when needed. The Board of Supervisors has committed funds for increasing the budget for EEO training to include all employees.

Do you have a documented process for EEO complaint notification, investigation and resolution?

All responding cities in Orange County have documented processes to manage EEO complaints (notification, investigation and resolution).

County HRSD recently implemented procedures to define a clear and concise process for the receipt, investigation and resolution of EEO complaints/incidents.

When a conflict of interest exists, what options are available to employees and/or staff to ensure a fair and unbiased investigation?

All responding cities in Orange County have escalation processes to effectively address conflicts of interest related to complaints as they may arise.

The County recently established a comprehensive escalation process. To reinforce this new process, the Directors of HRSD, Internal Audit, and County Counsel created a Compliance Oversight Committee (COC) to review EEO related complaints received by the Department of Internal Audit's fraud hotline, the EEO Access Office, and complaints regarding executive management or elected officials. An example of concern the COC might explore is how best to handle a complaint directed at the complainant's supervisor, ensuring that a subordinate is never assigned to investigate his or her supervisor.

Are the names and phone numbers of internal and /or external EEO contacts documented and distributed to all employees regarding HR/EEO reporting?

All responding cities answered affirmatively to this question. Commendably, the cities have multiple methods for an employee to file a grievance or complaint.

As noted earlier, the County issues an annual letter from the Chair of the Board of Supervisors, which includes the various filing procedures available to its 17,000 employees. Lunch and break rooms contain posters that include procedures to file an EEO complaint. The existing County EEO Access Office has been chronically understaffed. With the recent hiring of an individual experienced in EEO and related investigations, communication with employees and executive management is expected

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to improve dramatically. In addition, an additional position has been allocated to the EEO Access Office and will be filled in the near future.

Is your city currently involved in any litigation concerning EEO Harassment, Discrimination or Retaliation complaints?

The cities responded as follows:

1. **Yes** - Buena Park, Huntington Beach, Newport Beach, Santa Ana,
2. **No** - Aliso Viejo, Anaheim, Brea, Costa Mesa, Cypress, Dana Point, Fountain Valley, Fullerton, Garden Grove, Irvine, Laguna Beach, La Habra, La Palma, Laguna Hills, Laguna Niguel, Lake Forest, Laguna Woods, Los Alamitos, Mission Viejo, Orange, Seal Beach, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Stanton, Tustin, Villa Park, Yorba Linda.

The County responded as follows:

Yes - With approximately 17,000 employees, the County has averaged 50 EEO complaints per year. It is worth noting that the 50 complaints may represent only those actually received by the previous HRD and could easily have excluded statistics from the decentralized HRD staff within individual departments. Centralized HRSD will be able to provide more comprehensive statistics. County departments headed by an elected official are not required to report to or be part of the recentralized HRSD. Major problems for the County are all County-wide complaints not being reported and whether or not the assigned investigator is properly trained

The Grand Jury acknowledges that the difference in the number of complaints, when comparing cities with the County, is not statistically material. All of the responding entities have had EEO complaints; all have procedures for handling EEO complaints. Given size, and notwithstanding the reporting concerns noted above, proportionately both cities and County appear to have a similar number of EEO complaints.

Do you have employment practices liability coverage for HR/EEOC?

There are several types of insurance coverage that a city may have. Employment practices liability coverage for EEO would likely be part of a governmental entity's Liability Protection Program. Not all, but many, public entities avail themselves of membership in Joint Powers Authorities which provide insurance coverage at a more reasonable cost for members of their multi-member insurance pool. In this type of arrangement, each member's initial premiums are based on its size and annual budget. Member entities also carry their own Self-Insured Retention (SIR), which is similar to either a stop-loss or deductible. If the liability cost of a claim exceeds the individual member's SIR, Pool coverage would then take over. Ultimately, all members of the Pool share costs, making a Joint Powers Authority a prudent risk management protection route.¹¹

¹¹ www.cjpiea.org/4dcgi/programs/coverage_summaries.html

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Responses from cities vary as shown in the following:

1. Aliso Viejo is insured up to \$50 million (SIR not specified);
2. Anaheim is insured for \$4 million through SIR and ACCEL;
3. Brea is insured up to \$41 million, with an SIR of the first \$150,000;
4. Buena Park is insured (maximum amount not specified) and is self-insured for the first \$150,000;
5. Costa Mesa is insured up to \$10 million and self-insured for the first \$150,000;
6. Cypress is insured up to \$41 million and self-insured for the first \$150,000;
7. Dana Point is insured up to \$50 million (Deductible not specified);
8. Fountain Valley – Has insurance, but did not specify the amount;
9. Fullerton is self-insured for claims up to \$2 million, with additional coverage up to \$30 million;
10. Garden Grove is self-insured;
11. Huntington Beach is insured up to \$20,000,000 and is self-insured for the first \$1,000,000;
12. Irvine is insured up to \$1 million, with an SIR of the first \$150,000;
13. La Habra is insured up to \$12 million. (Deductible not specified);
14. La Palma is insured up to \$50 million, with an SIR of the first \$5 million;
15. Laguna Beach is self-insured with Pool coverage to \$1million; additional coverage to \$40 million;
16. Laguna Hills is insured for the first \$1 million (maximum amount was not specified).
17. Laguna Niguel is insured up to \$50 million (Deductible not specified);
18. Laguna Woods is self-insured;
19. Lake Forest is insured up to \$50 million (Deductible not specified);
20. Los Alamitos is self-insured;
21. Mission Viejo is insured up to \$15 million and self-insured for the first \$5.5 million;
22. Newport Beach is insured up to \$10 million and self-insured for the first \$500,000;
23. Orange has a \$200,000 policy through the California Insurance Pool Authority;
24. Placentia is self-insured;
25. Rancho Santa Margarita is insured up to \$1 million and self-insured for the first \$10,000;
26. San Clemente is insured up to \$50 million (Deductible not specified);
27. San Juan Capistrano is insured up to \$50 million with no deductible;
28. Santa Ana is self-insured for Liability up to \$1 million with Excess Liability coverage up to \$52 million;
29. Seal Beach is insured up to \$50 million (Deductible not specified);
30. Stanton is self-insured up to \$25,000;
31. Tustin is insured up to \$2 million with an SIR of the first \$150,000;
32. Villa Park is insured up to \$50 million.

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33. Yorba Linda is insured up to \$28 million and self-insured for the first \$150,000.

The County is self-insured for the first \$5 million and has coverage for claims extending beyond the first \$5 million, up to maximum coverage of \$100 million per occurrence.

FINDINGS

In accordance with California Penal Code Sections 933 and Section 933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the policies, procedures and level of EEO protections City and County government provide employees in municipal and county government in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at the six principal findings as follows (NOTE: These findings are unconfirmed with the City of Westminster who did not respond to the Grand Jury's Questionnaire):

- F1 Municipalities in Orange County cities are well-versed in EEO issues and maintain exemplary compliance strategies.
- F2 In an effort to improve Human Resource efficiencies and increase focus on EEO, the County has centralized its Human Resource functions in the new HRSD.
- F3 The County has implemented a Compliance Oversight Committee (COC) to review all EEO complaints in the County.
- F4 Complaint ratios between OC cities and the County of Orange are similar; but differences in how previous complaints were handled in the County led to major problems.
- F5 The County and several cities do not offer, or provide limited, training in harassment, discrimination, and retaliation, particularly for line staff. At this time, although line staff training is not required, all staff benefit from EEO training.
- F6 There are several Risk Management Joint Powers Insurance Pools (of which most cities are members) to ensure adequate coverage and sharing of liability with other member entities.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the

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recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of EEO practices and compliance in the 33 responding cities and Orange County Government, the Grand Jury makes the following four recommendations:

- R1 All OC cities and County government shall include funding for training of management and supervision as required by law and ensure training for all employees every two to three years. (F2, F3, F4, F5)
- R2 OC cities shall review SIR aggregate limits every five years to assess changes in risk management economies and insurance pool mix. (F6)
- R3 OC cities and the County of Orange government shall continue efforts to utilize best practices with respect to Harassment, Discrimination, and Retaliation. (F1, F3)
- R4 The OC Board of Supervisors shall continue to provide funding and resources sufficient to complete HRSD's centralization program. (F2)

REQUIREMENTS AND INSTRUCTIONS:

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding

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- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code Section §933.05 are required from:

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Responses Required/Requested:

<u>REQUIRED/REQUESTED RESPONSES</u>	<u>F1</u>	<u>F2</u>	<u>F3</u>	<u>F4</u>	<u>F5</u>	<u>F6</u>		<u>R1</u>	<u>R2</u>	<u>R3</u>	<u>R4</u>
<u>OC Board of Supervisors</u>								x	x		x
<u>OC Director of HRSD</u>		x	x	x	x			x	x	x	
<u>OC CEO's Office</u>			x								
<u>OC Director of Internal Audit</u>			x								
<u>Aliso Viejo</u>	x		-	-	x	-		x	x	x	
<u>Anaheim</u>	x				x	-		x	x	x	
<u>Brea</u>	x				x	-		x	x	x	
<u>Buena Park</u>	x				x	-		x	x	x	
<u>Costa Mesa</u>	x				x	-		x	x	x	
<u>Cypress</u>	x				x	-		x	x	x	
<u>Dana Point</u>	x				x	-		x	x	x	
<u>Fountain Valley</u>	x			-	x			x	x	x	
<u>Fullerton</u>	x		-		x	-		x	x	x	
<u>Garden Grove</u>	x				x	-		x	x	x	
<u>Huntington Beach</u>	x				x	-		x	x	x	
<u>Irvine</u>	x	-			x	-		x	x	x	
<u>La Habra</u>	x	-			x	-		x	x	x	
<u>La Palma</u>	x				x	-		x	x	x	
<u>Laguna Beach</u>	x				x	-		x	x	x	
<u>Laguna Hills</u>	x			-	x	-		x	x	x	
<u>Laguna Niguel</u>	x			-	x	-		x	x	x	
<u>Laguna Woods</u>	x	-			x	-		x	x	x	
<u>Lake Forest</u>	x			-	x	-		x	x	x	
<u>Los Alamitos</u>	x	-		-	x	-		x	x	x	
<u>Mission Viejo</u>	x				x	-		x	x	x	
<u>Newport Beach</u>	x	-			x	-		x	x	x	
<u>Orange</u>	x				x	-		x	x	x	
<u>Placentia</u>	x				x	-		x	x	x	
<u>Rancho Santa Margarita</u>	x				x	-		x	x	x	
<u>San Clemente</u>	x				x	-		x	x	x	
<u>San Juan Capistrano</u>	x				x	-		x	x	x	
<u>Santa Ana</u>	x				x	-		x	x	x	
<u>Seal Beach</u>	x	-		-	x	-		x	x	x	
<u>Stanton</u>	x				x	-		x	x	x	
<u>Tustin</u>	x				x	-		x	x	x	
<u>Villa Park</u>	x	-		-	x	-		x	x	x	
<u>Westminster</u>	x				x	-		x	x	x	
<u>Yorba Linda</u>	x				x	-		x	x	x	

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Acronyms Used In This Report

OC = Orange County

GJ = Grand Jury

EEO = Equal Employment Opportunity

EEOC = Federal Equal Employment Opportunities Commission

HR = Human Resources

HRSD = OC Human Resource Services Department (newly recentralized in second half of 2012)

DFEH = State of California Department of Fair Employment and Housing

EPA = Equal Pay Act of 1963

ADEA = Age Discrimination in Employment Act (1990)

ADA = Americans with Disabilities Act (1973)

GINA = Gender Information Non-Discrimination Act (2008)

FEHA = Fair Employment and Housing Act (State of California)

HIV = Human Immunodeficiency Virus

AIDS = Auto Immune Deficiency Virus

AB 1825 = State of California Assembly Bill Number 1825

HRD = Human Resources Department (the decentralized arrangement in place from post-bankruptcy 1994 to mid-2012)

HR = Human Resources

COC = Compliance Oversight Committee comprised of Director of Human Resource Services Department, Director of Internal Audit and County Counsel

OCEA = Orange County Employees' Association

RFP = Request for Proposal (essentially a bidding process)

SIR = Self Insured Retention (reference to the equivalent of a deductible, the amount a City alone must cover prior to level at which Joint Powers Authority Pool participation takes over)

CEO = Orange County's Chief Executive's Officer

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2012-2013

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SUMMARY

CalOptima provides healthcare for one out of three children in Orange County. That's correct!!! One-third of Orange County's children depend on CalOptima for their healthcare needs. In addition, CalOptima is responsible for the healthcare needs of one in five senior citizens and one in seven Orange County residents. It should also be pointed out that the 427,000 plus Members are either United States citizens or documented aliens. Projections for Membership growth in 2014 when the Affordable Health Care Act takes effect are as high as 27% or 540,000 Members.

In spite of many calling CalOptima "the Gold Standard" or a "National Model" for healthcare, political turmoil threatens the organization, jeopardizing its membership's access to quality healthcare and potentially putting the entire entity at risk. Over the last 18 months, CalOptima's leadership team has been decimated by the departure of 16 senior level executives, including the Chief Executive Officer (CEO), Chief Operations Officer (COO), Chief Medical Officer (CMO) and Chief Financial Officer (CFO). Its Board of Directors have experienced unprecedented turnover to the point that the most tenured Board member has only 20 months experience. The organization has been riddled by internal allegations of misconduct and inappropriate actions. Multiple Board members have been publicly accused of conflict of interest or other misdeeds. In all, the organization has spent more than \$520,000 on outside law firms and consumed countless hours of staff time investigating these allegations.

According to the former CEO, CalOptima is a complicated \$1.5 billion entity with a large member base, numerous regulations and challenging funding sources. When California's budget crisis is added to the mix and with anticipated growth, grappling for slices of the forthcoming \$2 billion pie will be fierce. Although the State sets the rates, CalOptima dictates to the Providers (hospitals, doctors, community clinics, etc.) what is required to retain or grow their slice. It has been a leader in incentivizing physicians to reduce the cost of patient care (example: utilizing surgical centers instead of hospitals) and improve their overall quality of care. However, an ordinance change in December, 2011 by Orange County's Board of Supervisors has made it possible for Providers to seize control of CalOptima's Board of Directors from Member organizations and their representatives. One Supervisor voting against the ordinance change was quoted as saying the proposal gave that individual "heartburn", while another dissenter was quoted, "It's like having the foxes watch the chicken coop."

There is only speculation regarding the future of CalOptima and its Members. Some of those interviewed believe that having for-profit Providers included in or potentially controlling all decisions, is bad news for Members and Member

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organizations. Others interviewed believe CalOptima's \$150 million reserves and ownership of a \$40-\$50 million building are attractive to several of the County's Board of Supervisors professing a budget crisis locally. Although there would certainly be debate and scrutiny from the California State Legislature, those funds could become discretionary for the Board of Supervisors.

Without CalOptima, the most likely scenario for Orange County would be a Geographic Managed Care system; the model used by San Diego County. In that scenario, insurance companies such as HealthNet, Blue Cross, Molina or Aetna would control healthcare for the County's neediest. Nationally, those firms have already begun positioning for 2014. Aetna, a large provider of commercial and individual health care plans, merged with Coventry Health Care in August, 2012 in a deal targeting Coventry's Medicare and Medicaid customers. "Expect other companies with government exposure to see greater investor interest," wrote a Credit Suisse analyst to his clients recently.

REASON FOR STUDY

This is a study by the 2012 - 2013 Orange County Grand Jury into why an award-winning and highly acclaimed public agency appears to be imploding. The goal is to determine what caused the turmoil, who will ultimately benefit and will the 427,000 Orange County residents that currently depend on state and federal aid for their healthcare needs be the biggest losers.

METHOD OF INVESTIGATION

Methods of investigation for this study were:

1. Interviewed employees, past employees, CalOptima Board members, past Board members, Provider representatives and Member organization representatives.
2. Reviewed various documents including confidential documents as well as investigation reports, email communication and letters.
3. Reviewed minutes and transcripts of relevant Board of Supervisors and CalOptima Board of Directors' meetings.
4. Reviewed newspaper and online media accounts of material allegedly leaked to the media following or during CalOptima Board of Directors' closed sessions.

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5. Listened to presentations made by County personnel regarding CalOptima to the current Grand Jury.
6. Attended CalOptima's regularly scheduled and special Board meetings.
7. Attended Board of Supervisors regularly scheduled meetings and heard first hand Supervisors' comments regarding CalOptima.
8. Reviewed County ordinances pertaining to CalOptima.

BACKGROUND AND FACTS

CalOptima is not well known to the general public. Most know it by the label Medi-Cal (California's Medicaid label) since the majority of Members qualify for Medi-Cal services. It is the only plan responsible for administering Medi-Cal in Orange County. In addition to serving low income families, CalOptima provides publicly funded health coverage for 20% of the County's seniors and people with disabilities and receives federal funding under Medicare programs. In fact, CalOptima's One Care program serves almost 14,000 County residents who qualify for both Medi-Cal and Medicare coverage.

CalOptima is a County Organized Health System, a public agency authorized by county, state and federal actions. Although it's funded by state and federal government, it operates independently under a Board of Directors appointed by the County's Board of Supervisors. Under this structure, Orange County is not responsible for CalOptima's financial, legal or program obligations.

CalOptima, a dba for the Orange County Health Authority, was created in 1993 by a County ordinance and began operations in 1995. Prior to then, Orange County's Medi-Cal system operated on a fee-for-service basis. Medi-Cal beneficiaries (Members) would seek out willing Providers who received payment directly from the State after registering with it. The problem with this model was Providers had an incentive to do more, such as ordering unnecessary tests, prescribing unnecessary drugs, etc., so they got paid more; ultimately costing taxpayers more money. Eventually, payment delays and other issues caused the Provider network to dwindle, so California's State Legislature decided healthcare could be better managed closer to all involved and gave counties the authority to select a health plan better suited to their constituents.

In a report by the Institute of Medicine, *Better Care at Lower Cost*, the arm of the National Academy of Sciences estimated \$765 billion per year is wasted on U.S. healthcare. They broke down that figure as follows:

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Unneeded Services	\$210 billion	27%
Excess Administrative Fees	\$190 billion	25%
Mistakes	\$130 billion	17%
Artificially High Prices	\$105 billion	14%
Fraud	\$75 billion	10%
Missed Prevention	\$55 billion	7%

The federal government is the largest purchaser of health care services in the United States. In 1980 healthcare accounted for 11% of federal spending. In 2011, it accounted for 27%.

Currently California has three managed care models serving 4.3 million beneficiaries while 3.3 million remain in a fee-for-service arrangement. The three managed care models include Geographic Managed Care, where the state contracts with various commercial plans (large insurance companies); the Two Plan, in which the state contracts with a local public plan and a commercial plan; and the County Organized Health System model, where the State contracts with a local public plan. Los Angeles County has the Two Plan and designated HealthNet as the commercial plan. San Diego County implemented Geographic Managed Care, designating Molina and HealthNet as their commercial plans. Neither County has received the high praise or tangible awards for quality given to Orange County's plan by public officials at all levels, the media and Member support organizations.

CalOptima has been considered a national model and the gold standard for county healthcare. In a Board of Directors' meeting minutes, one current Board member is quoted as saying they received unsolicited praise for CalOptima from the Director of California's Department of Health Care Services. Over the years the organization has been named multiple times one of the *Best Places to Work in Orange County* by the Orange County Register (2009, 2010, 2011), Orange County Business Journal (2009, 2011), OC Metro (2009) and Modern Healthcare (2010), a national publication. The CalOptima One Care HMO has a four star rating (as of 10/31/12), the highest quality score for a plan in the State of California.

The following represents a timeline of significant CalOptima events from Fall, 2010 to the present. These events have been documented and are a matter of public record. Other than the conclusions made in this Report's Findings

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section, no other conclusions have been drawn at this time from the following sequence of events.

- 2010 CalOptima received three stars from the National Committee for Quality Assurance, a commendation which was considered exceptional.
- Jan 2011 A CalOptima lawyer made more than 100 allegations against CalOptima's senior executives prompting the CalOptima Board of Directors to commission an outside legal firm to conduct an investigation.
- March 2011 The existing Orange County Supervisor sitting on CalOptima's Board was replaced by a different Supervisor.
- March 2011 A registered lobbyist in Orange County and Los Angeles County helped rewrite the Orange County ordinance to change the make-up of CalOptima's Board, giving more control to Providers and less to Members and organizations representing Members. This was in spite of recent studies showing Medicare and Medicaid fraud perpetrated by clinics, doctors, pharmacists and other medical Providers had spiked in recent years, reaching \$60-\$75 billion a year nationwide. The proposal also included a standing Board position for the Supervisor whose District contained the most CalOptima members. The registered lobbyist also received final approval of the new ordinance language. CalOptima's Board Chairman opposed changes to the language. An email trail exists between a CalOptima lawyer and Deputy County Counsel documenting the involvement of the registered lobbyist organization.
- July 2011 Exodus of 16 senior level managers begins.
- Aug 2011 The Supervisor sitting on the CalOptima Board reported on a trip taken with CalOptima executives to Washington, D.C. and said that Orange County's D.C. delegation praised CalOptima and "recognized the value of CalOptima's model of providing Members access to care in an effective and efficient manner." This is documented in Cal Optima's Board minutes.
- Sept 2011 The Cal Optima Board approved a CEO bonus of 20% (7/1/10-6/30/11) in a closed session and the fact was leaked to the media. The leak also cited 12 other executives that received bonuses.

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- Nov 2011 The Outside law firm hired to do an independent investigation gave its report to the CalOptima Board on November 3. The report stated none of the CalOptima lawyer's allegations were founded and that he retracted over 50 allegations prior to any executive interviews. The report listed several procedures and policies requiring improvement. The outside law firm retained a health care management expert to "offer insight from a management perspective."
- Nov 2011 The healthcare expert wrote a letter with his findings and recommendations to the outside law firm's President and it was included as a supplement to the law firm's report. However, the healthcare expert's letter was apparently leaked to the media. Since it was reported out of context, it portrayed the executive management team of CalOptima as inept. The Grand Jury has the letter. A high ranking executive from the registered lobbyist sent an email to CalOptima's CEO and Board Chairman saying, "If what was in the article is correctly reported, then whoever did the CalO (registered lobbyist's nickname for CalOptima) review was unqualified and issued some irresponsible findings."
- Nov 2011 On November 9, the same CalOptima lawyer brought additional allegations to the CalOptima Board. This time the allegations were regarding the CEO approving the bonuses for 12 other executives. The CalOptima Board retained the same law firm to investigate the new allegations.
- Dec 2011 The Orange County Board of Supervisors passed an ordinance changing the structure of CalOptima's Board of Directors. The new ordinance provided two additional Board seats and changed the structure and made it possible for more Providers to qualify for the 11 seats. One dissenting Supervisor is quoted as saying, the proposal gives that individual "heartburn" while another Supervisor says, "It's like having the foxes watch the chicken coop." This individual also criticized the Supervisor championing the ordinance change for having County Counsel make the proposal instead of them. "It's not how the Board does business; to try to use staff as a proxy," said the Supervisor. Instead of including a CalOptima Board seat for the Supervisor with the most members in their District, they extended the current Supervisor's seat for another year. According to the Agenda Staff Report (ASR) that recommended the ordinance change, Staff claimed this new Board make-up would reduce potential for conflict of interest. The media also reported the Supervisor

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championing the new ordinance received too many complaints about CalOptima; however, CalOptima's statistics uncovered only five in the previous four months.

- Jan 2011 A senior executive from the registered lobbyist organization wrote in a Payers and Providers newsletter, "It is true that doctors and hospitals have not always agreed with the policies and practices of CalOptima. Many, including [registered lobbyist organization's name], supported the successful recent efforts to expand and restructure its governing board." The Grand Jury has a copy of the newsletter.
- Feb 2012 An anonymous letter was faxed to the media, selected Providers and selected CalOptima Board members alleging conflict of interest against its Board Chairman and another Board member. The Board Chairman was accused of using his position to benefit his company in an effort to help Managed System of Care secure a Center for Medicare & Medicaid Innovation grant.
- Feb 2012 Two months after the ordinance change, the registered lobbyist organization held a \$250 per plate fund raiser for the Supervisor sitting on the CalOptima Board. This event was hosted at the home of the CEO of a for-profit hospital.
- Mar 2012 Wanting to clear his name, the CalOptima Board Chairman requested an investigation. The CalOptima Board approved (8-0 vote, with three absent) a different outside law firm to look into the legality of the allegations made against the Board Chairman and three other Board members. (This was documented in the March 23, 2012 Board minutes and confirmed by interviews.) The law firm was never hired since while preparing to sign the agreement, the Interim CEO received a call from a Board member instructing him not to sign it because he did not understand the Board's decision. The Board's decision to hire the law firm morphed into an internal compliance investigation released in September 2012 and concluded that two past Board Chairmen owed CalOptima a combined total of \$90,321.
- April 2012 The CEO resigned and took the position as President of a large healthcare organization.

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- May 2012 The CalOptima Board Chairman was removed from the Board during a Special Meeting of which neither he nor the other Board member mentioned in the anonymous letter was notified. He was later reinstated, but not as Chairman. The Director of the Orange County Health Care Agency was named CalOptima Chairman of the Board. The CEO of St. Jude Medical Center was named Vice-Chair.
- June 2012 According to interviews, a CalOptima employee resigned without another job after receiving a text from a newspaper reporter at 5:36 p.m. citing information discussed in a closed Board session that ended at 5:16 p.m. Months later, this employee was hired by the former CEO's firm.
- July 2012 Now reinstated, the former CalOptima Board Chairman sent a letter to the Board of Supervisors' Chairman resigning from the CalOptima Board. In the letter, another CalOptima Board member is referenced as the "subject of multiple compliance complaints" and of "delaying or completely halting the inquiry into [his] alleged wrongdoings." The Grand Jury has reviewed the letter.
- Aug 2012 The current Interim CEO, formerly the CFO, resigned from CalOptima and took a position with another county's County Organized Health System. The reason given was his long commute, but interviews substantiate that CalOptima had become "an unsafe environment for senior executives."
- Aug 2012 The CalOptima Board called a Special Meeting on a day the Interim CEO was off and a former County employee was named Interim COO.
- Aug 2012 During a meeting of the Board of Supervisors, the Supervisor sitting on the CalOptima Board responded to a public comment regarding CalOptima in what one publication's headline read, *[Supervisor] Blames Former CalOptima Executives for Agency's Brain Drain*.
- Sept 2012 At a CalOptima Board meeting, the Vice Chair reported CEO candidates had removed their names from consideration.
- Sept. 2012 Based on the results of the previously mentioned internal compliance investigation, the CalOptima Board instructed the Compliance Director to send letters to two former Board Chairmen requesting a total reimbursement of \$90,321 for unauthorized use of CalOptima employees and resources.

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NEW FACTS UNCOVERED DURING INVESTIGATION

1. A trail of correspondence between a CalOptima lawyer and an Orange County Deputy Counsel confirmed that a representative from a registered lobbyist helped author the proposed ordinance change (approved by the Board of Supervisors (3-2 vote) on December 6, 2011) that potentially gave Providers control of CalOptima's Board and had final approval of its language.
2. In January, 2011, a CalOptima lawyer submitted a report to the Board of Directors with over 100 allegations against senior management, who in turn commissioned an outside law firm to investigate. The objective of the investigation was to determine if any of the issues raised by him and another in-house CalOptima lawyer involved violations of the law or failure on the part of a CalOptima executive to follow proper and required legal procedures in the specific areas identified. The firm's final report, never seen by CalOptima staff, concluded that "most of the concerns lacked sufficient supporting evidence, were directly contradicted by documents produced by [CalOptima lawyer's name] and/or were determined to be non-issues. In fact, [CalOptima lawyer's name] withdrew more than 50% of his initial claims before we met with a single member of the executive team." The report added that "[CalOptima lawyer's title] and another in-house lawyer had done a poor job of interacting with the executive team." The report concluded by stating, "We uncovered no flagrant misconduct by any CalOptima executive, no gifts of public funds and no conduct that exposes CalOptima to immediate significant liability to regulators or third parties." They cited an interview with CalOptima's financial auditor, who confirmed that it had not found any material misstatements or significant issues regarding CalOptima's financial records for the most recent fiscal year. In the firm's final recommendations, they stated, "Our investigation did reveal that there are some operational and structural problems that need to be corrected at CalOptima. To a person, the executives say they recognize these problems, were aware of most of them and want to fix them." As part of the report, the law firm solicited "the perspective of an experienced healthcare business executive to make sure the Board received a balanced view of the issues and that our recommendations for resolution of the problems identified were practical and workable from an executive standpoint."

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3. Aside from the law firm's internal staff, CalOptima Board members were the only individuals allowed to view the report. However, a portion of the healthcare expert's letter, printed in its entirety in the Appendix of the law firm's final report, was apparently leaked to the media. Since it was not in the context of the full report, CalOptima's senior executives were portrayed as inept. A paragraph missing from the media's version or not reported by the media stated, "It is clear from its inception in 1994 that CalOptima has grown in significant ways and stands as a unique national model for organizing and administering healthcare financial resources to optimize the delivery of care to citizens of Orange County."
4. Following the CalOptima Board of Directors approving a CEO bonus in a closed session, someone apparently leaked the decision to the media along with the fact the CEO authorized bonuses for 12 other CalOptima executives. Six days after submitting their final report, the law firm hired to investigate the CalOptima lawyer's initial allegations was once again commissioned to investigate their new allegations regarding executive incentive compensation. According to the new final report, the CalOptima lawyer sent an email to the lead investigator citing six allegations in connection with the payment of incentive compensation to senior executives for the 2010/2011 fiscal year. In their findings, the law firm stated that, "contrary to [CalOptima lawyer's name] allegations, there was no gift of public funds, no misrepresentations to the Board, no breach of fiduciary responsibility and no self dealing." The report also said the CEO had been delegated the authority to pay incentive compensation to CalOptima executives in a November, 1994 OBAR (CalOptima Board Action Referral—original name was Optima). The findings and facts portion of the report stated, "What is surprising and disappointing, is that [CalOptima lawyer's name] continues to assert facts which he knew, or should have known, were not true."
5. A copy of the faxed anonymous letter sent February 2012 to the media and selected CalOptima Board members alleging conflict of interest by the then Board Chairman contained unique markings created in the scanning process. Identical markings from another fax sent from the Orange County office of a registered lobbyist conclude the anonymous letter came from the same machine.
6. A Supervisor's response to a public comment during the August 14, 2012 Board of Supervisors meeting and published by the media inaccurately claimed that only nine senior executives had left and that the former CEO and

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COO recruited them after they resigned. In fact, two secured positions at the former CEO's current business. One resigned without a new position after receiving a text from a newspaper reporter at 5:36 p.m. regarding the contents of the CalOptima Board's closed session which adjourned at 5:16 p.m.. Two became principals in the former COO's firm. Additionally, former CalOptima executives interviewed indicated they were never recruited by anyone that had previously left CalOptima. Former senior executives interviewed all claim that if not for the dirty politics perpetrated on CalOptima over the past 18 months, they would still be there. Most are now in highly prestigious positions and earning more income.

7. Representatives from Member organizations indicated they were intimidated by the new CalOptima Board structure and feared losing funding.
8. Determining that two past CalOptima Board Chairmen owe a combined total of \$90,321 for unauthorized use of CalOptima staff and resources is a puzzling conclusion by CalOptima's Board of Directors. The request had all the earmarks of retribution by the retooled Board of Directors against the Chairmen for fervently opposing the ordinance change. Any use of CalOptima staff and resources by the two was in conjunction with Managed System of Care. The CalOptima Board had previously approved \$50,000 of "seed" money to fund the start-up of the Managed System of Care. That sum was matched by the County of Orange Health Care Agency and exceeded by CHOC, Hoag Hospital, Integrated Healthcare Holdings, Inc., Irvine Health Foundation, Kaiser Permanente, Memorial Health Services, Prime Health Care, St. Joseph Health System Foundation, Tenet Health Systems and the University of California, Irvine. Since CalOptima, particularly CalOptima's Members, were the primary beneficiaries, common sense dictates the CEO had authority to assign an individual to assist with securing a \$14 million Center for Medicare and Medicaid Innovation grant and allow the two individuals to use vacant offices and unused conference rooms. The Grand Jury's research indicates these individuals have contributed significantly to CalOptima, their own organizations and society as a whole. Their legacies should not be tarnished by strategic media leaks or anonymous and questionable allegations never publicly refuted. CalOptima Board members are volunteers and receive no stipend for Board meetings or compensation for their many hours of service. The majority of those interviewed believe that having former executives and past CalOptima Board members subjected to smear campaigns and potentially slanderous remarks made during Board of

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Supervisor's meetings is reprehensible and a black mark on Orange County government and politics.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2012-2013 Orange County Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court with a copy to the Grand Jury.

Based on its investigation the Orange County Grand Jury has arrived at seven principle findings as follows:

- F1 A majority of Orange County's five Board of Supervisors have failed to take an active role in preserving an entity playing a vital role in the healthcare needs of the County's young, disabled, low income and senior residents. Sadly, 20 months ago, CalOptima received glowing reviews from Member organizations, politicians and government officials at all levels and was an entity Orange County's residents could be proud of.
- F2 A Board of Supervisors majority permitted an organization that is a registered lobbyist in Orange County and Los Angeles County to not only write a County ordinance, but have final approval of its language.
- F3 Member organizations have expressed fear of retaliation if they do not support certain causes or candidates and the Board of Supervisors majority has not attempted to curtail or dispel these fears.
- F4 A majority of the five Supervisors have allowed CalOptima senior executives, highly qualified individuals who performed their duties with passion and a belief they were making a difference, leave highly specialized positions.
- F5 A CalOptima Board member and two CalOptima lawyers have been disruptive and created an atmosphere that according to current and former CalOptima employees is "unsafe for senior executives."
- F6 Having a single Supervisor on the CalOptima Board lends to a perception of intimidation either real or perceived. County employees are reluctant to vote against a Supervisor.

CalOptima Burns While Majority of Supervisors Fiddle

- F7 Several current CalOptima Board members and recent hires lack the healthcare experience to understand the complexity of CalOptima as proven by their comments and questions during CalOptima Board meetings.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2012-2013 Orange County Grand Jury requires responses from each agency affected by the Recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation the 2012-2013 Orange County makes the following five recommendations:

- R1 The Board of Directors of CalOptima should include more than one County Supervisor. This would minimize potential conflict of interest and reduce any opportunity for CalOptima to be used for political gain or to advance personal agendas. The entity is larger than OCTA, which currently has all five Supervisors on its Board. (F1, F2, F3, F4, F5, F6)
- R2 Remove County employees from the Board of Directors of CalOptima since they report to the CEO of Orange County who is selected by the Board of Supervisors. (F1, F2, F3, F5, F6)
- R3 In order to attract more qualified individuals to fill vacant positions, offer salaries and incentive packages that are competitive in the healthcare industry. (F7)
- R4 Educate CalOptima's Board of Directors on the agency's role now and in 2014; why it operated effectively as a hybrid between private industry and County agency; its relevance to the County's less fortunate's well-being and healthcare needs and why CalOptima should be free from lobbyists and those who want to use it for political gain. (F2)
- R5 Ensure CalOptima Board members reaffirm their accountability to Members, Member organizations, staff and each other and refrain from leaking closed session details or partial reports to the media. (F5,F7)

REQUIRED RESPONSES

CalOptima Burns While Majority of Supervisors Fiddle

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors. Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted, or is not reasonable, with an explanation therefor.

CalOptima Burns While Majority of Supervisors Fiddle

(c.) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary/or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code Section §933.05 are required from:

Responses Required:

Orange County Board of Supervisors: F1, F2, F3, F4, F6

CalOptima Board of Directors: F5, F7

Responses Required:

Orange County Board of Supervisors: R1, R2, R3

CalOptima Board of Directors: R3, R4, R5

To Protect And To Serve

A Look at Tools to Assist Law Enforcement in
Achieving Positive Outcomes with the
Homeless Mentally III



2012-2013

To Protect And To Serve

A Look at Tools to Assist Law Enforcement in Achieving Positive Outcomes with the Homeless Mentally Ill

SUMMARY

“Homelessness is not a crime”: a statement noted in Orange County Police and Sheriff’s Department policy. However, homelessness and mental illness sometimes create a ‘perfect storm’ that requires outside intervention. When that storm occurs, it is usually law enforcement that must deal with the consequences. Officers and Deputy Sheriffs are expected to become on the spot psychologists, counselors, housing assistance experts and general-purpose problem solvers, as well as law enforcers and crime fighters.

*“There has been a shift for field officers from dealing with the disabled to dealing with the mentally ill.”*¹ This paradigm shift has created specific, unique challenges for those who choose to serve us as sworn officers: those who take an oath to support and defend the Constitutions of the United States and of California and promise to protect the rights found in these documents.

Individuals with mental disorders and mental illnesses who are also homeless make up our County’s ‘invisible population;’ invisible most of the time to most of us but not to law enforcement personnel. Law enforcement is tasked with providing service to all members of the community and its challenge is to do so while protecting the rights, dignity and private property of the homeless, who are often in need of special protection and services

REASON FOR STUDY

The tragic death of Kelly Thomas on July 5, 2011 in Fullerton had far flung consequences. Although the impetus for this study is, quite logically, this tragedy, the aftermath of which is that at least four lives were unalterably changed that night and by extension, countless others, this incident is not the focus of the Grand Jury study. Rather, the reason for this study is to explore what kind of training peace officers receive in dealing with the mentally ill and the homeless on our streets, both prior to taking up their duties in the community and in going forward in their careers.

METHOD OF INVESTIGATION

In conducting this study, the Grand Jury

- studied articles;
- researched newspaper articles;
- studied police training manuals;
- studied the Orange County Sheriff’s Department policy manual;
- studied Police Officers Standards and Training basic course materials contained in Learning Domain 37: People with Disabilities;

¹ Interview: former Chief of Police:

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- interviewed city Chiefs of Police;
- interviewed field training Sheriff's Officers;
- interviewed health care professionals both in Orange County and in other counties;
- conducted in-field observations with police officers;
- participated in ride-alongs with sheriff's deputies;
- reviewed training programs specific to working with the mentally ill and
- reviewed former Grand Jury studies.

BACKGROUND AND FACTS

What is mental illness?

"I never woke up one day and said, 'Hey, I want to live a tragic life'."

-Wayne Mellinger²

According to the Substance Abuse and Mental Health Services Administration, twenty percent to twenty-five percent of the homeless population in the United States suffers from some form of severe mental illness. In a 2008 survey performed by the United States Conference of Mayors, twenty-five cities were asked to identify the three major causes of homelessness in their communities. Mental illness was the third largest cause of homelessness for single adults (mentioned by forty-eight percent of cities): with the first cause being lack of employment and thus financial stability leading to poverty and the second being family crisis. For homeless families, mental illness was mentioned by twelve percent of cities as one of the top three causes of homelessness.³

Severe mental illness can be defined as a medical condition that disrupts an individual's ability to carry out essential aspects of daily life, such as self-care and household management. It may also prevent people from forming and maintaining stable relationships or cause people to misinterpret others' guidance and react irrationally. Mental illness is also referred to as "Mental Disorder".⁴ It can take two forms: thought disorder, wherein a person's thought process is disrupted causing that person to experience delusions, hallucinations, and/or irrational fears, or they may exhibit unusual behaviors; or mood disorder, where the person experiences periodic disturbances in mood, concentration, sleep, activity, appetite or social behavior. Mood disorders can be marked by periods of extreme sadness (depression) or excitement (mania) both of which tend to be episodic.⁵

² Wayne Mellinger Ph.D. is a social justice activist living in Santa Barbara and social worker for the homeless. He was appointed by Santa Barbara County 3rd District Supervisor Doreen Farr to the South Coast Homeless Advisory Committee and is a board member of Clergy and Laity United for Economic Justice (CLUE). He is bipolar.

³ *Mental Illness and Homelessness*. The National Coalition for the Homeless. July, 2009:

<http://www.nationalhomeless.org>

⁴ POST L.D.37; ch 4 p.4.4

⁵ POST L.D.37; ch4 p.4.5

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California's Peace Officer Standards and Training (POST) lists indicators that demonstrate behavior related to mental illness. These are: inappropriate behavior, extreme rigidity or inflexibility, excitability, impaired self-care, hallucinations, delusions, disorganized speech, thought patterns or disorientation, clinical depression, bipolar disorder, schizophrenia, postpartum-depression, postpartum-psychosis, posttraumatic stress disorder and personality disorder.⁶

Wayne Mellinger estimates that about half of those living on the street have mental health challenges and about half of these individuals also have substance abuse issues and gives amazing insight into what it is like:

Imagine going through life in sixth gear, sometimes flying smoothly on the interstate of life. Other times this accelerated mode of being leads to reckless driving in which you drive off the road and terribly crash the car. While other people gradually warm up their engines, you often lie in bed at night already awake and raring to go. While raised to be polite and deferential, you constantly find yourself interrupting people and finishing their sentences. You often feel like you have bulldozed your way through an encounter.... You sense that you are all over the place, ideas firing in your head so fast that others cannot keep up.... You even get unrealistic beliefs about what you can accomplish. Sometimes you are involved in "pleasurable sprees" that afterward seem terrifying foolish. Now imagine that you have found something that soothes that excessive energy and calms you down so much that you are actually able to sit quietly and focus for hours on doing some of the things you enjoy. While you know that the substance is unhealthy and illegal, the relief you feel under its influences is so wonderful that you find ways to do it more and more, until you are so involved with the substance that you are chemically dependent... While I come from a loving and caring middle-class family that provided me with everything I needed and ensured that life opportunities would abound, an undercurrent of darkness and chaos has run through my life. Periods of intense creativity, intellectual pursuits and professional accolades get followed by periods of exhaustive depression, isolation and dysfunctionality. These episodes have led me to homelessness several times in my adult life.⁷

⁶ POST L.D.37; ch4 pp.4.5-4.12

⁷ <http://homelessresourcesca.blogspot.com/2012/01for-homeless-mentally-ill-and-addicted...>

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The 2005-2006 Orange County Grand Jury study entitled: *The Homeless Crisis in Orange County*, found that throughout the year there were nearly 35,000 homeless people in Orange County. In 2011, that figure was estimated to be 18,325⁸ based on current HUD⁹ methodology.

The closing of large state-run mental health institutions in the 1970s left many severely mentally ill people with nowhere to go. For those who are holding onto the cliff of life, the wealthiest nation in the world has no safety net to catch those who free fall to the bottom.

Many residents, business owners and government officials continue to view chronic homelessness as a law enforcement issue rather than a social issue.¹⁰ How peace officers respond to persons living with a mental disorder can have tremendous impact on how these encounters will be resolved.

CAUGHT BETWEEN A ROCK AND A HARD PLACE

Law Enforcement:

Even peace officers skilled in dealing with the mentally ill are often caught between a 'rock and a hard place'. On the one hand, they have a duty of care for all citizens, regardless of their mental state and living circumstances; on the other hand, they have an obligation to citizens who own property and conduct business within the community and may interact with the homeless mentally ill.

The County of Orange is "policed" in two main ways: thirteen of the thirty four cities in the County contract with the Orange County Sheriff's Department for their services; the other twenty one cities have their own police departments.

⁸ Galvin, Andrew. Orange County Register, "Volunteers needed for count of homeless" 1.22.2013

⁹ Housing and Urban Development

¹⁰ *The Homeless Crisis in Orange County.2005-2006 Orange County Grand Jury study, p.6*

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Incorporated Cities of Orange County		
City	Sheriff's Dept.	City Police Dept.
Aliso Viejo	X	
Anaheim		X
Brea		X
Buena Park		X
Costa Mesa		X
Cypress		X
Dana Point	X	
Fountain Valley		X
Fullerton		X
Garden Grove		X
Huntington Beach		X
Irvine		X
La Habra		X
La Palma		X
Laguna Beach		X
Laguna Hills	X	
Laguna Niguel	X	
Laguna Woods	X	
Lake Forest	X	
Los Alamitos		X
Mission Viejo	X	
Newport Beach		X
Orange		X
Placentia		X
Rancho Santa Margarita	X	
San Clemente	X	
San Juan Capistrano	X	
Santa Ana		X
Seal Beach		X
Stanton	X	
Tustin		X
Villa Park	X	
Westminster		X
Yorba Linda	X	

An organization that is instrumental in setting policy for all these departments is the Orange County Chiefs' and Sheriffs Association. It is an exclusive non-profit entity that meets regularly to discuss issues and concerns of law enforcement in the County. It is comprised of chief law enforcement executives: city police chiefs and the Sheriff,

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who meet monthly as part of their duties. This practice is very beneficial to public safety because of the enhanced communication and co-operation between these men and women. The Orange County Chiefs' and Sheriffs Association is an effective political force when it speaks with one voice about an issue of concern whether through the media or with politicians at the county, state and federal level.

Individuals interested in becoming peace officers can complete any Police Officers Standards and Training (POST) approved police academy in California to initially qualify to work as a sworn officer in Orange County. However, Orange County itself has three options for initial training: the Sheriff's Academy, Golden West College Criminal Justice Training Center or a program at Fullerton College.

The purpose and scope of the training policy at the Sheriff's Academy is to provide a training program that will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.¹¹ This training is provided using courses certified by the California Commission on Peace Officer Standards and Training (POST) and the Correctional Standards Authority (CSA)¹². It addresses the following areas:

- Legislative Changes,
- State Mandated Training,
- Critical Issues Training.

In addition to this training, the POST requirement also includes Advanced Officer Training, similar to continuing professional training found in teaching, nursing and the practice of law, consisting of twenty-four hours of training every two years in compliance with the POST requirements. This requirement offers a variety of courses ranging from drug/alcohol recognition to perishable skills such as pursuit driving and firearms accuracy, as well as providing legal updates. It currently does not specify the number of hours for or frequency of on-going training for dealing with citizens with mental illness.

POST basic academy training offers a Learning Domain (thirty-seven) Entitled: *People with Disabilities* that consists of a workbook divided into four chapters designed to provide students with a self-study text that can be used in preparation for classroom training.

- Chapter One covers laws that protect the rights of people with disabilities, types of disabilities and peace officer interactions with people with disabilities.
- Chapter Two covers developmental disabilities.
- Chapter Three covers physical disabilities including neurological disorders and
- Chapter Four covers persons with mental illness.

¹¹ *Orange County Sheriff-Coroner Department Policy Manual: Training Policy* p.48

¹² Penal Code §13515.25

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The overview to Chapter Four states: *“Peace Officers must become familiar with the behavioral and psychological indicators of mental illness in order to determine if an individual is a danger to others, danger to self, or gravely disabled and to determine an appropriate response and resolution option.”*¹³ The chapter is thirty pages long and mostly in grid format, sometimes with as little as one paragraph on a page; arguably, not material for an in-depth study of the subject unless heavily supplemented by a knowledgeable and competent instructor.

The Sheriff’s policy for dealing with mentally ill persons is in the Field Operations Manual §29. It defines mentally ill as “those persons who are of such mental condition that they are a danger to themselves or the person or property of others, and in need of supervision, treatment, care or restraint.”¹⁴ The manual then goes on to discuss symptoms of mental illness and physical conditions that look like mental illness. It states: *“Mental illness symptoms only would not be justification for taking a person into custody.”*¹⁵ It also discusses how to talk to a disturbed person.¹⁶ Protocol for dealing with mentally ill individuals includes contacting a Centralized Assessment Team (CAT) or a Psychiatric Evaluation Team (PET) available twenty-four hours a day, seven days a week. It is also possible to contact an Emergency Treatment Services (ETS) facility which is open twenty-four hours a day, seven days a week.

Each city agency and the Sheriff’s Department should supplement POST training to include an in-depth study of dealing with those on the street who are emotionally disturbed and/or mentally ill – both in the context of day to day policing and in the context of use of force. Although many agencies have procedures for dealing with the mentally ill, few actually conduct regular training related to these policies. Even fewer train on tactics and use of force in the context of the emotionally disturbed and the mentally ill. The Grand Jury had the experience of speaking with a top law enforcement officer who believed there were other priorities that needed more attention. However, when interviewed, deputy sheriffs and city patrol officers expressed both a desire and a need for on-going, in-depth training in this area of policing.

Lack of in-depth training in this area can have dire consequences as demonstrated in the case study below, greatly abridged for these purposes:

In *Herrera v Las Vegas Metropolitan Police Department*, 298F.Supp 2d 1043 (District of Nevada 2004), plaintiff brought claims against five metro officers and the sheriff, the Las Vegas Metro Police Department and the city of Las Vegas for

- wrongful death,
- intentional infliction of emotional distress,
- negligence,
- negligent training and supervision.

¹³ POST LD37:chapter 4,p.4-1

¹⁴ Sheriff’s Field Operations Manual §29 p. 29.1

¹⁵ Ibid p.29.4

¹⁶ Ibid p.29.5

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An expert testified that defendant officers should have known that the manner in which they approached the decedent would escalate the confrontation. According to Van Blaircom, the officers' treatment of the situation, combined with their statements that a mentally ill individual should be treated as any other person, regardless of the situation, indicate that the police department's training in dealing with the mentally ill falls well below the reasonable standard of contemporary care.

There needs to be a paradigm shift in traditional police tactics in order to successfully interact with disturbed individuals. This will only happen if there is proper mandatory training of law enforcement personnel.¹⁷

The Grand Jury distributed a questionnaire to the Orange County Sheriff's Department and to every city police department in order to gain an objective understanding of policies and procedures used throughout the County when peace officers encounter the mentally ill homeless - which they do on a daily basis. We also wanted to understand whether departments were taking any creative and innovative approaches when dealing with this area of law enforcement. The questionnaire appears below with responses summarized as succinctly as possible.

Q: How many sworn officers do you have in your Department?

The range of sworn peace officers throughout the County of Orange varies greatly, depending on the size of the city. The least number of officers in a city is twenty-two; the greatest: three hundred forty. There are one thousand seven hundred and sixty-six deputy sheriffs in a total of thirteen cities and unincorporated areas within the County.

The number of officers per one-thousand people in a city ranges from 0.88 to 2.04. Most cities statistically have about one officer per one-thousand persons in the city they serve.

Q: Is your department accredited by a national agency such as the Commission on Accreditation for Law Enforcement Agencies?

Two city police departments are accredited nationally by the Commission on Accreditation for Law Enforcement Agencies (CALEA); nineteen cities and the Sheriff's Department are not. This means that less than ten percent (6.8 percent) of cities within the County of Orange have nationally accredited police departments.

¹⁷ LEMHS CORP, *Law Enforcement Mental Health Solutions* training seminar 02.13.13

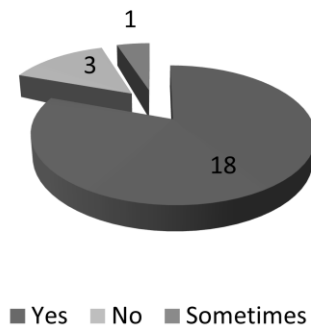
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Q: Beyond Police Academy training, how many hours of training do officers receive each year that specifically focuses on the understanding of mental illness suffered by those on the street?

Hours of Training on Mental Illness	Departments
0	1
1	2
2	3
4	2
5	2
12	1
16	1
1 to 2	1
2 to 4	4
3 to 4	1
4 to 16	1
4 to 8	1
Varies	2

Q: Does this training include presentations by mental health professionals?



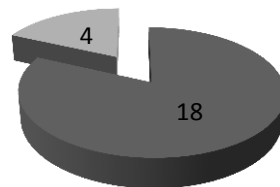
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Q: How many briefings annually are provided to your officers that specifically pertain to the homeless and strategies/tactics for dealing with them?

Annual Briefings	Departments
0	1
1	2
2	1
4	2
1 to 2	2
1 to 3	2
2 to 3	1
2 to 4	1
3 to 4	1
6 to 12	1
9	1
12	1
19	1
Frequently	1
Varies	2
Did not Answer	2

Q: Do you have a specific officer(s) designated to liaison with your city's homeless population (a homeless liaison officer)?



■ Yes ■ No

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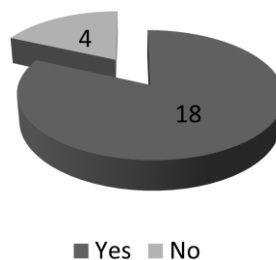
Q. How many officers? If no, how do you deal with this population?

Number of Liaison Officers	Departments
1	7
2	2
3	1
4	2
5	2
8	1
10	1
Handled Differently	6

Some departments are members of the Orange County Community Officer’s Association and, as part of that Association, meet and discuss strategies for dealing with the mentally ill homeless.

In a small city, all officers are familiar with the homeless population. The Grand Jury found this to be true during their ride-along with both the Sheriff’s Department and City Police. Officers knew people by name as well as something of their background and personal issues. In some cases, those on the street also knew the officer - sometimes by name. Other cities and the Sheriff’s Department are currently exploring the designation of a homeless liaison officer. One city said it deals with homeless mentally ill issues on a case-by-case basis.

Q: Do you have at least one officer trained in crisis intervention?



Q: What is your plan when this person(s) is not at work?

Responses vary from no formal plan to some cities having many or even all field officers formally trained in crisis intervention. Four city departments make use of crisis negotiation teams, Psychological Evaluation Teams (PET) and Centralized Assessment Teams (CAT). These teams are from the County’s Behavioral Health Department and are funded in part by the Mental Health Services Act (MHSA). Ten departments responded they had many officers trained in crisis intervention and therefore, the absence of one trained officer is not an issue. Four departments use community

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resources; four have no plan. The Sheriff's Department uses Centralized Assessment Teams and Psychological Evaluation Teams.

Q: If you do not have a dedicated officer(s), what other options are you exploring when dealing with persons suffering from mental illness in crisis?

Two departments did not answer this question; it was irrelevant to twelve others as they have dedicated officers. Other comments included: officers use services of the Orange County Health Care Agency; officers receive training on communication and intervention techniques. One department stated it is currently working with neighboring cities to improve the task force on homeless issues; another department and the Sheriff's Department attend crisis intervention training – a sixteen hour course – at Golden West College. A mental health professional told the Grand Jury that Orange County Health Care Agency offers a forty hour (Memphis Model) course to police departments but departments will not (cannot?) release officers for longer than sixteen hours. One department stated that, if an individual in question can be held on a *Welfare & Institutions Code* §5150,¹⁸ they get that individual to the hospital for a psychiatric evaluation; otherwise there is no procedure or other option available.

Q: What resources and facilities are available to you for use with the homeless mentally ill (other than those designated W&IC §5150)?

There were several responses to this question. All departments use one or more of the strategies discussed below.

One department has access to lists of shelters and assistance programs on their in-car computers. Others have lists of shelters, churches, other non-profits and food banks. Some departments use University of California, Irvine hospital, Hoag Hospital and College Hospital - although it is not clear whether these hospitals are used only for Welfare & Institutions Code §5150 designated individuals. One department has two social workers ride along with an officer one day a week; another has a mental health clinician ride with the homeless liaison officer regularly. Some departments call Centralized Assessment Teams (CAT) and Psychiatric Evaluation Teams (PET) for assistance; one department has an Alternative Sleeping Location (ASL) program. Some departments use Orange County Mental Health Agency resources.

Q: Do your officers have access to a PERT (Psychiatric Emergency Response Team) or PERT-like team 24 hours, 7 days a week? If yes, are you happy with their response? If no, what would you like to see changed?

Twenty-one departments (this number includes the Sheriff's Department) answered that they did have access to some type of psychological assessment/crisis intervention team. One department said they did not. Seventeen departments are happy with this professional partnership. One department was not happy and stated

¹⁸ Section 5150 of the *Welfare & Institutions Code* allows a peace officer to admit an individual to a hospital for a seventy-two hour psychological evaluation if that person meets certain criteria: i.e. are an immediate danger to themselves or others

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such a team needs additional resources; one did not answer the question. Four departments had no comment.

Q: As part of departmental training do your patrol officers periodically ride with the homeless liaison officer(s) in order to further develop their abilities and strategies, first hand, in dealing with the homeless? What other options/training do you utilize to enhance their skill set?

Five departments responded that their patrol officers ride with the homeless liaison officer; seventeen departments do not follow this practice. One department holds post-incident de-briefings. It is not clear whether these de-briefings include only officers involved in the incident or whether all patrol officers are included. Two departments send their officers to Orange County Mental Health briefing training. Three departments use the POST learning portal. One department holds informal briefings and training; one holds monthly CompStat¹⁹ (Computer Statistics) meetings. Three departments use the professional services of community leaders by having them give presentations; for instance, Orange County Mental Health Agency goes to roll call at the Sheriff's Department and the city police departments to remind officers of the importance and availability of Centralized Assessment Teams and Psychiatric Evaluation Teams. Seven departments avail themselves of outside professional courses; nine departments use videos, training bulletins, briefing training, handouts and periodicals. The Sheriff's Department, as well as using some of the strategies above, also uses a sixteen week "Memphis Model" (Crisis Intervention Training) course. Several police departments gave the Grand Jury a copy of the video: *Close Encounters* which teaches positive methods police officers can use when working with the homeless mentally ill in the field. This video can easily be used at roll call.

Q: Do supervisors and command staff periodically ride with the homeless liaison officer(s) so that they are aware of challenges and issues related to that specific population? What other options do you utilize to enhance their decision making skills?

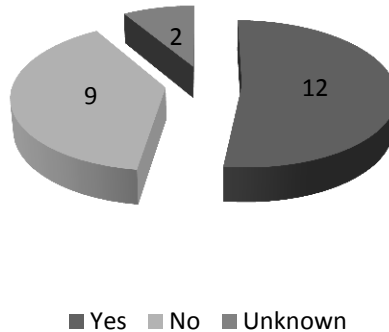
Five departments responded that their patrol officers ride with the homeless liaison officer; seventeen departments do not follow this practice. One department uses a new, internal database; one has a department policy and officer resource guide; one uses post incident de-briefing. In one department, the command staff is part of the homeless task force. Three departments report that they are continually briefed by the homeless liaison officer; three believe attending Chiefs' and Commanders' meetings enhances their skills. Ten departments avail themselves of outside professional training and conferences, as does the Sheriff's Department. Three departments did not answer the question.

¹⁹ CompStat: Name given to accountability process model of crime reduction. This model was developed by the New York Police Department and introduced in Los Angeles CA by Chief Bratton. It is a promising trend in significantly reducing violent crime.

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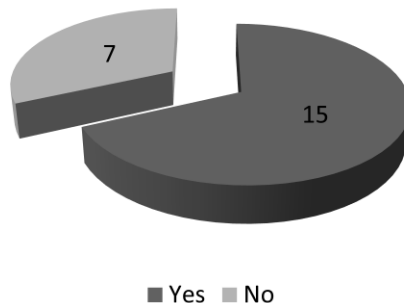
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Q: Has your department reached out to neighboring cities to learn whether specifically skilled officers could be combined into a task force dedicated to dealing with the homeless? If so, what was the response?



The Sheriff's Department is considering a task force dedicated to their contract cities and unincorporated areas. Another department is exploring opportunities for a task force. One department hosted a county-wide meeting of homeless outreach staff. Three departments have their homeless liaison officer(s) meet with others to share information and fifteen to twenty departments are members of the Orange County Officer's Working Group on Homeless and Mental Illness. Other departments work together: Seal Beach partners with Laguna Beach Police Department; Orange, Anaheim and Placentia Police Departments work together. Orange Police Department and Santa Ana Police Departments work together at the Santa Ana Riverbed area where a large homeless population resides.

Q: Has your department reached out to recognized law enforcement, mental health and legal experts to learn whether specifically skilled individuals could be used in your training program? If so, what was the response?



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Three departments use Orange County Mental Health Agency services. Other responses include: creating a four hour workshop for First Responders; developing a homeless task -force; co-hosting “Meeting of Minds” conference with Orange County Mental Health Agency; adding POST certified content to on-going training curriculum; having the community resource officer meet with others in the County, and using college programs for on-going education.

Q: If you were offered a complete program for training your officers in positive and effective interaction with mentally ill individuals would you avail yourself of the opportunity?

Twenty-one departments (including the Sheriff’s Department) are interested in on-going multidisciplinary training programs. Three departments have already completed such a program; others, including the Sheriff’s Department, are in the process of completing training. One department commented that their interest was subject to review of their needs and the cost of the program.

Q: Do you think the County should support additional training through the use of MHSA (Proposition 63) funds? If no, why not?

All police departments believe the County of Orange should use Mental Health Services Act (Proposition 63) funds for additional peace officer training. In fact, the Grand Jury was told that funding is available to local law enforcement for a comprehensive forty hour Crisis Intervention Training (CIT) program.²⁰ Some departments rejected this proposal as too difficult to implement due to the projected cost of overtime necessary to backfill the work schedule for patrol officers attending the weeklong training.²¹ The Grand Jury was told that the “push back” against the proposed CIT training happened before the Kelly Thomas incident.²² As per the responses to the previous question, a few departments have, in fact, completed this training and a few others plus the Sheriff’s Department (which equals thirteen cities) are in the process of doing so. A mental health professional told the Grand Jury that Orange County would fund CIT training with Proposition 63 funds if “local law enforcement changed their position.”²³ This individual said: “CIT is the First Line of Defense. The PERT is the Second Line of Defense.”²⁴ Orange County Health Care Agency has, in 2012, provided crisis intervention training to two hundred ninety-eight sworn officers. Another program has provided training to approximately two hundred officers.

Only one department commented on this question. The comment was that revenue from Mental Health Services Act (Prop. 63) in Orange County should be returned to the County.

²⁰ Interview: Orange County mental health professional: 3.14.13

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

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Q: Would you consider establishing a database maintaining information on your city's homeless population in order to make such information available to all officers in the field? If no, why not?

Seventeen departments, including the Sheriff's Department, said yes to this question; four said no. Concerns expressed in establishing a database include potential legal and Health Insurance Portability and Accountability Act (HIPAA) issues. One department is in the process of establishing a database. One department noted it should be a County maintained database because of the transient nature of the homeless population. To that end, the Grand Jury learned from an officer that the County manages a database called *Homeless Management Information Systems* (HMIS). However, the existence of this data base doesn't seem to be well known throughout the County. One department pointed out that there needs to be specific guidelines as to what is contained in the database and who has access to it.

Subsequent to the Kelly Thomas incident, the City of Fullerton directed the Los Angeles Office of Independent Review to conduct a systematic review of the Fullerton Police Department.²⁵ The president of the Los Angeles Office of Independent Review conducted numerous internal affairs investigations and his findings were presented to the Fullerton City Council. One of the positives he points to in his report is the Police Department's pro-active efforts in undertaking a "census" of its homeless population in which information gathered will be inputted into a database available to all Fullerton police officers in the field.²⁶ Although there are legitimate privacy concerns in establishing a database, there are creative ways of going about it that do not impact an individual's civil rights. This information could give officers insight into a person's behavior so that the officer is able to choose the most appropriate intervention techniques. Such a database could become an invaluable tool.

Q..What are your Department policy and procedures for dealing with those with mental illness?

Lexipol Policy 418²⁷ describes an officer's duties when a person is to be committed to a mental health unit pursuant to *Welfare and Institutions Code* §5150²⁸ The policy does not specifically address procedures or offer any insight into how an officer should proceed when he or she, in the course of their duties, comes in contact with a mentally ill homeless person.

²⁵ OIR Group. *Report to the City of Fullerton: Systemic Review of the Fullerton Police Department*, August 2012

²⁶ Ibid p.8

²⁷ The Lexipol Law Enforcement Policy Manual has more than 140 policies based on federal and state laws. The policy manual is written by legal and law enforcement professionals who constantly monitor major court decisions, legislation and emerging trends affecting law enforcement operations. Lexipol provides regular updates in response to legislative mandates, case law and the evolution of law enforcement best practices.

²⁸ Ibid §418.2: *AUTHORITY: When any person, as a result of mental disorder, is a danger to others, or to himself or herself...a peace officer...may...take, or cause to be taken, the person into custody and place him or her in a facility...for 72 hour treatment and evaluation.*

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Seventeen departments enclosed a copy of Policy 418 when returning the questionnaire; five departments enclosed copies of procedures based on Policy 418, which were customized to the specifics which impact their city. One department noted that its city had created a task force “to address challenges caused by the city’s homeless population.” This task force has brought together diverse members of the community, including the police department, and made nine recommendations which were then adopted by the City Council. This department spells out in Police Policy §1420.1: Protocol, that the Orange County Chiefs of Police and Sheriff’s Association has agreed to follow by contacting a Centralized Assessment Team (CAT) or Psychiatric Evaluation and (Response)Team (PE[R]T) for response to the field. The policy specifies that a Centralized Assessment Team (CAT) should be called any time an officer needs a clinical intervention that may or may not lead to a §5150 commitment.

Another department has incorporated into Policy 418 considerations an officer should utilize when handling a call involving a mentally ill individual, including:

- use of available information to determine the nature of the mental illness;
- conflict resolution and de-escalation techniques;
- appropriate language and
- available community resources.

One department spells out in their General Order how an officer will recognize mental illness and lists intervention strategies using the acronym **TACT**: Time; Atmosphere; Communication; Tone. The acronym is a good one and worth exploring, as private citizens can utilize these strategies as well as law enforcement.

Time: Police officers traditionally are expected to ‘wrap things up’ as soon as possible in order to take the next call for service. This practice is counter-productive when dealing with the mentally ill. If you hurry, you bring a sense of energy to the encounter that conveys to the individual that you are not interested in them.²⁹ A better approach for an officer to take is to slow the situation down, assess the problem and give the person time to process information. Take time to plan. This approach may take time but a positive outcome makes it worthwhile.

Atmosphere: Keep the scene calm and controlled. Move slowly and allow for personal space and for the individual to pace, if possible.³⁰

Communication: Build rapport with the individual and speak calmly and slowly. Repeat yourself and help the person feel safe. Use active listening and tell the individual what you are going to do before you do it.³¹

²⁹ LEMHS CORP, 2012. *Law Enforcement Mental Health Solutions* pp. 13-14

³⁰ Ibid

³¹ Ibid

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Tone: Build a relationship of trust. Be calm, firm, respectful, patient, truthful and reassuring. In this way, you can control the situation.³²

Depending on the officer's observations of the individual, there are five different procedures an officer can choose to follow. There is also a section on dealing with juveniles which includes three other options.

Several departments provided the Grand Jury with copies of training bulletins designed to teach officers positive intervention techniques, some using the TACT model. Other departments have specific protocols regarding Centralized Assessment Teams (CAT) and Psychiatric Evaluation Teams (PET) tailored to their departments.

One department has an extensive training bulletin that covers how to recognize and respond to Alzheimer's victims, as well as mental illness; another on how to deal with suicide attempts.

Another department has extensive policies on mental illness commitments, including the use of evaluation teams; juveniles and the responsibilities of the detaining officer and dealing with the emotionally disturbed and mentally ill.

What is your Department policy on mandatory continuing education for sworn officers in the area of understanding and working with mental illness in your community?

Initial training for peace officers is provided in the Police Academy and is a foundation designed to be built upon. Officers have a three-day block of specific training. About two hours each day covers: mental disorders, medication and rapport building. Following the classroom training, officers spend two days on the street with a trained, supervising officer.³³

The following summarizes the initial training provided to prospective police officers.

POST Field Training Guide: Mentally Ill

The trainee is expected to:

- Review and explain policy regarding the handcuffing of a mentally ill person;
- Explain how to properly book a mentally ill person;
- Recognize and demonstrate effective communication skills to be used with cognitively impaired persons;
- Explain how non-compliance may not be a sign of defiance or disrespect;
- Explain and demonstrate safeguards including the TACT model;
- Explain state law and agency policies regarding those with mental illness;

³² Ibid

³³ Interviews

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- Identify points to consider when dealing with mentally ill persons including, among others, ignoring verbal abuse;
- Be able to identify the appropriate mental health facility for an individual;
- Understand and explain criteria for *Welfare & Institutions Code* §5150;
- Know and discuss alternative methods for handling a situation that will not result in a §5150 commitment.

Continuing education is mandated under California *Penal Code* §13515.25 and states in part:

*“... the Commission on Peace Officer Standards and Training shall establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled persons. The training course shall be developed by the commission in consultation with appropriate community, local and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family groups. In developing the course, the committee shall also examine existing courses certified by the commission that relate to mentally disabled persons. The commission shall make the course available to law enforcement agencies in California. The course... shall consist of classroom instruction and shall utilize interactive training methods to ensure that the training is as realistic as possible...”*³⁴

The Penal Code then concludes with part (d) *“The Legislature encourages law enforcement agencies to include the course created in this section, and any other course certified by the commission relating to mentally disabled persons, as part of their advanced officer training program.”*³⁵ Advanced officer training consists of twenty-four hours of training every two years in compliance with POST requirements, but, because there are other competing subjects offered, some of which are mandatory, there is no mandated time requirement specifically dedicated to training in field encounters with the mentally ill.

Sixteen departments forwarded a copy of Policy 418, which includes §418.6 and references *Penal Code* §13515.25.

Six departments provided information on how *Penal Code* §13515.25 has been implemented. One department ensures all personnel receive refresher training at least once every three years and that this training is documented. Another department holds a conference specifically geared to on-going education that meets POST certified curriculum content. One department has specific training during orientation on dealing with persons with mental disabilities. The training is up-dated every three years and

³⁴ California Penal Code §13515.25

³⁵ Ibid

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developed in collaboration with mental health partners. It is documented on a mental illness awareness form. Another department offers an eight-hour course on *Penal Code §13515.25* specifically on responses to mental disabilities. Other departments are sending their officers to one of the available courses or workshops.

The Grand Jury is aware of at least four continuing education programs in Orange County that offer comprehensive and multi-faceted, in-depth training on dealing with mental illness on the street and in the community at large. One of these programs offers college credit through California State University Fullerton. The bigger issue seems to be how to free-up patrol officers – especially those serving small communities - to get them into these programs. Patrol shifts must be staffed twenty-four hours, seven days a week to ensure public safety. Most departments have minimum staffing levels usually set by evaluating calls for service, by time of day, day of the week and other factors. Thus, training can be costly. Although it may not be a simple task, the Grand Jury believes there are creative solutions out there that would make this goal achievable.

A CASE FOR LAURA'S LAW

Laura's Law may be a tool that can be used to help both law enforcement and the private citizen.

Laura's Law, also known as Assisted Outpatient Treatment (AOT), is a process that allows courts to compel individuals with severe mental illness and a past history of multiple hospitalizations, arrest and/or violence due to mental illness to receive treatment. It commits the Mental Health system to providing treatment. To date, Nevada County and Los Angeles County are the only counties in California to implement the program.

Laura's Law rose out of a tragedy in Nevada County, California where nineteen year- old Laura Wilcox was one of three people killed by a severely mentally ill patient who refused medication to control his delusions.

When Laura's Law was implemented in Nevada County,

- mental health hospitalization was reduced forty-six percent,
- incarceration was reduced sixty-five percent,
- homelessness was reduced sixty-one percent and
- emergency contacts were reduced forty-four percent.

Nevada County claims they saved \$1.81 - \$2.52 for every \$1.00 spent, as a result of reducing incarceration, arrest and hospitalization.³⁶

³⁶ Heggarty, Michael, Nevada County Behavioral Health Director. *The Nevada County Experience* Nov.15, 2011

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Los Angeles County implemented Laura's Law, with some modifications, eight years ago. Because Los Angeles County is one of our nearest neighbors, the Grand Jury went to the Los Angeles Department of Mental Health to understand how the program is working. We were told there is a "thicket of regulations to make the law unworkable."³⁷

A mental health professional told the Grand Jury that Laura's Law, as it stands, has no "teeth" in it. The "teeth" are in the implementation – not the law.³⁸ Los Angeles has implemented the program as a diversion program, used in lieu of legal action against an individual or detainment in a locked setting. Therefore, the court is essentially 'incentivizing' an individual. People agree to be medicated because they see it ultimately as in their own best interests.

The Los Angeles program is two-fold: first, it is a diversion program. With the implementation of AB109 (also called "Realignment Legislation"), more and more individuals are being remanded to County custody rather than state prison, thus further impacting the already bursting jails.³⁹ There is, therefore, an incentive both for the courts as well as for those with mental illness not to be incarcerated. For the individual, the tradeoff for taking medication means: no arrest record and not being subjected to jail and jail in-take procedures. Secondly, the courts offer the program to the 'best' people; meaning those who will benefit most from the program.⁴⁰ These are individuals who are very stable on medication but stop taking it for one reason or another. The bottom line for these people is that as long as they participate in the program, they are not locked up.

Los Angeles County has implemented the program with impressive results. Overall costs for this patient population decreased by an estimated forty percent due to:

- reduction in days of incarceration: seventy-eight percent;
- reduction in days of hospitalization: eighty-six percent.

New York found that Assisted Outpatient Treatment (Kendra's Law) kept the public, patients and law enforcement safer by:

- reducing physical harm to others forty-seven percent;
- reducing arrests eighty-three percent;
- reducing incarceration eighty-seven percent and
- reducing hospitalization seventy-seven percent⁴¹

³⁷ Interview, mental health professional. 2.7.13

³⁸ Ibid

³⁹ In order to be counted as an AB109 inmate, the offense for which the inmate is incarcerated must be a non-serious, non-violent, and non-sex-register felony with no prior such convictions. These offenders are referred to as "non-non-non." *Unforeseen Consequences and Impacts – AB 109 Realignment – Orange County Sheriff's Department presented by Lieutenant Mike McHenry*

⁴⁰ Ibid

⁴¹ Laura's Law fact sheet: Mental Illness Policy Org. <http://lauras-law.org/states/california/lauraslawfactsheet.html>

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Only a very small group of severely mentally ill patients – well known to law enforcement - are eligible under Laura’s Law. They must be individuals who are repeatedly arrested or hospitalized due to their failure to stay in treatment. Eligible individuals must have a history of non-compliance with treatment that has been a significant factor in being hospitalized, or incarcerated at least twice within the last thirty-six months, or resulted in one or more acts, attempts or threats of serious violent behavior within the last forty eight months.

California State Law requires the disclosure of substantial oral and written information to psychiatric patients before they can be offered anti-psychotic medication.⁴²

Welfare and Institutions Codes §5325.2 states: “Any person who is subject to detention pursuant to §5150, 5250, 5260 or 5270.15 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth....”

Section 5332 states: (b) “if any person...refuses treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient and upon determination of that person’s incapacity to refuse the treatment, in a hearing held for that purpose.”⁴³

New York City introduced Kendra’s Law (the model for Laura’s Law) over fifteen years ago. Because of its success, it was taken statewide over ten years ago. A study in *Psychiatric Services* found the odds of arrest for a violent offense were almost ten times (8.61) greater before participants entered Kendra’s Law than after. Nevada County found Laura’s Law reduced use of incarceration by ninety-seven percent (five hundred and four days); and hospitalization by sixty-one percent.

Why do those with severe mental illness not seek help? There are three main reasons. One reason is because they are “anosognosia”, meaning they do not believe anything is wrong with them.⁴⁴ For example, they do not “believe” they are Abraham Lincoln, or the FBI planted a transmitter in their head – they “know” it. A subset of this group rejects treatment, then experiences hallucinations and delusions and becomes needlessly homeless. As Ron Thomas, Kelly Thomas’ father, said at the Orange County Board of Supervisor’s meeting January, 2013: “My son wasn’t homeless- he chose to live on the street.” The Grand Jury experienced an example of this condition during a recent ride-along with law enforcement, when an individual had to be

⁴² Superior Court: Los Angeles County Office of the Counselor in Mental Health “Conduct of Riese Hearings Information booklet for doctors and hospitals rev. July 1997

⁴³ Riese Hearing Basic Codes and Regulations related to Capacity Hearings: www.disabilityrightsca.org

⁴⁴ Anosognosia affects nearly 60% of individuals with schizophrenia and nearly 50% with manic depression, results that have been “replicated more than one hundred times in the research literature”. See Amador, X.F. *I Am Not Sick I Don’t Need Help*. Vida Press, 2d Ed 2007 p.6

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reassured that all the police radios were covered with foil so that the FBI could not spy on her and thus it was 'safe' to speak with us.

Fifteen percent of patients will do anything they can to avoid taking medication under any circumstances and may require coercion to remain compliant⁴⁵ These individuals often equate medication with "poison" when in the throes of their illness, or have "deep seated delusional beliefs about it".⁴⁶

Another group of individuals do not "volunteer" for treatment because, while they may recognize their need for medication when they are taking it, they soon persuade themselves they no longer need it when they feel well then relapse into illness and inability to recognize how much it helps. *"It is a common phenomenon that a patient functions well with medication, yet, because of the mental illness itself, lacks the discipline or capacity to follow the regime the medication requires."* *Olmstead v L.C.*, 527 U.S. 581,610(1999) (Justice Kennedy, concurring).

Finally, many untreated severely mentally ill individuals are not legally competent to "volunteer" for anything, because their symptoms preclude proper understanding of what "volunteering" means. Categorizing them as "voluntary" treatment recipients violates their constitutional rights, and subjects government personnel to suits for damages. See *Zinernon v Burch*,494 U.S. 113(1990). Good risk management requires treating these individuals as treatment-refusers, even if they are willing to sign documents "volunteering" for treatment.

Treatment-refusers with severe mental illness can be a public safety problem because they frequently injure themselves, attempt suicide or 'suicide by cop', set fires or destroy public property, or become violent towards others. Studies have shown that seriously mentally ill individuals who refuse treatment are more likely to be aggressive and violent than other mentally ill people, particularly when they also abuse drugs and alcohol,⁴⁷ which they often do in an attempt to self-medicate. Police now spend an inordinate amount of time on mental health issues instead of crime, and a disproportionate percentage of officer involved shootings involve untreated, seriously mentally ill individuals.⁴⁸

⁴⁵ Torrey, Dr. E. Fuller. *The Insanity Offense: How America's Failure To Treat The Seriously Mentally Ill Endangers Its Citizens*. W.W. Norton and Co. N.Y. 2008 at 117, quoting Joseph McEvoy, "One of the foremost psychiatric researchers on this issue"

⁴⁶ Torrey pp.117-118, citing multiple studies.

⁴⁷ Torrey. Pp.161, 180-181; Van Dorn, Richard; Volavka, Jan; Johnson, Norman. *Mental Disorder and Violence: is there a relationship beyond substance abuse?*

⁴⁸ Biasotti, Michael C. V.P., New York Chiefs of Police, *Management of the Severely Mentally Ill and its Effects on Homeland Security*, Naval Postgraduate School, 2011. Chief Biasotti's finding specific to California are available at <http://lauras-law.org/states/california/biasotticastats.html>

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California is presently “caring” for the sickest mentally ill in prisons.⁴⁹ That being said, the mentally ill in our prison system have also been charged with a criminal offense, convicted and sentenced. The Grand Jury can attest to this shocking reality first hand, having visited various Orange County jails on numerous occasions since July, 2012.

The *Mental Health Services Act* (MHSA/Proposition 63) original interpretation for allocating funds for the treatment of mental illness is that since Laura’s Law is mandated, treatment for mental illness is not eligible. However, treatment costs could be reimbursed from Proposition 63 but not associated court costs – which can be significant.⁵⁰

Laura’s Law in Orange County

Policy makers in Orange County have been looking at the feasibility of implementing Laura’s Law for a number of years. Because laws vary from one state or county to another, Laura’s Law has had to be examined in light of existing law in the State of California and in the County of Orange and, initially, been found wanting on several legal fronts.⁵¹

Several Orange County healthcare experts told the Grand Jury that the Board of Supervisors has recommended legislative changes that, when enacted, may allow the County to implement Laura’s Law. The Supervisors have instructed their lobbyists to seek changes that would:

- allow for *Mental Health Services Act* (MHSA) funds to be used to implement Laura’s Law;
- allow a cap on the number of people in the program and thus the amount of money funded;

April, 2013 saw unanimous legislative approval for two of these changes: use of MHSA funds and limits to the number of adults with severe mental illness who are treated.

In April, 2013, there were three major bills moving through the legislature being driven by Orange County law-makers.

- AB1265 (Conway) would extend the initial period of court-ordered treatment from six months to one year in order to help prevent relapse.

⁴⁹ For statistics concerning the correlation between the emptying of state psychiatric hospitals and the filling of state prisons with mentally ill inmates see Raphael, Steven, *The Deinstitutionalization of the Mentally Ill and Growth in the U.S. Prison Populations: 1971 to 1996* (Goldman School of Public Policy, University of California at Berkeley), <http://ist-socrates.berkeley.edu/~raphael/raphael2000.pdf>. Some 20% of state prisoners in California are mentally ill, an extraordinarily high percentage. Torrey, supra, pp.61-62, 128. As of 1995 (and probably still), the largest mental institution in the United States is the Los Angeles County jail. Id. at p. 57. See also, “Cuts to Mental Health Programs Shift Burden to Law Enforcement, Tsai, Gary, Sacramento Bee, January 28, 2012.

⁵⁰ Interview: mental health professional

⁵¹ For instance, in the State of California, an individual is presumed competent unless adjudicated incompetent.

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- SB585 (Correa and Steinberg) address the issue of the use of Mental Health Services Act (Proposition 63) funding.
- SB664 (Yee) insures that no voluntary mental health program serving adults and no children's mental health program will be reduced as a result of the Laura's Law implementation.

In addition to the Correa/Steinberg Bill, the Senate Health Committee approved Senator Lee's Bill by a 7-2 vote. This Bill (SB664) will allow counties to limit the number of cases they handle each year under Laura's Law, dissolving yet another of the stumbling blocks an Orange County mental health professional had previously noted to the Grand Jury.

As of June, 2013, the substance of these bills seems to be rolled into the Correa/Steinberg Bill, as the authors have agreed to put all their language into this one bill. SB585 seems to be the bill to watch.

On March 19, 2013, the Board of Supervisors passed a resolution authorizing the application of Article 4.7 chapter Two of the Lanterman-Petris-Short Act in the County of Orange that allows for an additional thirty day hold (following a fourteen day hold) for intensive treatment which will be beneficial to the individual and less intrusive than a conservatorship.⁵²

Mental Health professionals also pointed out that Orange County, through its multitude of existing mental health programs is doing everything in the *spirit* of Laura's Law except bringing an individual before the Court (the "Black Robe Effect").

The Grand Jury congratulates the Orange County Board of Supervisors on taking a positive stand on this issue and working proactively. Although one Supervisor told the press that he "had not fully decided his position on Laura's Law,"⁵³ another has led County efforts to work with Laura's Law and is quoted as saying: "If we can afford it, why not give it a try?"⁵⁴

Although there is indeed a "thicket of regulations to make the law unworkable," the Grand Jury believes that the top decision makers and law makers in Orange County can and will continue to take a positive and proactive approach in finding creative strategies that will benefit several groups tasked with dealing with mental health issues: the mentally ill themselves, law enforcement who is tasked with dealing with the problem, and the citizens of Orange County. If the previously mentioned Bill clears the

⁵² "...under Article 4.7 of chapter 2 of the Lanterman-Petris-Short Act a person who has completed a 14-day period of intensive treatment pursuant to §5250 of the Welfare and Institutions Code may be certified for an additional 30 days of intensive treatment under specified conditions, with additional safeguards for that person's individual rights, as an alternative to conservatorship which can last up to one year..."

Resolution of the Board of Supervisors of Orange County, CA March 19, 2013

⁵³ Wood, Tracy, *Voice of OC* 04.25.13

⁵⁴ Ibid

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Senate and the Assembly and is signed into law, the County may be able to implement a pilot Laura's Law program.

A CASE FOR ACCREDITATION

CALEA - The Commission on Accreditation for Law Enforcement Agencies, Inc. has been described as "...the benchmark for policing in the twenty-first century."⁵⁵ To date, in the State of California, there are seventeen accredited law enforcement agencies. Only two of those agencies are in Orange County: Garden Grove and Tustin. Our neighbor in Los Angeles County, Bell, with a staff size of forty, is in the process of accreditation, as are four others in California. One Sheriff's Department (Alameda County) is accredited as is the California Highway Patrol. There are five University/College law enforcement agencies accredited, of which the California State University Fullerton Police Department is one. The East Bay Regional Park District Police Department in Castro Valley, CA and the Oakland Housing Authority Police Department are also accredited.

CALEA was created in 1979 as a credentialing authority through the joint efforts of

- International Association of Chiefs of Police,
- National Organization of Black Law Enforcement Executives,
- National Sheriff's Association, and the
- Police Executive Research Forum.

The purpose of CALEA's Accreditation Programs is to improve the delivery of public safety services, primarily by maintaining a body of standards, developed by public safety practitioners and recognizing professional excellence.

The specific goals of CALEA are to

- strengthen crime prevention and control capabilities,
- formalize essential management procedures,
- establish fair, nondiscriminatory personnel practices,
- improve service delivery,
- solidify interagency cooperation and coordination, and to
- increase community and staff confidence in the agency.

⁵⁵ Sheriff Craig Webre, Lafourche Parish (LA) past president: National Sheriff's Association

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The CALEA accreditation process is a proven modern management model that, once implemented, presents a Chief Executive Officer on a continuing basis with a blueprint that promotes the efficient use of resources and improves service delivery - regardless of the size, geographic location, or functional responsibilities of the agency. This accreditation program provides public safety agencies an opportunity to voluntarily demonstrate that they meet an established set of professional standards that facilitates an agency's pursuit of professional excellence.⁵⁶

Those of us living in the County of Orange send our children to schools accredited by the Western Association of Schools and Colleges (WASC). School accreditation objectively assures that our children receive the best possible education: one that will provide them with the groundwork to continue on to top colleges and universities. WASC accreditation assures, among other things, that when our children bring home "A"s, the excellence that "A" represents is truly on par with "A"s in all other accredited educational institutions. We do not send our children to non-accredited schools because we recognize it may jeopardize their future professional success.

The Grand Jury believes our cities deserve like-quality police departments that achieve and maintain a measurable standard of excellence. Having an accredited police department means that the department has

- completed a self-assessment by complying with the applicable standards, developing proofs of compliance and preparing for an objective on-site assessment,
- hosted a team of CALEA-trained assessors at their department to determine compliance with standards, view operations and talk with the public,
- participated in an open review which, hopefully, awards accreditation to the department for a three year period, and
- maintained compliance with standards in order to retain its accredited status.

Reaccreditation occurs at the end of three years, following another successful on-site assessment and hearing before the Commission.

In Orange County, the two police departments accredited by CALEA account for less than ten percent (6.8%) of cities that have accredited police departments. The

⁵⁶ www.calea.org

"The confidence in our department has increased tremendously throughout our community since becoming an accredited agency."
--Former Chief H. Rilling, (CT)

"The program offers agencies the opportunity for improved transparency and delivery of services to the communities served....[T]he end result will be a better department for both members and citizens alike."
-Former Chief T. Younce
- NCSUPD

"It has reduced our liability cost and made my risk managers very happy."
-Sheriff T. Dunning, NE

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Grand Jury would like to see that number increased to *one hundred percent*. If, throughout the State of California, law enforcement agencies with as few as thirty-four staff (Pismo Beach) and as great as eleven thousand plus members (California Highway Patrol) find the accreditation worthwhile and necessary, the nineteen cities in Orange County and the Sheriff's Department should make it a priority. The Grand Jury is well aware of the financial pressures under which our police departments and city executives struggle. However, not spending the money to accredit the city police department is a classic example of "penny wise; pound foolish". In today's world, with law enforcement having become a process of continually having to deal with a myriad of complex issues and life and death situations, our city managers owe it first to the citizens of our cities as well as to our sworn officers, to ensure our police departments continually pursue professional excellence. A city that investments taxpayer money in this endeavor will gain an accredited police department with:

- greater accountability;
- reduced risk and liability exposure;
- stronger defense against civil lawsuits;
- stanch support from government officials, and
- increased community advocacy.

COMMENDATION

Finally, with the thousands of words written here, there are not words to express the gratitude and thanks we, as citizens, owe to the men and women who serve us day and night as law enforcement officers in the County of Orange. Their professionalism, bravery and service cannot be overestimated or taken for granted. It is because of our trust in them that we get up each morning without a thought to our safety and well-being. It is because of our trust in them that, when things go wrong, we call them first. Thank you.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

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Based on its investigation of Police and the Sheriff's' Department in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at eleven principal findings as follows:

- F1 Although POST requires continuing education in the area of dealing with individuals who are mentally ill, it does not specify the number of hours or frequency of officer training; nor does it require that such training be documented.
- F2 Field officers desire more in-depth training in dealing with the mentally ill on the street. (Interviews)
- F3 There is one officer – in a very few instances two officers- for every one-thousand (1,000) citizens in a given city within the County who are expected to deal with the full range of law enforcement issues of that city.
- F4 Nationally accredited police departments police less than 10% of Orange County cities.
- F5 Not all Orange County cities have at least one officer trained in Crisis Intervention.
- F6 There is a broad spectrum of on-going training provided to patrol officers in order to develop their abilities and strategies in dealing with the mentally ill. Some departments provide minimal training; others have comprehensive programs in place.
- F7 Five departments have their patrol officers ride periodically with the homeless liaison officer. Seventeen do not.
- F8 Departments are reaching out – or beginning to reach out – to neighboring departments and to other skilled professionals, both in dialogue about the mentally ill and homeless issues in their cities, and to learn more effective strategies in dealing with these individuals.
- F9 All police departments believe that on-going training should be supported by Mental Health Services Act funding.
- F10 All police departments adhere to written policy, procedure and/or protocol regarding contact with mentally ill persons.
- F11 Policy and lawmakers in the County of Orange continue to examine Laura's Law in light of its potential impact on the mentally ill and all citizens for positive outcomes.

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RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of City Police Departments and the Sheriff's Department in Orange County, the 2012 - 2013 Orange County Grand Jury makes the following four recommendations.

- R1 Require specific continuing education for all police officers and sheriff's deputies in interacting with the mentally ill and homeless population:
- Orange County City Police Chiefs and the Sheriff-Coroner shall corroborate with the Orange County Chiefs and Sheriff's Association to set the type, hours and frequency of this supplemental training;
 - Include Crisis Intervention Training (perhaps the Memphis model);
 - Training is to be documented. (F1,F2,F3,F4,F5,F6,F7,F8,F10)
- R2 All Orange County City Police Departments and the Sheriff's Department shall be accredited with a national accreditation agency within five (5) years. (F4,)
- R3 The County of Orange Board of Supervisors shall implement a pilot program for Laura's Law with the necessary accommodations to insure that the program will function effectively as an essential tool to help those with mental illness, thus benefiting law enforcement, and the citizens of Orange County. (F11)
- R4 The Orange County Department of Mental Health Services and the Orange County Board of Supervisors shall provide funding for on-going police officer training through Mental Health Services Act funding. (F9)

REQUIREMENTS AND INSTRUCTIONS:

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney,

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Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

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Responses Requested:

Orange County Health Care Agency: F9

Responses Required:

Orange County Board of Supervisors: F11

Orange County City Police Chiefs and the Sheriff-Coroner: F1, F2, F3, F4, F5, F6, F7, F8, F10

Responses Requested:

Orange County Health Care Agency: R4

Responses Required

Orange County Board of Supervisors: R3, R4

Orange County City Police Chiefs and the Sheriff-Coroner: R1, R2