

August 15, 2004

Response to Stanislaus County Civil Grand Jury Report #04-39

In responding to the Grand Jury's Report, I am compelled to reflect on the 42 years I have been personally involved in the Criminal Justice system. As a young Police Officer with the Cities of Orange and Bakersfield, and an Attorney in private practice, I have had a very unique opportunity to view the system from various perspectives. I joined the Stanislaus County District Attorney's Office 19 years ago as a Criminal Prosecutor and the citizens of Stanislaus County have allowed me to serve as the District Attorney for the past 8 years. I have always considered my Oath of Office to be a sacred trust not given, but earned.

Responding to the grand jury's report, I concur that there were two incidents that were at issue during their investigation. Management in my office investigated these incidents and their recommendations were discussed with me in September 2003. In February 2004, when the CEO's office and County Counsel inquired into these incidents, I approached my staff who were involved in the incidents to refresh my memory and understand why this investigation was re-opened. If my motives in approaching these individuals were misinterpreted, I apologize. I meant no harm to my staff, reporters of the Modesto Bee or anyone else. My motives were only inquisitive in nature and not made to make anyone uncomfortable.

As the people's advocate, I have always attempted to maintain an Office of the District Attorney that is responsive to the community and is committed to the rights of victims. Similarly, I have a full appreciation for the Grand Jury process. While I believe in this particular case their findings may be somewhat flawed, I also believe that the role of the Grand Jury is a critically essential component to our free society and respect their efforts.

I would like to take this opportunity to publicly express my deep appreciation of the work performed by the employees of the District Attorney's Office. Their dedication to the service of our community is clearly evident on a daily basis.

I will respond to the report of the Civil Grand Jury Findings, Conclusions, and Recommendations as follows:

FINDINGS

- 1. The District Attorney is an elected official of the County.**

Agree

- 2. As an elected official, the District Attorney is not accountable to the Board of Supervisors or any other County official. He is accountable only to the electorate.**

Partially Agree: The District Attorney is a county employee in addition to being an elected official. As a county employee he/she is accountable with regard to county policies as well as most administrative directives. The District Attorney is also accountable to the Attorney General of the State of California. Of Course, the district Attorney is accountable through the elections process to the citizens of this County.

3. **Stanislaus County has adopted a Workplace Security and Anti-violence Policy, and a Harassment Policy. The Harassment Policy provides that it is applicable to elected officials. The Workplace Security and Anti-violence Policy states in Section I.E. that it applies to employees "...or other individuals providing services or acting on behalf of the County".**

Agree

4. **If elected officials of the County violate County policies, there is little recourse available to the County, unless the violation constitutes a criminal act.**

Disagree: The salary for elected officials is set by the Board of Supervisors.

5. **The Civil Grand Jury is required by Penal Code section 919© "...to inquire into the willful or corrupt conduct in office of public officers of every description in the county."**

Partially agree: Section 919 of the Penal Code states "corrupt misconduct". Otherwise the quote is correct.

6. **Prior to being interviewed at County Counsel's office, the District Attorney entered an employee's office, closed the door and stated that "Somebody has talked to the CEO's office and I'm going to find out who it is". He subsequently stated to the employee "But you know if never happened". On that occasion, the employee did report feeling personally threatened and fearful.**

Partially agree. The two events in question took place in August 2003. At that time, my management staff conducted an investigation and made recommendations to me. In February 2004 the CEO and County Counsel initiated a new investigation for reasons unknown to me. I went to one of the employees involved in one of the events to refresh my recollection and to determine why another investigation had been initiated. I do not recall that the door was closed at anytime. If this staff member misinterpreted my actions, I apologize. I meant no harm to my staff or anyone else. At no time did the employee display any indication of fear and there were no threats of any type made toward her or any other employee. I was not aware of any interviews scheduled with County Counsel or anyone else..

7. **Prior to another employee's meeting with County Counsel, the District Attorney approached the employee to state that he wanted to talk about "...that gun thing". During the course of the conversation he stated that he would not do something like that, and that it didn't happen. He subsequently stated that "I am just trying to find a rat in my office".**

Partially agree: I had no knowledge of any staff meeting with County Counsel. As in #6 above, I approached the staff member to assist my recollection of the events from four months

previous and to determine why an additional investigation was being conducted by the County Counsel's Office. I may have said that I would never do anything like that, and, in fact, the grand jury has determined there was no gun involved in this incident, but I do not recall making any statement about "a rat".

- 8. The District Attorney denies that either of the two events involving weapons display, simulated or actual, occurred.**

Agree: I have never brandished or "waved around" a firearm in the office. I did have my unloaded gun displayed in the palm of my hand while discussing types of handguns with a staff member in one instance.

- 9. Following his interview at County Counsel's office, the District Attorney made contact with two of the witnesses after specifically being admonished by County Counsel not to do so.**

Partially agree: I have on a few occasions greeted one of the persons while passing in the office. I have not spoken at all with the other person since the County Counsel's admonition.

- 10. Section I.C of the Stanislaus County Workplace Security and Anti-violence Policy provides that "...threats of violence... by any employee, contractor, or other person performing services for the County is prohibited and will not be tolerated".**

Statement of policy, no response is necessary.

- 11. Section I.D.3 of the Policy provides that a "... Type III event usually involves a threat of violence ... by a current or former worker, supervisor or manager**

Statement of policy, no response is necessary.

- 12. Section I.B. of the Stanislaus County Harassment Policy provides that "Harassment includes, but is not limited to speech such as epithets, derogatory comments or slurs and lewd propositioning on the basis of race, sex, religion, national origin, ancestry disability, medical condition, marital status, age or sexual orientation".**

Statement of policy, no response is necessary.

- 13. Investigators employed by the District Attorney are sworn law enforcement officers pursuant to Penal Code section 830, and are authorized to carry firearms without a concealed weapons permit. The authority of investigators to carry or use firearms is conditional upon conformance to a Firearms Policy that was promulgated, and signed, by the District Attorney. The effective date of that policy was July 22, 2003, or approximately one month prior to events at issue.**

Agree

- 14. Section VI.A (DISPLAY OF FIREARMS) of the Firearms Policy provides, in pertinent part, as follows: "Sworn personnel should not remove their firearm from the holster for the single purpose of display". Section X.A (SAFETY CONSIDERATIONS) of the Firearms Policy provides as follows: "Investigators shall not unnecessarily display or handle any firearm".**

Agree

- 15. Section 4 (CCW License Conditions and restrictions) of the State of California Department of Justice Standard Application for License to Carry a Concealed Weapon (CCW) states that "...the licensee shall not, when carrying a concealed weapon ... unjustifiably display a concealed weapon".**

Agree

- 16. An estimated fourteen attorneys employed by the District Attorney possess active concealed weapons permits that authorize them to carry firearms. Neither the District Attorney's office nor the Office of the Chief Executive maintains records on concealed weapons permits held by employees. At the time of the two events in which it is alleged that the District Attorney displayed a firearm, or simulated drawing and firing a firearm, the District Attorney possess a valid permit to carry a concealed weapon. The permit has since expired.**

Partially agree: It is correct that the District Attorney's Office does not presently maintain records of Deputy District Attorneys that have lawfully applied for and been granted Concealed Weapons Permits either by a County Sheriff or Police Chief. In August 2003, I did possess a valid permit to carry a concealed weapon.

- 17. The District Attorney has not promulgated a policy or issued directives relative to the carrying of firearms by employees who are not sworn law enforcement officers. At present, it is permissible for every employee at the District Attorney's office to carry a firearm while in the office, provided that each employee has obtained a concealed weapons permit from the Sheriff's Department or a Police Department.**

Partially Agree: The District Attorney's Office does not presently have a policy regarding non-sworn employees that possess concealed weapon's permits. The wording and inferences in this finding are that this is specific to the District Attorney's Office and the reality is that an individual that possesses a concealed weapons permit may enter many offices and public places.

- 18. The District Attorney made comments about having missed an opportunity to strike one of the reporters with his vehicle when the reporter had walked across the street in front of him.**

Disagree: I believe that this was taken out of context and embellished. The Reporter in question did in fact cross the street immediately in front of my vehicle, not once, but twice. Upon arriving at the office I made a comment to someone, in jest, that it was a good thing that my foot didn't slip off the brake since if I had hit him, no one would believe that it was an accident. There were no comments as stated by the Grand Jury.

- 19. The District Attorney's Office has not consistently trained staff on County policies.**

Partially agree: Each new employee is provided copies of specific policies on Violence in the Workplace, Harassment, and Drug Free Workplace. County Policies are available to all employees via the County Web site on the Internet. Office employees are encouraged to attend county provided training, but lack of resources does not permit everyone to attend. In addition, dependent on classification, staff attend professional training relative to their particular assignment.

20. The District Attorney has made jokes in the office about the incidents giving rise to County Counsel's investigation.

Disagree: I have never been privy to the reasons why the County Counsel chose to conduct a new investigation. I may have made light comments to someone regarding the investigation, however, I did not consider the investigation a "joking matter".

CONCLUSIONS

- 1. The actions of the District Attorney entering the office of an employee and displaying a firearm while making comments about a reporter constitutes a violation of the Stanislaus County Workplace Security and Anti-violence Policy. Those actions constitute an act of willful misconduct.**

Response: I disagree with the basis for this Conclusion and my response has been discussed in my answers to Finding's # 6,7,8.

- 2. The actions of the District Attorney entering the office of an employee who was conversing with a co-worker and simulating the drawing and firing of a firearm, while commenting that "This is what I would like to give (that reporter)" constitutes a violation of the Stanislaus County Workplace Security and Anti-violence Policy. Those actions constitute willful misconduct.**

Response: I disagree with the basis for this Conclusion and my response has been discussed in my answers to Findings' #6,7,8.

- 3. Comments uttered by the District Attorney regarding the opportunity to strike a reporter with his car constitute an indirect threat as defined in section I.D.4.b of the Workplace Security and Anti-violence Policy, and were made in violation of that policy. The comments constitute an act of willful misconduct.**

Response: I disagree with the basis for this Conclusion and my response has been discussed in my answer to Finding #18.

- 4. The two instances in which the District Attorney approached employees to say "it did not happen" prior to their interviews at County Counsel's office constitute two acts of willful misconduct.**

Response: I disagree with the basis for this Conclusion and my response has been discussed in my answers to findings.

5. **The District Attorney's statement to two employees that, "I am just trying to find a rat in my office", and "I am trying to find out who talked to the CEO's office" constitute two acts of willful misconduct.**

Response: I disagree with the basis for this Conclusion and my response has been discussed in my answer to Finding #7.

6. **The actions of the District Attorney in contacting two employees after he had been admonished by County Counsel not to do so constitute two acts of willful misconduct.**

Response: I disagree with the basis for this Conclusion and my response has been discussed in my answer to Finding #9.

RECOMMENDATIONS__

1. **The Stanislaus County Board of Supervisors, in a regular meeting of the Board, should recite the conclusions and recommendations contained in this Grand Jury report and publicly rebuke District Attorney James Brazelton for his actions.**

No response is necessary.

2. **Management personnel at the District Attorney's office, in consultation with County Counsel's office and the Sheriff's Department prepare a firearms policy that sets forth the following:**

- a. **A requirement that every weapon carried by non-sworn employees shall be registered with the department, and shall be identified by make, model and serial number;**
- b. **The conditions under which employees may carry firearms in the workplace;**
- c. **When and how firearms are to be stored at the workplace;**
- d. **Safety considerations; and,**
- e. **Prohibited use of firearms.**

Further, the Board of Supervisors should give serious consideration to applying the same policy to all County offices where employees possess concealed weapons permits.

Response: Although the carrying of concealed weapons is generally covered by California State Law and includes provisions for registration of those weapons with the agency granting permission for the permit, I do agree with the Recommendation in part that governs the need for a weapons policy specifically for non-sworn personnel that have obtained Permits. This policy would only cover their possession while at District Attorney's Office facilities. I instructed my staff to contact other District Attorney's Offices in an attempt to seek information on any similar policy. A Firearms Policy for non-sworn personnel with Concealed Weapons Permits has been drafted and is currently under review.

3. **Management personnel at the District Attorney's office should, in consultation with the Office of the Chief Executive Officer, develop a training program that identifies the training needs of all employees in the Department, the frequency with which the training should be repeated, and that includes a training schedule for each employee. The training manual should address separately professional level training courses, and**

training on County policies and other issues of a general nature. Completion of required training should be rating criterion for annual employee performance evaluations.

Response: A training program for sworn investigators is already in place, and a training manager assigned. In addition to job specific training and desired investigative and county training that Investigators attend, they also attend State of California Peace Officer Standards and Training (POST) mandated training. Deputy District Attorney's all attend professional development training, and on-going training in new laws and court procedures. Additionally, Deputy District Attorneys are provided professional development funds to further enhance their work performance. In addition, in-house training is provided to the Deputy District Attorneys to satisfy their continuing education requirements. Victim Services Advocates, and clerical staff attend county training and also receive periodic in-service training. I do agree with the need for an assigned training position to coordinate training needs, however the budget realities make this difficult to implement.

4. Responsibility for the training program should be vested in a mid-level manager.

Response: The budget realities make this recommendation difficult to implement and I am confident that assigned managers in the organization are addressing required and desired training needs within the budget constraints.

*James C. Brazelton
Stanislaus County District Attorney*