



2004 - 2005 Final Report

www.sacgrandjury.org

Sacramento County
2004-2005 Grand Jury
Final Report

June 30, 2005

**DEDICATION TO THE
HONORABLE RICHARD K. PARK, ADVISOR JUDGE**

The 2004-2005 Sacramento County Grand Jury dedicates its final report to Judge Richard K. Park, former Advisor Judge to the Grand Jury. Judge Park retired from the Superior Court bench on January 7, 2005, after a 20-year distinguished career.

Judge Park first served as Advisor Judge to the Grand Jury in 1993-1994. He was asked to take the advisory responsibility again in 1998, and continued in this role until his retirement in January.

We thank him for his many years of service to the Sacramento County citizenry and for his service to more than eight Grand Juries.

The 2004-2005 Grand Jury also welcomes its new Advisor Judge the Honorable Raymond M. Cadei of the Superior Court of Sacramento.

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Table of Contents

| | |
|---|-----|
| Letter from the Grand Jury Foreman | iii |
| Roster of 2004 – 2005 Grand Jurors | v |
| Grand Jury Committee Assignments | vii |
| Picture of the 2004 – 2005 Grand Jury | ix |
| The 2004 – 2005 Year In Review | xi |
| Charter of the Sacramento County Grand Jury | xix |

Reports and Investigations

| | |
|---|----|
| Sacramento County Civil Service Commission..... | 1 |
| Complaint Against Sacramento Independent Taxi Owners Association’s Hiring Practices..... | 11 |
| Failure of Sacramento County to Oversee the Delivery of Services Contracted to Galt Community Concilio, Inc..... | 17 |
| The Handling and Security of Inmate Correspondence at the Sacramento County Main Jail..... | 31 |
| Student Safety Walking to Inderkum High School..... | 35 |
| Landscaping and Lighting District Assessment Practices in the City of Folsom | 39 |
| The Development of New Partnerships and Programs to Assist Foster Children..... | 43 |
| Homeland Security: Ready or Not? | 53 |

 Elk Grove City Council and Conflict of Interest Issues (released 2/28/05)

Grand Jury Comments on the Responses of the Elk Grove City Council,
 the Sacramento Sheriff’s Department, and the Sacramento County
 Board of Supervisors to the Grand Jury’s Recommendations
 in the report “Elk Grove City Council and Conflict of Interest Issues”

(Complete responses can be found on the Grand Jury website @ www.sacgrandjury.org)

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Sacramento County **GRAND JURY**



W. Bernard Bowler, Foreman

Dean K. Beyer

William S. Borden, Jr.

Anthony S. Da Vigo

Alonzo D. Hall

Howard L. Harris

Marilyn A. Isenberg

Melissa W. Kubiak

Patricia K. Macht

Robert H. Reynolds

William G. Rutland, Jr.

Michael H. Scheible

Susan E. Scotland

Aletha M. Smith-Forsythe

William R. Uhrig

Barbara D. Ullman

Jeanne M. Whiting

Robert S. Willett

Norio Yamada

June 30, 2005

Honorable Raymond M. Cadei, Advisor Judge to the Grand Jury
Sacramento Superior Court
720 Ninth Street, Department 25
Sacramento, CA 95814

and

The Citizens of Sacramento County

Dear Judge Cadei and Citizens of Sacramento County:

With considerable pride, I am pleased to submit the 2004-2005 Final Report of the Sacramento County Grand Jury. This report represents the highlights of the Grand Jury's work over the past year.

The Grand Jury's job is to investigate government to ensure it is being run efficiently, honestly, fairly and that it is performing the duties required. We fulfilled our mandate to tour all the penal institutions within Sacramento County's boundaries. We evaluated 64 complaints, all of which were acted on to the degree the Jury agreed was appropriate.

There are nine reports in this publication. We hope you find each report enlightening and useful. Our intent was to act on behalf of our fellow citizens on items we thought would make a difference in our governments and in our communities.

This year the Grand Jury published one report in advance of its typical end of the term practice, making it available on its website. The subjects of the report recently responded to the Grand Jury report making it possible to include in this publication the first ever "response to the response" by a Sacramento County Grand Jury.

Also, you will find a special commentary on a variety of investigations in our Year in Review section. Each of the cases mentioned did not warrant a full-fledged report, but the Grand Jury believed the public would benefit from this information.

We are grateful to the many public officials who responded to our requests for information, meetings and presentations. We especially thank Advisor Judges Richard Park and Raymond Cadei, County Counsel Robert Ryan, Jr., and the representatives of the District Attorney's Office for their advice and legal assistance. Our requests for information were answered in a timely manner, and their counsel was invaluable in guiding our work.

I take this opportunity to publicly acknowledge the dedication and professionalism displayed by each member of the Grand Jury and to thank them for their support and teamwork throughout the year. Grand Jurors spent many hours away from home and work to serve the citizens of Sacramento County, at the expense of their employers and loved ones. I want to thank the spouses, partners and employers for giving our team members the privilege of time. Their sacrifice was much appreciated.

We want to particularly thank Michelle Park, the Grand Jury Executive Secretary, a superb professional without whom we simply couldn't have achieved our mission.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Bowler', written in a cursive style.

W. BERNARD BOWLER, Foreman
2004-2005 Sacramento County Grand Jury

2004-2005
Sacramento County Grand Jury

| | | |
|--------------------------|--|------------|
| Dean K. Beyer | Insurance Executive, retired | Sacramento |
| William S. Borden, Jr. | Business Principal | Sacramento |
| W. Bernard Bowler | IBM Executive, retired | Sacramento |
| Anthony S. Da Vigo | Deputy Attorney General, retired | Sacramento |
| Alonzo D. Hall | State of California Administrative Executive, retired | Sacramento |
| Howard L. Harris | Associate Professor, Dean of Students, retired | Sacramento |
| Marilyn A. Isenberg | Executive Director, State Industrial Development Commission, retired | Sacramento |
| Melissa W. Kubiak | Public School Teacher, retired | Sacramento |
| Patricia K. Macht | Assistant Executive Officer Public Affairs California Public Employees' Retirement System | Sacramento |
| Robert H. Reynolds | Department of Defense, retired | Antelope |
| William G. Rutland, Jr. | Self Employed (Government Relations Firm) | Sacramento |
| Michael H. Scheible | Deputy Executive Officer, California Air Resources Board | Sacramento |
| Susan E. Scotland | Community Volunteer | Sacramento |
| Aletha M. Smith-Forsythe | Federal Systems Analyst, retired | Gold River |
| William R. Uhrig | US Navy, retired | Orangevale |
| Barbara D. Ullman | Community Volunteer | Sacramento |
| Jeanne M. Whiting | Code Compliance Officer, retired | Folsom |
| Robert S. Willett | Attorney, retired | Sacramento |
| Norio Yamada | Department of Defense, retired Reserve Deputy | Sacramento |

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2004-2005 Grand Jury Committee Assignments

Officers:

W. Bernard Bowler, Foreman

Barbara D. Ullman, Foreperson Pro Tempore

Patricia K. Macht, Secretary

Jeanne M. Whiting, Telephone Tree Coordinator

Alonzo D. Hall, Sergeant-at-Arms

Anthony S. Da Vigo, Parliamentarian

Susan E. Scotland, Provisioner

| <i>Administrative/Municipal Affairs</i> | <i>Criminal and Juvenile Justice</i> |
|---|--|
| William S. Borden, Jr., Chair | Alonzo D. Hall, Chair |
| Anthony S. Da Vigo | Dean K. Beyer |
| Alonzo D. Hall | William S. Borden, Jr. |
| Patricia K. Macht | Anthony S. Da Vigo |
| Robert H. Reynolds | Howard L. Harris |
| William G. Rutland, Jr. | Marilyn A. Isenberg |
| Michael H. Scheible | Robert H. Reynolds |
| Aletha M. Smith-Forsythe | William G. Rutland, Jr. |
| Robert S. Willett | Barbara D. Ullman |
| | Jeanne M. Whiting |
| <i>Continuity</i> | <i>Edit</i> |
| Dean K. Beyer, Chair | Patricia K. Macht, Chair |
| Alonzo D. Hall | William S. Borden, Jr. |
| Jeanne M. Whiting | Marilyn A. Isenberg |
| Norio Yamada | Melissa W. Kubiak |
| | Michael H. Scheible |
| | Susan E. Scotland |
| <i>Education</i> | <i>Environment, Public Works & Special Districts</i> |
| Melissa W. Kubiak, Chair | Jeanne M. Whiting, Chair |
| Dean K. Beyer | Howard L. Harris |
| Patricia K. Macht | Marilyn A. Isenberg |
| Susan E. Scotland | Michael H. Scheible |
| William R. Uhrig | Aletha M. Smith-Forsythe |
| Barbara D. Ullman | William R. Uhrig |
| Robert S. Willett | Robert S. Willett |
| Norio Yamada | Norio Yamada |
| <i>Health and Human Services</i> | |
| Anthony S. Da Vigo, Chair | |
| Howard L. Harris | |
| Melissa W. Kubiak | |
| Robert H. Reynolds | |
| William G. Rutland, Jr. | |
| Susan E. Scotland | |
| Aletha M. Smith-Forsythe | |
| William R. Uhrig | |
| Barbara D. Ullman | |

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Year In Review The 2004-2005 Grand Jury Perspective

The 2004-2005 Grand Jury served for a year and completed its term on June 30, 2005. We received and reviewed more than 64 allegations and complaints.

This final report details specific investigations leading to recommendations for the named districts and county agencies. However, these investigations do not cover the entire scope of the activities the Grand Jury pursued. This *Year in Review* section provides additional information on tours, presentations, and complaint evaluations.

The work of the Grand Jury is organized by the following subject Committees: Administrative and Municipal Affairs; Education; Criminal and Juvenile Justice; Environment, Public Works and Special Districts; and Health and Human Services. Committees are assigned complaints and investigations according to subjects. The Edit Committee oversees the preparation of single-issue reports and the final report to the citizenry. The Continuity Committee prepares and provides for effective transition from one Grand Jury to the next and organizes collegial events.

Following are Year In Review Reports from each subject Committee.

Administrative & Municipal Affairs Committee

The Committee is responsible for reviewing and investigating complaints relating to the policies, procedures and actions of public agencies within Sacramento County. The Committee may be required to review the budgets, organizational charts, manuals and other information concerning allegations and conduct interviews.

The Committee reviewed 14 complaints this year, and of these, 12 were from citizens, one was initiated by the Grand Jury itself and one was a carry over from the previous Grand Jury. Five qualified for investigation and four resulted in reports that are included in the Final Report.

The Committee arranged to have a former Sacramento City Manager address the Grand Jury. The subject was Sacramento County Local Government Organization and Finance.

The Committee received a briefing on the November 2004 elections. Members of the Sacramento County Registrars Office briefed the Grand Jury prior to and following the November 2004 election. The briefings were conducted by the County Registrar; the Assistant County Registrar and the Administrative Services Officer.

The Grand Jurors were given an opportunity to serve as observers at polling places to provide objective feedback to the County Registrar. Members of the Grand Jury monitored 82 polling places during the General Election in November 2004 and the Special Election in March 2005. The Grand Jury members who visited these polling

places reported that overall, the County Registrar did an effective, efficient job in providing polling places, collecting ballots and counting ballots. This excellent performance was particularly noteworthy because the November election itself brought out a record number of voters.

Criminal and Juvenile Justice Committee

The role of the Criminal and Juvenile Justice Committee (C&JJ) is to review and investigate complaints regarding the criminal justice agencies within Sacramento County. C&JJ ensures that the agencies and correctional facilities comply with their policies and procedures, as well as state and federal laws. During the year, C&JJ received 25 complaints from citizens and inmates. Eight of the complaints were investigated.

Of the complaints investigated, one report was issued by the full Grand Jury and is included in this final report.

Complaints investigated but not reported on include a range of subject matter such as:

- Law enforcement – violation of rights, abuse and retaliation(s).
- Rio Cosumnes Correctional Center – unhealthy conditions in dorms, cigarette smoke and other carcinogens
- Sacramento Main Jail – suicide, inmate abuse and sanitation issues.

In response to news reports of recent suicides at the Sacramento Main Jail, the Committee inquired into this situation and followed up on the findings and recommendations of the 2003-2004 Grand Jury. After lengthy discussions with Jail authorities, including several site visits, the Committee determined the Jail has implemented many of the prior Grand Jury's recommendations and has even established additional preventative programs. For example, bed sheets used in all recent suicides are being replaced by blankets. In addition, welding of open spaces around bunks is underway. The Grand Jury supports Jail staff in their continuing efforts to deal with this difficult issue.

The Committee investigated a complaint alleging that an improper standard was used by a Sheriff's deputy to take the complainant into a Welfare & Institutions code 5150 involuntary hold. The statutory standard for such an action is "probable cause" to believe that a person, as a result of mental disorder, is a danger to himself or others. It was claimed, however, that the deputy acted upon a lesser standard based on his consideration of potential liability if he were released, and the complainant later damaged himself or another. The Sheriff's Patrol Operations Order 7/11 contained no reference to liability. The Assistant Sheriff and the Chief of Internal Affairs now agree that the proper 5150 standard is "probable cause", regardless of any consideration of potential liability.

The Committee also arranged the Grand Jury's mandatory tours of correctional facilities within Sacramento County. The California Penal code section 919(b) requires that the Grand Jury inquire into the condition and management of the prisons.

During its tours, the Grand Jury was briefed by correctional staff and spoke with staff and inmates. The Grand Jury toured the facilities, inquired about medical services, educational and vocational programs, and observed facility conditions.

Facilities toured included:

- California State Prison, Sacramento
- Folsom State Prison
- Sacramento County Main Jail
- Rio Cosumnes Correctional Center
- Sacramento County Work Release Facility
- Sacramento County Juvenile Hall
- Warren E. Thornton Youth Center
- Sandra Larson Women's Facility
- Sacramento County Boys Ranch
- Sacramento Juvenile Assessment Center
- Coroner's Office, Sacramento County Sheriff's Department
- Laboratory of Forensic Sciences, Sacramento County District Attorney's Office.

Education Committee

The role of this Committee is to monitor the activities of school districts within Sacramento County, as well as the Los Rios Community College District. The Committee examines citizen complaints alleging school district irregularities and initiates investigations into various educational issues.

During the year, the Education Committee received eight complaints, one of which was a rollover from the 2003-2004 Grand Jury. Of that number, it opened five of the complaints for investigation. One investigation is published in this final report.

The Committee closed two complaints after an investigation determined that school management followed proper procedure. The other two complaints were also closed but are worthy of special comment here.

The Committee received a complaint about the San Juan Unified School District (SJUSD) and the adoption of the Phase II Systems (PARS) retirement incentive program. When the PARS program failed to save SJUSD substantial dollars as expected, an internal district investigation was conducted. Concerns were raised that the investigation should have been done by an independent source; the district hired Vilfer and Associates to conduct this audit. Due to the findings and recommendations in their Nov. 1, 2004

report, the Education Committee felt that SJUSD and the community had the information needed to move forward and no further investigation was conducted by the Grand Jury.

This is the second case in two years that a Grand Jury was involved in investigating recently formed retirement systems for school districts. In both cases, the school districts failed in its objectives. The Grand Jury is concerned about this trend, and suggests that all school districts be extremely cautious when considering similar options in the future.

The Committee received a complaint alleging improper use of grant funds allocated to develop the Licensed Psychiatric Technician Program by the Grant Joint Unified School District (GJUSD). This grant was administered by the Sacramento Employment and Training Agency (SETA). The Committee interviewed appropriate staff. The Grand Jury found that the program is fully operational, and could not find evidence that funds were improperly used. The Grand Jury concluded no further investigation was warranted and closed the complaint.

As part of its role to monitor schools and school districts, members of the Grand Jury met with the County Superintendent of Schools and discussed a variety of issues which included the California High School Exit Exam, the “No Child Left Behind” Act and districts’ responsibilities for long-range planning.

Members of the Committee toured high schools in four Sacramento school districts:

- Inderkum High School in the Natomas Unified School District. Inderkum High School is a new model for schools—a 21st century high school, and is a recipient of the 2004 Leroy F. Greene Design Award for Excellence. Through collaborative planning, facilities will be shared among Inderkum High School, American River College and the Sacramento Public Library Authority. Inderkum is a self-contained campus with all classrooms under one roof and uses solar and geothermal energy to maintain the facility. The tour and a presentation were led by the high school’s principal and vice principal.
- Monterey Trail High School in the Elk Grove Unified School District. Monterey Trail is a new campus sharing a library with Edward Harris, Jr. Middle School. The school has separate buildings for the various disciplines and all were well equipped with the latest technology. The Committee was impressed with the facility and the District’s plans for future facilities. The Elk Grove Unified School District is now the largest school district in the County and is striving hard to meet the needs of its students. The tour and a presentation were led by the Superintendent, Assistant Superintendent and site Principal.
- Folsom High School is in the Folsom-Cordova Unified School District. Folsom High School is six years old and built on over 60 acres. It presently houses over 2600 students. The campus has a state-of-the-art gymnasium and athletic fields which host various statewide California Interscholastic

Federation championships. There is also a modern theater which shares use with the City of Folsom. Presentations were given by District and site staff, followed by a tour of the campus with an outstanding vocal demonstration given by the jazz choir.

- C.K. McClatchy High School in the Sacramento City Unified School District.* McClatchy High School is the second oldest high school in Sacramento. Built in 1937, it still utilizes the original buildings. The Committee was interested in how the bond funds from Measures E and I were spent. McClatchy High School is an outstanding example of bond money being well spent. Both the infrastructure and exterior work done to McClatchy have improved student and staff morale. It is also appreciated by the surrounding community. A presentation by the District Superintendent was followed by a tour given by the site Principal, Vice Principal, members of the District staff and the architectural firm involved in the renovation.

At a subsequent visit to McClatchy, Committee members learned of the new concept of Small Learning Communities (SLC). This idea was recently implemented in the district high schools. All students at McClatchy are members of a program within the school. The specializations include: Arts and Medical Health/Human Services; Engineering/Technology; Business; Humanities and International Studies; and International Community. Educators hope that students will feel a stronger sense of connection to the school, their peers, and their instructors through this concept. The Grand Jury encourages the Sacramento City School Superintendent and school administration to provide their full support to this program, and to give this program the time it may require to fully flourish.

All school districts are working to implement the “No Child Left Behind” Act and have programs in place to help students pass the California High School Exit Exam.

(*It should be noted that Grand Juror W. Bernard Bowler recused himself from any participation in the discussion, preparation, editing and approval regarding the Sacramento City Unified School District.)

Environment, Public Works and Special Districts Committee

The Environment, Public Works and Special Districts (EPW&SD) Committee reviews local and County government entities, as well as over 112 Special Districts.

The Committee reviewed four citizens' complaints and, of these, one qualified for investigation with findings and recommendations and is included in the final report. The others generated further investigation and were then closed without comment.

This Committee made inquiries of the County Health Officer regarding West Nile Virus and any proposed actions to safeguard and inform local residents of the possible hazards. It was concluded that appropriate measures are in effect to address this growing concern. We also revisited the posting of Environmental Health notices in restaurants. Most restaurants visited were found to be in compliance regarding posting, although some postings were difficult to find without inquiry.

In addition, the following tours and presentations were organized:

- A joint Committee effort was initiated by Environment, Public Works & Special District and Administrative and Municipal Affairs Committees to coordinate a presentation by a retired Sacramento City Manager. He discussed the operation of special districts, their operations and the management tools finance directors use to develop financial plans and manage expenses.
- A joint meeting was held with EPW&SD and Health & Human Services Committee to discuss air quality issues with the Air Pollution Control Officer of the Sacramento Metropolitan Air Quality Management District (AQMD). The Grand Jury decided that the appointment of the Air Pollution Control Officer, the first change in over 20 years, was an opportune time to address what local measures should take place to improve the Sacramento region's air quality, which according to the US Environmental Protection Agency ranks among the 10 worst nationally. He encouraged support for regional enforcement and coordination between AQMD and the Sacramento Area Council of Governments' Blueprint project.
- The Committee visited the Sacramento International Airport and discussed a number of issues with Airport staff. The issues examined included: planning for the airport expansion, the coordination of land use development decisions and planning that affect flight operations at the airport, the financing of airport operations and expansions, security improvements and the provision of public transport to the Airport.

Health and Human Services Committee

The role of this Committee is to investigate and gather information on policies and procedures of health and human service agencies serving Sacramento County. These include: Bureau of Family Support, Coroner's Office, Department of Health and Human Services, Department of Human Assistance, Department of Mental Health, Public Administration/Public Guardian, Senior and Adult Services, and Welfare Fraud.

The Committee received nine complaints, two of which were rollovers from the 2003-2004 Grand Jury. Of that number, five cases were opened for investigation. Three complaints were closed after investigation but are worthy of special comment here. Two investigations are published in this final report.

The Grand Jury received a complaint that the County of Human Assistance does not have adequate procedures concerning the investigation of claims of fraudulent receipt of CalWorks benefits, acknowledgement of complaints, and publication of complaint procedures. The Grand Jury investigated the process by which the Fraud Investigation Division (FID) of the Department of Human Assistance handles and responds to claims made by citizens of fraudulent receipt of CalWorks (formerly AFDC) benefits by others. The Grand Jury found that under the circumstances and workload under which it operates, FID procedures produce a timely investigation of complaints, but recommends that a standard procedure be developed for acknowledging citizen complaints.

The Grand Jury received a complaint alleging that the County Department of Health and Human Services has no oversight of services rendered by contract providers, specifically with regard to procedures to be followed when children become missing and unaccounted for during rendering of services. The Grand Jury investigated the procedures and protocols, if any, to be followed when a child under the care and supervision of a County contracted private service providers cannot be provided for. The County Department of Health and Human Services will study and develop such a protocol.

The Grand Jury received an inmate complaint about conditions in jail shower facilities. The Grand Jury investigated and determined that the shower facilities have been undergoing a retrofit process for approximately eight months to replace the entire plumbing system leading to the showers. The project is continuing.

Nine members of the Grand Jury toured the County Public Health Lab, including its bio-terror facilities. The facilities serve the FBI, the County of Sacramento and all of northern California except coastal counties. The Grand Jury was informed that it was the best equipped bioterrorist laboratory in the United States.

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Charter of the Sacramento County Grand Jury

Under Penal Code section 933, the Grand Jury is an independent body that reviews operations of the County, Cities, School and Special Districts within Sacramento County. The Grand Jury is an arm of the Court and has subpoena powers.

The Grand Jury is empowered to investigate citizen complaints about government or may investigate matters acting on its own initiative. It also may investigate allegations of criminal activity. Criminal cases are presented by the District Attorney's Office for possible indictment. If it is determined that there is probable cause to believe an accused person or persons has committed a crime, the Grand Jury can issue an indictment. An indictment is an accusation, not a finding of guilt.

The Grand Jury is made up of 19 citizens who have been nominated by a Superior Court Judge and then drawn at random from a group of 30 qualified individuals. A minimum of 12 of the 19 jurors must authorize the undertaking of an investigation. The Grand Jury has five subject committees that carry out authorized investigations: Administrative & Municipal Affairs; Education; Criminal & Juvenile Justice; Environment, Public Works & Special Districts; and Health and Human Services. The Grand Jury also has two other Committees critical for its success: the Continuity Committee and the Edit Committee.

By law, Grand Jurors may not disclose evidence obtained in their investigations or reveal the names of complainants. Similarly, witnesses are prohibited from disclosing any proceedings of the Grand Jury.

The results of major investigations are contained in reports that include findings and recommendations. Twelve jurors must concur to release a report to the public. These documents can be published as stand alone reports or be included in the Final Report at the expiration of the Grand Jury's term of office. Copies of Grand Jury reports are available on www.sacgrandjury.org.

Any individual may file a complaint with the Sacramento County Grand Jury. All complaints are held in the strictest confidence. A complaint form is at the back of this report, or may be downloaded from www.sacgrandjury.org, or may be obtained by calling the Grand Jury Office at (916) 874-7559.

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Reports and Investigations

Sacramento County Civil Service Commission

Issue

The focus of this Grand Jury investigation is to determine if the processes and procedures of the Sacramento County Civil Service Commission (Commission) are adequate and appropriate when it considers the merits of appeals by County employees concerning disciplinary actions taken against them by their employers.

Reason for the Investigation

During the last six months, a great deal of public and media attention has been drawn to a number of decisions in which the Commission overturned the Sacramento County Sheriff's decision to dismiss several sheriff's deputies for misconduct. The Commission's actions resulted in these deputies being fully reinstated to duty. Public concern over these reinstatements caused the Grand Jury to initiate an investigation.

Method of Investigation

The Grand Jury interviewed all five members of the Commission.

The Grand Jury reviewed the following documents:

- Sacramento County Charter, Article XVI
- Rules of the Sacramento County Civil Service Commission.

The Grand Jury obtained the following documents pertaining to five cases appealed to the Commission which involved disciplinary action taken against sheriff's deputies:

- Notice of Final Order of Disciplinary Action
- Transcripts of Proceedings before the Hearing Officer
- Hearing Officer's Proposed Decision
- Transcripts of Proceedings before the Commission
- Commission's Final Decision and Order.

Background and Facts

Introduction

The Grand Jury has limited its examination of this matter to the underlying processes, procedures and interpretations of law under which the Commission conducts appeals of disciplinary actions. The Grand Jury reviewed the transcripts of five specific cases, and used these cases to understand the processes, procedures, and interpretations that affect the Commission's considerations and deliberations. However, the Grand Jury did not attempt to review the specific merits of any particular case or outcome.

The Commission's Charge and Current Composition

The Commission, consisting of five members, each appointed by one of the Sacramento County Board of Supervisors for alternating five year terms, is established under Article XVI of the Sacramento County Charter. Its mandate is to establish and enforce policy and rules governing classification of civil service positions and the recruitment, examination, and appointment of County employees. It is also charged with the responsibility to investigate and decide appeals from any phase of the employee selection process, from the classification plan, and from disciplinary actions against County employees. This Grand Jury review is specifically centered on how the Commission considers appeals by County employees concerning disciplinary actions taken against them by their appointing authorities.

The Commission has established its own rules on how to handle appeals of disciplinary actions. The Commission has considerable discretion in setting these rules and can amend its rules by majority vote.¹

Processes and Procedures Respecting Appeals from Disciplinary Action

Commission Rule 11.4 pertains to the causes for which disciplinary action may be taken against a County employee. No such action may be taken without good cause. "Good cause" is defined as any facts which, based on relevant circumstances, may be reasonably relied on by the appointing authority in the exercise of reasonable discretion as a basis for disciplinary action. An essential element of good cause is the exercise of "reasonable discretion" *by the appointing authority*. Good cause is lacking where the appointing authority's exercise of discretion is unreasonable, but it is not lacking on the mere basis that the Commission or the Commission's hearing officer would, under the same circumstances, have exercised its own discretion differently.

Certain behaviors are defined as constituting good cause per se. They include the following:

- Inexcusable neglect of duty

¹ Rule 1.5(a) and (b)

- Conviction of a felony
- Conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his position
- Discourteous treatment of the public
- Willful disobedience
- Incompetence
- Dishonesty
- Inexcusable absence without leave
- Failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the employee's agency or employment.

Once an employee has been served by his or her appointing authority (the head of the agency by which the individual is employed), with an order of disciplinary action, the employee is entitled to an informal hearing, known as a *Skelly* hearing, with the employer or the employer's designee, before the order becomes final.

After the employee has been served with a final order and decides to contest the action, he or she files a notice of appeal with the Commission. An appeal hearing is then conducted in due course by a hearing officer employed or contracted by the Commission to hear sworn testimony of witnesses on both sides of the question. The hearing officer is charged with determining whether the facts alleged in the order are true, whether such facts constitute good cause for discipline, and what discipline is appropriate in light of all relevant facts and circumstances.² Ultimately, the hearing officer prepares a Proposed Decision, including Findings of Fact, Conclusions of Law, and Proposed Disposition, and submits that document to the Commission.

Finally, a hearing is held before the Commission, where the issues contained in the proposed decision are argued by representatives of the County agency and of the employee. The commissioners may ask questions of the representatives at that time. The hearing and deliberations are normally conducted in closed session.³ After the hearing is conducted, the Commission makes its final order affirming, modifying, or revoking the Order of disciplinary action.

The Commission can sustain the proposed action, or it can decrease an order of disciplinary action; it cannot impose a more stringent action. The Commission's order is subject to review by the Superior Court in an action called Administrative Mandamus.

² Rule 11.12(a)

³ Rule 11.12(c) In all five cases reviewed by the Grand Jury, the hearing and deliberations were held in closed session.

Quorum of Three

In all five cases reviewed by the Grand Jury, the hearing before the Commission was conducted by a quorum of three commissioners. In such a case, the three commissioners must vote unanimously in order to prevent the case from having to be heard again.

All of the commissioners denied awareness of pressure to conform with the others in view of the consequences of a contrary vote. In one of the five cases reviewed by the Grand Jury, however, one of the members initially voted “no” on the motion to adopt the hearing officer’s Proposed Decision to reinstate a deputy sheriff who had been dismissed. The member who voted “no” then asked the Commission’s counsel what the effect would be of the single “no” vote. The Commission’s counsel explained that the case would have to be postponed to the next calendar. The member immediately changed the “no” to a “yes” vote, avoiding the necessity of a new hearing.

Use of Historical Consistency to Determine Appropriate Disciplinary Actions

The Commission tries to ensure that an individual employee is not “singled out” for a harsher discipline than was imposed in previous cases. However, no two cases are totally alike, taking into consideration the circumstances, employment history, years in service, remorse, and other factors in mitigation or aggravation.

In one case, for example, in which “conviction of a misdemeanor which is of such a nature that it adversely affects the ability of the employee to perform the duties and responsibilities of his position” was charged, great attention was centered on the discipline imposed in other cases based upon the same charge. Yet of the 19 cases selected to show that a lesser discipline was historically imposed, not one involved a conviction for conduct “of such nature,” as, or anything remotely similar, to the conduct of the deputy in the case then pending before the Commission. As a result, a new precedent was set for future cases involving the aggravated conduct in question, i.e., reinstatement with full back pay and benefits.

Finally, and perhaps more importantly, even assuming that two cases are substantially similar, the appropriate standard to be applied in a particular case is expressly prescribed; the discipline must be “appropriate in light of all relevant facts and circumstances,”⁴ i.e., of the facts and circumstances *of the case then pending before the Commission*. The fact that a lesser discipline was imposed in a prior case is not necessarily pertinent to the case at hand, and may, conceivably, have been too lenient. It is not incumbent upon the Commission to put itself in a position of having to decide whether a prior case upon which it relies as precedent, was rightly decided.

⁴ Rule 11.12 (a)

Lack of Recusal Policy

The Sacramento County Charter⁵ provides that the Commission shall provide for the impartial hearing and determination of appeals from disciplinary action.⁶

The Commission has no rule or formulated policy pertaining to recusal by a commissioner in the event of actual or potential bias or the appearance of bias for or against a party to an appeal. One commissioner explained that the practice with respect to recusal by a commissioner is to abide by the judgments of the other commissioners. The decision to recuse oneself from participation in a particular case must be made by the commissioner in question, and no one else.

The Commission Rules have Ceded Too Much Power to the Hearing Officers in Two Respects

First, the Commission has eliminated its ability to review a case based on the total available record, including the transcript of the hearing before the hearing officer. Once an appeal reaches the Commission, its own rules limit argument by the parties to the “four corners” of the hearing officer’s Proposed Decision.⁷ In this regard, the Commission, upon receipt of a Proposed Decision, may (1) adopt it in its entirety, (2) refer it back to the hearing officer for clarification, (3) reduce the disciplinary action and adopt the remainder of the Proposed Decision, (4) reject a proposed reduction in favor of the disciplinary action originally imposed, or a lesser disciplinary action, and adopt the remainder, or (5) reject the Proposed Decision in its entirety.⁸ Under these Rules, the Commission has no option to decide the case itself upon the record, including the transcript.⁹

All of the evidence which is introduced at the hearing before the hearing officer is included in the transcript of the hearing. However, not all of the evidence may be referred to in the hearing officer’s Proposed Decision. Any evidence, no matter how relevant and persuasive, that is not referred to in the Proposed Decision, remains unknown to the Commission. In effect, the Commission must decide the appeal only on the basis of the evidence that the hearing officer is willing to disclose in the Proposed Decision. The Commission has, in effect, ceded much of its authority and responsibility to its hearing officers.¹⁰ In this way, the hearing officer may effectively determine, not merely propose, the result of a case.

⁵ Charter, Article XVI, §71H(d)

⁶ See *Gai v. City of Selma* (1998) 68 Cal.App.4th 213.

⁷ The sole exception is where new pertinent evidence could not with due diligence have been offered into evidence at the time of hearing.

⁸ Rule 11.12 (d)

⁹ Compare the State Civil Service Act (Gov. Code §19582 (c)) and the California Administrative Procedure Act (Gov. Code §11517 (c)(2)(E)).

¹⁰ A public agency endowed with a public trust is simply not allowed to yield its discretionary authority to an employee or contractor without recourse. 71 Ops.Cal.Atty.Gen. 266, 268-271 (1988); 63 Ops.Cal.Atty.Gen. 240, 242-243 (1980)

Second, the Commission has not only limited any argument before the Commission to the content of the Proposed Decision, but has further restricted any argument relating to evidentiary, procedural, or legal issues which were raised or could have been raised at the hearing, including any description of evidence which was accepted or rejected by the hearing officer, or the weight of the evidence, or the credibility of any witness.¹¹

Thus, whether (1) highly relevant evidence was rejected by the hearing officer, or (2) an allegation was proven by a preponderance of the evidence, or (3) a prescribed procedure relating to the hearing was followed, or (4) legal issues, presumably including constitutional issues, were correctly decided by the hearing officer, are all beyond the scope of argument to the Commission which will have no part of any such discussion. The decisions of the hearing officers in all those matters are absolutely beyond the purview of the Commission.

The Elements of Each Cause for Disciplinary Action Should be Properly Interpreted by the Hearing Officers and the Commission

Based upon its review of the cases referred to above, the Grand Jury believes that the Commission's review process failed to ensure that the following prescribed causes for disciplinary action were properly applied in one or more cases:

- Civil Service Rule 11.4(p) (Failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the employee's agency or employment)
- Civil Service Rule 11.4(j) (Conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties of his position).

The critical point in each of these two causes, is that the words "is of such a nature that," and "is of such a nature as," respectively, may not be ignored.¹²

Beginning with the Rule regarding the failure of good behavior, it is well settled law that it is not incumbent upon the County employer to prove an actual discredit to the agency. It is sufficient that the failure of good behavior is "of such a nature" as to result in a discredit to the agency.

Similarly, the Rule regarding conviction of a misdemeanor does not require proof of an actual adverse affect upon the employee's ability to perform his duties. It is sufficient that the conviction is "of such a nature" as to result in an adverse affect upon such performance.

A third of a century ago, the California Supreme Court¹³ interpreted the meaning of the following cause for discipline under the State Civil Service Act:¹⁴ "Other failure of good

¹¹ Rule 11.12 (c)(2)

¹² It is a fundamental rule of legal construction that no provision may be interpreted in such a manner as to render some of its words superfluous. (82 Ops.Cal.Atty.Gen. 90, 99 (1999))

behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing power or to the person's employment."

The court held that under that terminology the words "causes discredit" cannot be construed literally, and that public knowledge of the behavior in question is not an element of the offense. Thus, the Supreme Court explained, the charge of "Failure of good behavior which is of such a nature that it causes discredit to the agency" pertains to the conduct, not to publicity. Hence, it would be unnecessary, for example, to introduce newspaper articles concerning the employee's behavior to prove actual discredit to the agency.

The same reasoning would apply to the cause for disciplinary action pertaining to conviction of a misdemeanor. Proof by positive evidence of some degree of actual adverse affect upon the employee's ability to perform the duties of his position is not germane to the case. Even without the introduction of positive proof, it may in a particular case be reasonably inferred¹⁵ that an employee's usefulness in the exercise of all or any part of the full scope of his duties has been affected.

Findings and Recommendations

Finding 1. The votes of three of the five commissioners are required to decide an appeal from disciplinary action. Therefore, where only three hear an appeal, all three must vote unanimously to reach a decision. In such a case, there is a significant incentive for each of the three commissioners to reach the same decision. Such an incentive is inconsistent with the duty of each commissioner to exercise his or her individual judgment and consideration.

Recommendation 1. A minimum of four commissioners should hear appeals from disciplinary action except in the event of compelling circumstances. In no case should a vote be changed for the sole purpose of reaching a decision.

Finding 2. The Commission affords too much consideration in its determination of proper discipline to historical consistency. This policy is at odds with its duty to determine in each case the discipline which is "appropriate in light of all relevant facts and circumstances" of that case.

Recommendation 2. The Commission should determine whether the discipline imposed is appropriate in light of all relevant facts and circumstances of the case under review, and should afford less weight to consistency of the proposed disciplinary action with

¹³ *Nightingale v. State Personnel Board* (1972) 7 Cal.3rd 507, 513-514

¹⁴ Gov. Code §19572(t)

¹⁵ An inference is the result of reasoning from evidence. It does not fall outside the record, but is simply a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. (Evid. Code §600(b); and Cf., 74 Ops.Cal.Atty.Gen. 70, 71n3 (1991))

disciplines imposed in previous cases. The exceptions are cases involving substantial claims of discrimination based on race, sex, religion or national origin.

Finding 3. The Commission's Rules do not define a formal recusal policy to be followed in the event of an actual, potential, or appearance of, bias in a particular case.

Recommendation 3. The Commission should adopt and enforce a recusal policy to be followed in the event of actual, potential, or the appearance of bias. Each commissioner should be independently responsible under the policy for the decision to recuse or not to recuse himself or herself from each particular case.

Finding 4. The Commission, by its own rules, does not allow itself the ability to consider information contained in the full transcript of a disciplinary appeal hearing before a hearing officer. The transcript contains "all relevant facts and circumstances" which the Commission should be able to consider in making a final decision. The hearing officer's proposed decision may contain only those facts and circumstances deemed pertinent to that officer's proposed decision, and rarely contains "all" of the relevant facts and circumstances. By limiting the basis for its review only to the material in the hearing officer's proposed decision, the Commission has limited its ability to make a duly informed final decision.

Recommendation 4. The Commission should amend its rules to preserve its option to consider information contained in the full transcript of the case under appeal, and to maintain its option to hear any case with or without a hearing officer, or if previously heard by a hearing officer, to rehear the case with or without a hearing officer.

Finding 5. The Commission, by its own rules, has precluded any argument on appeal from a disciplinary action relating to evidentiary, procedural, or legal issues which were raised or could have been raised before the hearing officer, or to the weight of the evidence, or the credibility of a witness. Thus, the hearing officer's determinations as to all issues of evidence, procedure, or law, including the weight of the evidence, or the credibility of witnesses, are not subject to review by the Commission. By refusing to consider any such argument, the Commission has ceded too much of its authority and responsibility to exercise its own judgment in making a final decision, to the discretion of the hearing officer.

Recommendation 5. The Commission should amend its rules to allow for argument before the Commission relating to evidentiary, procedural, and legal issues, raised before the hearing officer, including descriptions of evidence, weight of the evidence, and credibility of witnesses.

Finding 6. Improper interpretations as to the elements of proof were applied in one or more of the cases reviewed related to the following causes for disciplinary action:

- (a) "Failure of good behavior . . . which is of such a nature that it causes discredit to [the employee's] agency or employment", and

- (b) “Conviction of a misdemeanor which is of such a nature as to adversely affect the employee’s ability to perform the duties and responsibilities of his position.”

Recommendation 6. The Commission:

- (a) should not require proof of actual discredit to the employee’s agency, when deciding whether there was a “Failure of good behavior . . . which is of such a nature that it causes discredit to the [employee’s] agency or employment”, and
- (b) should not require proof of an actual adverse affect upon the employee’s ability to perform the duties of his position, when deciding whether there was a “Conviction of a misdemeanor which is of such a nature as to adversely affect the employee’s ability to perform the duties and responsibilities of his position.”

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005, from:

- **The Sacramento County Civil Service Commission, Findings 1 - 6; Recommendations 1 - 6.**

(It should be noted that Grand Juror Marilyn A. Isenberg recused herself from any participation in the investigation, discussion, preparation, editing, or approval of this report.)

Complaint Against Sacramento Independent Taxi Owners Association's Hiring Practices

Issue

Sacramento Independent Taxi Owners Association (SITOA) is a nonprofit corporation organized to provide taxi service to the Sacramento International Airport. SITOA has a contract with Sacramento County (the County) that gives SITOA members the exclusive right to pick up passengers at the airport. The contract requires the use of fair, equal and non-discriminatory practices when hiring drivers. Does SITOA use fair, equal and non-discriminatory practices when hiring new drivers?

Reason for the Investigation

The Grand Jury received a complaint that SITOA engaged in discriminatory hiring practices. The complainant alleged the following specific actions occurred:

- SITOA officials hired relatives
- New drivers had insufficient driving experience and bad driving records
- There was discrimination based on religious, national and racial factors.

It was further alleged that the County may not have been receiving the appropriate income from the taxi fares as required by the contract, because there was no way to confirm independently how many fares were picked up at the airport by members of SITOA.

Method of Investigation

The Grand Jury interviewed the following:

- Assistant Director of Sacramento International Airport
- Deputy County Counsel assigned to airport representation
- SITOA's Attorney.

The Grand Jury reviewed the following materials:

- September 17, 2002 Consent Agenda Item, Board of Supervisors, County of Sacramento, Subject: Authorize the Director of Airports to Negotiate an Agreement for Taxicab Services at Sacramento International Airport Between The County of Sacramento And Sacramento Independent Taxi Owners Association (9/10/2002,#3)

- July 29, 2004 Letter to Deputy County Counsel, Sacramento County Counsel from Richard K. Turner, Kuykendall & Simas, LLP, re: Sacramento Independent Taxi Owner's Association Membership Investigation Report
- September 23, 2004 Letter to Attorney for SITOA from the Deputy County Counsel re: SITOA Clarification of Relationship.

Background and Facts

In June 2002, the Board of Supervisors approved a request for proposals for the exclusive rights to provide taxicab services at the Sacramento International Airport (Airport). In September 2002, the Airport was authorized by the Board to negotiate an agreement with the successful bidder, the Sacramento Independent Taxi Owners Association (SITOA).

SITOA is a nonprofit corporation organized specifically to respond to the County's desire to contract with a single entity to provide taxi service from the Airport. SITOA's membership is composed of approximately 60 members, each of whom owns his or her own cab, and operates the cab independently. Only SITOA members are authorized to pick up passengers at the airport. SITOA does not provide compensation to its members.

As part of its contract with the County, SITOA agreed to maintain a specified number of cabs at the airport to meet the demand for taxi service. In addition, the contract between SITOA and the County states in part:

“...its officers, members, owner/operators, agents and representatives shall at all times conduct business in a manner which assures fair, equal, and non-discriminatory treatment of all persons with respect to race, creed, color, sex, national origin, age or disability. In particular, Contractor shall do the following:

A. Maintain open hiring and employment practices and shall welcome applications for employment in all positions from qualified individuals who are members of minorities.

B. Strictly comply with all requirements of applicable federal, state or local laws and regulations issued pursuant thereto relating to the establishment of non-discriminatory practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color, sex, national origin or disability.”

In late March/early April 2004, the SITOA Board decided to recruit 10 new members. Information was released to the taxi-driving community seeking applications. Based on information supplied by SITOA, there were 68 applicants. However, 39 had less than the five years experience required by SITOA and were informed that they were ineligible for consideration.

The qualifications for the remaining 29 applicants were reviewed by the SITOA Board of Directors in a closed session. The review consisted of making sure the applicants filed the application and had submitted a printout of their driving record on file with the Department of Motor Vehicles. The Board members had the opportunity to discuss any personal knowledge they might have about an applicant and were able to make recommendations on the applicants' suitability for membership in SITOA.

Through this process some 25 applicants were determined to be qualified. A lottery was used to determine which of the 25 would be selected for the available taxi slots. Ten drivers were tentatively selected for membership, and seven more were tentatively selected to be placed on a waiting list.

However, according to procedures used by SITO A, prior to being accepted into membership each prospective new member should have been required to pass a written test. The test evaluated the applicant's basic knowledge of procedures, conduct of taxi operation at the airport and also tested for basic math, writing skill and the ability to use a map book correctly.

After the lottery, but prior to the administration of the written test, the SITO A President, apparently without the approval of the Board, telephoned the 10 who had been tentatively selected for membership to let them know of their selection. When it was later determined that the lottery had been performed before all of the requirements for the application had been met, the Board elected to repeat the application process. Shortly thereafter, the SITO A President resigned.

After the decision was made to conduct a new review of all applicants, four drivers who had been previously selected were informed their applications would not be approved.

The new review resulted in approval of 10 applications. A new waiting list was also added which included five more. Of the candidates informed of their tentative approval in the first review, four were informed that they would not now be selected. Also, a fifth person was removed from the waiting list because of information obtained about the candidate.

Because of the difficulties encountered in the initial application review process SITO A requested its attorney do an internal investigation. The attorney hired an independent investigator to study the matter.

The investigator found that while there did appear to be problems with the first process of selection, there did not appear to be evidence of racial or religious discrimination in the recent membership process.¹

SITO A's attorney also stated that on a going-forward basis, a new process will be developed to replace the lottery-style process. This new process will be conducted by a third party independent evaluator and focus on screening, interviews, and other admission qualifications.

SITO A has also worked with the Sacramento County Deputy County Counsel in an effort to clarify the continuing relationship between SITO A and the County. As a result of the discussions between SITO A and the County, SITO A has amended its selection protocol to include:

¹ The application to SITO A does not ask for race or religious affiliation. However, according to data provided by SITO A the Association's membership is drawn from a diverse variety of national backgrounds. The national origins of 62 members listed by SITO A include 13 from the U.S., 13 from India, 10 from Afghanistan, and eight from Laos. The remaining 18 members come from an additional 10 countries. SITO A also indicates 19 members are Christian, 18 are Muslims, 13 are Sikhs, eight are Buddhist and four practice other religions.

- Posting announcements of new membership selection, and placement of ads in *The Sacramento Bee* and one other weekly publication
- More timely review of applications
- Documented qualification requirements, including more prescriptive requirements involving driver records
- More stringent review for truthfulness of information put on applications
- More structured interviews and requirement of a passing score on written examination for membership
- Continuation of a lottery selection
- Posting of new members
- Establishment of a complaint appeal process
- Continuous reporting of any investigations to the Director of Airports.

The County Counsel's Office was aware of the complaints and has issued a letter that defines the membership selection processes that SITOA must follow. The letter states that SITOA must review all existing drivers to confirm that they meet the new standards. Those drivers with non-conforming DMV records are to be removed from membership in SITOA. Airport staff also confirmed that they did not have a method to ensure that SITOA members were properly reporting the number of fares they were picking up at the Airport. Because of this they have implemented the use of transponders that will enable the tracking of SITOA members at the Airport. The Airport also indicated it has assigned an employee to address all taxicab related issues in the future. Airport officials may be involved in ongoing hiring practices as they occur, and are charged with spot checking various aspects of the taxi service to ensure the public's interest is being met. SITOA's contract expires in November 2005. The County will re-open it up for bid with a new Request for Proposal.

Findings and Recommendations

Based on the interviews conducted and the evidence reviewed, the Grand Jury determined:

Finding 1. It could find no evidence that relatives were hired by SITOA, or of discrimination based on religious, national or racial issues.

Recommendation 1. No recommendation.

Finding 2. There was no evidence that SITOA was initially handling applications inappropriately.

Recommendation 2. Airport staff should ensure that taxi contractors follow the procedures, protocols and requirements agreed to by it and the Sacramento County Counsel's Office.

Finding 3. The County Airports Office failed to provide oversight of SITOA's hiring procedures prior to the complaints by applicants. However, the County Counsel now has the assignment to ensure compliance of the rules and to research future contracts.

Recommendation 3. County Counsel should continue to oversee the County contract between taxi contractors and the Airport.

Finding 4: The Airport had no way of ensuring that the appropriate fees were being paid to the Airport. The Airport indicates that transponders have now been installed in all of the cabs to record each trip. This will provide a way to track the fees due to the Airport by the drivers.

Recommendation 4. The Airport should continue to have an assigned employee oversee all taxicab issues, provide periodic public reports on the taxicab services of the airport, and act on problems in a timely manner.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005, from:

- **Sacramento County Director of Airports, Findings 2 – 4, Recommendations 2 - 4.**

The Grand Jury cannot require SITOA's legal counsel to respond to the findings and recommendations in this report. However, we believe that the public would be best served if the law firm of Kuykendall & Simas, LLP would respond to Recommendation 2.

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Failure of Sacramento County to Oversee the Delivery of Services Contracted to Galt Community Concilio, Inc.

Issues

These issues include:

- Whether the County of Sacramento provided appropriate oversight for its contracts with the Galt Community Concilio, Inc.
- Whether the County held the Concilio accountable for performance under those contracts
- Whether the County of Sacramento provided adequate oversight for its approximately \$263 million in contracts with other providers of social, mental health, and alcohol and drug treatment services.

Reason for the Investigation

In September of 2003 the Grand Jury received a complaint regarding misuse of funds by the officials of the Galt Community Concilio, Inc. (the Concilio), a non-profit 501.c.3 corporation. The Concilio was primarily supported with federal, state and county funds provided via contracts with the County of Sacramento. Since the original complaint was made, the Concilio has greatly restructured and reduced its operations, terminated employment of its previous Executive Director and filed for bankruptcy protection. Given these events, the Grand Jury decided that it would not be fruitful to pursue an investigation of the alleged misuse of funds by the Concilio.

However, the Grand Jury concluded there were several issues related to the oversight provided by the County of Sacramento that warranted further investigation. These issues related to how the County administered its contracts with the Concilio and the appropriateness of the actions taken by the County to address: 1) the Concilio's nonperformance relative to those contracts, and 2) the Concilio's overall ability to provide the contracted services to the community. Additionally, the Sacramento County Grand Jury examined the contract proceedings of Sacramento County departments with other community organizations that provide a service.

Method of Investigation

Members of the Grand Jury interviewed:

- Director and staff members of the Department of Health and Human Services (DHHS) of the County of Sacramento

- Agency Administrator of the Countywide Services Agency of the County of Sacramento
- Staff members of the Department of Human Assistance (DHA) of the County of Sacramento.

The Grand Jury reviewed the following materials:

- Videotape of the discussion of the Concilio at the June 18, 2003 meeting of the Sacramento County Board of Supervisors
- Contracted audits of the Concilio for fiscal years 1999-2000, 2000-2001, 2001-2002 and 2002-2003
- Contracts between the Concilio and the County of Sacramento
- County budget materials and a listing of recent contracts between the County DHA and DHHS and contractors for the provision of social and health services
- Chronologies of communications and actions taken by staff of DHA and DHHS relative to the Concilio in the period from 1998 to the present
- Communications between County staff and the Concilio and among County agencies regarding the Concilio
- Transcript of the interview with the previous Concilio Executive Director
- Documents related to the bankruptcy filing by the Concilio
- Correspondence between the Concilio and the Internal Revenue Service
- Correspondence between the Concilio and the State Attorney General's Office.

Background and Facts

Background on this Investigation

The 2003-2004 Grand Jury was unable to complete within its term an investigation into the allegations of the misuse of funds by the Concilio. Based upon the information that was uncovered during its investigation, the 2003-2004 Grand Jury recommended that this matter be carried over and investigated by the 2004-2005 Grand Jury.

A review of the documents suggested to the 2004-2005 Grand Jury that there were numerous improprieties in the financial operation of the Concilio and problems with the oversight provided by those departments of the County of Sacramento that contracted with the Concilio. The 2004-2005 Grand Jury determined that further investigation was warranted and opened this matter for review.

The specific issues for investigation were:

- Propriety of the financial operation
- Oversight provided by the County
- The Concilio's overall ability to provide the contracted services.

During the initial stages of this investigation the Grand Jury reviewed information concerning two issues. The first issue was the propriety of the financial operation of the Concilio itself. The Grand Jury considered information related to the legality and propriety of the Concilio's financial operations, the actions of its Board and former Executive Director, and the performance of the Concilio in meeting its obligations under its contracts with the County of Sacramento.

The Grand Jury concluded that it would not be productive to continue further investigation and publish a report related to the internal functioning of the Concilio. This decision was reached for several reasons.

First, the Concilio is now operating with a reconstituted Board, under new management, and at a very reduced level of operations. Second, the Executive Director who served during the period of alleged financial misconduct was terminated from employment at the Concilio in June of 2003. It does not appear that the current staff of the Concilio was responsible for past practices. Third, the Concilio filed for bankruptcy in January 2004.¹ At the time this report was written, the operations of the Concilio have been substantially reduced and are under the review of the Bankruptcy Court. The Grand Jury believes that any determination of legal culpability for alleged misconduct by former Concilio officials, who are not officials within the normal purview of the Grand Jury, is a matter for consideration by the Sacramento District Attorney.

The second aspect of the investigation is the oversight provided by the County of Sacramento agencies. These issues involved how County agencies administered contracts with the Concilio and the appropriateness of the actions taken by the County to address: 1) the Concilio's nonperformance problems relative to those contracts, and 2) the Concilio's overall ability to provide the contracted services to the community. These issues are the principal subjects of this report.

The Concilio: Background

The Concilio is a non-profit 501.c.3 corporation primarily supported with federal, state and county funds provided via contracts with the County of Sacramento. The Concilio was formed in 1975 and provided an array of social and health services to the communities in southern Sacramento County. Historically the Concilio's social services included senior services, emergency rent, utilities and mortgage assistance, food and clothing assistance, transportation services and job skill training. Health services included primary care, diabetes testing, pregnancy testing and prevention, prenatal and parenting classes and drug abuse counseling.

The Concilio and Sacramento County: Contracts

Table 1 that follows shows the principal sources of operating revenue for the Concilio for the three fiscal years (FY) ending June 30, 2003. These estimates were generated from

¹ United States Bankruptcy Court, Sacramento Division, Case No.: 04-20758-A-11

information provided in the Auditors' Reports² for the Concilio for FY 2000-2001, FY 2001-2002 and FY 2002-2003.³ During these years, contracts between the Concilio and the County's Department of Human Assistance (DHA) and the County's Department of Health and Human Services (DHHS) totaled \$3,158,000⁴ and amounted to 88 percent of the Concilio's government funding. Total revenues for the Concilio during this time, including net income from fundraising revenues,⁵ were approximately \$4,000,000. Grants from DHA and DHHS provided almost 80 percent of the Concilio's total revenues, and the Concilio was highly reliant on the County for its overall operations.

Table 1
Summary of Grants Made to Concilio for
FY 2000-2001 through FY 2002-2003

| FY | DHHS Award Amounts | DHA Award Amounts | Sacramento County Total | Other Grants ⁶ |
|---------------|-----------------------|----------------------|----------------------------|---------------------------|
| 2000-2001 | \$ 196,000 | \$ 620,000 | \$ 816,000 | \$ 90,000 |
| 2001-2002 | \$ 522,000 | \$ 620,000 | \$1,142,000 | \$170,000 |
| 2002-2003 | <u>\$ 785,000</u> | <u>\$ 415,000</u> | <u>\$1,200,000</u> | <u>\$182,000</u> |
| 3 year totals | \$1,503,000 | \$1,655,000 | \$3,158,000 | \$442,000 |

Expansion of County Funding for Concilio Programs and Switch to Fee-for-Service

For many years the Concilio provided a wide range of social services paid for by contracts with DHA or its predecessor agencies. These services included, among other things, transportation services, emergency aid to the needy and assisting in the development of job skills. The contracts administered by DHA averaged \$569,000 per year for the four-year period ending on June 30, 2003. These services were on a cost-reimbursement basis. Under this approach the Concilio was paid for expenses, principally staff salaries and benefits, it incurred in providing services under the contract.

In FY 1998-1999, the Concilio also began to provide drug and alcohol treatment services via a contract with DHHS. The initial award for FY 1998-1999 was \$25,000. By FY 2002-2003, it had increased to \$166,000. These services were also on a cost-reimbursement basis. Over the four years ending on June 30, 2002, the average funding awarded by DHHS for these contracts was approximately \$126,000 annually.

² Prepared by Straine and Co., Certified Public Accountants, for FY 1999-2000 and 200-2001, dated January 30, 2002 and by McCurry & White LLP for FY 2001-2002 and 2002-2003. Certified Public Accountants, dated March 24, 2004.

³ All references to fiscal year cover the period from July 1 through June 30 of the indicated years.

⁴ All funding numbers are rounded to the nearest thousand.

⁵ Net income was used because, although fundraising revenues were large, so were expenses. Net revenues for the three year period totaled approximately \$32,000 on gross revenues of \$1,335,000.

⁶ Actual revenue shown in the audits derived from state and federal Grants, principally SETA, FEMA, Title III Aging and State Pregnancy Prevention grants.

In mid-FY 2001-2002, the DHHS contracts with the Concilio were expanded to include mental health services to children and expanded alcohol and drug treatment services. The contract period was to run through the end of FY 2002-2003. The awards were \$284,000 for FY 2001-2002 and \$567,000 for FY 2002-2003.

These were new services that had not previously been provided by the Concilio. The method of qualifying for payment was also different. Previous DHA and DHHS contracts with the Concilio were on a cost-reimbursement basis. The new DHHS contracts were on a fee-for-service basis. The Concilio would not be paid until it demonstrated that the services covered by the contract had been delivered in accordance with the contract. Successful performance under these contracts would require that the Concilio train existing staff, hire and train new staff, establish a new client base and demonstrate that the services allowed by the contract had been provided to eligible clients.

As shown in Table 2, awards⁷ to the Concilio from DHA remained fairly steady while those from DHHS grew rapidly between FY 1999-2000 and FY 2002-2003.

Table 2
History of Concilio funding by DHA and DHHS
Award Amounts and Type of Award by Fiscal Year

| FY | DHHS | DHA ⁸ | Cost-Reim- bursement | Fee-for-Service |
|-----------|-----------|------------------|-------------------------|-----------------|
| 1999-2000 | \$118,000 | \$620,000 | \$738,000 | -0- |
| 2000-2001 | \$196,000 | \$620,000 | \$816,000 | -0- |
| 2001-2002 | \$522,000 | \$620,000 | \$786,000 | \$356,000 |
| 2002-2003 | \$785,000 | \$415,000 | \$415,000 | \$785,000 |

With the awards described above, the Concilio was expected to provide an increased range of services and to become the major agent for the County in supplying social, mental health, and alcohol and drug treatment services in the cities of Galt and Isleton and the unincorporated area of southern Sacramento County.

The DHHS staff recognized that the Concilio would face significant challenges in gearing up to provide these services. They indicated that Concilio staff was trained and qualified in FY 2001-2002 to provide these new services. The DHHS staff also provided substantial guidance and assistance to the Concilio during this period and well into FY 2002-2003.

⁷ The "award" is the amount authorized in the contracts; actual payments were in some cases much less.

⁸ Specifically, the DHA provided awards of \$397,000 in FY 1999-2000, FY 2000-2001, FY 2001-2002 and FY 2002-2003 for Temporary Assistance to Needy Families services. DHA also provided funding for CalWorks and other programs of \$273,000 for both FY 2000-2001 and 2001-2002, and \$126,000 for FY 2002-2003.

Financial Difficulties Encountered by the Concilio in FY 2001-2002 and 2002-2003

From July 2001 through June 2003 the Concilio faced a steadily worsening financial situation. According to the audit performed by McCurry & White, the Concilio experienced numerous financial and accounting problems related to:

- Cash accounting and cash flow
- Issuance of payroll checks
- Operation of its accounting system
- Reporting to regulatory agencies
- Control over accounting for property and equipment
- Control over purchases and cash disbursements.

Other documented problems included the failure to pay payroll taxes due to the Internal Revenue System, the writing of checks with insufficient cash in accounts to cover those checks, and the inability to make payments on a \$526,000 loan made to the Concilio by the Rural Community Assistance Corporation (RCAC).

This loan was used by the Concilio to purchase property in April 1999 to develop an improved, one-stop central service facility. In addition to the loan for the purchase of the property, the Concilio incurred an estimated \$136,000 in pre-development costs related to this property.⁹ The Concilio was unable to fulfill the original loan conditions on the original schedule and renegotiated a loan extension with RCAC in June 2002.

The financial condition of the Concilio further worsened during this period because of the Concilio's inability to generate a sufficient caseload under its contracts with DHHS for drug and alcohol treatment and mental health services. As stated previously, these contracts, which totaled \$851,000 over the two-year period, were on a fee-for-service basis. Payments under the contracts could only be made after the Concilio had delivered the authorized services to eligible clients. According to information provided by DHHS and DHA staffs, the Concilio had provided no eligible billings through November 2002, and the total billings were only \$6,000 by February 2003¹⁰. Despite the lack of clients, the Concilio had hired new staff whose salaries depended on income from the contract. Because of this situation the Concilio was faced with additional expenses but lacked a viable source of revenue to pay those expenses.

The Concilio received a 10% advance of \$56,700 for the mental health contract in July 2002, and it appears that these funds were used to pay Concilio salaries and other expenses that did not produce services that would qualify for payment. The Concilio was never able to develop the client base needed to generate the units of service envisioned in the contract. Ultimately, the Concilio was unable to repay the \$56,700 advance and could not generate sufficient additional revenue under the fee-for-service contracts to cover its other expenditures. The staff of both DHA and DHHS eventually concluded

⁹ Page 3 of the June 18, 2003 Report to the Board of Supervisors on the Concilio Financial Condition by DHA and DHHS staff

¹⁰ An average billing rate of \$47,000 per month would have been required to provide all of the services authorized by the mental health contract for FY 2002-2003.

that the Concilio had a total of \$246,000 in excess costs incurred that could not be paid under the fee-for-service contracts.¹¹

By the spring of 2003, the fiscal mismanagement problems of the Concilio were widely known, its financial situation had worsened, and its ability to function deteriorated rapidly. In May 2003, the entire Concilio staff was terminated from employment. Following that action, a re-constituted Board of Directors was formed. Funding from DHHS was not continued for FY 2003-2004, and contracts with DHA were reduced to \$289,000 for FY 2003-2004. The loss of these contracts represented a reduction of more than 70% in funding from the Concilio's principal source of revenues, the County of Sacramento.

DHHS and DHA Knowledge about Concilio's Problems; Proposal to Restructure Contracts with the Concilio and Design a Corrective Action Plan

Interviews and materials¹² provided by the staff of both DHHS and DHA indicate that both departments were aware from the conception of the fee-for-service contracts that the Concilio could have problems generating sufficient units of service to offset the cost of operating programs under the contracts. However, both DHHS and DHA staff indicated that they were not aware of the extent of the Concilio's financial difficulties or of its improper management practices prior to the latter part of FY 2002-2003.

However, DHHS and DHA did have warnings in mid-FY 2002 that the Concilio was not properly providing financial information and might not be meeting the conditions of its contracts. In January 2002, an interoffice DHA memo¹³ noted that Concilio "services covered under CALWORKS and TANF are very few and perhaps the contracted amounts should be reviewed." The memo went on to say "DHA is paying a large portion of (the Concilio's) staff salaries, but it appears the staff is not dedicated to DHA functions but the overall function of the Concilio." In February 2002, DHHS notified the Concilio that fiscal shortcomings¹⁴ needed to be addressed. Specifically DHHS noted that the Concilio did not submit a timely and correct annual cost report and was late in providing the financial audit for FY 2000-2001.

By October 2002, internal DHHS internal e-mails show that DHHS staff was clearly aware that the Concilio was facing serious revenue shortfalls under its contracts. Internal e-mails in February 2003 show that DHHS knew that the Concilio was falling further and further behind in delivering services that qualified for payment. In March 2003, DHHS

¹¹ Page 4 of the June 18, 2003 Report to the Board of Supervisors on the Concilio Financial Condition by DHA and DHHS staff

¹² DHHS and DHA provided the Grand Jury with detailed chronologies of their correspondence with and discussions concerning the Concilio. Copies of written material and many e-mails were also provided. These materials and the information provided in interviews with DHHS and DHA staffs were used by the Grand Jury to develop the information provided in this section.

¹³ January 30, 2002 memo from DHA staff to Jerry Plummer, Subject: Galt Community Concilio Contract # CW 58-02

¹⁴ February 7, 2002, letter from Toni J. Moore, Administrator, Alcohol and Drug Services Division, DHHS, to Sharon Gillies, Executive Director of the Concilio

notified the Concilio that the financial audit for FY 2001-2002 as called for in the DHHS and DHA contracts was overdue, and notified the Concilio that “no further processing of unpaid claim(s) will take place until two copies of the FY 2001-2002 audit report are received.”¹⁵ In April, DHHS wrote the Concilio to express concerns about the Concilio’s inability to repay its 10 percent contract advance as scheduled.¹⁶

Throughout the second half of FY 2001-2002 and most of FY 2002-2003, DHHS staff responded to this situation by working with the Concilio staff to deliver the services under the contracts. However, by June 2003, DHA and DHHS staffs recognized the severity of the Concilio’s financial situation. DHA staff reviewed the Concilio’s books¹⁷ and determined the Concilio’s inability to pay its debts and its lack of revenues and cash flow. It was clear to DHHA and DHA that the Concilio was seriously overextended and would never be able to develop a sufficient client base and meet its obligations under the fee-for-services contracts. In their June 18, 2003 report to the Board of Supervisors DHHS and DHA concluded, “Due to the requirements of the funding source the Concilio was unable to generate the units of service needed to offset the cost of operating the programs and is left with a shortfall of approximately \$246,000.”¹⁸ DHA and DHHS also reported that major restructuring of the Concilio’s programs would be necessary for it to continue as a viable entity.

The Corrective Action Plan

In response to the Concilio’s situation, DHA and DHHS staff worked with the remaining Concilio personnel to provide for additional cash flow and ongoing revenue and to reduce the liabilities faced by the Concilio. The major elements of this plan were:

- The County would switch the fee-for-service contracts to a cost-reimbursement basis and pay \$246,000 to reimburse the Concilio for expenses it incurred but which were not payable under a fee-for-service approach.
- The Concilio would sell the property for the one-stop facility to retire the loan debt and predevelopment costs estimated to be \$738,000.
- The Concilio would pursue other actions to cancel debt or produce additional revenue. These were estimated to produce an additional \$130,000 in savings.
- The County would continue to fund the Concilio for social services via a \$269,000 contract with DHA, and
- The Concilio would complete financial audits for FY 2001-2002 and FY 2002-2003; additional funding of \$20,000 would be provided by the County for this purpose.

¹⁵ March 25, 2003, letter from Toni J. Moore, Administrator, Alcohol and Drug Services Division, DHHS, to Sharon Gillies, Executive Director of the Concilio

¹⁶ April 2, 2003 letter from Ann Edwards-Buckley, program Manager, child and family Mental Health, DHHS to Sharon Gillies, Executive Director of the Concilio

¹⁷ June 3, 2003 untitled report that does not identify the author or recipients, Subject: Galt Concilio

¹⁸ Page 1 of the June 18, 2003 Report to the Board of Supervisors on the Concilio Financial condition by DHA and DHHS staff

On June 18, 2003, the contract amendment and the overall corrective action plan were approved in a 5-0 vote of the Board of Supervisors by Resolution 2003-0795.

Outcome of Corrective Actions

Unfortunately, the actions taken by the Board of Supervisors to provide \$246,000 in funding and to institute a corrective plan proved insufficient to resolve the Concilio's financial situation. The Concilio filed for reorganization under Chapter 11 of the Bankruptcy Code in January 2004. A reorganization plan was filed in May 2004 and a new Executive Director was hired. The Concilio now operates with eight staff members rather than the 28 it previously employed. County support of the Concilio has been greatly reduced and amounts to a single contract with DHA for \$289,000 for FY 2004-2005. The Concilio has greatly reduced its operation and maintains a much-scaled down level of services. At the time of this report, it was unknown how successful the Concilio would be in surviving bankruptcy and continuing its operations, albeit at a much scaled down level.

The County is Heavily Reliant on a Large Number of Community-Based Organizations for Health and Human Assistance Services

The Grand Jury requested and received a listing of the FY 2004-2005 contracts and service agreements between DHA and current service providers. Similar information was provided by DHHS for its contracts with community based organizations. The FY 2003-2004 budget for the County provides information on the number of contracts for services made by DHA and DHHS. Table 3 provides a summary of the current contracts and agreements for services made by DHHS and DHA.

Table 3
Summary of Current DHHS and DHA Contracts and Agreements

| Category | Amount funded | Number of Agreements | Entities Funded |
|--------------------------------------|----------------------|----------------------|-----------------|
| DHA Contracts | \$ 53,000,000 | 48 | 32 |
| DHA Service Agreements ¹⁹ | \$ 22,000,000 | 89 | 44 |
| DHHS - CBO contracts ²⁰ | \$109,000,000 | 130 | 64 |
| DHHS – other contracts ²¹ | <u>\$ 79,000,000</u> | <u>126</u> | N/A |
| Total | \$263,000,000 | 393 | |

The information shows that the County depends on a large number of contractors to deliver approximately one-quarter of a billion dollars in annual services to citizens and communities. The contractors include a wide range of non-governmental entities: large,

¹⁹ Information on service agreements is for FY 2004-2005 and was provided by DHA

²⁰ Contracts with community based organizations, as defined by DHHS

²¹ Approximate number and amounts, based on FY 2003-2004 DHHS budget information

medium and small non-profits, and individual contractors who deliver a broad range of human assistance and health related services. Some contractors are larger entities that derive only a relatively small fraction of their income from these contracts.²² Others are individual medical providers with relatively small contracts for direct medical services.

However, much of the funding goes to contractors similar to the Concilio in that they are relatively small to medium sized community-based, non-profit agencies whose operations depend heavily on contracts with the County. For example, DHA indicated that it currently has 48 contracts or service agreements for a total of \$7,300,000 with 27 small community-based service providers. DHHS has 130 contracts for \$109,000,000 with 64 organizations with similar characteristics. Many contractors have multiple contracts for various purposes with both DHA and DHHS.

County Oversight of the Concilio and Other Non-Profit Agencies that Provide Countywide Social and Health Services

According to the staff of DHA and of DHHS, evaluation of performance by non-profit service providers is often assessed functionally by various staff experts. For example, the DHA contract with the Concilio provided funding for a wide range of social services, job training, senior services and emergency services. The description of services to be provided under the contract is very general. Only the general nature of the services,²³ an expected number of clients to be served over the contract period and minimum hours of operation are described. Rather than detailing the services to be provided, the Concilio's contracts are structured to provide funding for a specified level of staffing.²⁴ Various County staff with expertise in each area are then assigned responsibility for determining that adequate service is being provided in each area.

In the case of the DHHS mental health contract with the Concilio a "Service Performance Monitor" was specified, and the contract requirements are both detailed and extensive. However, even though one individual is named for the purpose of the contract, that individual is not responsible for assessing the overall performance and viability of the contractor.

The staff of both DHA and DHHS indicated there are no Countywide policies that govern how County staff monitors overall performance of non-profit agencies. There is also no single department or individual designated with the overall responsibility to ensure that contracted agencies operate in a financially responsible manner and meet the overall requirements of their contracts with the County.

²² Examples include the University of California, Davis, Medical Center; local school districts and Sutter Health Central

²³ Examples of the descriptions include: Provide emergency services (food, clothing, shelter and transportation); provide gas vouchers or bus passes; provide nutrition/cooking classes and housing workshops, etc.

²⁴ For example, the DHA contract with the Concilio for Community Based Support Services specifies the percent of time and salaries that will be paid to 12 Concilio staff.

Summary and Conclusions

As these facts illustrate, the Concilio was suffering severe financial problems at least as early as April 2002. Cash flow was problematic; bills were not being paid; payroll taxes went unpaid; checks were approved but never issued. This situation persisted until May of 2003, when basic payroll could not be met and the entire staff was laid off. However, despite written documentation of performance problems at the Concilio in early 2002, neither DHA nor DHHS, who collectively provided more than three-quarters of the Concilio's revenues, were able to recognize the magnitude of the problem. In fact, DHHS worked to greatly expand the Concilio's mental health, drug and alcohol services, an effort that added to the Concilio's financial problems because it resulted in an even greater gap between revenues and expenditures.

The lack of effective oversight by DHHS and DHA of the Concilio was aggravated by the lack of enforcement of contract provisions, especially those related to annual audits and financial reports. Furthermore, the financial bailout of the Concilio proposed by DHHS and DHA and approved by the Board of Supervisors on June 18, 2003, was an action that further undermined the principle that contractors should be required to provide the services required in contracts in order to be paid. The intent to save a long standing community organization, expressed by the Board during its June 18, 2003 meeting, was understandable. However, the Board's approval of an after-the-fact redefinition of what the County would pay for under its contracts was inappropriate and poor policy. This investigation reveals that the County is substantially deficient in tracking the performance and viability of its contracted service providers. In summary, the current oversight system:

- Lacks an accountable system that ensures proper financial operation and performance of non-profit agencies that contract with the County to provide services
- Has no formal policies to trigger a review of an organization receiving monies for providing services to the public
- Does not identify either an individual or department responsible for overseeing the operation of non-profits to ensure performance and responsible management
- Fails to ensure timely audits are prepared as required by contracts.

Partially because of these deficiencies, the County did not identify and address the serious problems at the Concilio in a timely manner. As a result, contracted services were not provided, County funds were likely misspent, and the County's efforts to institute a corrective action plan were ultimately unsuccessful.

Even more alarming is the fact that the DHHS and DHA together administer almost 400 annual contracts or service agreements with service providers throughout the area. These agreements deliver approximately one-quarter of a billion dollars in annual services. As was the case with the Concilio, there are often several different DHA and DHHS contracts with the same service provider. Many of these non-profits are small or medium-sized entities that receive a large portion of their funding through contracts with

the County. The County is highly dependent on these contractors to provide social and health services, but fails to seriously oversee the operation of these entities.

It is not known if other non-profit service providers will experience the types of financial problems that led to the bankruptcy of the Concilio. However, if such problems occur or develop, the Grand Jury believes that County does not have a system in place to detect and address them in a timely manner.

Findings and Recommendations

Finding 1. Neither DHHS nor DHA had an effective system for oversight of their many contracts with the Concilio and did not have a system to determine if the Concilio was properly managed and capable of meeting the requirements of the contracts. The County generally lacks an oversight system for the approximately 400 contracts, which total \$263 million annually, that it has with non-profit providers of social, mental health, and alcohol and drug treatment services. If the financial problems occur at other nonprofit service providers, it is likely that they would not be detected and addressed before services suffered.

Recommendation 1. The County should establish clearly defined procedures to ensure that the financial operations and program performance obligations are met by all non-profit and community-based service providers that have substantial service contracts with the County. As part of this procedure, clear responsibilities need to be established for contract management and coordination of multiple contracts. In the case where a single non-profit service provider is providing multiple services under multiple contracts, a single lead county official should be identified as responsible for overall evaluation of performance and assurance that performance problems are addressed. Performance goals and objectives should be developed, measured, documented and reported.

Finding 2. When DHHS became aware that the Concilio was not providing the level of services called for in the contracts, it was slow to remedy the situation. When it became clear that the Concilio was in a financially untenable situation and could not provide the services called for in its contracts, DHHS proposed, and the County Board of Supervisors approved, a questionable bailout. The County modified the method of payment and essentially forgave the Concilio of the obligation to provide the services called for in the DHHS contracts. This allowed the Concilio to receive a \$246,000 payment for expenses it incurred in its unsuccessful attempt to provide services called for in its contracts.

Recommendation 2. The County should assure that contract provisions, such as audit requirements, that are essential to ensuring legal and proper use of contract monies are implemented and enforced. In addition, the County should implement requirements for the County's grant/contract monitors to ensure the grantee/contractor has engaged an auditor at least 30 days prior to the end of the fiscal year.

Finding 3. DHA and DHHS did not ensure annual audits were completed in a timely manner. These agencies did not inquire about the status of the FY 2001-2002 audit until

February 2003, seven months after the end of the fiscal year. The FY 2001-2002 audit (along with the FY 2002-2003 audit) was not completed until March 2004. The delay further compromised the ability of these departments to detect the severe financial problems at the Concilio.

Recommendation 3. Once a criteria for payment under a contract is established (such as a fee for documented service to individual clients), the County should not modify its approach and utilize a different method of payment (such as reimbursement for expenses incurred) for any payments made for past performance.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005 from:

- **Sacramento County Board of Supervisors, Findings 1 – 3, Recommendations 1 – 3.**
- **Agency Administrator, Countywide Services Agency, Findings 1 – 3, Recommendations 1 - 3.**

(It should be noted that the Grand Jury Advisor Judge Raymond Cadei recused himself from the review of this report.)

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The Handling and Security of Inmate Correspondence at the Sacramento County Main Jail

Issue

Is inmate correspondence being handled in a secured manner in accordance with the policies established by the staff of the Sacramento County Main Jail?

Reason for the Investigation

The Sacramento County Grand Jury received a complaint alleging mailboxes located in the housing units or “jail pods” were unsecured, thus allowing others to have access to mail deposited in the mail receptacles. It was further alleged that on repeated occasions, mail was delayed, lost or not delivered. The Grand Jury believed it important to determine if inmates’ mail was being adequately handled and secured.

Method of Investigation

The following reports and documents were reviewed:

- Main Jail Inmate Handbook
- Sheriff’s Department Operations Order for Inmate Correspondence (Revised 09/02)
- Sheriff’s Department Operations Order for Grievances (Revised 09/01)
- Sacramento County Main Jail – Inmate Information
- Random sample of approximately 200 inmate grievances

The following individuals were interviewed:

- Assistant Commander, Main Jail Division
- Administrative Sergeant – Training Manager – Main Jail Division
- Project Manager in charge of maintenance and Main Jail facilities
- Officer in charge of mail inspection and distribution
- An inmate trustee

In addition, the Sacramento County Main Jail was visited on three separate occasions.

Background and Facts

The Grand Jury opened an investigation to determine whether a systemic problem existed regarding the processing and security of inmate mail at the Main Jail. Was outgoing inmate correspondence, in fact, accessible to other inmates to be read, rifled, and perhaps destroyed by other inmates before being processed by the Jail staff?

The Sheriff's Department Operations Order for Inmate Correspondence has clear guidelines for the handling of incoming and outgoing mail. It states, "...each housing pod...shall be equipped with a mail drop box. All inmates shall deliver their outgoing correspondence into the provided mailbox in their respective housing location." Jail representatives stated having no prior knowledge of inmate complaints or grievances regarding mail security, after inmate mail was placed in the mail receptacles.

In the Main Jail, a secured mail drop is a receptacle that has a cover with a slot to deposit mail. The cover has a lock, the key to which is the responsibility of the floor officer. Outgoing mail collection takes place in the late evening and the delivery of inmate mail occurs in the early morning directly to the inmate's cell.

On a visit to the Main Jail, the Grand Jury observed an inmate trustee placing a paper bag (to collect inmates' mail) in the receptacle of an unsecured mail drop—a condition which the inmate indicated had existed for at least six months. Other similar circumstances were also observed--some pods had secure mail drops, covered and locked; others did not.

In another visit, members of the Grand Jury went to the Jail at 11 p.m. to view the mail inspection/sorting/delivery process. Envelopes were inspected to determine the contents. Letters with no return address were returned to the U.S. Post Office. Letters containing gang information, pornography or other inappropriate content were returned to the sender. It appeared that every effort was made to find an inmate, even when the address was not completely correct. The Grand Jury found the handling of the mail by the distribution officer to be efficient and professional.

In an effort to investigate other allegations of delayed, missing or lost mail, the Grand Jury reviewed 200 inmate grievances. Six of those grievances related to mail handling, including issues involving the misaddressing of both outgoing and incoming mail, non-receipt of magazines, mishandling of legal mail, and delays in receiving mail. Officers who responded to the grievances often instructed the inmates to reread the inmate handbook for the rules relating to correspondence.

It should be reported that the Jail staff who worked with the Grand Jury in this investigation was helpful, courteous and receptive to Grand Jury comments.

Findings and Recommendations

Finding 1. The staff of the Main Jail was negligent in allowing inmate mail drops to remain unsecured and at risk of being accessed by other inmates. The Grand Jury was advised that a total of 16 mail drops needed to be made secure.

Recommendation 1. Unsecured mail drops should be repaired promptly as promised by the Main Jail authorities.

Finding 2. Jail floor officers did not notify maintenance personnel of defective slots so repairs could be made in a timely manner.

Recommendation 2. Main Jail staff should develop a procedure to ensure that mail-related deficiencies as noted in this report are promptly reported and repaired.

Finding 3. Jail staff, in responding to inmate complaints of mail not received or delayed mail delivery, instructed inmates to review the rules regarding correspondence in the Inmate Handbook.

Recommendation 3. Main Jail staff should post next to the mailbox in each pod a sample envelope addressed per the rules in the Inmate Handbook.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005, from:

- **Sheriff, Sacramento County, Findings 1 – 3, Recommendations 1 - 3.**

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Student Safety Walking To Inderkum High School

Issue

Is there a safe path of travel along Natomas Boulevard for students walking to Inderkum High School?

Reason for the Investigation

It was brought to the attention of the Sacramento County Grand Jury that there was not a completed pedestrian pathway to Inderkum High School from North Park Drive to New Market Drive on the west side of Natomas Boulevard. Students must cross Natomas Boulevard at several points along their route to the high school in order to stay on a sidewalk. However, it was noticed that some students take the shorter way and walk along Natomas Boulevard next to automobile traffic. The Grand Jury believed it was important to investigate when a complete walkway would be constructed providing sidewalks for the high school students.

Method of Investigation

The following individuals were interviewed:

- Principal of Inderkum High School
- Vice Principal of Inderkum High School
- Manager of New Growth Division – Sacramento Development Services Department
- Assistant City Manager and Director for Development Services

The following documents were reviewed:

- North Natomas Financing Plan
- Natomas Boulevard Improvement table

In addition, several members of the Grand Jury walked the route. (See map on page 38).

Background and Facts

The Grand Jury opened an investigation to determine what the future plan was for students to be able to walk to Inderkum High School in a safe and logical manner. At various places along Natomas Boulevard between North Park Drive and New Market Drive, sidewalks end in an abrupt manner, not connecting to either a crosswalk or pavement. On the west and east side between Del Paso Road and New Market Drive walkways are complete. From New Market to Inderkum High School on the south side there is also a completed sidewalk. There is no sidewalk from New Market to Inderkum High School on the north side and from New Market to North Bend on the west side. From North Bend to a walkway along the collection pond there is an area of about 35 feet where there is no walkway. At that point students must go to the crosswalk at North Bend, cross Natomas, continue on the east side to New Market, cross again and continue to Inderkum High School. From North Bend to North Park on the east side, there is a sidewalk.

Inderkum High School opened in September 2004 with approximately 700 students. When the school adds another grade for the 2005-2006 school year, the projected enrollment is 1100 students, more than a 50 percent increase. The posted speed limit along Natomas Boulevard is 45 miles per hour but it has been observed that traffic frequently exceeds 45 miles per hour. Students do not always cross at the marked crosswalks, but tend to walk on the non-paved areas which are unsafe and become muddy and very slippery in inclement weather. With the increased student population there is a greatly expanded risk of a student being injured.

Findings and Recommendations

Finding 1. Student safety is in jeopardy because there is not a completed pedestrian pathway along Natomas Boulevard from North Bend to New Market on the west side.

Recommendation 1. In the interest of student safety, paved access in these areas needs to be completed.

Finding 2. The City has plans and the appropriate finances in the 2005-2006 budget to complete the pedestrian pathways sometime during the 2005-2006 fiscal year, but that may not occur until June 2006.

Recommendation 2. The City needs to ensure the completion of these areas to be used by students is done by the start of the school year, August 22, 2005.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005, from:

- **Sacramento City Council, Findings 1, 2 and Recommendations 1, 2.**

INDERKUM HIGH SCHOOL AND VICINITY



*Inderkum High School complex
Legend ----- no sidewalk

Landscaping and Lighting District Assessment Practices in the City of Folsom

Issue

Does the City of Folsom properly lower property assessments in a particular assessment district when surplus accumulations occur? Have fraudulent projects been created to conceal excess accumulation of property assessment funds?

Reason for the Investigation

A complaint was received alleging that the City of Folsom failed to properly reduce the assessments paid by property owners in the Steeplechase Landscaping and Lighting District, and instead used the funds to create an illegal surplus. It was further alleged that fraudulent projects were included in the City's Engineering Report to conceal the illegal accumulation of funds from the over assessment of parcels.

Method of Investigation

Members of the Grand Jury:

- Reviewed the 2003-2004 budget for recommended assessment per parcel for several districts, including Steeplechase, The Residence, and Silverbrook Landscaping and Lighting Districts
- Viewed a tape of the Folsom City Council meeting of April 4, 2003, when the subject of a possible over assessment was brought to the attention of the Folsom Council members
- Reviewed California Streets and Highways Code, specifically Sections 22500-22509, which may be cited as the "Landscaping and Lighting Act of 1972;" Section 22526, defining incidental expenses; Section 22556, levying a new assessment; Sections 22565-22574, Engineer report requirements; and Sections 22655-22663, collection and distribution of monies collected by tax assessment
- Reviewed California Constitution Article 13D (Assessment and Property-Related Fee Reform), implementing Proposition 218 requiring a vote of approval by the property owners before a new fee or charge can be imposed or increased. Article 13D became effective on July 1, 1997
- Reviewed an independent auditor's review of specific district assessments contained in the engineer's report prepared by Shilts Consultants, Inc., Engineering, the firm hired by the City of Folsom

- Interviewed the Folsom Neighborhood Services Director, the Folsom Landscaping and Lighting Districts Manager, and the Folsom Assistant City Attorney.

Background and Facts

As of March 1, 2005, there were 24 Landscaping and Lighting (L&L) Districts in the City of Folsom. The purpose of landscaping and lighting districts is to maintain and service the public improvements within each district. Such improvements generally consist of landscape corridors and median islands as well as street lights.

Each L&L District is formed in accordance with the 1972 Landscaping and Lighting District Act. When a district is formed, an annual per parcel assessment is established which is collected by the County (via a resident's tax bill) and remitted back to the City of Folsom to administer the district's improvements. The annual assessment is created and established to cover operating and maintenance costs of the public improvements and is adopted each year by the City Council.

During the meeting with Folsom officials, the reason for specific expenditures and the methods of handling funding excesses were discussed. Folsom officials explained that each district has certain landscaping issues--plants, dividers, fences or walls that require repair and replacement at different times. Districts are also responsible for graffiti abatement, damage repair due to accidents or vandalism, and other such costs. If the budget allows, entire sections of walls and fences are repaired or replaced as necessary. Projects are determined after an on-site inspection of each district.

Grand Jury members reviewed maps showing where each Folsom L&L district is located and why a type of fencing works in some areas and why block walls are needed in others. In the Steeplechase Landscaping and Lighting District, a portion of fence was recently replaced. This project was noted in the budget and billing portion of the engineer's report. All funds were accounted for after the project was completed.

From the Shilt's Engineering Report, Grand Jury members reviewed line items in the budget for several districts and discussed the differences in funding found for what appeared to be similar items, or when one district was smaller than another. The assessments were the same for both. Although each district pays equally for the cost of an engineering report, it does not pay equally for staff time. Larger districts require more time to inspect, review and to determine an appropriate assessment for district projects. In each of these cases Folsom officials provided facts and explanations that justified these practices.

Folsom officials stated that assessments for projects are made after an on-site inspection to determine the needs of each district for the coming year. The cost of projects that may take more than one year to complete are pro-rated and funds may be accumulated to pay for such projects in the succeeding year. There was no evidence of the creation of fraudulent projects to conceal property over-assessments or any co-mingling of funds between districts.

Using the Silverbrook Lighting and Landscape District as an example of a district with surplus funds, Folsom officials addressed how assessments are lowered if there is a surplus. Silverbrook was intended to be residential, but instead is mostly commercial. In addition, light rail is coming to the area and extensive additional landscaping changes are anticipated. The Silverbrook account has a balance of \$92,442. Of that amount, \$40,000 is retained as the amount needed in the budget for this year's projects. The remaining \$52,442 is returned to the affected property owners as a credit on the County tax bill, or as a zero assessment for the coming year.

Finding and Recommendation

Finding 1. The City of Folsom is in compliance with existing laws when the L&L District uses its assessment authority. When a surplus occurs, credits are applied to the tax rolls generated from the County Auditor. The credit is not specifically noted on the tax bill, and as such, is not necessarily clear to property owners.

Recommendation 1. The City of Folsom should explain to property owners how assessments are made and why credits are given rather than lowering assessments. The L&L District and the City Council should continue their efforts to keep property owners informed about the assessment and billing process.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the finding and recommendation contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005 from:

- **Folsom City Council, Finding 1 and Recommendation 1.**

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The Development of New Partnerships and Programs to Assist Foster Children

Issue

What are the new supplementary programs to assist foster children?

Reason for the Investigation

The Grand Jury decided to review new programs which the County has initiated with partnerships in the community; these programs have been designed to help children in Foster Care to improve the chances for reunification with their families and to help them prepare for a successful and independent adult life. The Grand Jury wanted to find out more about these programs, particularly from the perspective of the foster care community of providers.

Method of Investigation

The following reports and documents were reviewed:

- Sacramento County Independent Living Program brochure
- Sacramento County Early Start to Emancipation Preparation Program pamphlet
- Emancipate! Foster Youth Emancipation Guide
- Casey Great Start Young Adult Program information brochures
- Adolfo Housing Services for Former Foster Youth brochure
- Information pamphlet from Juvenile Dependency Drug Court
- CPS Citizens Academy Binder
- Parent and Staff Shared Leadership Task Force, Children's Protective Services' brochure
- Parent Leadership Task Force 2003 Summary, Children's Protective Services' recruitment publication
- Shared Leadership Task Force Meeting Minutes, December 2004
- Making Memories brochure
- Wraparound Sacramento – Exceeding Expectations! by Maria Pagador and Jim Hunt
- Facts about EMQ Children and Family Services 'Wraparound' Program, publication by EMQ Children and Family Services
- Intensive Service Options, California, U.S. Dept. of Health and Human Services Summary Report.

The following individuals were interviewed:

- Agency Administrator, Countywide Services Agency
- Deputy Director, Sacramento County Department of Health and Human Services
- Child Protection Division Chief, Department of Health and Human Services
- Program Manager, Foster Home Licensing/Family Maintenance
- Social Worker, Foster Care/Group Home Placement
- Social Worker, Family Reunification
- Drug Court Coordinator, Alcohol and Drug Services Division.

The following sites were visited:

- Department of Health and Human Services Offices
- Sacramento County Drug Dependency Court
- The Specialized Treatment and Recovery Services (STARS) office
- Parent Leadership Program meeting site.

A written survey was sent to a random selection of area Group Homes; the addresses were provided by the Department of Health and Human Services.

Glossary of Terms:

| | |
|-------|---|
| CPS | Children's Protective Services |
| STARS | Specialized Treatment and Recovery Services |
| DHHS | Department of Health and Human Services |
| DHA | Department of Human Assistance |
| ILP | Independent Living Program |
| ESTEP | Early Start to Emancipation Preparation Program |
| AOD | Alcohol and Other Drug |

Background and Facts

The Grand Jury discussed with the Department of Health and Human Services (DHHS) managers several new programs developed to help improve the outcomes for children in foster care. The Grand Jury believes a public review and recognition of these new programs would be informative for the Sacramento community. The programs reviewed include:

- Independent Living Program
- Drug Dependency Court
- Citizens Academy
- Parent and Staff Shared Leadership Task Force
- Making Memories
- Wraparound Services.

The Child Protective Services system, which helps coordinate these services, was designed to protect children from unsafe home environments. Children can be legally removed from homes that have been deemed unsafe or unhealthy. After temporary placement, the child is put into the foster care system if the home is still not considered a viable living situation. Children are then placed in either individual foster care homes or are placed in group homes, depending on the circumstances of each case. The long history of the foster care system includes inadequate care for thousands of children and dismal outcomes for their success in life. This history has been extensively detailed in many reports and will not be discussed in detail here.

The foster care system has begun to emphasize the concept of healing the family from which the child is removed and to improve the rates of reunification with the families. The Grand Jury decided to summarize some of the programs that the DHHS is utilizing to attempt to promote better rates of success for foster children and their families.

Independent Living Program for Foster Youth

The Independent Living Program is a collaboration of services available to foster youth between the ages of 16 and 21; this group, particularly the youth over the age of 18, has a need for services to help them adjust to life beyond the foster care system. After the age of 18, young people are “aged out” of the system and have had serious problems learning to live independently. A large percentage of these children become victims of physical and sexual assault, have become homeless and many rely on public assistance. The Sacramento Emancipation Collaboration was formed in 1999 to help address the needs of these young people. Partners in the collaboration include several government agencies such as DHA and DHHS and many community based organizations in the community.¹

The goals include helping foster youth obtain the services they will need to transition to independence. Social workers, probation officers, foster families and school district Foster Youth Services social workers can refer eligible youth to the program. Those currently in foster placement and those who have emancipated from foster care can be referred to the program. The ILP receives federal funds, which are administered by the County.²

Services for the youth in this program include classes on independent living skills and personal growth; workshops on financial aid for college; services related to education and career planning; assistance in finding appropriate community services; activities such as graduation and award ceremonies, conferences, a speakers bureau and community service activities.³

Services in the Early Start to Emancipation Preparation (ESTEP) program include one-on-one tutoring, daily living skills, social and interpersonal skills, survival and youth life skills education. An evaluation of participants in Los Angeles County showed an average

¹ Sacramento Emancipation Collaboration information pamphlet

² Sacramento County Independent Living Program brochure

³ Sacramento County Independent Living Program brochure

improvement of two grade levels in reading skills and an improvement in attitudes toward school and learning.⁴

Adequate housing for emancipated youth is another difficult issue for youth who are leaving foster care and for those who are homeless. As part of the Sacramento Emancipation Collaboration, Adolfo Housing Services helps find housing options for former foster youth. In addition to a variety of support services such as those noted in the above programs, this program focuses on transitional housing for up to 24 months and on permanent housing through subsidized assistance. There is also a Housing Choice Voucher program.⁵

The Casey Great Start Young Adult Program publishes a comprehensive guide to services for current and former foster youth, ages 12-24. The guide has over 50 pages of information on subjects ranging from employment, housing, education, health care, childcare, and legal resources to recreation and transportation. Each subject area includes specific information and a list of community resources where the young person can obtain services and assistance.⁶

The ILP also produces a regular newsletter, which highlights events and provides updates on various aspects of the programs.

Independent Living Programs strive to help young people develop productive lives as independent adults.

Drug Dependency Court

The mission of the Sacramento County Juvenile Dependency Court is “to support the Child Welfare Dependency System by encouraging and enforcing compliance with the alcohol and other drug (AOD) treatment and AOD testing orders of the Juvenile Dependency Court”. The vision is “to support the safe and timely reunification or permanent placement of abused and neglected children by causing parents to immediately address any AOD involvement.” The services are optional for parents whose children have been removed from the home due to alcohol or drug abuse issues.

Among the program goals are to help parents receive treatment for AOD and to maintain a sober lifestyle so that they can reunify with their children. There are eligibility criteria for the program and once the parent(s) is determined to be eligible, a CPS Early Intervention Specialist Social Worker will make an assessment. The parent who volunteers receives the following services:

- AOD assessment and treatment authorization/referral
- Assignment to a STARS recovery specialist

⁴ ESTEP brochure

⁵ Adolfo Housing Services for Former Foster Youth brochure

⁶ Emancipate! Foster Youth Emancipation Guide by Casey Great Start Program

- Supportive Services Plan including drug testing, meetings with a STARS recovery specialist and requirements for participation in an assigned AOD treatment program.⁷

The STARS program is the agency contracted by the County to provide the case management. The STARS worker is often a person who has been through recovery and therefore has great empathy with the clients. Some of the services include treatment, home visits, randomly observed drug testing and progress reports to the Court, social worker, attorneys and court coordinator.

Drug Court hearings monitor the parent's compliance with the program and non-compliance results in sanctions, which may even include jail time. The program features many incentives, and tracks the client's progress through three levels until they reach graduation from the program. The social workers interviewed indicated the STARS program has had many successes. The treatment specialist functions as the gatekeeper for the family.

The County is keeping statistics on outcomes for this program and to date, the outcomes are very positive, not only in numbers of clients completing the program, but also in the positive effects on family reunification.⁸

The program's goal of breaking the cycle of substance abuse is a vital part of the creation of strong families for children.

Citizens Academy

The Citizens Academy is a seven-week community participation forum, which is open to anyone who has an interest in Child Protective Services. Applicants must be a minimum of 18 years of age, live or work in the City and/or County of Sacramento and must commit to attending all seven weeks of the session. The goal of the academy is to provide an overview of the Child Protective Services System, including the role of the Board of Supervisors, State Department of Social Services, Judiciary and Child Protective Services System.⁹

Week One is an introduction to the Citizens Academy and an overview of the Child Welfare System, focusing on Emergency Response. Week Two covers Voluntary Services and Court Services; Week Three discusses the Judicial system; Week Four explains Family Reunification through adoption; Week Five explores the Community Partnership; Week Six features Foster Care City and the seventh week includes sharing by parents and foster youth and graduation. In a column by Anita Creamer in *The Sacramento Bee*, the Academy volunteers in the Foster Care City exercise discussed their

⁷ Pamphlet, Introduction to Juvenile Dependency Drug Court, Sacramento County Dept. of Health and Human Services, Alcohol and Drug Services Division

⁸ Refer to fact sheet, Dependency Drug Court, Facts and Information, July 2004

⁹ CPS application form for the Child Protective Services Citizens Academy

experience role-playing the various participants in the CPS system, from children to staff to parents.¹⁰

The goal of the Citizens Academy is to create a community understanding of the complex issues in the CPS process.

Parent and Staff Shared Leadership Task Force

The Parent Leadership Task Force was developed in 2003 with the goal of bringing together parents who had been through the CPS system with CPS workers to improve the delivery of Child Welfare Services in Sacramento County. The principle of shared leadership by including parent representatives is key to the goal of strengthening the Child Welfare Services delivery system and improving outcomes for children and families. Subsequent goals were recruiting parents and getting them involved in CPS committees, and developing a parent support group and a parent hotline. The original parent leaders participated in many aspects of the CPS decision-making process: The State Child Welfare Services Redesign Forum; shared personal experiences with the child welfare system; recruitment potential parent representatives for committee participation; made recommendations for improvements in the CPS parent orientation class; reviewed and helped develop written materials for parents; participated in the Citizens Academy and joined the CPS team conducting the Sacramento County Child Welfare Services Self-Assessment.¹¹

Current Task Force activities include recruiting new members, contacting and supporting parents in the CPS system, developing information for these parents, sharing their own experiences and helping CPS staff to improve services.¹²

Making Memories program

Making Memories is a collaborative effort between Sacramento Court Appoint Special Advocates (CASA), a non-profit organization, and Sacramento County Child Protective Services. The program was developed to enhance opportunities available to foster youth placed in Sacramento County foster homes or with relatives. Donations from the community are used to fund enrichment activities. Some of the activities noted are summer camp, field-trips, after-school sports programs, senior prom, music lessons and school pictures.¹³ In Grand Jury interviews with County staff, workers indicated that this program was a very important community collaboration that helps foster youth experience a richer childhood.

¹⁰ *The Sacramento Bee*, November 14, 2004, Anita Creamer column

¹¹ Parent Leadership Task Force 2003 Summary, CPS informational publication

¹² Parent and Staff Shared Leadership Task Force, CPS recruitment brochure

¹³ Making Memories brochure

Wraparound Services

This new emphasis for services to children in foster care “is strengths-based, family-centered, and needs driven. The program works with children, and the families of those children, in the highest levels of group care. The ultimate goal is to wrap services and supports around the children and families, enabling the children to return to a family home setting, no longer requiring the higher level foster care placements, nor the intervention of government in the family’s life.”¹⁴ Workers attempt to identify an acute situation and stabilize it to prevent a further escalation of the child’s problems. Family histories include substance abuse and physical and sexual abuse. Children act out with behaviors that include “fighting, stealing, vandalism, running away, self-mutilation, cruelty to animals and fire-setting.”¹⁵

The treatment teams typically utilize family, extended family, individuals involved with the family and professional staff working together to improve family functioning. Statistics are showing better outcomes for children and families in this program; for example, the placement disruption rate was nearly 60 percent lower than for children in the control group of one study. The other benefit of this program for the county is expected to be lower costs.¹⁶

Group Home Survey Results

It is difficult to determine how well known these services are. As one measure, the Grand Jury sent a survey to 81 Group Homes requesting evaluation of the programs outlined above. The list of addresses was provided by the Department of Health and Human Services. Surveys were first sent to the many individual foster care homes in the community. The survey asked if the provider was aware of these programs, if any of their children were served by any of these programs and asked for their evaluation of each program.

The Grand Jury received 28 completed surveys and 10 surveys were returned by the post office as undeliverable. The results of this small sample were as follows:

The Independent Living Program

| | | | |
|-----------------|-----------------|-------------------|---------------------------|
| Positive | Negative | No Opinion | Unaware of Program |
| 23 | | 4 | 1 |

Drug Dependency Court

| | | | |
|-----------------|-----------------|-------------------|---------------------------|
| Positive | Negative | No Opinion | Unaware of Program |
| 1 | | 9 | 18 |

¹⁴ Wraparound Sacramento – Exceeding expectations! By Maria Pagador and Him Hunt

¹⁵ Facts about EMQ Children and Family Services “Wraparound” Program, publication by EMQ Children and Family Services

¹⁶ Intensive Service Options, California, U.S. Dept. of Health and Human Services summary report

Citizens Academy

| | | | |
|-----------------|-----------------|-------------------|---------------------------------|
| Positive | Negative | No Opinion | Unaware of Program 28 |
|-----------------|-----------------|-------------------|---------------------------------|

Parent and Staff Shared Leadership Task Force

| | | | |
|-----------------|-----------------|-------------------|---------------------------------|
| Positive | Negative | No Opinion | Unaware of Program 28 |
|-----------------|-----------------|-------------------|---------------------------------|

Making Memories

| | | | |
|-----------------|-----------------|------------------------|---------------------------------|
| Positive | Negative | No Opinion 1 | Unaware of Program 27 |
|-----------------|-----------------|------------------------|---------------------------------|

Wraparound Services

| | | | |
|-----------------------|----------------------|------------------------|--------------------------------|
| Positive 14 | Negative 6 | No Opinion 5 | Unaware of Program 3 |
|-----------------------|----------------------|------------------------|--------------------------------|

Foster Youth Permanency Projects

Foster care is designed to be a temporary safe haven for children whose families are unable to care for them. Too often, children languish in the system, waiting years for permanent homes that never materialize. In response to that challenge, Sacramento County is partnering with several community-based agencies to achieve better permanency outcomes for older foster youth. Information received by the Grand Jury is as follows:

Destination Family Youth Permanency Project

Destination Family is a multi-county public/private collaboration, involving Child Protective Services (Sacramento and Nevada Counties), Sierra Adoption Services, Family Alliance Foster Family Agency, and California Department of Social Services. Destination Family makes every effort to connect or re-connect referred foster youth, aged 11-18, to a significant adult relationship, such as a mentor, relative or foster parent, using best practices to actively involve youth in the permanency process and placement decisions. The project is funded through an Adoptions Opportunity Grant for five years to work with other agencies to identify and recruit parents, to prepare the family for the rewards and challenges of adopting a teen, and to provide support and after-care services to make the adoption work. As of March 2005, 73 youths were referred to Destination Family (56 in Sacramento County and 17 in Nevada County): 36 youths have been placed or have found a permanent family connection; one-third of the placed youths (12) were adopted. In addition, two youths entered into Guardianship, seven youths received lifetime commitments from adult(s) in their lives, connections were made for nine youths, and three youths are now connected with mentoring foster families.

Intensive Relative Search Project

The Intensive Relative Search Project is a family-finding initiative sponsored by CPS in cooperation with EMQ Children and Family Services, River Oak Center for Children, Stanford Home, and the Sacramento Children's Home. This intensive family-finding model, which combines high-tech search tools with old-fashioned collaboration, was pioneered by Catholic Community Services of Western Washington. The process involves a private-public partnership between CPS and partner agencies looking for extended family or friends of the family who may be willing to connect with the child. The Long-Term Placement Program has identified 62 youths who have been in care anywhere from 7-17 years to receive these relative search services. The goal is to find at least one safe and caring adult willing to make a connection with a child and, ultimately, to become a guardian or adoptive parent before the child ages out of care.¹⁷

Summary and Conclusions

Sacramento County, through the Department of Health and Human Services, is making attempts to improve the outcomes for children in the foster care system. It has been acknowledged in many reports from many sources that the entire system has serious flaws that have a long-term effect on children's lives.

In an effort to improve the outcomes for many of these children, the County has facilitated the development of several programs designed to aid children and families in the system. In conjunction with non-profit entities, the County supports The Independent Living Program For Foster Youth, Drug Dependency Court, The Citizens Academy, The Parent and Staff Shared Leadership Task Force, Making Memories, Wraparound Services, Destination Family Youth Permanency Project and the Intensive Relative Search Project.

In visiting these programs, the Grand Jury was impressed with the level of dedication and commitment to improving children's lives that we saw in these programs. In particular, the Drug Dependency Court and the STARS workers were exceptionally committed to breaking the cycle of drug abuse that affects so many families and their children. The citizens of Sacramento County need to know about and support these efforts, as they will ultimately benefit the entire community.

Findings and Recommendations

Finding 1. While the Grand Jury did not evaluate the effectiveness of these programs, we believe Sacramento County and the Department of Health and Human Services are making a good effort to design and support supplementary programs to improve outcomes for children in foster care. County statistics and anecdotal evidence indicate positive effects from many of these new efforts.

¹⁷ Program information provided by Sacramento County DHHS, Child Protective Services

Recommendation 1. The County should continue to encourage and support these new programs.

Finding 2. It appears that many Group Home providers lack knowledge of and are even unaware of the existence of some of these programs. Most respondents to the survey were completely unaware of the Making Memories program, The Parent and Staff Shared Leadership Task Force and the Citizens Academy. Over half were unaware of the Drug Dependency Court.

Recommendation 2. The County and the Department of Health and Human Services need to improve awareness of these programs with their providers of care and with the community in general. The County must develop a method of disseminating information on these programs to all of its providers. Providers may be better able to utilize services for their children if they are more knowledgeable about the options available. Community support for programs that have successes is essential.

Finding 3. The Department does not maintain a current mailing list of its Group Home providers; the returned mail indicates an inattention to updating addresses for providers.

Recommendation 3. The Department of Health and Human Services needs to maintain an up-to-date list of providers. The Department must verify that all Group Homes on its list are valid entities and are at the addresses listed on the county's official mailing list.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005, from:

- **Agency Administrator, Countywide Services Agency, Findings 1 – 3 and Recommendations 1 - 3.**

(It should be noted that Grand Juror Melissa Kubiak recused herself from any participation in the investigation, discussion, preparation, editing, or approval of this report.)

Homeland Security: Ready or Not?

Issue

As part of its responsibility to investigate operations of Sacramento County and jurisdictions within the County, the Grand Jury embarked on an investigation to determine the extent to which the County of Sacramento and its political subdivisions are coordinated and prepared to respond to an incident in which a weapon of mass destruction¹ is used.

The Grand Jury sought to understand at the broadest level possible, whether the basic elements of readiness exist in our community. The Grand Jury sought to draw an overall conclusion from a review of the multi-faceted programs and systems currently under development for prevention, preparation and response to a multi-jurisdictional terrorist attack.

Reason for the Investigation

The September 11, 2001 attack on the World Trade Center has heightened the nation's sensitivity to the vulnerability of another attack. Experts agree the likelihood of another attack somewhere in this country is nearly certain. The need for every community to be prepared is without question. The co-chairs of the U.S. Commission on National Security, Sens. Warren Rudman and Gary Hart put best the reason for the investigation: "Are we living on borrowed time and squandering it?"²

¹ Throughout this report, a "weapon of mass destruction" refers to the intentional use of a chemical, nuclear, biological, radiological, or explosive device to cause harm to life or property, or to disrupt the economy of the region.

² The Wall Street Journal, "Our Hair Is On Fire," p. A 16, Dec. 16, 2004

TABLE OF CONTENTS

| | |
|---|----|
| Issue | 53 |
| Reason for Investigation | 53 |
| Method of Investigation..... | 55 |
| Executive Summary | 57 |
| Background and Facts - Part 1 | 60 |
| The Major Federal Grant Systems and Local Administration..... | 60 |
| Grants Provided to the Board of Supervisors | 60 |
| Emergency Operations Office | 61 |
| Grants Provided to the Sacramento City Council..... | 63 |
| Sacramento Regional Office is UASI Funds Administrator..... | 66 |
| Discussion and Observations | 68 |
| The Division of Authority Between the City and County of Sacramento | 68 |
| Approval Authorities Do Not Represent Critical Services | 69 |
| Homeland Security Program Funds Reserved for Other Disciplines | 71 |
| Background and Facts - Part 2..... | 72 |
| Hazardous Materials Division | 72 |
| Public Health Officer | 73 |
| Bio-Terror Control..... | 73 |
| Surge Capacity..... | 74 |
| Bio-Transport..... | 74 |
| Background and Facts - Part 3..... | 75 |
| Review of Traditional and New Emergency Plans and Procedures | 75 |
| The Standardized Emergency Management System | 75 |
| The Mutual Aid System..... | 76 |
| The National Incident Management System..... | 77 |
| Discussion and Observations..... | 77 |
| The Development of A Comprehensive Master Plan | 77 |
| Compatibility of Communication Systems..... | 78 |
| Coordination and Participation of Private Industry | 79 |
| Public Awareness and Training | 80 |
| Disaster Service Workers..... | 80 |
| Mass Communications Capability with Residents | 81 |
| Findings and Recommendations | 82 |
| Response Requirements..... | 84 |
| Table of Acronyms | 86 |
| Glossary | 87 |

TABLE OF CHARTS AND DIAGRAMS

| | |
|--|----|
| Operational area - Urban Area Diagram..... | 65 |
| Federal Grants Approval Authorities Chart..... | 67 |

Method of Investigation

The following officials were interviewed:

- Emergency Operations Coordinator, Emergency Operations Office, Sheriff's Department
- Administrative Services Officer II, Emergency Operations Office, Sheriff's Department
- Administrative Services Officer I, Emergency Operations Office, Sheriff's Department
- Captain, Sacramento Police Department, Sacramento Regional Office of Homeland Security
- Lieutenant, Sacramento Police Department, Sacramento Regional Office of Homeland Security
- Lieutenant, Sheriff's Office, assigned to Sacramento Regional Office of Homeland Security
- Chief, Hazardous Materials Division, Environmental Management Department
- Supervising Environmental Specialist, Hazardous Materials Division, Environmental Management Department
- Health Officer, Department of Health and Human Services
- Deputy Health Officer, Bio-terror Specialist, Sacramento County Department of Health and Human Services
- Chief, Radio & Electronics Division, Sacramento County Office of Communications and Information Technology
- Division Chief, Sacramento County Office of Communications and Information Technology
- Lieutenant, Sheriff's Office, Radio Communications Coordinator, Technical Services
- Homeland Security Consultant, City of Sacramento
- Chief, Sacramento Police Department
- Deputy Chief, Sacramento Police Department
- City Manager, City of Sacramento
- County Executive, County of Sacramento
- Sheriff, County of Sacramento
- Undersheriff, County of Sacramento
- Chairman, Sacramento County Board of Supervisors.

The following statutes, regulations, and ordinances were reviewed:

- Government Code §§8550 – 8668, California Emergency Services Act
- Government Code §6500 et seq., Joint Exercise of Powers Act
- Government Code §§3100, 3101, Disaster Service Workers; Public Employees
- Labor Code §§3211.9, 3211.92, Disaster Councils; Disaster Service Workers

- Health and Safety Code, Chapter 6.95, §§25500 – 25520, Business Emergency Response Plans
- Health and Safety Code, Chapter 6.95, §§25531 - 25543.3, Hazardous Materials: California Accidental Release Prevention Program
- California Code of Regulations, title 19, division 2, §§2400 – 2450, Governor’s Office of Emergency Services; Standardized Emergency Management System Regulations
- California Code of Regulations, title 19, §§2571 - 2572.2, Disaster Service Workers; Classifications and Duties
- Title 42 United States Code, §7412 of the federal Clean Air Act. Hazardous Air Pollutants
- Sacramento County Code of Ordinances:
 - §§2.46.010-2.46.170, Emergency Operations Office
 - §2.20.030, Chief Information Officer
 - §2.21.070, County Health Officer
 - §6.96.000, et seq., Hazardous Materials
- Sacramento City Code of Ordinances:
 - §§2.116.020-2.116.050, Emergency Services

The following documents, charts and manuals were consulted:

- Inter-Department Correspondence of October 27, 1997: County Executive’s Designee - Emergency Operations Office
- County of Sacramento Multi-Hazard Plan
- Public Health Preparedness and Response Plan
- Environmental Management Department HazMat Area Plan
- Sacramento Regional Office of Homeland Security Organization Chart
- City of Sacramento Standardized Emergency Management System Organization Chart
- County of Sacramento Standardized Emergency Management System Organization Chart
- Sacramento Operational Area Organization Chart
- Correspondence of October 19, 2004, to Sacramento City Council re: Status Update of Office of Homeland Security 2003 Urban Areas Security Initiative Grant
- Correspondence of October 19, 2004, to Sacramento City Council re: Approval of Office of Homeland Security FY 2004 Urban Areas Security Initiative Grant Funding
- FY 2005 Homeland Security Grant Program, Program Guidelines and Application Kit, version 2.0 (Department of Homeland Security, December 22, 2004)
- FY 2005 Homeland Security Grant Program, California Supplement to Federal Program Guidelines and Application Kit (Governor’s Office of Emergency Services, January 26, 2005)
- FY 2004 Homeland Security Grant Program Guidelines and Application Kit
- FY 2004 Urban Areas Security Initiative Grant Program Guidelines and Application Kit

- Sacramento Urban Area Homeland Security Strategy, issued December 2003
- Sacramento Urban Area Homeland Security Strategy, issued March 2005
- Grants Status, Sacramento County Emergency Operations Office, issued on August 18, 2004
- Homeland Security Presidential Directive/HSPD-5 re: Management of Domestic Incidents, The White House, February 28, 2003
- Homeland Security Presidential Directive/HSPD-8 re: National Preparedness, The White House, December 17, 2003
- United States Department of Homeland Security's Fact Sheet: Department of Homeland Security Funding for States and Cities, May 21, 2003
- United States Department of Homeland Security re: National Incident Management System, March 1, 2004.

The following facility was inspected:

- Sacramento County Public Health Laboratory.

Executive Summary

What would happen if a “weapon of mass destruction” were launched somewhere in Sacramento County tomorrow?

Is there an agreed upon plan of action -- from the highest levels of county government to the police patrol on the street, the firefighter, emergency medical officials, public health investigators and hazardous materials specialists? Would the following others know their respective roles: public works workers who are charged with the repair and rebuilding of roads, levees, bridges, water sources, telecommunications, utilities, etc.; human services providers charged with coordinating food and emergency shelter, public safety communicators and health care professionals?

Each city, special district or other public entity within Sacramento County has its own emergency operations plan for incidents that occur within its jurisdictions. The County has a “multi-hazard” plan for natural disasters, such as floods, fire, storms, earthquakes, as well as epidemics and civil disturbances within the unincorporated areas.

The County is developing a terrorism addition to its multi-hazard plan. The County's Hazardous Materials Division also has a plan, including a weapon of mass destruction component, to cope with a chemical attack. And finally, the County's Public Health Division has a plan to cope with a bio-terrorist attack involving such pathogens as smallpox, plague, botulism, anthrax, tularemia, and bio-hemorrhagic agents.

The Sacramento Regional Office of Homeland Security is developing a regional or “urban area” plan for emergency responders (law enforcement, fire, emergency medical services) to a terrorist incident in the densely populated corridor from West Sacramento to Roseville and Rocklin.

The Grand Jury commends the dedicated employees of the Sacramento County Office of Emergency Operations, Sacramento Regional Office of Homeland Security and the Public Health Office for the progress that has been made over the last three years in preparation for an incidence of terrorism should it occur in Sacramento County.

But one key question about all these plans presents itself: does Sacramento County have a comprehensive master plan to respond in a coordinated fashion in the event of a terrorist attack? Such a plan would:

- Ensure all plans are compatible with one another
- Cover all of the weapons of mass destruction, including chemical, nuclear, biological, radiological, and other explosives
- Incorporate and define the roles of all of the services or “disciplines” essential to survival and recovery
- Apply to all areas of the County, and
- Encompass all phases of prevention, preparation, response, mitigation and recovery.

The Grand Jury finds that no such plan is on the drawing board, and that the type of political oversight and leadership needed to achieve this is lacking.

The public might believe that government has at its fingertips one consolidated plan, or master book of instructions, to guide all agencies for preparation and response to a potentially devastating attack. However, as the Grand Jury began to investigate this area, it became readily apparent that information on homeland security preparation is not easily obtained; its many parts reside in various agencies, and there is considerable overlap. In the course of interviewing officials in charge of various aspects of response, it became apparent that the Grand Jury inquiry itself was instructive for officials in understanding that a great deal more work is needed to provide a consolidated, coordinated approach toward preventing, preparing for and responding to a terrorist event in which a weapon of mass destruction is involved.

Many Sacramento residents may still recall the great floods of a half-century ago and the bombs exploding at the Roseville rail yards 30 years ago. But today’s weapons of mass destruction are altogether different in kind and scope from a flood, a fire, or a conventional explosive device. Casualties could be in the tens of thousands. Damage to our infrastructure could be catastrophic. Such an attack could be far beyond the ability of any political subdivision to control on its own. It would require the cooperation and coordination of many jurisdictions, emergency services agencies, and the standardization of those services, a unified command and an effective communications system. It could require the services of all of the various disciplines, the cooperation of the residents, coordination of public and private sector service organizations, and the participation of private industry.

Over the past four years, much of the attention and funding has been given to three critical “first responder” disciplines, i.e., law enforcement, fire, and emergency medical

services. The Grand Jury believes it is time for the Board of Supervisors to direct a broader emphasis on the other critical services, including:

- Public health to cope with a biological attack upon the population
- Health care to cope with a surge of mass casualties
- Food and shelter services, especially in the event of a biological or chemical attack upon our agricultural fields, and
- Public works to cope with extensive damage to critical structures, transportation and utilities
- Environmental management to cope with chemical and radiological contamination of air and streams.

The Grand Jury also found that the County and its jurisdictions need to give more attention and funding to preparing the general public and working with private industry on prevention and security.

The Grand Jury found little emphasis on the important tasks of educating the general public on what to do if a terrorist attack occurred. What protocols should be used, for example, if a member of the public is a shut-in, is infirm, or elderly? What would the County want the public to do to avoid panic? Without a plan for instructions, the public could jam the streets and highways or obstruct the movement of emergency supplies and personnel.

Experts have suggested that a terrorist attack would probably be aimed at a private industrial facility. Prime targets cited include petrochemical facilities, food and agricultural fields, defense contractors, hydroelectric dams, deep-water harbors, light and heavy rail transportation facilities, air cargo airports, and other prime targets of terrorist activity. The Grand Jury acknowledges the possibility that each individual facility may have or may be working on disaster plans. However, the Grand Jury found no evidence within government that these plans have been evaluated or consolidated into a master plan.

After eight months of investigation, the Grand Jury recognizes that the homeland security environment is fluid and constantly evolving. After reviewing hundreds of documents and conducting 31 interviews with officials charged with the responsibility, the Grand Jury makes the following conclusions:

- **The County of Sacramento needs a comprehensive, cohesive plan and approach for responding to a terrorist attack.**
- **While much has been done to train first responders, more funds and attention need to be allocated to the other critical disciplines contained in the body of this report.**
- **More emphasis is needed in two other areas: mobilizing private industry and providing a great deal more education for the public.**

- **The Sacramento County Board of Supervisors needs to demonstrate a stronger policy direction and proactive leadership to activate and marshal action that will enable the community to appropriately and effectively respond to homeland security needs.**

Background and Facts–Part 1

The Major Federal Grant Systems and Local Administration

The World Trade Center attack gave rise to the creation of a major new federal cabinet level super agency, the U.S. Department of Homeland Security (DHS). The focus of the new agency was to prepare the nation, states, and local entities for attacks by international or domestic terrorists employing weapons of mass destruction.

Grants Provided to the Board of Supervisors

The DHS has provided communities throughout the U.S. grants each year since FY 2001. The California Office of Homeland Security serves as the agent to distribute grants to designated County “operational areas”. The grants must be used to protect and safeguard people, property, freedoms, and infrastructure. The grants are given for a variety of purposes:

- Prevention (identification of terrorists and security risks)
- Preparedness (training, strategic exercises, specialized equipment, protective gear for first responders)
- Response (planning, coordinated emergency management)
- Mitigation, and
- Recovery/Resumption.

The County receives the funds and in turn provides them to various agencies of the County and local jurisdictions within the county. These grants are going almost exclusively to first responders. To appreciate why that is so, it is fundamental to understand the structure created within Sacramento County to approve how these funds are allocated.

The approval authority for the distribution of homeland security grant funds consists of the following: the Sheriff, Folsom Chief of Police, County Metropolitan Fire District Chief, Sacramento Fire Chief, and the County Public Health Officer. (See Page 67, Federal Grants Approval Authorities Chart.) Law enforcement, fire services, and emergency medical service agencies each received 20 percent of the funds; other agencies are eligible for the other 40 percent in discretionary grants, although this percentage rarely goes to agencies other than those who are first responders. A second set of special purpose grants is administered by the County (operational area) under a variety of programs. These programs include the Citizens Corp Programs (CCP), Volunteers in Police Service (VIPS), Citizens Emergency Response Team

(CERT), Neighborhood Watch, and a Disaster Medical Reserve Corps. Also funded by a separate allotment from a homeland security grant are the Law Enforcement Terrorist Prevention Program (LETPP), and the Regional Terrorism Threat Assessment Center (RTTAC).

The Sheriff's Office Houses The Sacramento County Emergency Operations Office

The Sacramento County Emergency Operations Office is an umbrella agency responsible for the management and monitoring of homeland security grant funds. It is also responsible for the coordination of a wide array of services which are provided by various departments and agencies, such as City Parks departments, Department of Human Assistance, Police and Sheriff's Departments, Department of Water Resources, Department of Transportation, and so on.

Each agency within the County is in charge of incidents within its own jurisdiction according to its own emergency operations plan, even where mutual aid from the outside is called in. In such a case, where a major emergency is beyond the control of a local jurisdiction within Sacramento County, the County of Sacramento is the designated lead agency for purposes of providing and coordinating services and resources from other jurisdictions within or outside of the County.

This authority is provided in the County Code of Ordinances adopted in 1973, chapter 2.46 (Emergency Operations Office):

*The purposes of this chapter are to provide for the preparation, unification, and carrying out of plans for the protection of persons and property within the incorporated and unincorporated areas of Sacramento County (including the cities therein) in the event of an emergency; to provide for the coordination, unification, or consolidation of the emergency functions of this county with all other political jurisdiction[s], public agencies, corporations, organizations and persons within Sacramento County*³

The Director of Emergency Operations is the County Executive or his designee.⁴ The Director is authorized to coordinate the activities of all emergency services both in pre-emergency planning, during an emergency, and in post emergency activities. The Director is supposed to organize and develop the Sacramento County emergency program working together with the departments of local government, volunteer groups, and individuals. The Director also administers the County's Emergency Operations Office, prepares and maintains the basic emergency operations plan for the County and appoints the Emergency Operations Coordinator. The Emergency Operations Coordinator designates alternate coordinators, directs the coordination and cooperation between political jurisdictions, private sector, services and staff of the emergency

³ Sacramento County Code of Ordinances, section 2.46.010

⁴ Ibid., sections 2.46.110; 2.46.030

operations office and assists in resolving questions of authority and responsibility that may arise between them.⁵

The County ordinance also provides that in the event of a local emergency, the Director has the power to require the emergency services of any County officer or any officer or employee of any other political subdivision within Sacramento County. The Director is also responsible for exercising emergency control over the County and its political subdivisions, using police powers vested in the Board of Supervisors and City Councils by the Constitution and statutes.⁶

The County Code of Ordinances also requires all public and private agencies to cooperate with the County, as described below:

*All public and private agencies within Sacramento County, and all officers and employees of such agencies shall cooperate with the board of supervisors, director emergency operations coordinator in rendering all public assistance in carrying out the provisions of this chapter.*⁷

*Nothing in this chapter shall replace or eliminate the responsibility of each political subdivision within Sacramento County to develop and maintain its own emergency operations plan and capability with respect to local emergencies confined entirely within such political jurisdiction which such political jurisdiction is capable of handling.”*⁸

The County Executive designated the Sheriff’s Department as responsible for day-to-day operations of the Emergency Operations Office. The County Executive placed the following conditions on this: the emergency operations coordinator shall report directly to the Office of the Sheriff, not through the Sheriff’s line function:

- the emergency operations positions shall remain non-sworn positions, and
- the County Executive is to be in charge during major emergencies. Hence, there is currently in the Sheriff’s Department an Emergency Operations Division headed by a non-sworn manager who is the coordinator for the county (unincorporated area) as well as the coordinator for the operational area (including incorporated area) over a wide range of functional services for natural emergencies and other disasters.

The California Code of Regulations pertaining to the Standardized Emergency Management System provides that:

- all local governments within a county geographical area shall be organized into a single operational area

⁵ Ibid., section 2.46.110

⁶ Ibid., section 2.46.120

⁷ Ibid., section 2.46.150

⁸ Ibid., section 2.46.160

- the County government shall serve as the lead agency of the operational area unless another member agency of the operational area assumes that responsibility by written agreement with County government, and
- the lead agency of the operational area shall coordinate information, resources and priorities among the local governments within the operational area, and between the regional level and the local government level.⁹

For purposes of the ordinances referred to above, the term “emergency” is defined as:

*...the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within Sacramento County caused by such conditions as air pollution, fire, flood, storm, epidemic, civil disturbance, earthquake or other conditions, including conditions resulting from war or imminent threat of war, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of Sacramento County requiring the combined forces of other political subdivisions to combat.*¹⁰

These ordinances have never been amended to expressly include in the definition an act of terrorism involving weapons of mass destruction. However, the definition of “emergency” is sufficiently broad to encompass such an event. This understanding has been implicitly recognized by the responsibility conferred upon it for the oversight of homeland security grant funds.

Grants Provided to the Sacramento City Council

Another series of federal grants was established by the DHS. These were the Urban Area Security Initiative (“UASI” grants), designed to provide prevention and protection to urban areas, where the risk of terrorist activity is perceived to be greater. The UASI funding is supposed to be used for training and equipment. The program is designed to increase and improve the capabilities of emergency responders to prevent, prepare, respond and recover from terrorist threats or attacks. These grant funds are distributed to “core” agencies, usually urban cities, within an “UASI group.” According to grant requirements, program activities must be coordinated among the core cities, County and the California Office of Homeland Security.

The UASI group consists of the most populated areas of the County of Sacramento. These include the cities of Sacramento, Folsom, Citrus Heights, Rancho Cordova, and Elk Grove as well as the City of West Sacramento in the County of Yolo, and portions of South Placer County, including the Cities of Rocklin and Roseville. (*See Diagram on page 65 of operational area and urban area superimposed.*)

The City of Sacramento is designated the “core” city, and as such is the authorized grant coordinator and administrator for the program. The City Council approves the acceptance of the funds, and the Sacramento Chief of Police is the project manager.

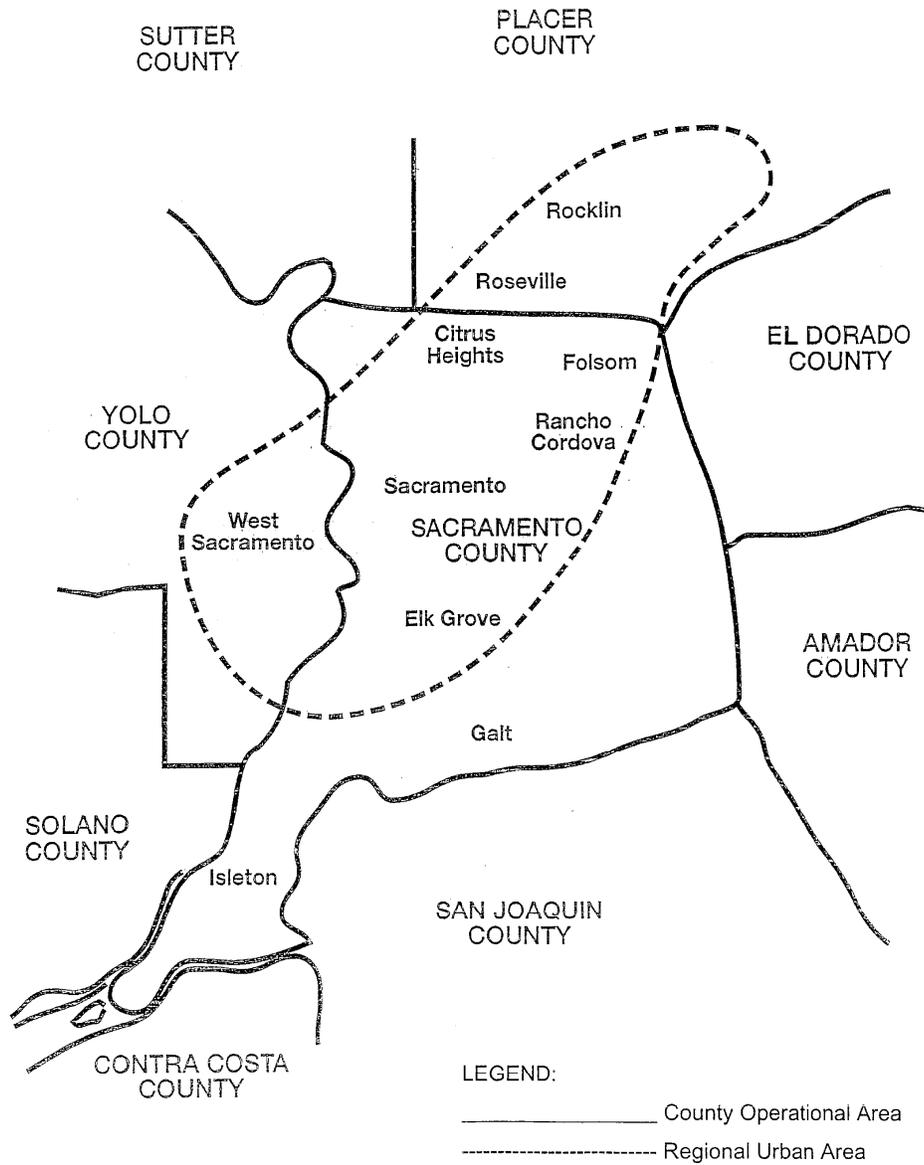
⁹ California Code of Regulations, title 19, section 2409, subs. (b), (d), and (e)

¹⁰ Sacramento County Code of Ordinances, section 2.46.030(5)

The Sacramento Chief of Police and the Sacramento County Sheriff share in approving the distribution of UASI grant funds.

The Sacramento urban area group is also responsible for the Regional Terrorist Threat Assessment Center (RTTAC), one of four in the state, along with San Diego, Los Angeles, and the Bay Area. RTTAC is responsible for training, planning, communications, and assessment of threats to 34 counties.

County Operational Area and Regional Urban Area
Superimposed

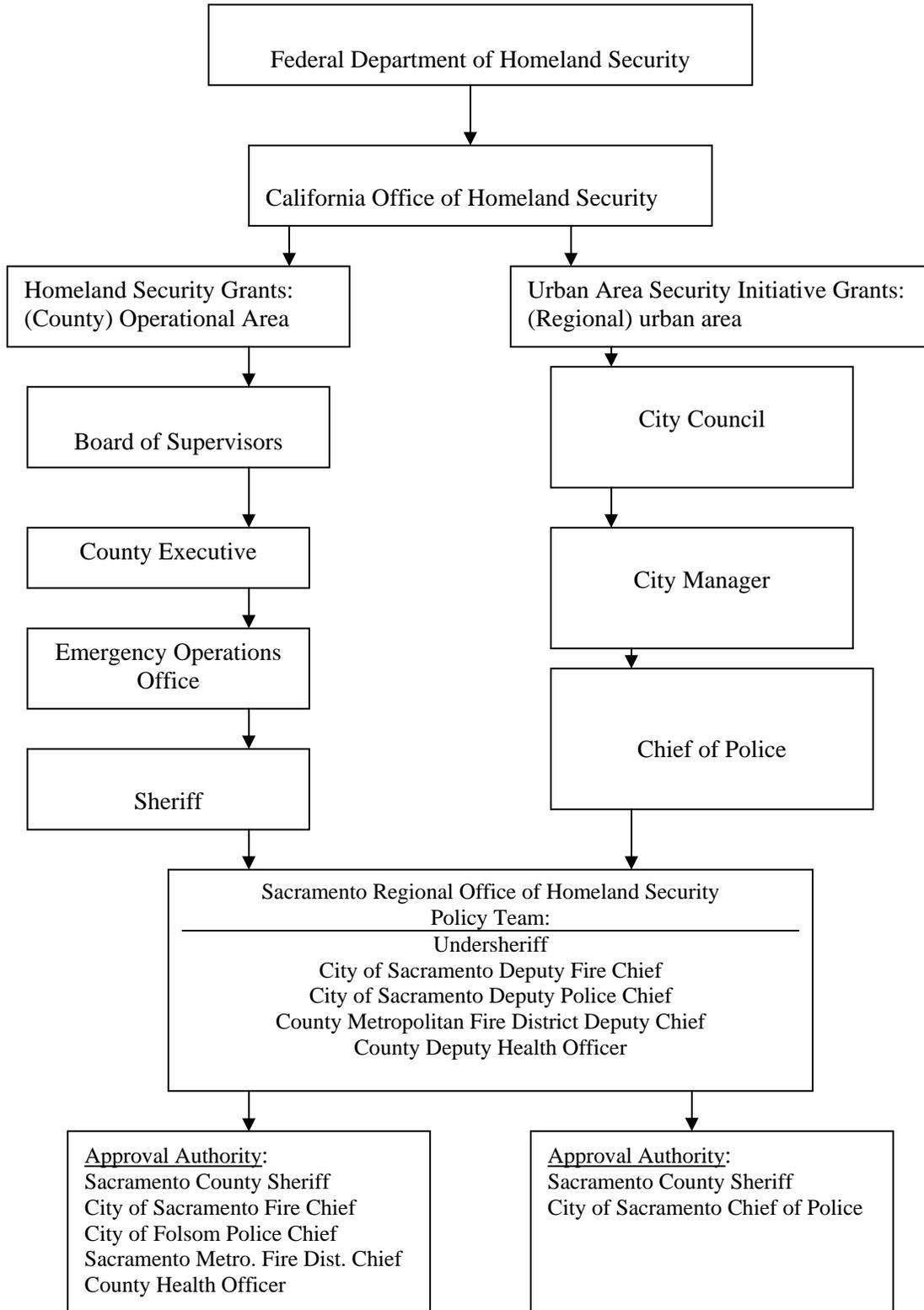


Sacramento Regional Office of Homeland Security is the UASI Funds Administrator

To develop and implement the urban area grant program, the City of Sacramento created the Office of Emergency Services and Homeland Security (OESHS). This office is headed by the Deputy Chief of Police of the City of Sacramento, and consists of sworn personnel (a police lieutenant, a police sergeant, a police officer, a fire battalion chief, and a fire captain) and an administrative analyst, to develop, coordinate, plan, administer, oversee and implement the comprehensive regional-based partnership.

More recently, the Sacramento Regional Office of Homeland Security (SROHS) was established. Its intent is to provide a more cohesive and coordinated approach to the distribution and administration of the Homeland Security Grant Program and the Urban Area Security Initiative Grant. Each grant is accepted and approved for distribution by different entities. (*See Federal Grants Approval Authorities Chart.*)

FEDERAL GRANTS APPROVAL AUTHORITIES CHART



SROHS is comprised of a multi-jurisdictional task force. It includes the California Highway Patrol, the County Health Officer, the Sheriff's Department, Sacramento County Metropolitan Fire District, the City of Sacramento Police Department, the City of Sacramento Fire Department, the City of Folsom Police Department, the City of West Sacramento Police Department, and the City of West Sacramento Fire Department.

An adjunct to SROHS is the Terrorism Early Warning Group (TEWG). It is comprised of the Sacramento County Sheriff's Office, the Sacramento Police Department, the Sacramento Metropolitan Fire District, the Sacramento Fire Department, and the Sacramento County Health Department. It is staffed or on-call 24 hours a day with core law enforcement and fire service professionals. It is aided by representation from the County's Emergency Medical Services (EMS), Hazardous Materials Division (HazMat), and others. TEWG's job is to assess current and future terrorist response capabilities, vulnerabilities and threats throughout the local regions.

Within the SROHS organization is a policy team consisting of the Undersheriff, the Deputy Chief of the Sacramento Police Department, the Deputy Chief of the Sacramento Fire Department, the Deputy Chief of the County Metropolitan Fire District, and the Deputy County Health Officer. The policy team recommends to the approval authorities the distribution of homeland security and UASI fund grants. The approval authorities have the final approval of the recommendations for their respective funds.

The Director of SROHS is the Sacramento Deputy Chief of Police. The organization has two parts: the Emergency Response Division, headed by a consultant, (formerly an Assistant Sheriff) and the Community Services Division, headed by a Police Captain. Community services consist of CERT, VIPS, and Neighborhood Watch, as well as Corporations Partnership (participation of private industry), and the Regional Community Policing Institute (training in community policing). Emergency response consists of planning, operations, and intelligence.

DISCUSSION AND OBSERVATIONS

The Division of Authority Between the City and County of Sacramento is Not Clear with Regard to Decisions Affecting the Operational Area

The sharing of authority with regard to distributing federal funds is a structural decision-making problem. To understand the structural problem, it is instructive to document the makeup of these approval authorities.

With respect to the homeland security grants, designated officials collaborate together to approve the distribution of grant funds. They include the Chiefs of the City Fire Department and County Metropolitan Fire District, the County Sheriff and the Police Chief of one of the larger cities in the County, the City of Folsom, and the County Health Officer.

UASI approval authority consists of the County Sheriff and the Sacramento Chief of Police. However, the City Chief of Police is the project manager of UASI grants and reports directly to the City Manager.

The City Deputy Chief is the Director of SROHS. SROHS is now developing the regional plan for parts of three counties, including the major portion of the County of Sacramento. That plan describes the roles and responsibilities of law enforcement, fire, and emergency medical services in a terrorist event. The City of Sacramento and the County are equally represented on the SROHS policy team.

The County does not appear to be able to assert its authority as lead agency in the operational area of Sacramento County, as provided by state and local law. In the most favorable scenario where the City and County are equally represented in approving UASI grants, neither may act alone. This sharing of authority is in direct conflict with the statutory authority given solely to Sacramento County for a multi-jurisdictional terrorist event.

In the absence of a direct line of authority between the County Board of Supervisors, the County Executive, the Sheriff, the County Emergency Operations Coordinator, on the one hand, and all the other entities involved, such as SROHS, or the Sacramento Chief of Police as the project manager, an agreement should be reached on authority. Specifically, an agency needs to be agreed upon that will be designated as being in charge of the planning, preparation and responding to an event.

The Grand Jury understands that some form of agreement, in the nature of a memorandum of understanding, respecting the elements of planning and preparation, is presently under consideration.

Making a Comprehensive Master Plan and Response is Not Feasible Because The Approval Authorities Do Not Include Representatives for Many of the Critical Services Essential to Mitigation and Recovery.

Prior to distributing UASI grants, the DHS required communities to perform an assessment of needs and capabilities to respond to a weapon of mass destruction event. The DHS developed a guide for spending funds, which may be used for 10 distinct purposes or disciplines. These disciplines include:

- **Law enforcement**, including sworn officers, special weapons and tactics squad, bomb technicians, management/incident command, investigators, and security personnel, who are responsible for law enforcement at county, municipal, and district levels of government
- **Fire services**, including firefighters, company officers, and fire marshals, who are engaged in fire suppression, rescue, arson investigation, and prevention

- **Emergency medical services**, including emergency medical technicians on ground based and aero pre-hospital services
- **Emergency management services**, including volunteer organizations, professional associations, human service agencies, private agencies, and supporting emergency management agencies which are directed to coordinate preparedness, response, recovery, and mitigation for weapons of mass destruction terrorism incidents
- **Hazardous materials personnel**, including technicians, specialists, environmental quality control, private companies and contractors who identify, characterize, provide risk assessment, and mitigate/control the release of a hazardous or potentially hazardous substance
- **Public works**, including administrative, technical, supervisory, and crafts workers in areas of environmental services, water quality, solid waste, animal services, buildings, bridges, levies, roads, telecommunications, engineering, equipment services, electric districts, and digital cable services, who are responsible for the construction and management of infrastructure
- **Government administration**, including elected and appointed officials, executives, administrators, and staff, who are responsible for public administration of community health and welfare during a terrorist event
- **Public safety communications**, including call takers, shift supervisors, medical control centers, and dispatchers, who serve as conduit and link persons reporting on an incident to response personnel and emergency management, and who identify an incident and support the resolution of life safety, criminal, environmental, and facilities problems associated with a terrorist event
- **Health care delivery**, including physicians, nurses, pharmacists, medical records staff, clinical, forensic, and administrative personnel in hospitals, physicians offices and related facilities, who are responsible for providing medical, diagnostic, laboratory evaluation, treatment, and mental health support
- **Public health services**, including physicians, public health laboratory director, microbiologists, laboratory assistants, and other professional, paraprofessional, and support staff, who are responsible for the detection and identification of “level A” biological agents and other infectious diseases.

The sole service represented on the UASI approval authority is law enforcement from the City of Sacramento and the County of Sacramento. Except for a County public health representative on the homeland security approval authority, the representatives on that authority are exclusively law enforcement (the Sheriff and a Municipal Chief of Police) and fire (the Chiefs of County Metro Fire Districts and a Municipal Fire

Department). This is in accordance with a formula prescribed by the Governor's Office of Emergency Services.

Each discipline is not always exclusive of the others; there is in certain instances a considerable overlap. For example, emergency medical services are provided in some cases by the fire service. Two fire services in Sacramento County (Metropolitan Fire District and Sacramento City Fire Department) are hazmat qualified. In addition, public safety communications may be operated by the fire service (City of Sacramento), or by law enforcement (Sacramento County Sheriff's Office).

There is no evidence to suggest that representatives of these other critical needs have been asked to serve on the approval authority. The California Supplement to the FY 2005 Federal Program Guidelines¹¹ expressly provides that an operational area approval authority may add additional members by a majority vote.

The 40 Percent Allotment of Homeland Security Grants Reserved for "Other" Disciplines Have Been Largely Allotted to Law Enforcement, Fire, and Emergency Medical Services

The California Supplement¹² prescribes the allocations by discipline for the State Homeland Security Program and LETPP, as follows:

Fire services – 20 percent

Police services – 20 percent

Emergency medical services – 20 percent

All other disciplines (discretionary) – 40 percent

Note: The Approval Authority may change the allocation percentages with a four-fifths vote.

The Grand Jury asks is it reasonable to construe the word "discretionary" so as to permit no allocation to any of the "other" disciplines, or is it a reference only to the allocation among the "other" disciplines?

Similarly, may the intent be rationally inferred from the authority to "change the allocation percentages with a 4/5 vote," that by a 4/5 vote consisting entirely of police and fire members, the entire 40 percent of "discretionary" funds, in addition to the prescribed 20 percent for each of those services, may be retained by police and fire, to the exclusion of all others; or is it at least as rational to limit the authority in such a fashion which would be consistent, and not at odds, with the program design and objectives?

¹¹ FY 05 Homeland Security Grant Program, California Supplement to Federal Program Guidelines and Application Kit (Governor's Office of Homeland Security, Jan. 26, 2005, p. 9).

¹² Id., p.10

Specifically, the express purpose of the funding by the DHS to California is “to enhance the ability of the state, urban areas, local jurisdictions, and certain nonprofit organizations to prevent, deter, respond to and recover from threats and incidents of terrorism.”¹³ The task encompasses a far greater range of services than those provided by the first responders: fire, police, and emergency medical services. Indeed, two of the five potential weapons of mass destruction, chemical and biological, could have only a limited involvement of police and fire. Perhaps even more significant is the fact that the list of 10 specified disciplines was comprised as a guide for expenditure of funding. An interpretation that ignores any of them would be inconsistent with the goals of the program. It is noted in this regard that the FY 2005 Homeland Security Grant Program Guidelines provides that each Initial Strategy Implementation Plan (ISIP) and subsequent Biannual Strategy Implementation Report (BSIR) must identify the amount designated for each discipline from each program area.

These program areas include law enforcement, fire service, emergency medical services, emergency management, hazardous materials response, public works, public health, health care, public safety communications, government/administrative services, Citizens Corps Councils and Programs, nonprofit and other.

Background and Facts—Part 2

County’s Hazardous Materials Division Is Responsible for Maintaining An Area Plan, Including a Weapons of Mass Destruction Component for Emergency Response to the Release of a Hazardous Material

The County Environmental Management Department (EMD) has operational jurisdiction over the incorporated and unincorporated territory of the County. The Hazardous Materials Division of EMD is responsible for business emergency response plans, hazardous generators, hazardous material storage, under and above ground storage tanks, incident response, and hazardous materials land use.¹⁴ The Division is responsible for informing the public and for providing critical information to incident responders concerning the existence and nature of hazardous materials.

It also administers the California Accidental Release Prevention Program, under the federal Clean Air Act¹⁵ aimed at preventing the accidental releases of regulated substances.¹⁶ “Accidental release” includes any unanticipated emission.¹⁷ It also assesses the capabilities of each fire department, designates a scene commander, and maintains its own incident response team that may respond directly to the scene of a hazardous spill. Hazardous material facilities are inspected on a regular basis, and it has authority to require these facilities to take actions to preserve security.

¹³ Id. p. 5

¹⁴ Health & Saf. Code sections 25500 – 25520

¹⁵ Title 42, USC section 7412 (r)

¹⁶ Health & Saf. Code sections 25531 – 25543.3

¹⁷ Ibid., 25532(a)

The Division maintains and regularly updates an Area Plan, including a weapons of mass destruction component, defining the roles of responders, and containing environmental and public health mitigation provisions. The area plan provides for:

- Procedures and protocols for emergency rescue personnel, including the safety and health of those personnel
- Pre-emergency planning
- Notification and coordination of onsite activities with state, local, and federal agencies, responsible parties, and special districts
- Training of appropriate employees
- Onsite public safety and information
- Required supplies and equipment
- Access to emergency response contractors and hazardous waste disposal sites and
- Incident critique and follow up.¹⁸

The Sacramento County Public Health Officer Is Responsible for the Prevention, Detection, and Mitigation of Communicable Disease

Bio-Terror Control

The County Health Officer is responsible to the Board of Supervisors, and serves as a member of the homeland security approval authority. The Deputy County Health Officer, who is also a bio-terror specialist, is a member of SROHS. Public health receives funding for bio-threat planning from the federal Center for Disease Control and Prevention, which allocates funds to the state Department of Health Services (Emergency Preparedness Office), for distribution to counties (in Sacramento, the DHHS, Division of Public Health). These funds are provided for additional staff, including the Deputy County Health Officer, and for a portion of the public health laboratory. Two additional positions for public health were underwritten by 2003 UASI funds.

The Public Health Preparedness and Response Plan, also known as the Bio-Terrorism Preparedness Plan, is coordinated under the Standard Emergency Management System (SEMS) with the County, and is consistent with the EMD HazMat Area Plan, and an annex to the County's Multi-Hazard Plan.

If there were a threat of a possible biological agent, Public Health would determine the nature of the material in its bio-laboratory. However, an act of bio-terrorism would not likely be evident until specific symptoms begin to appear in the community. A single verified case of smallpox would be an adequate indicator, for example, since the disease does not appear in nature. While anthrax does occur in nature, a single case involving the lungs would be indicative of a terrorist act. Three simultaneous cases of botulism would be, as well.

¹⁸ Ibid., 25503, subd. (c)

Physicians and laboratories are required to report some 88 designated diseases, and the Public Health System routinely checks on hospital intensive care units for suspicious incidents of respiratory diseases. A spike in the normal occurrence of certain illnesses would trigger an alert. Public health is implementing the California Health Alert Network to disseminate disease control advisories on public health issues to medical practitioners, hospitals, schools, and others within the network.

Surge Capacity of Local Hospitals and Medical Facilities to Handle Mass Casualties

Sacramento County appears to rate below the federal benchmark in its ability to provide hospital beds to handle mass casualties from a large-scale biological attack. The federal benchmark suggests that the County should have 650 additional hospital beds over its normal amount. The Grand Jury is informed that Sacramento County is currently 375 beds short of the benchmark.

An immediate influx of licensed medical personnel would be summoned from the medical reserve corps of licensed volunteers and, if necessary, through a system of medical mutual aid from neighboring jurisdictions.

The County also maintains a local stockpile of antibiotics and antidotes. Stored are amounts sufficient to treat 10,000 to 20,000 patients afflicted by a designated biological agent. The Sacramento City Fire Department maintains a stockpile for first responders. In case of a medical emergency, local and regional stockpiles would be used while the County awaits the arrival of supplies from regional or state stockpiles, or from a federal source -- the Strategic National Stockpile. The request to tap into the federal source must come from the Governor, who follows prescribed procedures. The Strategic National Stockpile officials may take up to 12 hours to deliver supplies to a location designated by the State.

A Strategy for Local Transportation of Medical Supplies Provided by the Federal Government

Local officials assume that local transportation, including air lift resources would be mobilized to move medical supplies from the point of arrival to the sites where they are needed. However, there is no written document that prescribes the responsibility for doing so, or for providing an alternate air transportation plan in the event of congested or damaged roads and highways.

Background and Facts–Part 3

Review of Traditional Emergency Plans and Procedures And New Components for Weapons of Mass Destruction

The Standardized Emergency Management System (SEMS)

The California Emergency Services Act¹⁹ provides that the state Office of Emergency Services issue regulations establishing SEMS for use by all emergency response agencies.²⁰ The regulations are found in the California Code of Regulations.²¹ SEMS is intended to standardize response to emergencies involving multiple jurisdictions or multiple agencies, and requires emergency response agencies to use basic principles and components of emergency management. These include the Incident Command System (ICS), the multi-agency or inter-agency coordination system (MACS), the operational area concept, and established mutual aid systems.²²

ICS is the nationally used standardized on-scene emergency management concept. Its users are supposed to use this to create an integrated organizational structure equal to the complexity and demands of single or multiple incidents without being hindered by jurisdictional boundaries. It is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, with responsibility for the management of resources to effectively accomplish stated objectives pertinent to an incident.²³ An “incident” is an occurrence or event that requires action by emergency response personnel to prevent or minimize loss of life, and damage to property /or natural resources.²⁴

Each local government, operational area, and mutual aid region must provide for all of the following functions within SEMS:

- **Management**, including overall emergency policy and coordination
- **Operations**, including flood control, care and shelter, construction and engineering, potable water, utilities and energy.
- **Planning/Intelligence**, including collection, evaluation, and dissemination of information
- **Logistics**, including providing for facilities, services, personnel, equipment, and materials, and
- **Finance/Administration**, including financial activities and administrative aspects not assigned to the other functions.²⁵

¹⁹ Gov. Code sections 8550-8668

²⁰ Ibid., section 8607

²¹ Cal. Code of Regs., title 19, sections 2400-2450

²² Ibid., section 2401

²³ Ibid., section 2402(1)

²⁴ Ibid., section 2402 (i)

²⁵ Ibid., section 2403(c)

To obtain homeland security grants, the Sacramento County operational area must include these five functions of the various political jurisdictions within Sacramento County. The “integrated organization structure” has to include the County and seven incorporated municipalities as well as other local governments, including power districts, water districts, school districts, community services districts, reclamation districts, and district agricultural associations.

All local governments within a County geographical area shall be organized into a single operational area.²⁶ The operational area authority and responsibility under SEMS shall not be affected by non-participation by any local government within the operational area.²⁷ The County government shall serve as the lead agency of the operational area unless another member agency of the operational area assumes that responsibility by written agreement with county government.²⁸

The regulation providing that all local governments within a County geographical area shall be organized into a single operational area is consistent with the traditional geographically defined political subdivisions of states into counties. However, by incorporating the basic principles and components of mutual aid systems, along with ICS and MACS, as part SEMS, the California Emergency Services Act recognizes the regional scope of emergency management.²⁹

The Mutual Aid System

For purposes of mutual aid, the term “state of emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state, other than a “state of war emergency,” which by reason of their magnitude are, or are likely to be, beyond the control of the services, personnel, equipment and facilities of any single county or city and require the combined forces of a mutual aid region or regions to combat.³⁰ A “local emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county or city, other than conditions resulting from a labor controversy, which are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat.³¹

A mutual aid “operational area” consists of a County and all political subdivisions within the County area. With regard to a local emergency, political subdivisions have full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans, or agreements.³² A mutual aid “region” is comprised of an area of the state consisting of two or more county operational areas.

²⁶Ibid., section 2409(b)

²⁷Ibid., section 2409(c)

²⁸Ibid., section 2409(d)

²⁹ Gov. Code section 8607

³⁰ Ibid., section 8558, subd. (b)

³¹ Ibid., section 8558, subd. (c)

³² Ibid., sections 8631, 8605, 8559, subd. (b)

During any state of emergency when the need arises for outside aid in any county or city, such aid will be provided using previously approved emergency plans.³³ The mutual aid Region IV, of which Sacramento County is a part, consists of 11 counties.

The term “emergency” as used in these sections is essentially similar to the term “emergency” as defined in the Sacramento County Code of Ordinances.³⁴ Mutual aid is rendered according to provisions within the established emergency plan.³⁵

The local official who has sought the mutual aid within a jurisdiction remains in charge of an incident, and directs the personnel and equipment provided through mutual aid.³⁶ In the case of a major emergency inside a city, for example, the City Manager or Mayor would be in charge of the event, even if state and federal forces were called in for assistance. Even if the event involved more than one municipality, the City Manager or Mayor would remain in charge within each of the respective municipalities. If the event involved more than one county, the state Office of Emergency Services would coordinate available resources.

The National Incident Management System (NIMS).

The federal version of SEMS is NIMS. According to the DHS, NIMS is “the nation’s first standardized management plan that creates a ‘unified structure’ for federal, state, and local lines of government for incident response.” NIMS dictates a standard incident management organization called the “Incident Command System” (ICS) that establishes five functional areas: command, operations, planning, logistics, and financial/administration for management of all major incidents. The federal government recognizes the state and or local responsibility for managing domestic incidents of terrorist attacks, major disasters, or other emergencies. The federal government will assist where local resources are overwhelmed or when federal interests are involved.

DISCUSSION AND OBSERVATIONS

The Development of a Comprehensive Master Plan for A Weapons of Mass Destruction Event

The County Executive or his designee is responsible as the Director of Emergency Operations for the preparation and maintenance of the basic emergency operations plan for the County. The Emergency Operations Office maintains the multi-hazard plan for a wide range of disasters including natural, epidemic, as well as civil disturbances within the unincorporated areas of the County. A terrorism annex to this plan is scheduled for completion in November 2005. In addition, the County is responsible for the coordination of all of the emergency operations plans of political entities within the

³³ Ibid., sections 8616, 8600, 8559, subd. (a)

³⁴ Sacramento County Code of Ordinances, section 2.46.030(5)

³⁵ Gov. Code section 8560

³⁶ Ibid., section 8618

County, including for example, municipalities, districts, SMUD, and hospital facilities, and for the coordination of a mutual aid response to a terrorist event within a local jurisdiction which is beyond its control.

The County Environmental Management Department (EMD) maintains and regularly updates an “area plan” (pursuant to EPA regulation under the federal Clean Air Act).³⁷ This includes a weapons of mass destruction component involving the release of hazardous materials, and defining the roles of responders. Law enforcement agrees that the EMD area plan is feasible for response to nuclear, radiological, biological, and chemical events. However, law enforcement does not agree that the EMD area plan is useful in the event of an explosive attack, and prefers the City of Sacramento’s building “high-rise” plan for fire, etc.

In addition, the Division of Public Health, Department of Health and Human Services, maintains a Public Health Preparedness and Response Plan.

Finally, SROHS is currently developing a standard operational plan for the region that prescribes the roles and responsibilities of law enforcement, fire, and emergency medical services in a major terrorist event.

Still not on the drawing board is the development of a comprehensive master plan encompassing all of the critical disciplines essential to the prevention, preparation, response, mitigation, and recovery from an event involving any of the weapons of mass destruction. Such a plan must be accompanied by the capability in terms of training and material to prevent or respond as an “integrated organizational structure” within the meaning of SEMS, to all of the phases of such an event anywhere in the County. As previously noted, the development of such a multi-faceted plan by far exceeds the disciplines of law enforcement and fire alone, and demands the active participation of hazardous materials, public health, emergency management services, public works, government administration, and other services. The completion of such a plan should be deemed and promoted as the ultimate goal of preparedness by the highest level of County government, consisting of the County Board of Supervisors acting in its legislative and supervisory powers.

Compatibility of Communication Systems

Traditionally, each political jurisdiction may have operated its disparate radio system on its own frequency. In the past, issues have existed regarding the inability of law enforcement, fire, emergency medical services, and others providing critical services in an incident, to work cohesively within the County.

Standardized communications during an incident are essential, and require integrated communications systems for both incident and information management. The County’s Chief Information Officer is charged with the duty to study and make recommendations

³⁷ Title 42, USC section 7412(r).

to the County Executive and the Board of Supervisors regarding communications and information technology needs and services, and for recommending priorities.

The County's Office of Communications and Information Technology maintains an 800 megahertz radio system, known as the Sacramento Regional Radio Communications System. There are more than 12,000 radios on the SRRCS two-way mobile radio network. It is organized in a way that allows each user to use any of the 49 channels which may be available.

Primary users employ SRRCS as their primary or exclusive voice radio. Secondary users employ their own disparate systems, but also maintain SRRCS as a secondary system. The vast majority of regional county and municipal police, fire and related services, as well as schools, parks, hospitals, airports, and numerous other federal, state, and local agencies which have "opted in," are primary or secondary users of the system. The City of Isleton uses its VHF system to dispatch out of Solano County, but is a secondary user on 800 MHZ. The City of Galt Police Department has elected to be interoperable with the County San Joaquin Sheriff's Office on 450/460 MHZ. Portable coverage for the Galt/Isleton area can be improved by changing or realigning antennas at Walnut Grove.

Coordination and Participation of Private Industry

A weapon of mass destruction attack could be directed at a private or public facility. Prime targets could be petrochemical, food and agriculture, defense contractors, hydroelectric dams, deep water harbors, light and heavy rail transportation facilities, air cargo airports, just to name a few.

The participation and coordination of private industry in homeland security is critical. This fact has been officially recognized. Specifically, the County ordinances are intended to provide for the "...coordination ...of the emergency functions of this county with...corporations, organizations and persons within Sacramento County..."³⁸ and further expressly provide that the Director of Emergency Operations shall "direct coordination and cooperation between political jurisdictions, private sector, services and staff of county emergency operations office and assist in resolving questions of authority and responsibility that may arise between them." (Emphasis added.)³⁹

The California Emergency Services Act provides in part:

...all emergency services functions of this state be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all

³⁸ Sacramento County Code of Ordinances, section 2.46.010

³⁹ Ibid., section 2.46.110(14)

*manpower, resources, and facilities for dealing with any emergency that may occur. (Emphasis added.)*⁴⁰

Many private entities are members of their own organization, the American Society of Industrial Security, aimed at critical infrastructure security. Another organization of interest is the Association of Sacramento Area Planners. Some efforts have been made to coordinate and cooperate with the private sector in the prevention and mitigation of terrorist activity.

Local homeland security officials have identified and assembled a list of public and private critical infrastructure targets (railroads, port, chemical plants, etc.). Some assessment of vulnerability of certain sites has been accomplished. Federal funding for the Buffer Zone Protection Program (BZPP), including training and funds for site security, is projected for September 2005. The goal is to establish contact and liaison with each critical site, according to direct information relating to threats against determined priorities.

The Talon Program is a joint effort by TEWG and the Sacramento FBI Joint Terrorism Task Force (JTTF) to establish the Threat Advisory Liaison Operations Network website for the sharing of information with all levels of law enforcement, public agencies, and private industry. Members of the advisory system may receive communications of potential threat information necessary for its survival and participation in a well-coordinated response.

Evidence is lacking that there exists today any substantial direct participation of the private sector in government planning, training, prevention, security, preparedness, or response to a terrorist incident.

Public Awareness and Training

The County has not embarked on a substantial effort to engage members of the general public in education or training exercises that may be critical to their survival. Such training would be helpful in providing aid in response to a weapon of mass destruction event. Additionally, this investment would pay off by preventing or minimizing patterns of public behavior which could frustrate the execution of the best conceived plan for effective response to such an event. The Grand Jury recognizes that some plans are well under way to mobilize volunteers, i.e., the Citizens Emergency Response Team, the Volunteers in Partnership, Neighborhood Watch, and the Disaster Medical Reserve Corp. However, there is no evidence that the potentially enormous auxiliary resource the public at large could provide as active partners in the overall plan of response to, mitigation of, and recovery from the effects of a major emergency, has been tapped.

⁴⁰ Gov. Code section 8550

Disaster Service Workers

In addition, a broad scope of public assistance has been authorized by law for many decades. The principal focus of such a program is the public employees at every level of state government, including state, county, municipal, and public district employees. It may be possible that this potential resource within the County of Sacramento, particularly in view of its substantial number of state employees who reside within the Sacramento urban area, may be sufficiently trained to organize neighborhood disaster councils to further disseminate information and to plan for an organized and orderly response which would be compatible with, if not in aid of, the efforts of the professional first responders to a major emergency. The legal framework for such a program does not have to be invented; it already exists. Specifically,

...the protection of the health and safety and preservation of the lives and property of the people of the state from the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and resources is of paramount state importance requiring the responsible efforts of public and private agencies and individual citizens. In furtherance of the exercise of the police power of the state in protection of its citizens and resources, all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their supervisors or by law.⁴¹

For purposes of this chapter the term ‘disaster service worker’ includes all public employees. . . The term ‘public employees’ includes all persons employed by the state or any county, city, city and county, state agency or public district”⁴²

The California Code of Regulations prescribes the various classifications and general duties of disaster service workers, which include the following:

communications worker, community emergency response team member, finance and administrative staff, human services (e.g., food, clothing, shelter, bedding, rehabilitation aid, listing of deceased and missing), fire fighter auxiliary, labor, law enforcement auxiliary, logistics (e.g., procurement, warehousing, transportation), medical and environmental health (e.g., casualty station staff, hospital assistant, environmental sanitation restoration worker), safety assessment inspector (e.g., damage assessor, emergency restoration of facilities and vital services), search and rescue, utility repair and restoration.⁴³

Since public employees are “subject to such disaster services activities as may be assigned to them by their supervisors . . .” the initial focus for education and training would be directed to the supervisors, with the approval of their agency or department directors.

⁴¹ Ibid., section 3100

⁴² Ibid., section 3101

⁴³ California Code of Regulations, title 19, section 2572.1

Finally, the principles and components of the mutual aid system have been incorporated into the Standardized Emergency Management System. Under that system, state agencies are expressly authorized to provide mutual aid, including personnel, equipment, and other available resources, to assist local subdivisions during a local emergency.⁴⁴ During a state of emergency the Governor may direct all agencies of the state government to utilize and employ state personnel, equipment, and facilities for the performance of any and all activities designed to prevent or alleviate actual or threatened damage due to the emergency.⁴⁵

Mass Communication Capabilities with Residents

The City has recently acquired and is in the process of installing an automatic telephone warning system, or "reverse 911" capability for the regional urban area, and which covers the entire County operational area. Reverse 911 systems provide a means of instant communication with the residents to warn of imminent danger arising from, and to provide instruction on responding to a major emergency. Systems of this type can warn residents not to use certain streets and highways which would be necessary for the movement of critical supplies, services and materials. It can also be used to issue an evacuation order or summon citizen volunteers and disaster service workers.

The system may accommodate up to 10,000 10-15 second calls per minute. The calls may be directed to specific areas or zones, and may also specify a particular language if known to the operator. It will indicate which calls were received, whether in person or by a recording device, and which calls were not answered.

Not yet within the capability of the system are cell phones or voice-over-Internet-Protocol. However, the technology for cell phone capability is currently under development.

Findings and Recommendations

I. PLANNING AND COORDINATION

Finding 1. The Board of Supervisors does not appear to be contemplating the development of a unified, comprehensive master plan encompassing all of the critical disciplines essential to the prevention, preparation, response, mitigation, and recovery from a weapon of mass destruction event.

Recommendation 1. The Board of Supervisors must ensure the development of a unified, comprehensive master plan encompassing all of the critical disciplines essential to the prevention, preparation, response, mitigation, and recovery from a weapon of mass destruction event.

⁴⁴ Gov. Code section 8632

⁴⁵ Ibid. section 8628

Finding 2. The County's role as the lead authority for planning and response to a multi-jurisdictional terrorist event has been obscured by the dual planning and operational systems of the county operational area and the city's regional or "urban area" which includes most of the County.

Recommendation 2. The County's role as the lead authority for planning and response to a multi-jurisdictional terrorist event should be expressly defined and reclaimed, or expressly delegated to the City of Sacramento.

Finding 3. The homeland security and UASI approval authorities lack a broad base of representation of critical services other than law enforcement and fire services. This results in the lack of integrated planning and response, and of a more balanced distribution of homeland security funds across the 10 disciplines as envisioned by the Homeland Security grant program.

Recommendation 3. Approval authorities for homeland security and UASI grant applications and fund distributions should now be expanded to include representatives from other critical disciplines in order to assure integrated planning and response as well as a more appropriate allocation of state homeland security program funds during the ensuing phases of the homeland security program.

Finding 4. Neither the County nor the City has effectively integrated the participation of private industry in homeland security.

Recommendation 4. The County or City should take immediate steps to include and coordinate the services of private industry, against which a weapon of mass destruction attack is likely to be directed, in plans for prevention and response to such an event.

Finding 5. No substantial effort has been undertaken to educate and train the public at large on how to respond to a weapon of mass destruction event.

Recommendation 5. The Sacramento County Board of Supervisors must demonstrate a strong policy objective to educate and train the public at large on how to respond to a weapon of mass destruction event in a manner which contributes to rather than impairs the effectiveness of the operational plan.

II. RESPONSE CAPABILITY

Finding 6. A standard operational plan for law enforcement, fire suppression, and emergency medical services that prescribes the roles and responsibilities of responders to a weapon of mass destruction event is still under development.

Recommendation 6. The County Emergency Operations Office and the Sacramento Regional Office of Homeland Security should in collaboration complete the development of a standard operational plan for law enforcement, fire suppression, and

emergency medical services that describes the roles and responsibilities of responders to a weapon of mass destruction event.

Finding 7. The County is significantly short of the federal benchmark for “surge capacity” hospital beds and may not have adequate treatment capability in the event of a large scale medical emergency.

Recommendation 7. The County Health Officer should determine the adequacy of the County’s existing “surge capacity” hospital beds and develop a plan to provide adequate facilities for a large scale event.

Finding 8. There is no written plan for transporting emergency medical supplies which have arrived at a location designated by the State from national repositories to the sites where they are needed.

Recommendation 8. The County Health Officer should formalize a written plan with the Sacramento Regional Office of Homeland Security and with the California Highway Patrol to reach an accord on how emergency medical supplies will be transported when they arrive here from a national repository.

Finding 9. The City has recently acquired a “reverse 9-1-1” automatic telephone warning system as a means of instant communication with residents of the regional urban area, concerning imminent danger arising from a weapon of mass destruction event, along with appropriate directives and instructions. The County has not yet demonstrated a similar capability for the non urban area of the County.

Recommendation 9. The City must complete the installation of an automatic telephone warning system and extend its capability to cell phones and voice-over-Internet-Protocol as the technology becomes available. The County must assure that the system is operable throughout the operational area.

Finding 10. The compatibility of communication technology between law enforcement, fire suppression, and emergency medical, and other related services has been extended to a wide array of state and local agencies in the region. Almost all agencies that need to communicate during an emergency have adopted a common system. However, adjustments to the antennas in Walnut Grove are needed to improve portable coverage for the Galt/Isleton area which is not fully aligned with SRRCS.

Recommendation 10. The current common communications system should be made fully operational, and the County should make the necessary adjustments to the antennas in Walnut Grove to improve portable coverage for the Galt/Isleton area, and continue to seek full alignment of that area with SRRCS.

Finding 11. No substantial effort has been undertaken to assess the capability of mobilizing the region’s public employees as disaster service workers.

Recommendation 11. The County's operational plan should identify how public employees could serve as disaster service workers in accordance with the existing legal framework. A process should be established to rapidly mobilize these workers during an emergency.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2005, from:

- **Sacramento County Sheriff's Department -
Finding and Recommendation 6.**
- **Sacramento City Police Department -
Finding and Recommendation 6.**
- **Public Health Officer –
Findings and Recommendations 7, 8.**
- **Sacramento County Office of Communications and Information
Technology – Finding and Recommendation 10.**
- **Sacramento City Council or Mayor –
Findings and Recommendations 2, 3, 4, 9, 11.**
- **Sacramento County Board of Supervisors –
Findings and Recommendations 1, 2, 3, 4, 5, 9, 11.**

Response Requirements

| | | Board of Supervisors | County Information Officer | Sheriff | County Health Officer | Chief of Police | City Council |
|------------------------------------|---------------------------------|-----------------------------|-----------------------------------|----------------|------------------------------|------------------------|---------------------|
| Planning & Coordination | | | | | | | |
| | Finding 1 Recommendation 1 | XX | | | | | |
| | Finding 2 Recommendation 2 | XX | | | | | XX |
| | Finding 3 Recommendation 3 | XX | | | | | XX |
| | Finding 4 Recommendation 4 | XX | | | | | XX |
| | Finding 5 Recommendation 5 | XX | | | | | |
| Response Capability | | | | | | | |
| | Finding 6 Recommendation 6 | | | XX | | XX | |
| | Finding 7 Recommendation 7 | | | | XX | | |
| | Finding 8 Recommendation 8 | | | | XX | | |
| | Finding 9 Recommendation 9 | XX | | | | | XX |
| | Finding 10 Recommendation 10 | | XX | | | | |
| | Finding 11 Recommendation 11 | XX | | | | | XX |

TABLE OF ACRONYMS

| | |
|--------|---|
| BZPP | Buffer Zone Protection Program |
| BSIR | Biannual Strategy Implementation Report |
| CERT | Citizens' Emergency Response Team |
| DHHS | (County) Department of Health and Human Services |
| DHS | (Federal) Department of Homeland Security |
| EMD | (County) Environmental Management Department |
| EMS | Emergency Medical Services |
| EPA | (Federal) Environmental Protection Agency |
| FEMA | Federal Emergency Management Agency |
| HazMat | Hazardous materials |
| HSGP | Homeland Security Grant Program |
| ICS | Incident Command System |
| ISIP | Initial Strategy Implementation Plan |
| JTTF | Joint Terrorism Task Force |
| LETPP | Law Enforcement Terrorist Prevention Program |
| MACS | Multi-agency Coordination System |
| MHZ | Megahertz |
| NIMS | National Incident Management System |
| ODP | Office of Domestic Preparedness |
| OESHS | (Sacramento) Office of Emergency Services and Homeland Security |
| RTTAC | Regional Terrorist Threat Assessment Center |
| SEMS | Standardized Emergency Management System |
| SOP | Standard Operating Procedure |
| SROHS | Sacramento Regional Office of Homeland Security |
| SRRCS | Sacramento Regional Radio Communications System |
| SHSP | State Homeland Security Program |
| TEWG | Terrorist Early Warning Group |
| UASI | Urban Area Security Initiative |
| VHF | Very high frequency |
| VIPS | Volunteers in Police Service |

GLOSSARY

Agency. A department of a political entity, such as a city fire department

Approval authority. A designated body of public officials authorized to approve the receipt and distribution of federal grant funds within the parameters of federal grant specifications.

Automatic telephone warning system. A “reverse 9-1-1” telephonic capability by which the county may communicate warnings and instructions to its residents.

Biological “level A” agent. A biological weapon of mass destruction consisting of smallpox, plague, botulism, anthrax, tularemia, and biohemorrhagic agents.

Core agency. A jurisdiction designated as the authorized coordinator and administrator of an Urban Area Security Initiative grant for an urban area.

Disaster service worker. All public employees, including those employed by the state or any county, city, state agency or public district.

Emergency. The actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons or property within a political entity which are or are likely to be beyond the control of the entity and which may require the combined forces of other political entities to combat.

Emergency plan. Those official and approved documents which describe the principles and methods to be applied in carrying out emergency operations or rendering mutual aid during emergencies.

Hazardous materials. Regulated hazardous chemical substances.

Homeland security grant program. The program of federal grants to operational areas for prevention, preparation, response, and mitigation of a terrorist event.

Incident. An occurrence or event, either human caused or by natural phenomena, that requires action by emergency response personnel to prevent or minimize loss of life or damage to property and/or natural resources.

Incident command system. The nationally used standardized on scene emergency management concept specifically designed to allow its users to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents without being hindered by jurisdictional boundaries.

Jurisdiction. A self governing political entity consisting of a county, or existing within a county, e.g., a municipality or district.

Local emergency. The duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county or city, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat.

Mutual aid operational area. A county and all political subdivisions within the county area; during a local emergency, political subdivisions have full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans, or agreements.

Mutual aid region. An area of the state consisting of two or more operational areas; during a state of emergency, aid may be rendered to an affected city or county outside of an operational area in accordance with approved emergency plans.

National Incident Management System. A standardized management system that creates a unified structure for federal, state, and local lines of government for incident response.

Operational area. For purposes of the Homeland Security Grant Program, and of the mutual aid system, the geographical area defined as a county.

Sacramento Regional Radio Communications System. An 800 megahertz two-way mobile radio network for compatible communication between emergency services agencies and related facilities.

Standardized Emergency Management System. A standardized management system that creates an integrated organizational structure for response to an incident involving multiple jurisdictions or multiple agencies.

Standard operational plan. A plan which prescribes the standards of operation in a weapon of mass destruction event, including the roles and responsibilities of law enforcement, fire suppression, and emergency management services in response to such an event, as well as the preventive, preparative, and restorative aspects of such an event.

State of emergency. The duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state, other than a state of war emergency, which by reason of their magnitude are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county or city and require the combined forces of a mutual aid region or regions to combat.

Talon program. A joint effort by Terrorist Early Warning Group and the Sacramento FBI Joint Terrorism Task Force to establish a website for the sharing of information with all levels of law enforcement, public agencies, and private industry.

Terrorist event. An emergency caused by a terrorist, foreign or domestic, involving a weapon of mass destruction.

Urban Area Security Initiative grant. A federal grant for an urban area for purposes of preparation, including training and equipment, for a terrorist attack.

Urban Area Security Initiative group. A group of jurisdictions each of which share some part of its territory to form a region known as an urban area.

Urban area. For purposes of the Urban Area Security Initiative grants, a specified geographical region, without regard to jurisdictional boundaries, characterized by population density where the risk of terrorist activity is deemed more prominent.

Weapon of mass destruction. A weapon consisting of chemical, nuclear, biological, or radiological or other explosives.

**Elk Grove City Council and
Conflict of Interest Issues Report
(Released February 28, 2005)**

and

**Grand Jury Comments on the
Responses including Attachment
with Affected Agencies' Responses**



Sacramento County Grand Jury Report

Elk Grove City Council and Conflict of Interest Issues

2004-2005 Sacramento County Grand Jury

Elk Grove City Council Failed to Comply with Conflict of Interest Provisions of State Law When Using the Sacramento Sheriff's Department to Provide Law Enforcement Services

Issues

Did Elk Grove City Council members James Cooper and/or Michael Leary, who are also employees of the Sacramento Sheriff's Department, violate the conflict of interest provisions of state law with respect to the Agreement for Law Enforcement Services between the Sheriff's Department and the City of Elk Grove? Did other members of the Council, the City Manager, the City Attorney, the management of the Sheriff's Department and/or the County of Sacramento meet their responsibilities to ensure that conflict of interest requirements were followed? Did the parties involved conduct themselves in a manner that served the citizens of Elk Grove and the County?

Reason for the Investigation

After its formation in 2000 the City of Elk Grove (Elk Grove or the City) contracted with the Sacramento Sheriff's Department (Sheriff's Department)¹ to provide law enforcement services. The contract was approved in November 2001 and has been augmented several times. Two members of the Elk Grove City Council (the Council), James Cooper and Michael Leary, are also a captain and a sergeant, respectively, in the Sheriff's Department.² Conflict of interest provisions of state law prohibit these Council members from influencing, participating in the making, or voting on any aspect of a contract between the City and the department in which they are employed. The Grand Jury received complaints and conducted an in-depth investigation into questionable Council member actions involving the Agreement for Law Enforcement Services between Elk Grove and the Sheriff's Department. These questionable actions include:

- Whether Sheriff's deputies who are Council members violated state law by voting on, participating in and/or influencing the law enforcement services agreement
- Whether other Council members and other City officials did enough to protect the interests of the City against inappropriate conduct by these deputies
- Whether the Sheriff's Department met its responsibility not to use these deputies to influence the contract and/or its administration, and
- Whether the County Supervisors and County Counsel met their responsibility to ensure that the contract was approved and administered in accordance with state laws.

¹ The contract, called the Agreement for Law Enforcement Services, is legally between Elk Grove and the County of Sacramento, but is negotiated and administered by the Sheriff's Department.

² Mr. Cooper was a Lieutenant at the time of his election in 2000.

In its investigation the Grand Jury reviewed the actions of: Mr. Cooper and Mr. Leary, the other three members of the Council, the City Manager, the City Attorney, the management of the Sheriff's Department, the Sacramento County Counsel and the Sacramento County Board of Supervisors.

Method of Investigation

Members of the Grand Jury³ utilized sworn testimony from:

- The members of the Elk Grove City Council, including Mr. Cooper and Mr. Leary
- The Elk Grove City Manager, Assistant City Manager and Chief of Police
- The Elk Grove City Attorney
- The management of the Sheriff's Department

Members of the Grand Jury utilized information gained from interviews with:

- A member of the Sacramento County Board of Supervisors
- The Sacramento County Counsel
- The Sacramento County Chief Executive and Chief Financial Officers

The Grand Jury reviewed and utilized the following materials in preparing this report:

- Twelve legal analyses related to how state conflict of interest statutes affect Elk Grove officials who were also employees of the Sheriff's Department
- A report prepared by the law firm of Foley & Lardner, which assessed the Council's compliance with the conflict of interest requirements of state law
- The City's Agreement for Law Enforcement Services with the Sheriff's Department
- Materials prepared by the Sacramento County District Attorney's Office that evaluated Council members' compliance with the conflict of interest requirements
- Minutes and other records of the meetings of the Council
- A videotape of the December 3, 2003 meeting of the Council
- Information provided by the Sheriff's Department

The Grand Jury also received legal advice and analysis of evidence from the Sacramento County District Attorney's (District Attorney) Office.

³ Two members of the Grand Jury, Anthony Da Vigo and Norio Yamada, recused themselves from this matter, and did not participate in the investigation, deliberation or preparation of this report in any manner.

Background and Facts

Background – General

The City of Elk Grove was created by a vote of its residents on March 7, 2000. The City was incorporated effective July 1, 2000. Elected to the five member Council were Daniel Briggs, James Cooper, Michael Leary, Sophia Scherman and Richard Soares. Mr. Cooper was appointed by the Council to be Mayor. Mr. Cooper was a Lieutenant in the Sheriff's Department and Mr. Leary was a Sergeant in the Sheriff's Department.

The City hired David Jinkens as its first City Manager. He served until September 2001, when the City then hired John Danielson, the current City Manager. The new city also established a contract with the law firm of Kronick, Moskovitz, Tiedemann and Girard (Kronick) for legal services. That firm designated Anthony Manzanetti as the lead attorney to provide those services. Mr. Manzanetti served as the contracted City Attorney until the City hired him on September 15, 2003 as the "in-house" City Attorney.

By law the Sheriff's Department is required to provide the preexisting level of law enforcement services to a newly incorporated city for a period of one year after incorporation, and is reimbursed by the city for the cost of these services. After the first year the new city must decide how to best provide for ongoing law enforcement services. The Council began exploring this question at its initial meeting in July 2000 and subsequently decided to contract with the Sheriff's Department. An Agreement for Law Enforcement Services was entered into with Sacramento County in November 2001.

Problems Because Two Council Members were also Sheriff's Deputies

Because two members of the Council were employees of the Sheriff's Department, it was recognized that the Council would have to take the utmost care in how it handled matters relating to law enforcement services. The Sheriff's Department was a contender for the ongoing provision of law enforcement services. State law severely limits the involvement of any City employee or Council member in any contract with another department that also employs that person. The penalties for violation of these provisions are severe for the individual, the City and the contracting agency. Outlined below are the conflict of interest requirements.

Conflict of Interest Requirements Relating to Contracted Services between Elk Grove and the Sheriff's Department

Because the City retained the Sheriff's Department to provide law enforcement services, the conflict of interest provisions of Government Code Section 1090 (section 1090) came into play.⁴ Briefly, section 1090 prohibits conflicts affecting the making of contracts.

⁴ Government Code section 87100 also deals with conflict of interest but in a significantly different situation. Here a violation occurs if the official has a "personal financial interest" and attempts to use his or

City officers or employees are prohibited from having a financial interest in any contract made by them in their official capacity, or by any governmental body of which they are members.⁵ The prohibitions apply when a contract is “made” or signed and also during its “making,” which includes preliminary discussions, negotiations, plan preparation, and bid solicitation.

There are two main purposes for conflict of interest requirements. The first is to prevent the prospect of personal financial gain from influencing the decisions of government officials. The second is to prevent conflicts more related to an official’s loyalty or allegiance. Both of these are of concern in the Elk Grove situation.

Generally section 1090 would prohibit the City from contracting with an entity in which one of its Council members has a financial interest. However, under section 1091.5 there is a provision that allows the City to legally contract with Sheriff’s Department under very narrow circumstances, when one or more members of the Council is also an employee of the Sheriff’s Department. For such a contract to be permissible, all of the following conditions must be met:

- The Council members have only a “remote interest” in the contract, such as salary
- The Council members disclose their interest on the record
- The Council members do not vote on the contract, and
- The Council members do not attempt to influence others on the contract.

The penalties for violating sections 1090, et seq. can be severe. A willful violation is a felony punishable by a fine and/or imprisonment in state prison, and the offending official is forever disqualified from holding any public office in the State of California. Any contract established in violation of section 1090 could be found to be void and any monies paid for such services could be recoverable by the City of Elk Grove.

Advice Provided to Council Members on Conflict of Interest Requirements

All Council members received extensive information regarding the conflict of interest limitations. At least 12 written legal opinions were provided to the Council members over a period of three years. Four of these opinions were provided prior to the first Council meeting in July 2000. Since the greatest concern was over potential conflicts involving Mr. Cooper and Mr. Leary, the legal opinions were typically both delivered to them and discussed with them.

her position to influence a government decision. No contract need be involved. Based on the evidence and the advice provided by the Sacramento County District Attorney’s Office, the Grand Jury has concluded that problems related to complying with this provision do not appear to apply to the Elk Grove situation.⁵ One court opinion indicates the purpose of the section 1090 prohibition “is to remove or limit the possibility of any personal influence, either directly or indirectly, which might bear on an official’s decision...” It is also intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” Further “...Conflict-of-interest statutes are concerned with what might have happened, rather than merely what actually happened; they are aimed at eliminating temptation, avoiding appearances of impropriety and assuring governmental officers’ undivided and uncompromised allegiance.”

A. Written Advice

This issue was first addressed on March 8, 2000, one day after the incorporation election. On that date County Counsel Robert Ryan sent a memo regarding Elk Grove contracting for law enforcement services⁶ to the Sacramento County Board of Supervisors and to Sheriff Lou Blanas. The Ryan opinion concluded that should either Mr. Cooper or Mr. Leary participate, directly or indirectly, in contracting with the County for law enforcement services, such a contract would be void and any monies paid for such services could be recoverable by the City. It warned that the prohibitions of section 1090 are applicable to both direct and indirect participation. That is, not only are affected officials prohibited from voting on the contract, they also are not allowed to attempt to influence the vote of others on the contract.

A series of 11 additional opinions followed from May 2000 to July 2003. All dealt with various aspects of the conflict of interest laws. They all support the original opinion in the Ryan memo.⁷ A listing of these opinions is provided in Table 1. Below are several examples:

- *May 9, 2000 memo to Mayor-Elect and Members Elect of the Council and Anthony Manzanetti, City Attorney, from Michael Dean of Kronick; Subject: Conflict of Interest Under Government Code 1090 Arising Out of Contracting for Law Enforcement Services with the County of Sacramento.* Mr. Cooper and Mr. Leary requested this opinion in response to Mr. Ryan's March 8 opinion. Mr. Dean's opinion was that they could not participate in any contract with the Sheriff's Department and if they did participate that the contract would be void.
- *May 15, 2000 memo to Assemblyman Anthony Pescetti from Ben Dale, Deputy Legislative Counsel, Subject: Conflict of Interest: Council: Sheriff's Lieutenant or Sergeant.* Mr. Cooper and Mr. Leary also requested this opinion in response to Mr. Ryan's March 8 opinion. Again, this memo is consistent with Mr. Ryan's opinion.
- *October 1, 2002 memo to Terry Fitzwater, Elk Grove Assistant City Manager from Harriet Steiner of McDonough, Holland and Allen law firm, Subject: Potential Conflicts of Interest Related to Sheriff's Contract.* This opinion was an independent request from the Elk Grove City Manager. The memo supports prior opinions.

⁶ This opinion is included in this report as Attachment 1.

⁷ In several cases the ensuing memos made it clear that the conflict of interest limitations are more encompassing than those expressed in the Ryan memo.

Table 1 – Written Opinions Provided to Elk Grove City Council Members

1. March 8, 2000 memo from County Counsel Robert Ryan to the Board of Supervisors and Sheriff Lou Blanas
2. May 9, 2000 memo from Michael Dean of Kronick: Requested by Mr. Cooper and Mr. Leary in response to County Counsel's memo
3. May 15, 2000 memo from the Legislative Counsel to Assemblyman Anthony Pescetti: Requested by Mr. Cooper and Mr. Leary
4. May 17, 2000 memo from Michael Dean of Kronick regarding Mr. Cooper and Mr. Leary's prohibition from participation in decisions regarding contracting for services with the Sheriff's Department
5. July 18, 2000 letter from County Counsel to Rodney Lilyquist, Senior Assistant Attorney General on the conflict of interest issue
6. August 2, 2000 letter from Michael Dean of Kronick to the Council regarding Mr. Cooper and Mr. Leary participating in public forums, hearings and workshops related to law enforcement issues
7. June 20, 2001 memo from Mr. Manzanetti and Mr. Dean regarding Police Chief Ed Flint's participation in the Law Enforcement Service Plan Development
8. October 1, 2001 memo from Harriet Steiner of McDonough to Terry Fitzwater. This opinion came as a result of an independent request from Mr. Fitzwater and Mr. John Danielson, the City Manager
9. December 20, 2001 letter from Mr. Manzanetti to Mr. Danielson regarding prohibitions on Mr. Cooper and Mr. Leary participating in a vote on a grant program for additional law enforcement funding
10. February 19, 2003 memo from Kronick to the Council regarding Mr. Cooper and Mr. Leary and conflict of interest
11. May 16, 2003 memo from Kronick to the Council regarding Mr. Cooper and Mr. Leary participating in discussion about creating new positions in the police department
12. July 16, 2003 memo from Kronick to the Council regarding newly adopted legislation on how to disclose conflict of interest issues at a public meeting

B. Verbal Advice

In addition to written guidance, verbal advice and warnings were provided. The written opinions were discussed and explained to affected Council members. When potential specific conflict of interest situations were identified, the affected Council members were advised. In general, the City Attorney would identify items which involved potential conflicts, and would advise members about conflicts prior to the Council meeting. When it was agreed that a conflict existed and a recusal was required, the City Attorney would ask the affected Council member if they would make the recusal statement, or if they wanted a statement to be made by the City Attorney.⁸ The City Attorney advised the Council member that the statement of conflict needed to be made each time a conflict of interest issue came up, and that it was not sufficient to simply abstain from the vote.

Development of Agreement for Law Enforcement Services with the Sheriff's Department; Subsequent Modifications

For the first year of its existence the newly incorporated City received, by law, the same level of law enforcement services that it had prior to incorporation. These services were provided by the Sheriff's Department, but paid for by the City at a cost of approximately \$7.7 million for fiscal year 2000-2001. This process allowed the City time to decide how to best provide law enforcement services on an ongoing basis.

The first reference to establishing an ongoing contract for law enforcement services was at the initial meeting of the Council on July 19, 2000. The City Manager was directed to provide information regarding the City's expectations of its law enforcement provider, to identify who was capable of providing those kinds of services, and to prepare criteria for a Request for Proposal.

The City ultimately decided to contract with the Sheriff's Department for law enforcement services. This contract was approved in November 2001. The cost of services for the fiscal year 2001-02 was approximately \$9.9 million. The contract was signed by Richard Soares, Council member representing Elk Grove⁹ and Roger Niello, Chairperson, Sacramento County Board of Supervisors.

After the contract went into effect, there were several amendments, including the annual service plans.¹⁰ These modifications steadily increased the cost of the contract, which

⁸ For example, Mr. Manzanetti made the following statement on the record at the first Council meeting on July 19, 2000. "Mayor Cooper and Council Member Leary disclosed that they are both employed by the County of Sacramento Sheriff's Department. They understand that financial interests under the Conflict of Interest Laws in the Government Code section 1090 et seq. disqualifies each of them from participating in, directly or indirectly, the making of the contract for law enforcement services. For this reason, Mayor Cooper has turned over control of the meeting to Mayor Pro Tempore Soares and both the Mayor and Council Member Leary will not be participating in the discussion on this item, 'Discussion and Possible Action/Creation of Council Ad Hoc Committee on Law Enforcement'."

⁹ Mayor Cooper recused himself from this item, and Council member Soares signed for the City Council.

¹⁰ The service plan is actually a contract extension and an amendment to the original contract. Legally it is just as much a contract as the original Agreement for Law Enforcement Services

rose to \$11.3 million in fiscal year 2002-2003, \$14.4 million in fiscal year 2003-2004 and \$16.9 million in fiscal year 2004-2005.

According to the original agreement, the Service Plan for each fiscal year should have been independently adopted by the Council and approved in writing by the Sheriff and County Executive. However, for three fiscal years the annual municipal budget simply included funds for expanded police services that would be included in the Service Plan, and no independent action was taken by the Council to approve the Service Plan. It was only on June 2, 2004, that the Council for the first time adopted the municipal budget for fiscal year 2004-2005 with the Service Plan adopted in a separate vote as required in the original agreement.

Violations of Conflict of Interest Requirements

As was noted previously, City and County officials were well aware that conflict of interest concerns had frequently arisen due to Mr. Cooper's and Mr. Leary's positions both as Council members and as Sheriff's Department employees. In early 2004, as controversy over conflict of interest issues intensified, the City hired the law firm of Foley & Lardner to investigate this situation. This investigation examined the history of Council actions related to the Agreement for Law Enforcement Services to determine what factors influenced the contractual decisions and to assess if conflict of interest laws were followed. Its report (the Foley report) identified "numerous unmistakable violations of Government Code 1090."

An analysis of the Council's compliance with conflict of interest requirements was also prepared by the District Attorney's Office during this investigation. That assessment also identified numerous violations of section 1090.

Based on the evaluations referenced above, and on other evidence and sworn testimony, the Grand Jury identified 20 separate meetings where the Council considered some matter related to law enforcement services in a manner that was not consistent with the conflict of interest requirements of section 1090. The first of these meetings occurred on June 20, 2000, and the last on May 19, 2004. Council member Cooper voted on or participated in a matter related to police services during all 20 of the meetings. Council member Leary voted or participated in a matter related to police services during 16 of the 20 meetings.

This review also revealed numerous inconsistencies relative to how Mr. Cooper and Mr. Leary adhered to conflict of interest requirements. Many times they participated in actions concerning a police matter related to the contract, but sometimes they did not. Both the Foley Report and the District Attorney's Office analysis noted eight occasions between June 2000 and June 2004 when Mr. Cooper and/or Mr. Leary abstained from votes when issues related to law enforcement services were considered. Sometimes when they did not vote, a recusal statement was made. More often than not, they simply refrained from voting. Three examples of their participation are provided as follows:

August 1, 2001 - Discussion of Law Enforcement Agreement Service Plan - The Agenda included Action Item No. 7.3: Consideration of the Law Enforcement “Service Plan.” At that point, the new contract with the Sheriff’s Department had not been finalized. According to testimony Mr. Cooper and Mr. Leary were advised to not participate on this agenda item.¹¹ Both Mr. Cooper and Mr. Leary disregarded that advice and participated and voted.

June 5, 2002 - Approval of Municipal Budget for 2002-03 - The Municipal Budget for 2002-03 contained the funding for the annual Service Plan for the Law Enforcement Services agreement. This was the only action taken that year by the Council to consider the Service Plan. By participating in the discussion and voting on the overall budget Mr. Cooper and Mr. Leary voted on a contract amendment.

December 3, 2003 - Meeting Regarding the Police Services Contract - The meeting was to discuss the hiring of a consultant to evaluate law enforcement services provided by the Sheriff’s Department to Elk Grove. This evaluation could include an assessment of alternative methods for the provision of law enforcement services. Mr. Cooper announced that he and Mr. Leary would recuse themselves from the discussion and leave the dais due to their conflict of interest as employees of the Sheriff’s Department.¹² Both Mr. Cooper and Mr. Leary then proceeded to the public podium to address the Council concerning the study.¹³

Based on the testimony presented to the Grand Jury, it is clear that both Mr. Cooper and Mr. Leary were advised that they should not address the Council on this issue.^{14,15} Mr. Cooper’s and Mr. Leary’s testimony to the Council urged the continued support of the Law Enforcement Service Agreement with the Sheriff’s Department, and was clearly aimed at influencing the Council to maintain that agreement.

¹¹ Testimony indicated that Mr. Cooper insisted he could raise the issues because it wasn’t really the contract. Mr. Cooper’s view was that the contract was not in place; this was just the service plan, on which he could vote. However, Mr. Cooper was advised that the service plan is part of the contract, and would become an amendment to the contract.

¹² Newly amended regulations of the Fair Political Practices Commission outlined how elected officials could disclose conflicts of interest and speak during a meeting as a member of the public regarding “personal financial interests”. A July 16, 2003 memo from Mr. Manzanetti specifically outlined when Council members could speak as a member of the public. This memo concluded that the circumstances under which a Council member might be able to testify were limited to circumstances where a matter in which they held a personal financial interest, such as property, was under discussion. These circumstances did not apply to the matter under consideration at the December 3 meeting.

¹³ Mr. Leary started his comments with a thank you to Mr. Manzanetti for allowing him to speak under new provisions of the conflict of interest law. Mr. Manzanetti interrupted and made a statement that was ambiguous about the ability of Mr. Leary to testify. This statement was not consistent with his pre-meeting advice.

¹⁴ Testimony indicated that Mr. Cooper and Mr. Leary were advised that they could not participate, could not attempt to influence the contract, and that testifying could have serious criminal implications.

¹⁵ Testimony indicated that Mr. Cooper and Mr. Leary believed that Mr. Manzanetti’s interpretation was too narrow. They contended they were permitted to address the Council. They viewed Mr. Manzanetti’s advice as just an opinion from another lawyer who was trying to prevent them from participating in a matter, law enforcement, which they knew best.

Table 2 presents a list of 25 Council meetings between June 2001 and June 2004 when law enforcement services matters were considered a total of 28 times.¹⁶ The table indicates how Council members Cooper and Leary participated in each of these matters. It was prepared using the Foley Report, information prepared by the District Attorney's Office and the other evidence available to the Grand Jury. The table identifies which actions of Mr. Cooper and/or Mr. Leary were judged by the Grand Jury to be inconsistent with section 1090 requirements.

Elk Grove and County Officials Failed to Ensure that Conflict of Interest Requirements Were Followed

A. Council Members Cooper and Leary

1. Failure to Accept the Limitations Imposed by Law Regarding Conflict of Interest

Upon election to office, in March 2000, the members of the new Council, including Mr. Cooper and Mr. Leary, received a training manual from the Kronick law firm. This manual contained specific information about conflict of interest issues. Additionally, Mr. Leary had attended training seminars for public officials in Monterey, CA and New York.

In addition to the training manual and the training seminars, 12 separate legal memos regarding the conflict of interest issue were sent to the Council. According to testimony, upon being informed of the interpretation contained in each successive opinion, both Mr. Cooper and Mr. Leary repeatedly disagreed with the interpretation of the law and requested further legal opinions. They both indicated to Mr. Manzanetti that they were seeking their own legal advice from other sources.

Despite the importance of this issue, both Mr. Cooper and Mr. Leary were vague in their recollection about the content of the memos. They indicated that they had an incomplete personal understanding of the conflict of interest requirements and did not, until recently, fully understand the full consequences of violations of the law.

2. Failure to Recuse Themselves

In Council meetings between June 2001 and May 2004, Mr. Cooper voted on or participated in issues directly or indirectly related to the law enforcement contract with the Sheriff's Department a total of 20 times. During this same period, Mr. Leary voted on or participated in issues related directly or indirectly to the law enforcement contract with the Sheriff's Department a total of 16 times. Analyses in the Foley Report and by

¹⁶ On three occasions more than one item related to police services was considered at one meeting.

Table 2 - Council Actions Affecting the Law Enforcement Agreement¹⁷

| | |
|---------------|--|
| June 20, 2001 | Approved 90 Day Extension of Law Enforcement Agreement Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 Authorized staff to prepare Police Services Plan Mr. Cooper and Mr. Leary abstained, vote was 3-0 |
| July 11, 2001 | Adopted Municipal Budget for 2001-02 (includes Police Services Plan) Mr. Cooper voted to approve . Mr. Leary absent, vote was 4-0 |
| Aug. 1, 2001 | Approval of Police Services Plan Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 |
| Sept 5, 2001 | Approved clerical staffing increase to Police Services Plan Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 |
| Oct. 3, 2001 | Approved towing service agreement Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 |
| Jan. 9, 2002 | Approved grant for police staffing increase Mr. Cooper and Mr. Leary abstained, vote was 3-0 |
| Apr. 10, 2002 | Accepted grant funds for staffing increase for police services Mr. Cooper voted to approve , Mr. Leary absent, vote was 4-0 |
| June 5, 2002 | Adopted Municipal Budget for 2002-03 (includes Police Services Plan) Mr. Cooper and Mr. Leary voted to approve , vote was 3-0 |
| Aug. 7, 2002 | Approved staffing increase to Police Services Plan Mr. Cooper and Mr. Leary abstained, vote was 2-0 |
| Oct 16, 2002 | Approved application for DUI/Traffic grant Mr. Cooper and Mr. Leary abstained, vote was 3-0 |
| Jan. 15, 2003 | Vote concerning levying special tax for police services Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 Approved staffing increase to Police Services plan Mr. Cooper and Mr. Leary abstained, vote was 3-0 |

¹⁷ Actions that are inconsistent with the requirements of Section 1090, based the Grand Jury's review of the evidence, the analysis in the Foley Report and the assessment of the District Attorney's Office, are shown in **Bold**. Those listed in bold only include cases where Mr. Cooper and/or Mr. Leary voted or participated. They do not include cases where section 1090 may have been violated solely due to a failure to properly announce a recusal from the proceeding.

Table 2 -- Continued

- Mar. 5, 2003 Authority to use State funds to purchase police equipment
Mr. Cooper and Mr. Leary voted to approve, vote was 4-0
- Apr. 2, 2003 Adopted ordinance levying special tax for police services
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- May 21, 2003 Amended Police Services Plan, adding staff
Mr. Cooper and Mr. Leary abstained, vote was 3-0
- June 4, 2003 Adopted Municipal Budget for 2003-04 (including Police Services Plan)
Mr. Cooper and Mr. Leary voted to approve, vote was 4-0
- Oct. 15, 2003 Approved use of grant funds for police services
Mr. Cooper voted to approve, Mr. Leary absent, vote was 3-0
- Nov. 5, 2003 Adopted ordinance levying special tax to finance police services
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- Nov. 19, 2003 Second reading – ordinance levying special tax for police services
Mr. Cooper and Mr. Leary approved by consent
Amended Police Services Plan to increase staffing
Mr. Cooper and Mr. Leary abstained, vote was 3-0
- Dec. 3, 2003 Discussion of evaluation of law enforcement contract with Sheriff’s Dept.
Mr. Cooper and Mr. Leary testified to Council in support of contract
- Jan. 7, 2004 Authorized contract to evaluate police services provided by Sheriff’s Dept.
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- Mar. 3, 2004 Adopted resolution to annex territory to levy tax for police services
Mr. Cooper and Mr. Leary approved by consent
- Apr. 7, 2004 Adopted ordinance levying special tax for Police Services
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- Apr. 21, 2004 Second reading – adopted ordinance levying special tax for police services
Mr. Cooper approved by consent, Mr. Leary absent
- May 19, 2004 Adopted resolution to annex territory to levy tax for police services
Mr. Cooper and Mr. Leary approved by consent
- June 2, 2004 Adopted Police Services Budget for 2004-2005
Mr. Cooper and Mr. Leary recused themselves, vote was 3-0

the District Attorney's Office concluded that most, if not all, of the votes were not allowed under conflict of interest laws, specifically the provisions of section 1090. In a number of other meetings when issues directly or indirectly related to law enforcement contract with the Sheriff's Department were discussed, Mr. Cooper and Mr. Leary abstained from voting. However, in many of these instances they failed to properly note the reason for their abstention.

Mr. Cooper and Mr. Leary contend that they always followed the advice of the City Attorney. They claimed that any failure to follow the law was not willful on their part, but rather the result of inadequate legal advice.¹⁸ However, testimony by several parties indicated there were multiple times when Mr. Cooper and Mr. Leary were clearly advised before a meeting that they should not participate in a matter that was before the Council, and yet they voted or otherwise participated. These improper actions occurred despite the numerous memos and discussions that advised them about conflict of interest limitations.

In summary, Mr. Cooper and Mr. Leary exhibited a pattern of knowingly and willfully disregarding their responsibility to abide by the conflict of interest provisions of state law. The evidence and sworn testimony received by the Grand Jury does not support any claim that their failure to follow the law resulted from either erroneous legal advice or an incomplete understanding of the law.

3. Attempts to Influence the Agreement for Law Enforcement Services

In addition to improper votes at Council meetings, there were numerous instances of efforts by Mr. Cooper or Mr. Leary to influence other Council members or City staff on matters related to the Agreement for Law Enforcement Services.

One clear example occurred at the December 3, 2003 Council meeting. Both Mr. Cooper and Mr. Leary recused themselves from voting, left the Council dais and spoke from the public podium to the Council on an issue regarding a study of the law enforcement contract.

At times Mr. Cooper and Mr. Leary conveyed their support for the Agreement for Law Enforcement Services to City staff. On another occasion, Mr. Leary met with a fellow Council member at a local restaurant and discussed issues related to the law enforcement contract. On other occasions during Council meetings their actions were interpreted by fellow Council members as intimidating¹⁹ and as an attempt to influence the deliberations.²⁰

¹⁸ However, as noted in the Foley Report, the courts have ruled that the fact that an office holder has sought, and followed, the specific advice of the city attorney will not relieve him or her of personal liability for the violation.

¹⁹ The testimony revealed that as the debate over the police study intensified, Mr. Cooper began to wear his gun to Council meetings, which was seen as an effort to intimidate the Council into keeping the agreement with the Sheriff's Department.

²⁰ One member testified that Mr. Cooper and Mr. Leary would banter with each other about the Law Enforcement Services Agreement across other Council members seated between them, and that they rapped impatiently on the dais in response to comments they apparently regarded as adverse to their support of the

A final example is the participation of Mr. Cooper and Mr. Leary in the controversy over the consideration of establishing a city police department. In late September 2003 the management of the Sheriff's Department became concerned about the potential formation of an independent police department by the City. These concerns occurred after Captain Ed Flint, the City's Chief of Police (an employee of the Sheriff's Department) informed the Sheriff's Department that the City was contemplating a study of the current law enforcement services. This was seen as a possible first step in the formation of a city police department.

On the evening of September 24, Mr. Cooper and Mr. Leary confronted Chief Flint and the City Manager regarding the same issue. The testimony indicated that the members of the management of the Sheriff's Department met and spoke with Mr. Leary before and after the confrontation with Chief Flint. Mr. Cooper and Mr. Leary first met with Chief Flint, and immediately thereafter with the City Manager. Testimony indicated that the meetings were very intense, confrontational, and that abusive language was used. The purpose of these meetings was to put pressure on Chief Flint to be loyal to the Sheriff's Department, and to discourage him from any support of an independent Elk Grove police department. An additional reason for the second meeting was to pressure the City Manager to dismiss Chief Flint.²¹

4. Intimidating and Vulgar Behavior with City Management and other Council Members

Testimony demonstrated that Mr. Cooper and Mr. Leary acted repeatedly in a belligerent and uncivil manner with the City Attorney, the City Manager and fellow Council members. City officials and fellow Council members testified that Mr. Cooper and Mr. Leary created an atmosphere of intimidation and used vulgarity on numerous occasions when the issue of their involvement in the law enforcement services agreement was being discussed.²² They exhibited similar behavior in the confrontation with the Chief of Police over concerns about the possible formation of a city police department.

Testimony also indicated that when the opinions on conflict of interest limitations were discussed with Mr. Cooper and Mr. Leary their response was never accepting of the content of the opinions, and often resulted in abusive behavior. Council members and City employees observed Mr. Cooper and Mr. Leary engaged in "shouting matches" with the City Attorney over disagreements about conflict of interest interpretations.

Sheriff and the County contract. Another witness testified "It never stopped. It was always, you know, a comment here or there."

²¹ The Grand Jury believes that Mr. Danielson was put under great pressure to fire Chief Flint, and was told that if that didn't occur, Mr. Danielson's own job would be in jeopardy.

²² Testimony indicated that Mr. Cooper and Mr. Leary often used use profanity when addressing Mr. Manzanetti about interpretations of conflict of interest requirements.

B. Other Council Members and City Officials

1. Other City Council Members

Although the primary burden to avoid violations of the conflict of interest laws lies with the individuals subject to conflict of interest limitations, the rest of the Council also had an obligation to ensure legal requirements were observed. Each Council member was informed of conflict of interest requirements, and all knew that the two members had a clear conflict relative to the Agreement for Law Enforcement Services.

The testimony showed that other Council members felt intimidated by Mr. Cooper's and Mr. Leary's language and behavior but did not seriously attempt to halt this situation either publicly or privately. They were unwilling to confront these two members. The Council members were victims of an environment of intimidation to which they contributed by their failure of leadership. This choice of inaction and acquiescence put the Agreement for Law Enforcement Services and the City of Elk Grove in jeopardy.

2. The City Manager

The City Manager is the administrative head of the City government, and is responsible for the operation of all City departments. He serves at the pleasure of the Council. The current City Manager, Mr. John Danielson, has served since 2001. He prepares the agenda for the Council meetings, briefs the Council members before the meetings and has great influence over the process used by the Council in its deliberations.

The City Manager was well aware that Mr. Cooper and Mr. Leary were strongly resisting advice to strictly adhere to conflict of interest requirements, and that they were very antagonistic towards the City Attorney with respect to this issue. In an attempt to address the conflict issue in October of 2001 the City Manager provided an outside legal opinion from the McDonough legal firm. The opinion was prepared without the knowledge of the City Attorney, so that the two Council members would know that it was independent of Mr. Manzenetti's legal opinions.²³

The City Manager knew that conflict of interest problems relative to law enforcement services occurred repeatedly. He was aware that conflict of interest requirements were not being observed. He could have, but did not, establish a process to ensure that conflict of interest issues were dealt with explicitly and in accordance with the law.

In addition to the many times when the Council explicitly considered issues related to the Agreement for Law Enforcement Services, there were instances in which law enforcement issues were commingled with other budget issues in a single vote. Votes on the law enforcement budget items were included within the total municipal budget²⁴ on October 4, 2000, July 11, 2001, June 5, 2002, and June 4, 2003. Each of these appears to

²³ The memo was, in the opinion of one witness: "... the strongest of all the opinions we had seen to date."

²⁴ The City Council approved the annual service plan as part of the budget. When it approved the budget, it amended the contract with the Sheriff's Department.

have been a violation of the conflict of interest requirements of section 1090. The City Manager should have ensured that issues related to the Agreement for Law Enforcement Services were separated from other Council actions so that the members with conflicts could recuse themselves and avoid voting inappropriately.

3. The City Attorney

The City Attorney is responsible to the Council as a whole, but does not formally represent an individual Council member in a legal capacity. However, the City Attorney did act as a legal advisor to Council members when conflict of interest limitations affected their actions. Since the City's inception, Mr. Anthony Manzanetti has performed these functions. Mr. Manzanetti was hired as the "in-house" City Attorney for Elk Grove on September 15, 2003. Prior to that time, he acted as the City Attorney as a partner of the Kronick law firm whose services were contracted by the City of Elk Grove.

Knowing the potential for conflict of interest problems, the City Attorney provided extensive materials and advice pertaining to conflict of interest issues, as summarized previously. He discussed many of these memos with the Council members. As it became clear that Mr. Cooper and Mr. Leary were refusing to accept strict interpretations of the conflict of interest provisions, the City Attorney repeatedly sought additional information to bolster and clarify the information previously provided. As time went by, Mr. Cooper and Mr. Leary became more and more dissatisfied with the position taken by the City Attorney on how conflict of interest requirements limited their involvement in most activities related to law enforcement in Elk Grove. Testimony also indicated that Mr. Cooper and Mr. Leary threatened the City Attorney with termination if he did not accede to their wishes in this matter. In addition, Mr. Cooper and Mr. Leary often were publicly abusive and threatening towards the City Attorney.

Based on the assessments made in the Foley Report and by the District Attorney's Office, there were times when the City Attorney advised that participation was permissible when it was likely prohibited by conflict of interest requirements. In addition, the City Attorney inappropriately allowed the Council to consider law enforcement budget items within the total City budget on a single vote.

It appears that Mr. Cooper's and Mr. Leary's repeated disregard for his legal advice led Mr. Manzanetti to conclude that they were not going to consistently comply with the law.²⁵ He could have publicly noted that their actions were not permitted or urged the Council to institute a consistent protocol for avoiding violations of the conflict of interest laws, but he apparently decided that neither approach was appropriate.

²⁵ To quote from testimony received from a person knowledgeable about Mr. Manzanetti's handling of the conflict issue: "I think he did it not only adequately, I think he did it courageously with no regard to the volume of vulgar comments and belittling comments that they would make towards him each and every time he brought it up."

C. Sacramento Sheriff's Department

1. The Department Failed to Address Conflict of Interest Issues in a Timely Manner

The Sheriff's Department was informed in March 2000 of the potential problems that could be caused by either Mr. Cooper's or Mr. Leary's failure to fully observe conflict of interest limitations that resulted from their employment by the Sheriff's Department and their election to the Elk Grove City Council. According to testimony provided by representatives of the Sheriff's Department, the department was generally aware of the potential problems, but did not provide any formal direction to either of its employees.²⁶

Furthermore, as has been shown in other parts of this report, there were numerous occasions between incorporation in July of 2000, and the recent events of 2004 when conflict of interest violations likely resulted due to the actions of Sheriff's Department employees on the Council. Yet despite early warnings and repeated problems, the Sheriff's Department waited for over four years to take any effective action to protect the validity of the County contract with Elk Grove or to ensure the proper conduct of its employees.

2. Recent Direction by the Department to Mr. Cooper and Mr. Leary

On December 9, 2004, Sheriff Blanas issued directives to Mr. Cooper and Mr. Leary regarding limitations on their activities while they are concurrently members of the Elk Grove City Council and employees of the Department. These directives clearly communicate to Mr. Cooper and Mr. Leary that they are admonished to obey section 1090 "which makes it a felony for you to participate in any way in Council decisions affecting that city's [referring to Elk Grove] arrangement for law enforcement services." The directive further states: "This prohibition extends to discussion of operational issues, including traffic enforcement, law enforcement funding, selection or removal of the Chief of Police, memorandums of agreement between the Sheriff's Department and the City, and proposal for any adjustment in the level of law enforcement services to be provided." A copy of the directive to Mr. Cooper is provided as a sample in Attachment 2.

D. County of Sacramento

In March 2000 the County Counsel sent a memorandum²⁷ to the Sacramento County Board of Supervisors and the Sheriff's Department that alerted both parties of potential conflict of interest problems under section 1090 because two Sheriff's deputies were elected to the Council. The memorandum concluded that should either deputy participate, directly or indirectly, in contracting with the County for law enforcement

²⁶ None of the parties who testified could specifically recall any explicit guidance on this issue. One party, for example, testified that he "may have had [a conversation with Mr. Cooper and/or Mr. Leary over this issue] or ... staff may have [had such a conversation] because the purpose was to make sure that ... staff [referring to Mr. Cooper and Mr. Leary] knew that they couldn't be involved in the contract."

²⁷ The "Ryan Opinion," provided as Attachment 1.

services, such a contract would be void and any monies paid for such services might need to be repaid to the City.

In November 2001 the Board of Supervisors and the City signed the initial contract for law enforcement services. Between then and the present, the contract has been amended and augmented several times, each time with the approval of the Board of Supervisors. Although the County was advised of the potential that a conflict of interest violation by the Council could void the contract, it did not review the contract or subsequent amendments to ensure that they were properly adopted by the Elk Grove City Council.

Summary and Conclusions

The Grand Jury finds that there was a sweeping, widespread failure by the elected and appointed leaders of the City of Elk Grove and the Sheriff's Department in creating, managing, and implementing the Agreement for Law Enforcement Services so that it was free from the effects of conflicts of interests involving two Council members, James Cooper and Michael Leary. As a consequence, numerous violations of state conflict of interest law occurred during Council meetings between June 2000 and May 2004.

The Grand Jury further finds that the interests of the citizens of Elk Grove were not properly protected because the actions of Council members Cooper and Leary have placed the validity of the law enforcement contract into serious jeopardy.

Council members and City staff made numerous errors in the process of approving and amending the agreement with the Sheriff's Department, and failed to ensure that all legal requirements were met. Attempts by City officials to ensure compliance by Council members Cooper and Leary were met with resistance, which was often accompanied by behavior that can only be described as vulgar, unprofessional and abusive. The Sheriff's Department and the County of Sacramento failed to heed early warnings about potential problems, and failed to address problems when they occurred.

Each of the parties listed bears a share of the responsibility for this widespread failure. The Grand Jury finds that some individuals involved bear more responsibility than others. The Grand Jury has fashioned specific findings applicable to individuals or groups of individuals. Following each finding are recommendations designed to prevent future violations and inappropriate conduct. The Grand Jury believes that if any of the recommended remedial actions had been taken in a timely manner, the violations of conflict of interest laws could have been avoided.

The Grand Jury wishes to make explicit notice of its belief that the actions and behavior of the Council members Cooper and Leary were not only reprehensible, but were also severe enough to cause the Grand Jury to consider filing an accusation in this case. (An accusation is a legal process used to address an elected official's misuse of office. If convicted of an accusation, the penalty is the removal from elective office.)

Ultimately the Grand Jury determined that addressing this matter in a written report was a more appropriate remedy. The decision was made to issue a report rather than file an accusation against Mr. Cooper and Mr. Leary because the Grand Jury believes that encouraging the adoption of our recommendations provides a more timely and efficient method to remedy the problems uncovered in this investigation. Furthermore, such an approach avoids the considerable legal, technical, and tactical obstacles, as identified by the District Attorney's Office, to obtaining their removal from office.

Our recommendations cannot directly address how the citizens of Elk Grove should take into account the performance of their elected and appointed officials in this matter. However, the Grand Jury strongly believes that the actions of City officials uncovered in this investigation need to be fully disclosed. We have presented the facts and our assessment as completely and clearly as possible, within the constraints placed on us by state law.²⁸ **We urge the citizens of Elk Grove to review our report in determining the adequacy of the performance of their elected and appointed officials.**

Findings and Recommendations

A. Findings and Recommendations Concerning Council Member James Cooper and Council Member Michael Leary

Finding A-1: Both Mr. Cooper and Mr. Leary received substantial and more than adequate legal advice regarding the requirements of the conflict of interest law. This advice clearly identified how their actions were limited relative to influencing, participating in the making of or voting on any aspect of a contract between Elk Grove and the Sheriff's Department. They either knew, or reasonably should have known, that they were required to recuse themselves from voting on any aspect of such a contract, and that they were prohibited from participating in actions that might influence members of the Council or staff on any aspect of such a contract. Any claim in defense of their actions that they did not fully understand conflict of interest requirements and that they always followed the advice of the City Attorney on potential conflicts are not credible in light of the sworn testimony and other evidence available to the Grand Jury.

Recommendation A-1: So long as the Sheriff's Department provides law enforcement services to Elk Grove, Mr. Cooper and Mr. Leary should completely recuse themselves from any and all activities that involve police services in the City. This recusal should encompass all discussions or votes by the Council concerning law enforcement services. It should also include all actions that could involve the funding or curtailment of police services, any discussion about or involvement in the operation, management or evaluation of police services, and any activities related to personnel decisions in the Elk Grove Police Department.

²⁸ Penal Code section 929 generally prohibits the Grand Jury from specifically attributing testimony to a specific witness, but allows the Grand Jury, with the authorization of the court, to reference in its report the testimony and documentary evidence that it has relied upon. Accordingly, this report excludes specific use of privileged testimony that might reveal the identities of the parties who provided the testimony.

Finding A-2: During 20 Council meetings between June 2001 and May 2004, Mr. Cooper and/or Mr. Leary failed to recuse themselves and voted or otherwise participated in matters that directly or indirectly affected the City's contract for law enforcement services with the Sheriff's Department. Based on the testimony and evidence available to us, the Grand Jury believes that many of these actions constituted deliberate and willful violations of state conflict of interest requirements.

Recommendation A-2: Mr. Cooper and Mr. Leary should commit to a written procedure that clearly defines how they will fully recuse themselves from any further involvement in any activities related to the provision of police services in the City of Elk Grove, regardless of whether or not the involvement would be deemed illegal under state law.²⁹ To ensure ongoing compliance the activities of Mr. Cooper and Mr. Leary in following the recusal procedure should be closely monitored and documented. All Elk Grove officials involved in any aspect of providing, assessing or contracting for police services should be informed of the recusal procedure, and be required to report any failure to follow the procedure to the City Manager.

Finding A-3: Mr. Cooper and Mr. Leary both repeatedly acted in an unprofessional, abusive and inappropriate manner with the City Manager, the City Attorney, the City Chief of Police and other members of the Council. Their conduct was intimidating towards all of these parties and, in the opinion of the Grand Jury, disrupted the orderly functioning of the Council. This improper and reprehensible conduct significantly contributed to an atmosphere where their failure to observe conflict of interest requirements went unchallenged.

Recommendation A-3: Mr. Cooper and Mr. Leary should cease their inappropriate behavior towards other Council members and City staff. They and the rest of the Council should develop a code of conduct that promotes communication and civil interaction, and eliminates abusive behavior. This code of conduct should be followed in all interactions among Council members and between Council members and City staff.

²⁹ As elected Council members of the Elk Grove, Mr. Cooper and Mr. Leary were obligated to act in the best interests of the City and its residents in any matter before the Council, or that otherwise related to City business. As Sheriff's deputies, Mr. Cooper and Mr. Leary were expected to be loyal to the Department, and any actions perceived as being disloyal could adversely affect their careers in the Department. This situation created an inherent conflict of interest when they participated in matters involving both the City and the Sheriff's Department, whether or not such participation was allowed by law. Because of this situation, the Grand Jury believes that Mr. Cooper and Mr. Leary should recuse themselves from any and all matters where the Department is a provider of law enforcement services to the City, even if such involvement would not violate state law governing financial conflict of interests

B. Findings and Recommendations Concerning the City Council, the City Manager and the City Attorney

Finding B-1: The City Manager knew of the potential conflict of interest problems caused by Mr. Cooper's and Mr. Leary's refusal to accept and follow legal advice relative to limits on their actions required by the conflict of interest laws. The City Manager was remiss in failing to establish clearly elaborated and consistent procedures to deal with Council actions that might result in possible conflict of interest violations.

Recommendation B-1: The City Manager should develop and the Council should adopt and implement an explicit procedure to:

- Determine if a conflict of interest requirement might apply to any Council member for any item before the Council
- Explicitly advise the affected Council member and all other members of the potential conflict
- Explicitly document the determination that a conflict of interest restriction applies or does not apply, and
- Report on the record during each Council meeting on the actions being taken to ensure that all conflict of interest requirements are met

Finding B-2: The City Attorney is commended for the actions that he took to repeatedly advise Mr. Cooper and Mr. Leary on conflict of interest issues in the face of their abusive and intimidating behavior. The City Attorney provided both Mr. Cooper and Mr. Leary with substantial, compelling and repeated written legal opinions, as well as verbal guidance, regarding how conflict of interest laws limited their actions relative to voting on, influencing, or participating in the making of any agreement between the City and the Sheriff's Department. The City Attorney met his responsibility to convey the legal requirements of the conflict of interest statutes; however, he ultimately failed in his duty to protect the City and to ensure that the contract for law enforcement services with the Sheriff's Department was legally executed. The City Attorney did not provide clear and consistent procedures to identify, deal with and document each potential conflict of interest situation, and, at times, may have failed to adequately identify potential conflicts.

Recommendation B-2: The Elk Grove City Council should instruct the City Attorney to explicitly advise the Council whenever a Council member may be acting in violation of conflict of interest requirements. The City Attorney should ensure that he has a complete and thorough understanding of how conflict of interest requirements apply to any matter before the Council. He should develop a method of obtaining expert legal opinions in cases where there is any doubt about how conflict of interest requirements apply.

Finding B-3: The City Manager should not have allowed the Council to approve the annual "Service Plan" as part of its approval of the annual city budget. The annual Service Plan was an amendment to the Agreement for Law Enforcement Services. This procedure of "bundling" the Service Plan within the annual municipal budget made it more difficult to detect and avoid conflict of interest violations.

Recommendation B-3: The City Manager should ensure that all actions on contracts that could potentially involve a conflict of interest are considered separately and discretely by the Council.

Finding B-4: The three other Council members were aware of the conflict of interest problems that could be caused by Mr. Cooper's and Mr. Leary's refusal to accept and follow advice relative to limits on their actions. Each Council member was advised regarding the obligations to observe the conflict of interest statutes, and of the serious consequences that violations of those statutes could have. Council members could have insisted that the Council establish procedures and safeguards to avoid actions that might involve possible conflict of interest violations. Further, when confronted with potential violations by either Mr. Cooper or Mr. Leary, the other Council members could have used their power to stop the proceedings until it could be determined if the actions were legally permissible.

Recommendation B-4: All Council members should be fully advised and trained on how conflict of interest and other ethics requirements may limit their actions, and how they can ensure that they and other Council members abide by legal requirements and observe standards of ethical conduct. The Elk Grove City Council should instruct and empower the City Manager and the City Attorney to explicitly warn the Council whenever a Council Member may be acting in violation of conflict of interest requirements.

Finding B-5: The Grand Jury received sworn testimony that illustrated how Mr. Cooper and Mr. Leary used abusive behavior and vulgar language to intimidate Council members and City staff. This behavior played a significant part in allowing actions contrary to conflict of interest laws to go unchallenged. Yet the Council members, both individually and collectively, failed to take action to confront, address and correct this behavior.

Recommendation B-5: The Council should develop an explicit code of conduct that promotes communication and civil interaction, and eliminates abusive or intimidating behavior. This code of conduct should be followed in all interactions among Council members and between Council members and City staff. All Council members should commit to following the code of conduct.

Finding B-6: Because conflict of interest statutes were not followed, the Agreement for Law Enforcement Services with the Sheriff's Department is in jeopardy of being voided.

Recommendation B-6: The City of Elk Grove and the Sheriff's Department should mutually agree upon a method of providing law enforcement services should a court determine that the existing Agreement for Law Enforcement Services is void. This agreement should include a mutually acceptable method to resolve any financial problems resulting from a voiding of the contract.

C. Findings and Recommendations Concerning the Sheriff's Department

Finding C-1: The Sheriff's Department was informed in March 2000 of the severe potential problems that could be caused by either Mr. Cooper's or Mr. Leary's failure to fully observe conflict of interest limitations created by their employment by the Department and their election to the Elk Grove City Council. The Department was also aware that it would be illegal for any of its employees to use either Mr. Leary or Mr. Cooper to influence any matter related to the contract between the Department and the City. The Department erred in failing to provide clear direction to Mr. Cooper and Mr. Leary that they were to avoid any and all involvement in law enforcement matters between the City and the Department.

Recommendation C-1: On December 9, 2004 the Sheriff's Department provided clear direction to Captain Cooper and Sergeant Leary that they must avoid any and all involvement in matters between the Elk Grove and the Department.³⁰ Adherence to this policy should be closely monitored. The same policy should be applied to all other Department employees who serve as elected or appointed officials to entities that have contracts with the Department. Finally, the Department should provide clear direction to all of its employees that it would be improper to involve any such official, who is also an employee of the Sheriff's Department, in any matter of police business that involves the entity the official represents.

D. Findings and Recommendations Concerning the Board of Supervisors

Finding D-1: The Board of Supervisors was informed in March of 2000 that conflict of interest limitations of section 1090 affected any potential contract with Elk Grove, and that a failure to observe these limitations could void any contract and adversely affect the County financially. The Board should have established a review process to ensure the subsequent contracts were free of defects related to section 1090, but did not. Furthermore, the County still does not have any policies in place to ensure that other County employees who are also elected or appointed officeholders are instructed to avoid all involvement in County contracts with the entity the employee represents.

Recommendation D-1: The County Counsel is to be commended for his March 2000 opinion alerting the Board of Supervisors and the Sheriff of potential conflict of interest requirements. (No response is required). The Board of Supervisors should maintain oversight for any contract where county employees of the contracting department are also elected or appointed to the entity that contracts for services. Further, the Board of Supervisors should direct county employees who are also elected or appointed officeholders to avoid all involvement in the formation, negotiation and execution of county contracts between the county department that employs the officeholder and the entity the employee represents.

³⁰ See Attachment 2

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by May 31, 2005, from:

- **Elk Grove City Council**
- **Sacramento Sheriff's Department**
- **Sacramento County Board of Supervisors**

The Grand Jury cannot require individual council members to respond to the findings and recommendations in this report. However, we believe that the public would be best served if Mr. Cooper and Mr. Leary individually respond to findings and recommendations A-1 through A-3. Therefore, we invite Mr. Cooper and Mr. Leary to provide responses to the Presiding Judge of the Sacramento Superior Court by May 31, 2005.

COUNTY OF SACRAMENTO
OFFICE OF THE COUNTY COUNSEL
Inter-Department Correspondence

March 8, 2000

To: Chairperson and Members
Board of Supervisors

Sheriff Lou Blanas

From: Robert A. Ryan, Jr.
County Counsel

Subject: City of Elk Grove – Contracting for Law Enforcement Services

As you are aware, voters have approved the incorporation of the City of Elk Grove. The new City will come into existence on July 1 of this year.

At the same time, members of the new City Council of Elk Grove were elected. At present, it appears that two Sheriff's officers, Lieutenant Jim Cooper and Sergeant Michael Leary have been elected to the Council. This Office does not represent the new city nor its new council members.

However, it is the opinion of this Office that should either Lt. Cooper or Sgt. Leary participate, directly or indirectly, in contracting with the County for law enforcement services, such a contract will be void and any money paid for such services will be recoverable by the City.

DISCUSSION

Government Code section 1090 prohibits governmental officers from being financially interested in contracts of the agency for which they serve. Government Code section 1091 permits a public agency to enter a contract in which an officer is interested if there is only a remote interest:

"(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest."

A "remote interest" is defined to include "that of a person receiving salary, per-diem, or reimbursement for expenses from a government entity."¹

Together, sections 1090 and 1091 will prohibit Sheriff's officers who are also members of the City Council from participating in a contract with the County for the provision of law enforcement services to the City of Elk Grove. Provided that Lt. Cooper and Sgt. Leary disclose their interest and do not participate, the City may enter into such a contract.

The prohibitions of sections 1090 and 1091 are applicable to both direct and indirect participation. That is, not only may interested officers not vote on the contract, but they may not attempt to influence the vote of others on the contract.

"In enacting the conflict-of-interest provisions the Legislature was not concerned with the technical terms and rules applicable to the making of contracts, but instead sought to establish rules governing the conduct of governmental officials. [Citation omitted.] Accordingly, those provisions cannot be given a narrow and technical interpretation that would limit their scope and defeat the legislative purpose. [Citations omitted] Thus, in *Stigall v. City of Taft*, supra, where a member of the city council participated in preliminary matters leading to the adoption of a contract but resigned before the formal award of the contract, the court refused to construe the word "made" in a narrow and technical sense and instead held that it encompassed the planning, preliminary discussion, compromises, drawing of plans and specifications and solicitation of bids that led up to the formal making of the contract." (*People vs. Honig* (1996) 48 Cal.App.4th 289, at 314, 315.)

Further:

"Section 1091 applies to an officer who is a member of a body or board that authorizes, approves or ratifies a contract. Such an officer will not be deemed to be interested in a contract if his or her interest is one of the remote interests set forth in the section, the officer makes full disclosure of the interest, the officer abstains from voting, the officer does not influence or attempt to influence any other member, and the body or board authorizes, approves or ratifies the contract in good faith by a vote of its membership sufficient for that purpose without counting the vote of the officer with the remote interest." (*Id.*, at 317, 318.)

¹ Section 1091.5 provides that even this does not constitute a financial interest "... unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record."

March 8, 2000

Section 1091 affords a safe haven for contracts only insofar as there is compliance. A contract entered into in violation of either section 1090 or 1091 is void. The remedy is made more draconian by the fact that the public agency which approved the contract and whose officers violated sections 1090 or 1091 may recover any funds expended under the contract. (*Thomson v. Call* (1985) 38 Cal.3d 633; *People ex rel. State of Cal. v. Drinkhouse* (1970) 4 Cal.App.3d 931.)

For this reason, the prohibitions become relevant not only to the City of Elk Grove and the members of its council, but to the County as a potential contracting party. In the event either of the Sheriff's officers apparently elected to the council attempt to influence the Council's decision on a contract with the County for law enforcement services, this Office believes that the contract would be void and that any payments received from the City under such a contract could be required to be repaid to the City.²

As a result, care and prudence should be exercised as the new City forms and discussions regarding potential contracts for law enforcement services commence.

If you have questions regarding this matter, please contact me.



ROBERT A. RYAN, JR.

cc: Mr. Terry Schutten

²Criminal sanctions are imposed on individuals violating the provisions of these sections.



COUNTY OF SACRAMENTO

Inter-Department Correspondence

LOU BLANAS

Sheriff

December 9, 2004

To: CAPTAIN JAMES COOPER

From:


LOU BLANAS, SHERIFF

Subject: POLITICAL ACTIVITY WHILE A MEMBER OF THE SHERIFF'S DEPARTMENT

THE FOLLOWING IS TO BE CONSIDERED AS MY DIRECT ORDER, VIOLATION OF WHICH MAY SUBJECT YOU TO DISCIPLINARY SANCTION AND CRIMINAL PROSECUTION.

You are admonished that while a member of this Department and a member of the Elk Grove City Council, you must obey Government Code Section 1090, which makes it a felony for you to participate in any way in Council decisions affecting that city's arrangement for law enforcement services, including its contract with this Department or any consideration of alternatives, such as contracting with another agency or choosing instead to create its own Department. This prohibition extends to discussion of operational issues, including traffic enforcement, law enforcement funding, selection or removal of the Chief of Police, memorandums of agreement between the Sheriff's Department and the City, and proposals for any adjustment in the level of law enforcement services to be provided.

You are further notified that neither I nor any members of this administration will have any discussions with you concerning the Elk Grove Police Services Contract. Any concerns that you have, any concerns voiced by your constituents or by any other members of the City Council or the administration of City of Elk Grove shall be taken up with either the Chief of Police or the Assistant Chief of Police for the City of Elk Grove. You are not to bring up any issues concerning the Police Services Contract directly or indirectly with any member of the Sacramento Sheriff's Department.

Any violation of this section will be deemed to be outside the scope of your employment with this Department and you will bear individual responsibility for the consequences of any actionable breach.

Captain James Cooper
December 9, 2004
Page 2

This order shall remain in effect throughout your term as a city council member. A copy of this order will be placed in your personnel file for ready reference.

I, Captain James Cooper, acknowledge receipt of this order and my understanding of same this 9th day of December, 2004, at Sacramento, California.



**Comments on the Responses of the Elk Grove City Council, the
Sacramento Sheriff's Department, and the Sacramento County Board
of Supervisors to the Grand Jury's Recommendations in the Report:
"Elk Grove City Council and Conflict of Interest Issues"**

Issue

On February 28, 2005 the Grand Jury issued the report "Elk Grove City Council and Conflict of Interest Issues."¹ This report made 11 recommendations for changes in the manner the Elk Grove City Council, the Sacramento Sheriff's Department and the County Board of Supervisors address and prevent potential conflicts of interest by Council members who are also employees of the county. Penal Code section 933.05 required each of these entities to respond to the Grand Jury's findings and recommendations by May 31, 2005.² Each responded in writing within the required timeframe.³ We are issuing this report to provide the City Council, the Sheriff's Department, the Board of Supervisors and the public with our assessment of the adequacy of the responses.

Grand Jury Response

The Grand Jury believes that the City Council, the Sheriff's Department and the Board of Supervisors have agreed to substantially implement all of the recommendations contained in our report.⁴ In many cases the recommended actions have already been completely or partially implemented. In other cases commitments have been made to implement the recommendations.

In addition to responding to the Grand Jury's recommendations, the Council, the Department and the Board of Supervisors, as required by law, also provided responses to the findings related to their particular entity.⁵ In many instances the agencies indicated their overall or partial concurrence with the Grand Jury findings. The Council indicated that it did not have sufficient evidence to concur with some portions of findings A-1, A-2, A-3 and B-5. In addition, the Council indicated that it did not concur with findings B-3

¹ A copy of the report can be found in this Final Report.

² The Grand Jury could not require Council Members James Cooper and Michael Leary to respond individually, but encouraged both Mr. Cooper and Mr. Leary to do so by May 31, 2005 relative to Recommendations A-1 through A-3. The Grand Jury did not receive responses from either Mr. Cooper or Mr. Leary.

³ Copies of their complete response can be found at the Grand Jury website, www.sacgrandjury.org.

⁴ See Attachment which contains the Grand Jury's recommendations and the entity's responses.

⁵ In addition the Sheriff's Department provided responses to each of the report's findings and recommendations; the Department was not required to provide responses.

and B-6, and did not concur with parts of findings A-3, B-1 and B-2. Finally, the Department stated that it did not concur with finding C-1.

The Grand Jury reviewed each of the responses that did not concur with our findings and considered the reasons for non-concurrence cited by the Council and the Department. None of the reasons cited provided sufficient information or new facts for the Grand Jury to conclude that any of our previous findings were in error or warrant modification. Because the Council's and Department's non-concurrence did not have a material effect on the Council's or Department's commitment to follow our recommendations, the Grand Jury does not believe it is necessary to respond to the areas of disagreement. Suffice it to say that the Grand Jury continues to stand by its original report in its entirety.

In closing, we believe the agency responses to our recommendations provide a strong basis for preventing a repeat of past problems. We are hopeful that each of the parties will fully and faithfully implement the actions they have committed to in their responses. However, we strongly recommend that the 2005-2006 Grand Jury closely monitor the implementation of the recommendations by each party. Furthermore, we recommend that the 2005-2006 Grand Jury aggressively pursue any failure by any of the parties to abide by the commitments contained in their responses.

(It should be noted that Grand Jurors Anthony S. Da Vigo and Norio Yamada recused themselves from any participation in the discussion, preparation, editing, or approval of these comments.)

Attachment

Grand Jury Recommendations and Responses by Affected Agencies*

A. Recommendations Concerning Council Member James Cooper and Council Member Michael Leary – Response Required by Elk Grove City Council

Recommendation A-1: So long as the Sheriff's Department provides law enforcement services to Elk Grove, Mr. Cooper and Mr. Leary should completely recuse themselves from any and all activities that involve police services in the City. This recusal should encompass all discussions or votes by the Council concerning law enforcement services. It should also include all actions that could involve the funding or curtailment of police services, any discussion about or involvement in the operation, management or evaluation of police services, and any activities related to personnel decisions in the Elk Grove Police Department.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

So long as the Sheriff's Department provides law enforcement services to Elk Grove, City Council Members employed by the Sacramento County Sheriff's Department shall completely recuse themselves from, nor influence or attempt to influence, any and all activities, discussions, or City decisions that involve police services in the City. This recusal shall encompass, but not be limited to, all discussions or votes by the Council concerning law enforcement services, all discussions and/or actions that could involve the funding or curtailment of police services, and discussions and/or actions about or involvement in the operations, management or evaluation of police services, and/or discussions and/or activities related to personnel decisions in the Elk Grove Police Department, even if such involvement would not violate State law governing financial conflict of interests.

Recommendation A-2: Mr. Cooper and Mr. Leary should commit to a written procedure that clearly defines how they will fully recuse themselves from any further involvement in any activities related to the provision of police services in the City of Elk Grove, regardless of whether or not the involvement would be deemed illegal under state law. To ensure ongoing compliance the activities of Mr. Cooper and Mr. Leary in following the recusal procedure should be closely monitored and documented. All Elk Grove officials involved in any aspect of providing, assessing or contracting for police services should be informed of the recusal procedure, and be required to report any failure to follow the procedure to the City Manager.

(*The Grand Jury is reporting the portion of the agency's responses which pertains directly to our recommendations. Each agency's complete response is available on the Grand Jury website.)

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

To ensure ongoing compliance with the recusal procedures, the activities of City Council Members that are employed by the Sacramento County Sheriff's Department should be closely monitored and documented as set out in comment to Recommendation B-1. All Elk Grove officials involved in any aspect of providing, assessing or contracting for police services should be informed of the recusal procedure, and be required to report any failure to follow the procedure to the City Manager.

The procedure for recusal shall be as follows:

1. Statement in Agenda Packets: The City shall include the following statement in all agenda packets distributed to Members of the Elk Grove City Council:

“State law places the duty on you to ensure that you comply with all of the State's ethics laws. The City is not responsible for ensuring that you comply with the State's ethics laws. Before making, participating in making, influencing or attempting to influence a governmental decision, the burden is on you to determine whether you may legally engage in this conduct. The City Attorney's office represents the interests of the City as a whole, not any individual Council Members. There may, therefore, be times when your interests cannot be adequately represented by the City Attorney. Please contact the City Attorney as soon as possible to discuss any potential conflicts of interest that you may feel will limit you from making, participating in making or influencing governmental decisions.”

2. Recusal from Making, Participating in Making, Influencing or Attempting to Influence Governmental Decisions: If a Member of the Elk Grove City Council determines that he or she may have a potentially disqualifying conflict of interest, the Council Member shall notify the other members of the City Council, the City Attorney and the City Manager that such a conflict may exist. Unless and until it is determined that the Council Member does not have such a disqualifying conflict of interest, the Council Member shall recuse himself or herself from any involvement in the decision, including recusing himself or herself from making, participating in making, or influencing this decision.

3. Verbal Statement on the Record: If during the course of a public meeting (either during open or closed session), a Council Member has a conflict of interest which requires his or her recusal, the Council Member(s) with a Conflict of Interest shall make a verbal statement on the record immediately prior to the consideration of the matter and before any action is taken on the item in question. This verbal statement shall be required for all matters which are the subject of discussion or debate by the City Council, or which will be the subject of debate by the City Council, regardless of whether the matter is listed on the agenda. The verbal statement may take the following form:

“I am employed by the Sacramento County Sheriff’s Department. Therefore, I will not be participating in item [state the agenda item number]. So the record should reflect my recusal on the item and my “abstention” from participation in this matter. In addition to my recusal here today, I have not made, participated in making, or otherwise influenced or attempted to influence this decision.”

4. **Physically Leave the Council Chambers:** Except with regard to matters on the consent agenda, the Council Member with a conflict of interest shall, after having made a public disclosure of his or her financial interest, step down from the Council dais and leave the Council Chambers until the conclusion of that item. Once that item is concluded and the City Council is ready to move to the next item, the Council Member(s) that left the room may return to the dais.

By adoption of this resolution and policy, the recommendation is hereby implemented.

Recommendation A-3: Mr. Cooper and Mr. Leary should cease their inappropriate behavior towards other Council members and City staff. They and the rest of the Council should develop a code of conduct that promotes communication and civil interaction, and eliminates abusive behavior. This code of conduct should be followed in all interactions among Council members and between Council members and City staff.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

The City Council shall develop a code of conduct that promotes communication and civil interaction, and eliminates abusive behavior. This code of conduct shall apply to the City Council.

On April 27, 2005 The City of Elk Grove City Council adopted a code of ethics, a copy of which is attached and made a part of this comment and response.

B. Recommendations Concerning the City Council, the City Manager and the City Attorney - Response Required by Elk Grove City Council

Recommendation B-1: The City Manager should develop and the Council should adopt and implement an explicit procedure to:

- Determine if a conflict of interest requirement might apply to any Council member for any item before the Council
- Explicitly advise the affected Council member and all other members of the potential conflict
- Explicitly document the determination that a conflict of interest restriction applies or does not apply, and
- Report on the record during each Council meeting on the actions being taken to ensure that all conflict of interest requirements are met.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy and procedure for recusal:

1. Determination if Conflict of Interest Requirement Might Apply to Any Council Member for Any Item Before the Council:
 - a. State law places the duty on each City Council Member to ensure that he or she is in compliance with all of the State's ethics laws. The City is not responsible for ensuring that each Council Member conducts him or herself in an ethical manner.
 - b. If a City Council Member discovers that he or she may have a conflict of interest, the Council Members shall notify: (1) the City Council, (2) the City Attorney and (3) the City Manager that such a conflict may exist. The Council Member shall refrain from making, participating in making or influencing governmental decisions unless and until a determination is made that he or she is entitled to participate.
2. Explicitly Advise the Affected Council Member and All Other Council Members of the Potential Conflict:
 - a. The City Attorney shall provide advice to the City regarding potential conflicts of interest issues identified by City Council Members. Where necessary, the City Attorney shall consult with outside counsel to provide this advice;
 - b. Opinions of the City Attorney and outside conflicts counsel are drafted for the benefit of the entire City and are, therefore, subject to disclosure to the entire City Council;
 - c. Where the City Attorney concludes that he or she cannot adequately represent the interests of the City as a whole because of particular conduct by a Council Member, the City Attorney shall immediately advise the Council Member that he or she should seek advice from separate legal counsel. The City Attorney shall document this advice for the City Council;
3. Explicitly Document the Determination that a Conflicts of Interest Restriction Applies or Does Not Apply:
 - a. All Opinions of the City Attorney regarding conflicts of interest shall be documented in writing (either electronically or on paper) and shall be distributed to the entire City Council. The City Attorney will not be required to provide a formal written opinion for advice that is requested during the course of public meetings. Because of the attorney-client privilege, the scope of advice given in the course of a public meeting may be limited.
 - b. The City Attorney may seek formal written advice from the Fair Political Practices Commission and the Attorney General where appropriate.

Nothing in this policy shall require the City Attorney to violate the attorney-client privilege unless expressly authorized to do so by a majority vote of the City Council.

By adoption of this resolution and policy, the recommendation is hereby implemented.

Recommendation B-2: The Elk Grove City Council should instruct the City Attorney to explicitly advise the Council whenever a Council member may be acting in violation of conflict of interest requirements. The City Attorney should ensure that he has a complete and thorough understanding of how conflict of interest requirements apply to any matter before the Council. He should develop a method of obtaining expert legal opinions in cases where there is any doubt about how conflict of interest requirements apply.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

The Elk Grove City Council hereby instructs the City Attorney to explicitly advise the Council, and to document that advice, whenever a Council Member may be acting in violation of conflict of interest requirements. The City Council does not by this direction waive, or give permission to the City Attorney to waive, the attorney-client privilege. The City Attorney shall develop a method of obtaining expert legal opinions in situations where there is any doubt about how conflict of interest requirements apply.

By adoption of this resolution and policy, the recommendation is hereby implemented.

Recommendation B-3: The City Manager should ensure that all actions on contracts that could potentially involve a conflict of interest are considered separately and discretely by the Council.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

The City Manager shall ensure that all actions on the budget that could potentially involve a conflict of interest are considered separately and discretely by the Council, consistent with FPPC regulations regarding the segmentation of decisions. This policy recognizes that while segmentation is permitted under the Political Reform Act, no such segmentation permitted under Section 1090-the conduct either will be considered the making of a contract or it will not.

By adoption of this resolution and policy, the recommendation is hereby implemented.

Recommendation B-4: All Council members should be fully advised and trained on how conflict of interest and other ethics requirements may limit their actions, and how they can ensure that they and other Council members abide by legal requirements and observe standards of ethical conduct. The Elk Grove City Council should instruct and empower the City Manager and the City Attorney to explicitly warn the Council whenever a Council Member may be acting in violation of conflict of interest requirements.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

All Council Members shall:

1. Undertake efforts to be fully trained and advised on how conflict of interest and other ethics requirements may limit their actions;
2. Undertake efforts to be fully trained and advised on how they can ensure that they and other Council Members abide by legal requirements, and
3. Observe standards of ethical conduct.

The Elk Grove City Council hereby instructs and empowers the City Manager and the City Attorney to explicitly warn the City Council whenever a Council Member may be acting in violation of conflict of interest requirements, including the policies adopted by the City Council herein.

By adoption of this resolution and policy, the recommendation is hereby implemented.

Recommendation B-5: The Council should develop an explicit code of conduct that promotes communication and civil interaction, and eliminates abusive or intimidating behavior. This code of conduct should be followed in all interactions among Council members and between Council members and City staff. All Council members should commit to following the code of conduct.

City Council Response: The City Council of the City of Elk Grove hereby adopts the following policy:

The Council shall develop an explicit code of ethics that promotes communication and civil interaction, and eliminates abusive or intimidating behavior. This code of conduct shall be followed in all interactions among Council Members and between Council Members and City staff. All Council Members shall commit to following the code of ethics.

On April 27, 2005 The City of Elk Grove City Council adopted a code of ethics, a copy of which is attached and made a part of this comment and response.

Recommendation B-6: The City of Elk Grove and the Sheriff's Department should mutually agree upon a method of providing law enforcement services should a court determine that the existing Agreement for Law Enforcement Services is void. This agreement should include a mutually acceptable method to resolve any financial problems resulting from a voiding of the contract.

City Council Response: The City Council of the City of Elk Grove adopts the following policy:

The City of Elk Grove shall work with the County of Sacramento to reach mutual agreement upon a method of providing law enforcement services should a court be asked

to determine that the existing Agreement of Law Enforcement Services is void. This agreement would include a mutually acceptable method to resolve any financial problems resulting from a voiding of the contract.

On April 7, 2005 The Elk Grove City Attorney and County Counsel, Robert Ryan, Jr. met to discuss, among other things, such an agreement. As a follow-up to that meeting, on April 21, 2005 the Elk Grove Assistant City Manager and City Attorney met with Assistant County Counsel John Wisenhunt, Under Sheriff John McGunies, and City Deputy Sheriff George Anderson to further negotiate such an agreement.

C. Recommendation Concerning the Sheriff's Department - Response Required by Department

Recommendation C-1: On December 9, 2004 the Sheriff's Department provided clear direction to Captain Cooper and Sergeant Leary that they must avoid any and all involvement in matters between the Elk Grove and the Department. Adherence to this policy should be closely monitored. The same policy should be applied to all other Department employees who serve as elected or appointed officials to entities that have contracts with the Department. Finally, the Department should provide clear direction to all of its employees that it would be improper to involve any such official, who is also an employee of the Sheriff's Department, in any matter of police business that involves the entity the official represents.

Department Response: Notwithstanding its disagreement with Finding C-1, supra, the Sheriff independently found it appropriate to admonish both Council Members in writing of the obligation to follow all laws regarding conflicts of interest, as described in the response to Recommendation A-1, supra. The Department cannot "closely monitor" the activities of Council Members Cooper and Leary with respect to their Council duties. To do so would invade the autonomy of a duly constituted coordinate branch of government and create the very atmosphere in which conflicts of interest might flourish.

D. Recommendation Concerning the Board of Supervisors - Response Required by the Board

Recommendation D-1: The County Counsel is to be commended for his March 2000 opinion alerting the Board of Supervisors and the Sheriff of potential conflict of interest requirements. (No response is required). The Board of Supervisors should maintain oversight for any contract where county employees of the contracting department are also elected or appointed to the entity that contracts for services. Further, the Board of Supervisors should direct county employees who are also elected or appointed officeholders to avoid all involvement in the formation, negotiation and execution of county contracts between the county department that employs the officeholder and the entity the employee represents.

Board Response: Concur with the Recommendation D-1. In order to implement this recommendation, the Auditor-Controller is to be designated by the Board of Supervisors

to oversee financial implementation of any contracts entered in circumstances where county employees of the contracting department are also elected or appointed to the entity that contracts for services. The Auditor-Controller is to report to the Board of Supervisors on an exception basis. Currently this applies to the City of Elk Grove and the First Five Sacramento Commission.

It is further recommended that a policy be drafted in which county employees are required to notify the Clerk of the Board when elected or appointed to a governmental board, council, commission or any other governmental entity. Upon such notification, the employee will receive written notice of the conflict of interest laws and the parameters of their participation should contract issues arise.



8400 LAGUNA PALMS WAY • ELK GROVE, CALIFORNIA 95758
TEL: 916.683.7111 • FAX: 916.691.2001 • www.elkgrovecity.org

ANTHONY B. MANZANETTI
City Attorney
amanzanetti@elkgrovecity.org

Certified Mail Return Receipt Requested

May 11, 2005

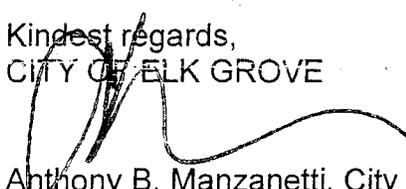
To the Honorable Michael G. Virga
Presiding Judge of the Superior Court of the
County of Sacramento
720 Ninth Street
Sacramento, CA 95814

Dear Judge Virga:

In compliance with the request of the Sacramento County Grand Jury and California Penal Code Sections 933 and 933.05, enclosed please find a certified copy of Elk Grove City Council Resolution No. 2005-120, which contains the comment of the Elk Grove City Council and the Mayor of the City of Elk Grove on the findings and recommendations in the Sacramento County Grand Jury Report - Elk Grove City Council and Conflict of Interest Issues, dated February 28, 2005.

If you have any questions or comments, please do not hesitate to contact me directly.

Kindest regards,
CITY OF ELK GROVE


Anthony B. Manzanetti, City Attorney

Copy: Mayor Briggs and City Council
John Danielson, City Manager

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)
)
CITY OF ELK GROVE)

I, PEGGY JACKSON, City Clerk of the City of Elk Grove, County of Sacramento, State of California, have compared the attached copy of **Resolution 2005-120** with the original record of the same in this office and certify that it is a full, true and correct copy of the whole and said original record.

Witness my hand and official seal this 6th day of May, 2005.

PEGGY JACKSON, CITY CLERK



City Clerk and Clerk of the Council of the
City of Elk Grove



RESOLUTION NO. 2005-120

**THE CITY OF ELK GROVE
MAYOR'S COMMENT
AND COMMENT OF THE CITY COUNCIL
TO THE REPORT OF THE SACRAMENTO GRAND JURY**

| | |
|--|--|
| <p>To the Hon. Michael G. Virga Presiding Judge of the Superior Court of the County of Sacramento:</p> | <p>In re: Elk Grove City Council and Conflict of Interest Issues as Addressed in the Sacramento Grand Jury Report of February 28, 2005</p> |
|--|--|

Whereas, the Sacramento County Grand Jury has directed the City of Elk Grove to provide comment to both the findings and recommendations to the Presiding Judge of the Sacramento Superior Court as required by Penal Code Sections 933 and 933.05; and

Whereas, Penal Code Sections 933 and 933.05 require, in the case of a city, that the Mayor shall also comment on the findings and recommendations: and

Whereas, the Mayor and City Council of the City of Elk Grove has reviewed the report by the Grand Jury;

Now, Therefore, the Mayor and City Council of the City of Elk Grove do hereby resolve and comment as follows:

COMMENT TO FINDING A-1:

The City of Elk Grove City Council agrees with the first two sentences of Finding A-1. The City of Elk Grove City Council has insufficient information to either agree or disagree with the balance of Finding A-1.

COMMENT TO RECOMMENDATION A-1:

The City Council of the City of Elk Grove hereby adopts the following policy:

So long as the Sheriff's Department provides law enforcement services to Elk Grove, City Council Members employed by the Sacramento County Sheriff's Department shall completely recuse themselves from, nor influence or attempt to influence, any and all activities, discussions, or City decisions that involve police services in the City. This recusal shall encompass, but not be limited to,

all discussions or votes by the Council concerning law enforcement services, all discussions and/or actions that could involve the funding or curtailment of police services, any discussions and/or actions about or involvement in the operation, management or evaluation of police services, and/or discussions and/or activities related to personnel decisions in the Elk Grove Police Department, even if such involvement would not violate state law governing financial conflict of interests.

By adoption of this resolution and policy, the recommendation is hereby implemented.

-oOo-

COMMENT TO FINDING A-2:

The City of Elk Grove City Council generally agrees with the first sentence of Finding A-2. The City of Elk Grove City Council has insufficient information to either agree or disagree with the specific number of Council meetings specified in this finding or the balance of Finding A-2.

COMMENT TO RECOMMENDATION A-2:

The City Council of the City of Elk Grove hereby adopts the following policy:

To ensure ongoing compliance with the recusal procedures, the activities of City Council Members that are employed by the Sacramento County Sheriff's Department should be closely monitored and documented as set out in comment to Recommendation B-1. All Elk Grove officials involved in any aspect of providing, assessing or contracting for police services should be informed of the recusal procedure, and be required to report any failure to follow the procedure to the City Manager.

The procedure for recusal shall be as follows:

1. Statement in Agenda Packets: The City shall include the following statement in all agenda packets distributed to Members of the Elk Grove City Council:

"State law places the duty on you to ensure that you comply with all of the State's ethics laws. The City is not responsible for ensuring that you comply with the State's ethics laws. Before making, participating in making, influencing or attempting to influence a governmental decision, the burden is on you to determine whether you may legally engage in this conduct. The City Attorney's office represents the interests of the City as a whole, not any individual Council Member. There may, therefore, be times when your interests cannot be adequately represented

by the City Attorney. Please contact the City Attorney as soon as possible to discuss any potential conflicts of interest that you may feel will limit you from making, participating in making or influencing governmental decisions.”

2. Recusal from Making, Participating in Making, Influencing or Attempting to Influence Governmental Decisions: If a Member of the Elk Grove City Council determines that he or she may have a potentially disqualifying conflict of interest, the Council Member shall notify the other members of the City Council, the City Attorney and the City Manager that such a conflict may exist. Unless and until it is determined that the Council Member does not have a disqualifying conflict of interest, the Council Member shall recuse himself or herself from any involvement in the decision, including recusing himself or herself from making, participating in making, or influencing this decision.

3. Verbal Statement on the Record: If during the course of a public meeting (either during open or closed session), a Council Member has a conflict of interest which requires his or her recusal, the Council Member(s) with a Conflict of Interest shall make a verbal statement on the record immediately prior to the consideration of the matter and before any action is taken on the item in question. This verbal statement shall be required for all matters which are the subject of discussion or debate by the City Council, or which will be the subject of debate by the City Council, regardless of whether the matter is listed on the agenda. The verbal statement may take the following form:

“I am employed by the Sacramento Sheriff’s Department. Therefore, I will not be participating in item [state the agenda item number]. So the record should reflect my recusal on the item and my “abstention” from participation in this matter. In addition to my recusal here today, I have not made, participated in making, or otherwise influenced or attempted to influence this decision.”

4. Physically Leave the Council Chambers: Except with regard to matters on the consent agenda, the Council Member with a conflict of interest shall, after having made a public disclosure of his or her financial interest, step down from the Council dais and leave the Council Chambers until the conclusion of that item. Once that item is concluded and the City Council is ready to move to the next item, the Council Member(s) that left the room may return to the dais.

By adoption of this resolution and policy, the recommendation is hereby implemented.

-o0o-

COMMENT TO FINDING A-3:

The City of Elk Grove City Council agrees with the first sentence of Finding A-3 and the second sentence of this finding up to the words "...and, in the opinion..." However, it was Mr. Cooper that repeatedly jabbed his finger at Dan Briggs, nearly poking him in the chest. It was Mr. Cooper that pursued Dan Briggs down the hall behind the Council Chambers and called him a name that was sexually demeaning and belittling. And, it was Mr. Cooper that in the presence of Dan Briggs repeatedly used sexually denigrating language directed at female persons both present and not present.

The City of Elk Grove City Council has insufficient information to either agree or disagree with the balance of the second sentence. The City of Elk Grove City Council disagrees with the third sentence of this finding to the extent it implies that conduct that may have been in conflict with state law regarding conflicts of interest was not challenged.

COMMENT TO RECOMMENDATION A-3:

The City Council of the City of Elk Grove hereby adopts the following policy:

The City Council shall develop a code of conduct that promotes communication and civil interaction, and eliminates abusive behavior. This code of conduct shall apply to the City Council.

On April 27, 2005 The City of Elk Grove City Council adopted a code of ethics, a copy of which is attached and made a part of this comment and response.

-o0o-

COMMENT TO FINDING B-1:

The City of Elk Grove City Council agrees with the first sentence of Finding B-1. The City of Elk Grove City Council disagrees with the balance of Finding B-1 in that the manner in which the City Council conducts itself is for the Council alone to determine, not the City Manager. Had the City Council asked for "clearly elaborated and consistent procedures to deal with Council actions that might result in possible conflict of interest violations" The City of Elk Grove City Council is confident that City staff, including the City Manager, would have brought forth such procedures.

COMMENT TO RECOMMENDATION B-1:

The City Council of the City of Elk Grove hereby adopts the following policy and procedure for recusal:

1. Determination if Conflict of Interest Requirement Might Apply To Any Council Member for Any Item Before the Council:
 - a. State law places the duty on each City Council Member to ensure that he or she is in compliance with all of the State's ethics laws. The City is not responsible for ensuring that each Council Member conducts him or herself in an ethical manner.
 - b. If a City Council Member discovers that he or she may have a conflict of interest, the Council Members shall notify: (1) the City Council, (2) the City Attorney and (3) the City Manager that such a conflict may exist. The Council Member shall refrain from making, participating in making or influencing governmental decisions unless and until a determination is made that he or she is entitled to participate.
2. Explicitly Advise the Affected Council Member and All Other Council Members of the Potential Conflict:
 - a. The City Attorney shall provide advice to the City regarding potential conflicts of interest issues identified by City Council Members. Where necessary, the City Attorney shall consult with outside counsel to provide this advice;
 - b. Opinions of the City Attorney and outside conflicts counsel are drafted for the benefit of the entire City and are, therefore, subject to disclosure to the entire City Council;
 - c. Where the City Attorney concludes that he or she cannot adequately represent the interests of the City as a whole because of particular conduct by a Council Member, the City Attorney shall immediately advise the Council Member that he or she should seek advice from separate legal counsel. The City Attorney shall document this advice for the City Council;
3. Explicitly Document the Determination that a Conflicts of Interest Restriction Applies or Does Not Apply:
 - a. All Opinions of the City Attorney regarding conflicts of interest shall be documented in writing (either electronically or on paper) and shall be distributed to the entire City Council. The City Attorney will

not be required to provide a formal written opinion for advice that is requested during the course of public meetings. Because of the attorney-client privilege, the scope of advice given in the course of a public meeting may be limited.

- b. The City Attorney may seek formal written advice from the Fair Political Practices Commission and the Attorney General where appropriate.

Nothing in this policy shall require the City Attorney to violate the attorney-client privilege unless expressly authorized to do so by a majority vote of the City Council.

By adoption of this resolution and policy, the recommendation is hereby implemented.

-o0o-

COMMENT TO FINDING B-2:

The City of Elk Grove City Council agrees with the first two sentences and the third sentence up to the word "however" in sentence three of Finding B-2. The City of Elk Grove City Council disagrees with the balance of sentence three as it knows of no evidence that the Law Enforcement Contract was not legally executed. The City of Elk Grove City Council disagrees with the fourth sentence, to the extent it implies the City Attorney gave inconsistent or incorrect advice. The City of Elk Grove City Council agrees with that portion of the fourth sentence that asserts that the City Attorney did not document each potential conflict of interest situation.

COMMENT TO RECOMMENDATION B-2:

The City Council of the City of Elk Grove hereby adopts the following policy:

The Elk Grove City Council hereby instructs the City Attorney to explicitly advise the Council, and to document that advice, whenever a Council Member may be acting in violation of conflict of interest requirements. The City Council does not by this direction waive, or give permission to the City Attorney to waive, the attorney-client privilege. The City Attorney shall develop a method of obtaining expert legal opinions in situations where there is any doubt about how conflict of interest requirements apply.

By adoption of this resolution and policy, the recommendation is hereby implemented.

-o0o-

COMMENT TO FINDING B-3:

The City of Elk Grove City Council disagrees with this finding to the extent that it implies that the adoption of a budget is in some manner the making of a contract.

COMMENT TO RECOMMENDATION B-3:

The City Council of the City of Elk Grove hereby adopts the following policy:

The City Manager shall ensure that all actions on the budget that could potentially involve a conflict of interest are considered separately and discretely by the Council, consistent with FPPC regulations regarding the segmentation of decisions.

This policy recognizes that while segmentation is permitted under the Political Reform Act, no such segmentation permitted under Section 1090—the conduct either will be considered the making of a contract or it will not.

By adoption of this resolution and policy, the recommendation is hereby implemented.

-o0o-

COMMENT TO FINDING B-4:

The City of Elk Grove City Council generally agrees with this finding. However, it is each Council Member's own responsibility, not the City's responsibility or other City Council Members' responsibility, to be accountable for their own action and no other Council Member should have to monitor their colleagues' conduct. Out of respect for each Council Member, in the past each Council Member allowed other Council Members to act as they saw fit without intervention from other Council Members.

COMMENT TO RECOMMENDATION B-4:

The City Council of the City of Elk Grove hereby adopts the following policy:

All Council Members shall:

1. Undertake efforts to be fully trained and advised on how conflict of interest and other ethics requirements may limit their actions,

2. Undertake efforts to be fully trained and advised on how they can ensure that they and other Council Members abide by legal requirements, and
3. Observe standards of ethical conduct.

The Elk Grove City Council hereby instructs and empowers the City Manager and the City Attorney to explicitly warn the City Council whenever a Council Member may be acting in violation of conflict of interest requirements, including the policies adopted by the City Council herein.

By adoption of this resolution and policy, the recommendation is hereby implemented.

-oOo-

COMMENT TO FINDING B-5:

The City of Elk Grove City Council is unaware of the sworn testimony the Grand Jury received during its confidential investigation, and therefore has insufficient information to agree or disagree with Finding B-5.

COMMENT TO RECOMMENDATION B-5:

The City Council of the City of Elk Grove hereby adopts the following policy:

The Council shall develop an explicit code of ethics that promotes communication and civil interaction, and eliminates abusive or intimidating behavior. This code of conduct shall be followed in all interactions among Council Members and between Council Members and City staff. All Council Members shall commit to following the code of ethics.

On April 27, 2005 The City of Elk Grove City Council adopted a code of ethics, a copy of which is attached and made a part of this comment and response.

-oOo-

COMMENT TO FINDING B-6:

The City of Elk Grove City Council disagrees with Finding B-6 in that the City is not aware of any actual or perceived threat to the validity of the Law Enforcement Services contract and is also confident that any such challenge would be rejected by the courts and mooted by appropriate action by the parties.

COMMENT TO RECOMMENDATION B-6:

The City Council of the City of Elk Grove adopts the following policy:

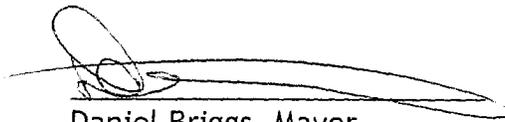
The City of Elk Grove shall work with the County of Sacramento to reach mutual agreement upon a method of providing law enforcement services should a court be asked to determine that the existing Agreement for Law Enforcement Services is void. This agreement should include a mutually acceptable method to resolve any financial problems resulting from a voiding of the contract.

On April 7, 2005 the El Grove City Attorney and County Counsel, Robert Ryan, Jr. met to discuss, among other things, such an agreement. As a follow-up to that meeting, on April 21, 2005 the Elk Grove Assistant City Manager and City Attorney met with Assistant County Counsel John Wisenhunt, Under Sheriff John McGuniess, and Chief Deputy Sheriff George Anderson to further negotiate such an agreement.

-o0o-

By my signature below, I adopt this as the comment of the Mayor of the City of Elk Grove and it is hereby submitted pursuant to the Laws of the State of California.

May 2, 2005
CITY OF ELK GROVE



Daniel Briggs, Mayor

By action of the City Council of the City of Elk Grove at its regularly scheduled meeting on April 27, 2005, this is the comment of the City of Elk Grove and the comment of the City Council of the City of Elk Grove and is submitted pursuant to the Laws of the State of California.

Attest:

May 2, 2005
CITY OF ELK GROVE



Elk Grove City Clerk
Peggy Jackson



Elk Grove City Council
by Daniel Briggs, Mayor

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-119

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

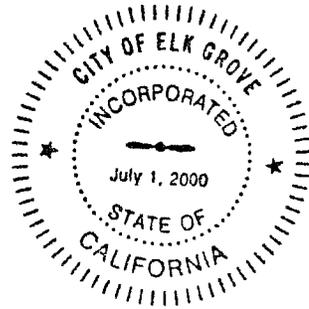
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 27th day of April 2005 by the following vote:

AYES: **COUNCILMEMBERS:** *Scherman, Soares, Briggs, Cooper, Leary*

NOES: **COUNCILMEMBERS:**

ABSTAIN: **COUNCILMEMBERS:**

ABSENT: **COUNCILMEMBERS:**



Peggy E. Jackson

Peggy E. Jackson, City Clerk
City of Elk Grove, California

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-120

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 27th day of April 2005 by the following vote:

AYES: **COUNCILMEMBERS:** Scherman, Soares, Briggs, Cooper, Leary

NOES: **COUNCILMEMBERS:**

ABSTAIN: **COUNCILMEMBERS:**

ABSENT: **COUNCILMEMBERS:**




Peggy E. Jackson, City Clerk
City of Elk Grove, California

RESOLUTION NO. 2005-119

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
ADOPTING THE CITY CODE OF ETHICS**

WHEREAS, the City of Elk Grove desires to establish a framework for day-to-day actions and decision making by Councilmembers, City employees, officers, commissions, and elected or appointed officials; and

WHEREAS, a City Code of Ethics provides such a framework; and

WHEREAS, a City Code of Ethics serves to:

- a. Increase public confidence in City government; and
- b. Assist Councilmembers, City employees, officers, commissions, and elected or appointed officials with decision making; and,
- c. Encourage high standards of conduct by all; and

WHEREAS, a City Code of Ethics can represent a commitment to uphold a standard of integrity beyond that required by law;

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Elk Grove hereby adopts this City Code of Ethics, as attached.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 27th day of April, 2005.



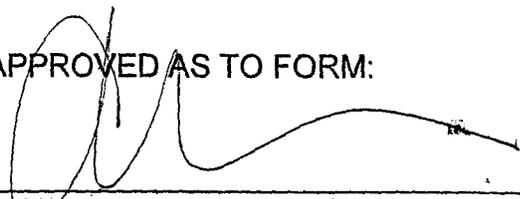
DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON,
CITY CLERK

APPROVED AS TO FORM:



ANTHONY MANZANETTI,
CITY ATTORNEY

City of Elk Grove California

City Code of Ethics

Adopted by Citizens of Elk Grove

Preamble

The citizens of the City of Elk Grove are entitled to responsible, fair and honest city government that operates in an atmosphere of respect and civility. Accordingly, the Elk Grove City Council, with citizen input, has adopted this code to:

1. Describe the standards of behavior to which its leaders and staff aspire.
2. Provide an ongoing source of guidance to elected leaders, city officials and staff in their day-to-day service to the city.
3. Promote and maintain a culture of ethics.

Pledge

On (date adopted), the City Council of the City of Elk Grove adopted this City Code of Ethics, which applies to all City employees, officers, commissions, and elected or appointed officials and requires the following pledge:

City Code of Ethics

Responsibility

- I understand that the community expects me to serve with dignity and respect, as well as be an agent of the democratic process.
- I avoid actions that might cause the public to question my independent judgment.
- I do not use my office or the resources of the city for personal or political gain.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the city and its citizens.

Fairness

- I promote consistency, equity and non-discrimination in public agency decision-making.
- I make decisions based on the merits of an issue, including research and facts.
- I encourage diverse public engagement in our decision-making processes and support the public's right to have access to public information concerning the conduct of the City's business.

Respect

- I treat my fellow city officials, staff, commission members and the public with patience, courtesy, civility, and respect, even when we disagree on what is best for the community and its citizens.

Honesty

- I am honest with all elected officials, staff, commission members, boards, the public and others.
- I am prepared to make decisions when necessary for the public's best interest, whether those decisions are popular or not.
- I take responsibility for my actions, even when it is uncomfortable to do so.

REVISED
COUNTY OF SACRAMENTO
CALIFORNIA

59

For the Agenda of:
May 24, 2005
Timed: 11:30

APPROVED
BOARD OF SUPERVISORS

MAY 24 2005
By *Cindy H. Turner*
Clerk of the Board

To: Board of Supervisors

From: County Executive

Subject: Response To Sacramento County Grand Jury Report; Elk Grove City Council
And Conflict Of Interest Issues Dated February 28, 2005

Contact: Mary Ann Treadaway, Principal Analyst (874-8249)

Overview

The Sacramento County Grand Jury Report issued on February 28, 2005 regarding the Elk Grove City Council and conflict of interest issues contained one finding and recommendation for the Sacramento County Board of Supervisors. This report responds to that recommendation. For your information, attached to this report is the response from the Sheriff's Department related to the findings and recommendations directed to that Department.

Recommendation

1. Adopt this report as Sacramento County's response to the Recommendation D-1 contained in the Grand Jury Report dated February 28, 2005.
2. Approve the implementation of the recommendations contained in the response.
3. Instruct the Clerk of the Board to forward a copy of this response to the Presiding Judge of the Superior Court and the Grand Jury Foreman.

Measures/Evaluation

Not applicable.

Fiscal Impact

At this time, there are no additional costs identified related to the implementation of the response to the recommendation. However, this will have to be monitored for workload impact and may result in a need for additional staff resources in the Department of Finance.

BACKGROUND:

The City of Elk Grove was created by a vote of its residents on March 7, 2000 and incorporated effective July 1, 2000. Two of the five elected City Council members are Sacramento County Sheriff employees. By law the Sheriff's Department was required to provide the preexisting level of law enforcement services to a newly incorporated city for a period of one year after

incorporation, and is reimbursed by the city for the cost of those services. After the initial year, the new city must decide how to provide for ongoing law enforcement services. The Elk Grove City Council began exploring this question at its initial meeting in July 2000 and subsequently decided to contract with the Sheriff's Department. An Agreement for Law Enforcement Services was entered into with Sacramento County in November 2001.

DISCUSSION:

State law limits the involvement of any City employee or Council member in any contract with another department that also employs that person. The penalties for violations of these provisions are severe for the individual, the City and the contracting agency. The Grand Jury investigated this issue relative to the Elk Grove City Council and the contract for law enforcement services with the Sacramento County Sheriff's Department. As a result of that investigation the Grand Jury issued a report on February 28, 2005 with a series of findings and recommendations. One of the findings and recommendation is directed to the Sacramento County Board of Supervisors:

Finding D-1: The Board of Supervisors was informed in March of 2000 that conflict of interest limitations of section 1090 affected any potential contract with Elk Grove, and that a failure to observe these limitations could void any contract and adversely affect the County financially. The Board should have established a review process to ensure the subsequent contracts were free of defects related to section 1090, but did not. Furthermore, the County still does not have any policies in place to ensure that other County employees who are also elected or appointed officeholders are instructed to avoid all involvement in County contracts with the entity the employee represents.

Recommendation D-1: The County Counsel is to be commended for his March 2000 opinion alerting the Board of Supervisors and the Sheriff of potential conflict of interest requirements. (No response is required). The Board of Supervisors should maintain oversight for any contract where county employees of the contracting department are also elected or appointed to the entity that contracts for services. Further, the Board of Supervisors should direct county employees who are also elected or appointed officeholders to avoid all involvement in the formation, negotiation and execution of county contracts between the county department that employs the officeholder and the entity the employee represents.

Response

Concur with the Recommendation D-1. In order to implement this recommendation, the Auditor-Controller is to be designated by the Board of Supervisors to oversee financial implementation of any contracts entered in circumstances where county employees of the contracting department are also elected or appointed to the entity that contracts for services. The Auditor-Controller is to report to the Board of Supervisors on an exception basis. Currently this applies to the City of Elk Grove and the First Five Sacramento Commission.

It is further recommended that a policy be drafted in which county employees are required to notify the Clerk of the Board when elected or appointed to a governmental board, council, commission or any other governmental entity. Upon such notification, the employee will receive

written notice of the conflict of interest laws and the parameters of their participation should contract issues arise.

FINANCIAL ANALYSIS:

In order to comply with the recommendation, there may be an increased workload to the Department of Finance requiring additional resources. This will be monitored and should there be a workload impact that cannot be absorbed within existing resources, a request for additional funding will be submitted for consideration.

Respectfully submitted:

Terry Schutten
County Executive

Attachment

Cc: Presiding Judge, Sacramento Superior Court
Grand Jury Foreman
Department of Finance

Sacramento County Agenda and Record Processing Application Approval List

Approval List for Agenda Item 105285

Page 1

| | | |
|----------------|------------|----------|
| Geoff Davey | 04/15/2005 | Approved |
| Terry Schutten | 04/18/2005 | Approved |



Lou Blanas

Sheriff

April 29, 2005

Honorable Michael Virga, Presiding Judge
Sacramento Superior Superior Court
County of Sacramento
720 9th Street
Sacramento, CA 95814

Re: Sacramento County Grand Jury Report: Elk Grove City Council and Conflict of Interest Issues

Dear Judge Virga:

Pursuant to Penal Code Sections 933 and 933.05, the following specific responses to the Grand Jury Report concerning the Elk Grove City Council and Conflict of Interest issues are very respectfully submitted to the Presiding Judge of the Sacramento County Superior Court.

As required by Statute, a copy of these responses shall be provided to the Sacramento County Board of Supervisors.

A. Findings and Recommendations concerning Council Member James Cooper and Council Member Michael Leary

Finding A-1: The Sheriff's Department agrees with this finding.

Recommendation A-1: Concur. As reflected in the Grand Jury Report, on December 9, 2004, Council Members Cooper and Leary were admonished in writing by Sheriff Louis Blanas as to the obligations to refrain from conflicts of interest arising from dual employment as with the Sheriff's Department. Additionally, on or about March 8, 2000, upon the incorporation of the city of Elk Grove, the Sheriff's Department obtained the opinion of County Counsel Robert Ryan regarding conflict of interest laws, which was communicated to Council Members Cooper and Leary.

Finding A-2: The Sheriff's Department disagrees with this finding. This disagreement is based on conflicting legal opinions solicited by the City Attorney as to what constitutes violations of the conflict of interest laws. In the absence of consensus on this matter, it cannot be definitely established that clear violations occurred.

Recommendation A-2: The Sheriff's Department concurs with this recommendation for clarifying what actions constitute a violation of the conflict of interest statutes. This matter must be deferred to the City of Elk Grove for implementation as it is beyond the authority of the Sheriff's Department to unilaterally impose it.

Finding A-3: The Sheriff's Department disagrees with this finding. The Sheriff's Department had received no complaints of this nature prior to the commencement of this Grand Jury investigation.

Recommendation A-3: The Sheriff's Department concurs in principle with the development of a code of conduct promoting civility in public discourse. This matter must be deferred to the city of Elk Grove for implementation as it is beyond the authority of the Sheriff's Department to unilaterally impose it.

B. Findings and Recommendations Concerning City Council, the City the Manager, and the City Attorney

Finding B-1: The Sheriff's Department agrees with this finding.

Recommendation B-1: The Sheriff's Department concurs in this recommendation. Implementation of any such recommendation must be deferred to the City of Elk Grove as it is beyond the authority of the Sheriff's Department to unilaterally impose it.

Finding B-2: The Sheriff's Department disagrees with to this finding. This disagreement is founded on the fact that the City Attorney was physically present when certain of the challenged activity occurred and took no action to prevent, modify, or correct it. Indeed, at least one incident of this nature was captured on videotape.

Recommendation B-2: The Sheriff's Department agrees with this recommendation. Implementation of this recommendation must be deferred to the City of Elk Grove as it is beyond the authority of the Sheriff's Department to unilaterally impose it.

Finding B-3: The Sheriff's Department agrees with this finding.

Recommendation B-3: The Sheriff's Department concurs with this recommendation. Implementation of this recommendation must be deferred to the City of Elk Grove; however, the Sheriff's Department will certainly assist in any way possible in addressing any such change.

Finding B-4: The Sheriff's Department disagrees with this finding. This disagreement is founded on the inaction of the city Attorney who was physically present during certain of the disputed transactions and who took no action to prevent, modify, or correct same.

Recommendation B-4: The Sheriff's Department concurs in this recommendation. Implementation of this recommendation is within the exclusive authority of the City of Elk Grove.

Finding B-5: The Sheriff's Department agrees that testimony on this subject was received by the Grand Jury. The Sheriff's Department disagrees with the conclusions that a) "This behavior played a significant part in allowing actions contrary to conflict of interest laws to go unchallenged;" and b) "Council members, both individually and collectively, failed to take action to confront, address and correct this behavior," as the Sheriff's Department does not have independent nor definitive proof that either circumstance occurred. The Department did not receive any timely complaint upon which to find any nexus to Department employment and supporting the taking of any action regarding same.

Recommendation B-5: The Sheriff's Department concurs in principle with a code of conduct promoting civility in public discourse among the City Council members. Implementation of such a code is within the exclusive authority of the City Council.

Finding B-6: The Sheriff's Department disagrees with this finding, noting that there is a diversity of legal opinions as to whether the extant contract is in "jeopardy of being voided." The Sheriff asserts that the contract is valid and that the facts in dispute do not support the argument that the contracts are void *ab initio*.

Recommendation B-6: The Sheriff's Department will address the provision of law enforcement services with the City of Elk Grove in the event that a court determines that the extant contract is void. Until any such determination is made, the Sheriff's Department asserts that the extant contract is valid and will meet its obligations thereunder.

C. Findings and Recommendations Concerning the Sheriffs Department

Finding C-1: The Sheriff's Department disagrees with this finding. The Sheriff's Department immediately sought the advice of County Counsel Robert Ryan regarding this matter in March 2000. This advice was communicated to Council Members Cooper and Leary. The Sheriff's Department did not use either Council Members as agents to influence any matter related to the contract between the Department and the City.

Recommendation C-1: Notwithstanding its disagreement with *Finding C-1, supra*, the Sheriff independently found it appropriate to admonish both Council Members in writing of the obligation to follow all laws regarding conflicts of interest, as described in the response to *Recommendation A-1, supra*. The Department cannot "closely monitor" the activities of Council Members Cooper and Leary with respect to their Council duties. To do so would invade the autonomy of a duly constituted coordinate branch of government and create the very atmosphere in which conflicts of interest might flourish.

D. Findings and Recommendations Concerning the Board of Supervisors

Finding D-1: The Sheriff's Department disagrees with this finding. On March 8, 2000, County Counsel Robert Ryan made it clear that conflict of interest statutes required Council Members Cooper and Leary to abstain from voting on the adoption of the contract with the Sheriff's Department for law enforcement services. The disagreement with this finding is based on the lack of any evidence of nonfeasance on the part of the Board of Supervisors or any individual Supervisor as to this matter.

Recommendation D- 1: The Sheriff's Department concurs with this recommendation. This recommendation should be implemented as soon as practicable. The Sheriff's Department will assist the Board of Supervisors in implementing any such recommendation, which is within the exclusive prerogative of the Board.

As can be seen from the subject matter of the findings and recommendations, much of what was addressed and recommended is beyond the purview of the Sheriff's Department and is instead within the exclusive prerogative of the City of Elk Grove. The Sheriff's Department cannot and does not wish to intrude on local governmental autonomy. Nonetheless, the Department stands ready to cooperate in the exploration of solutions for the issues raised in this report.

Very truly yours,

SHERIFF LOU BLANAS

A handwritten signature in black ink that reads "David T. Lind". The signature is written in a cursive style with a large initial "D" and a stylized "L".

David T. Lind
Assistant Sheriff