



Sacramento County District Attorney's Office

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August 12, 2019

Honorable David De Alba, Presiding Judge
Sacramento County Superior Court
720 9th Street, Dept. 47
Sacramento, CA 95814

Re: Sacramento County Grand Jury Final Report 2018-2019

Dear Judge De Alba:

This letter will serve as my response pursuant to Penal Code sections 933 and 933.05, as invited by the Grand Jury, concerning the portion of the Sacramento County Grand Jury Final Report 2018-2019 entitled, "Does the Sacramento County Board of Supervisors Have Effective Oversight of Elective Officers?" The findings and recommendations by the Grand Jury pertinent to the District Attorney's Office were:

Findings

F1. Sacramento County based oversight of the DA and Sheriff is inadequate given the potential impact their policies and action could have on the communities they serve. Opportunities exist to improve understanding, tolerance and trust between all parties.

Recommendations

R1. The BOS should initiate action to create a Sacramento County oversight commission with responsibilities pertaining to the DA and Sheriff. This recommendation should be accomplished by December 31, 2019.

My comments are limited to the Grand Jury's findings and recommendations as they relate to my office.

As District Attorney, I am dedicated to protecting the rights of all citizens in our community. I agree that opportunities exist to improve understanding, tolerance, and trust between my office and the community I serve. This is why my office continues to dedicate substantial efforts and resources to that very objective as described in detail below.

I also recognize the decisions I make have the potential to significantly impact people's lives since the core function of the District Attorney's Office is to investigate and prosecute criminal

conduct.¹ By its very nature, the decision to file or to refrain from filing criminal charges in any case will generate disagreement among the parties involved and, at times, the public at large. In 2018 alone, over 36,000 cases were submitted to my office for filing review. Of those, approximately 25,000 were filed. It is fair to say that each of those decisions was supported by some and criticized by others. Such is the role of the District Attorney.

However, I do not agree that the Sacramento County-based oversight of the District Attorney is inadequate. It is the level of oversight afforded under the law. California's Constitution, statutes, and judicial authorities are clear regarding who can and should have oversight of District Attorneys. District Attorneys are state officers who have been locally placed throughout the state.² The day-to-day operations of the District Attorney's prosecutorial duties are not subject to supervision by the Board of Supervisors, but instead District Attorneys are supervised by the Attorney General.³ District Attorneys must not base their decisions on public sentiment or what the Board of Supervisors or even a particular individual wants. Instead, District Attorneys are constitutionally and statutorily granted the authority to exercise their own discretion, which they must do impartially.⁴ A District Attorney's decision must be based on the facts, law, and what he or she believes is just under the circumstances. This makes sense, as society does not want District Attorneys utilizing their power swayed by political pressure or as directed by

¹ Cal. Gov't Code § 26500.

² *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 361.

³ Cal. Const., art. V, § 13; Cal. Gov't Code § 25303; see also Cal. Gov't Code § 12550; *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228; *County of Modoc v. Spencer* (1894) 103 Cal. 498. As noted by the California Supreme Court, "In contrast [to the Attorney General's supervision of District Attorneys], the county board of supervisors is statutorily barred from obstructing the district attorney's investigative or prosecutorial function. While Government Code section 25303 generally provides that the 'board of supervisors shall supervise the official conduct of all county officers . . .,' it further states that '[t]his section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the . . . district attorney of a county. The board of supervisors shall not obstruct the . . . investigative and prosecutorial function of the district attorney of a county.'" *Pitts v. County of Kern, supra*, 17 Cal.4th at p. 358. See also *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1209, fn. 4 ["[B]oard of supervisors 'does not have the power to perform the county officers' statutory duties for them or direct the manner in which the duties are performed.'" (quoting *People v. Langdon* (1976) 54 Cal.App.3d 384, 390)]; *Hicks v. Board of Supervisors, supra*, 69 Cal.App.3d at p. 240 ["Except for the power of the electorate to remove him," a district attorney's performance of prosecutions is "subject only to the supervision of the Attorney General."]; *Graham v. Municipal Court* (1981) 123 Cal.App.3d 1018, 1022 ["A county district attorney prosecuting a criminal action within a county, acts as a *state* officer, exercising ultimately powers which may not be abridged by a county board of supervisors." (italics in original)]. "California district attorneys 'are given complete authority to enforce the state criminal law in their counties. In contrast, the "powers and duties" of the counties themselves . . . do not include any provision in the area of law enforcement. . . . Thus, the "governing body" of the counties . . . cannot instruct the' district attorney how to investigate or prosecute crime." *Pitts v. County of Kern, supra*, 17 Cal. 4th at pp. 358-359 (quoting *McMillan v. Monroe County* (1997) 520 U.S. 781, 790).

⁴ "[B]oth the accused and the public have a legitimate expectation that [a District Attorney's advocacy] will be born of objective and impartial consideration of each individual case." *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, 267. "The importance, to the public as well as to individuals suspected or accused of crimes, that these discretionary functions be exercised 'with the highest degree of integrity and impartiality, and with the appearance thereof' (*People v. Superior Court (Greer), supra*, 19 Cal. 3d at p. 267) cannot easily be overstated." *People v. Eubanks* (1996) 14 Cal.4th 580, 589. "[T]he district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual." *Id.* at p. 590.

influential groups or individuals. Further, this explains why historically District Attorneys have not been subject to oversight commissions.⁵

An oversight commission is not authorized by law with regards to my office. Moreover, it is not necessary.

When I took office in January 2015, I started a new unit to improve relationships with our community groups. The Community and Government Relations (CGR) division was formed to help promote transparency and accountability. This has been done by increasing community engagement, maximizing prevention and education outreach efforts, and strengthening public trust in the criminal justice system. I am proud of the work of this division and the relationships we have developed with so many segments of our population and local officials. It is not uncommon for community groups and leaders to share information they have about particular cases we have considered for filing decisions. This input is welcomed as we strive to reach fair and just case dispositions.

Here are some of the many community events and programs our office is involved with, all of which help promote understanding, tolerance, and trust between my office and the community:

Citizens Academy: Eighteen years ago, we implemented this academy. It is currently an 11-week course created to engage the community in developing a mutual understanding of the criminal justice system. Diversity and racial issues within the framework of the criminal justice system are explored. In 2018, over 55 citizens completed the program, which addressed issues such as racial profiling, use of force by law enforcement, and law enforcement oversight. To date, almost 1,000 individuals have participated.

Speakers Bureau: Members of the District Attorney's Office are matched with community groups and organizations wanting to learn more about the criminal justice system. There are more than 30 topics and 135 speakers across all levels and areas of expertise. Community groups from all over Sacramento County have requested a speaker to present on a specific subject or attend various career fairs. In 2018, we spoke to over 103 organizations and groups on topics such as identity theft, elder abuse, cybercrimes, real estate fraud, consumer protection, domestic violence, human trafficking, and juvenile delinquency. We also participated in 11 career fairs with young people discussing career choices in the criminal justice system.

⁵ The Grand Jury noted seven other counties with oversight commissions. Those commissions generally oversee activities of their Sheriffs, not their District Attorneys. In 2015, Orange County did establish an oversight commission that included their District Attorney. However, this was in direct response to a concern of financial liability their county might incur because of a particular situation involving their jail. Aguilar, Erika. "OC Supervisors Expand Civilian Oversight to DA and Other County Law Enforcement." November 11, 2015. <https://www.sopr.org/news/2015/11/11/55595/oc-supervisors-expand-civilian-oversight-to-da-and/>. This Orange County commission has since lost significant funding and has been directed to instead examine issues of homelessness in their county. Graham, Jordan. "Orange County splits auditing office, partially funds law enforcement watchdog, passes \$6.5B budget." June 26, 2018. <https://www.oregister.com/2018/06/26/orange-county-splits-auditing-office-partially-funds-law-enforcement-watchdog-passes-6-5b-budget/>.

Understanding Your Rights: In 2018, we created this educational program as a response to several landlords who exploited the non-English speaking community by providing them with substandard housing. The Sacramento County District Attorney's Office, Sacramento City Attorney's Office, Sacramento City and County Code Enforcement, local law enforcement, and Highlands Charter School partnered to create a multi-lingual education program with the goal of informing these vulnerable groups of their basic legal rights. The program is presented at various Highland Charter School locations throughout Sacramento County. The benefits of the program include the explanation of landlord accountability, assisting the refugee community to adapt to their new lives in our community, an improved community relationship between law enforcement and the newest arrivals, and a safe place for open discussion. The program is presented in English and students receive a copy in their native language, including Farsi, Arabic, Russian, and Spanish. To date, over 900 individuals have participated in the program.

We Connect: Because Sacramento is one of the most diverse communities in the nation, our office launched this program to allow our new prosecutors to benefit from working hands-on in the community. They learn about the various neighborhoods, cultures, and lifestyles, which helps to build stronger relationships and a better understanding of the communities we represent.

COMMUNITY COLLABORATIONS

Sacramento Together Against Human Trafficking: This is a collaboration of community-based organizations that meet with the District Attorney's Office and law enforcement to improve the community response to human trafficking. At the urging of Sacramento Together members, Dignity Health funded a program that pays for licensed clinical therapists to meet with human trafficking victims.

Sacramento Regional Family Justice Center: The District Attorney's Office was a leader in the creation of the Sacramento Regional Family Justice Center (SRFJC). The SRFJC was developed after a county wide strategic planning session identified gaps in services to victims of family/dating violence, elder abuse, and sexual assault. SRFJC provides free same-day legal help with restraining orders at Sacramento Family Court, advocacy and programming that includes support groups for victims, and Camp Hope Sacramento for children who have witnessed domestic violence. The SRFJC works collaboratively with other community groups when applying for funding opportunities. One of my Assistant Chief Deputy District Attorneys serves as a board member.

Camp Hope Sacramento: Started by the SRFJC, the program sends up to 12 children at a time to this evidence-based trauma informed camp for kids who have witnessed violence in their families. The District Attorney's Office provides transportation for the campers. One of my Assistant Chief Deputy District Attorneys assists in the program by driving a van, attending camp, and mentoring kids.

The Domestic Violence Prevention Collaboration: This group meets once a month and includes all community organizations that work on domestic violence and some law enforcement. The collaboration meets to discuss recent trends. Partner agencies give presentations to the other members about the services each organization provides. The collaboration has regularly donated to Camp Hope Sacramento.

Domestic Violence Death Review Team: This team meets monthly to review all domestic violence homicides to determine whether any part of the system response could have prevented the homicide or could be improved. This group includes local hospitals, county agencies, community groups working on domestic violence, and law enforcement.

Elder Death Review Team: This team meets monthly to review all suspicious elder deaths to determine if criminal conduct was involved and looks at the system response to determine if the death could have been prevented or the system response could be improved. This group includes local hospitals, county agencies, community groups working on elder violence, and law enforcement.

Sacramento Financial Abuse Specialist Team (Sac FAST): The District Attorney's Office attends Sac FAST, which includes community groups and government agencies that work on elder abuse. These meetings occur every other month.

Sacramento Minority Youth Violence Prevention Collective: The District Attorney's Office attends monthly meetings with the Health Education Council, Black Child Legacy, Kaiser Hospital, Sacramento County Office of Education, Californians for Safety and Justice, California Endowment, the City of Sacramento, Mutual Assistance Network, Sacramento State University, Sacramento ACT, Liberty Towers, and others at the Youth Violence Prevention Collective. The focus of this group is on making positive changes to our community for prevention of youth violence.

YOUTH PROGRAMS

Sacramento County District Attorney's Crime Lab Youth Shadow Day: Our office created this program in 2018 to give high school students hands-on education from criminalists in the field of forensic science. Areas covered include evidence preservation and chain of custody, crime scene investigations, drug and ballistics testing, and DNA analysis. The program encourages students to pursue a career in the criminal justice field. Ninety students participated in our first Shadow Day. Due to the overwhelming response to the program, we added a second date in 2018 with 45 students participating. Over 40 different schools within Sacramento County were represented. This event continues to expand and over 100 students have participated in 2019.

Criminal Justice Youth Shadow Day: Our office created this program to give high school students a first-hand look at the criminal justice system. The program encourages students to pursue a career in the criminal justice field. Based on their interests, students are paired with prosecuting attorneys, defense attorneys, probation officers, law

enforcement officers, criminal investigators, and judges to experience the different roles within the system. Seeking an ethnically and economically diverse group of students, CGR sent invitations to several community-based organizations. During the first Shadow Day in 2015, over 70 high school students participated from many different schools throughout the county. The second Shadow Day in 2016 brought over 100 participants. In 2017, we had two Shadow Days with a combined total of 200 students. In 2018, we held two Shadow Days with a combined total of 195 students. Over 300 applications were received from 70 different schools in Sacramento County. In 2019, over 290 students applied and 190 have participated so far.

District Attorney Youth Academy: During the 2018-2019 school year, high school students were invited to participate in a yearlong Youth Academy my office created. In this program, students actively learn about the criminal justice system and engage in communication with law enforcement justice partners about issues that affect youth today. The response to the initial invitation was so overwhelming that four separate academies were formed in four different areas of the county.

The Youth Academies included 45 ethnically diverse presenters from the Court, Probation Department, Public Defender's Office, Sacramento Police Department and Sheriff's Department. In addition to providing an overview of the criminal justice system, topics included use of force, in-car cameras, criminal investigations, forensic science, abuse of marijuana, and distracted driving. Students also engaged in gang intervention and prevention programs and learned of the risks involved in the use of social media. The goals of the program are to teach students about the criminal justice system, have open dialogue about issues that affect youth today, and encourage students to consider a career in the justice system. A total of 306 students from 73 different high schools participated last year.

Gun-Violence Information for Teens (GIFT): We created this program to teach youth about the legal consequences of gun possession and gun-related violence and encourage them to make positive choices. The GIFT team goes into the Youth Detention Facility, middle schools, and high schools. In 2018, this program was presented to 30 classes.

Internet, Social Media Awareness, Resources & Training (#iSMART): Our office started this program to create an interactive, scenario-driven program that teaches middle school and high school students about challenges, risks, and threats in the world of social media—whether at home, school, or online. The program also emphasizes the personal, academic, professional, and legal consequences of their digital footprint. There is also a parent component that is available and taught in both English and Spanish. In 2018, iSMART was taught on 75 separate occasions to over 2,300 high school students in Sacramento County.

Luther Burbank Youth Academy: Similar to the District Attorney Youth Academy described above, we partnered with the Sacramento City Unified School District to establish a Youth Academy course specifically at Luther Burbank High School. This program works to deter criminal activity among at-risk students; provides an overview of

the criminal justice system, including the roles and challenges of law enforcement, attorneys, and the courts; and inspires students to choose a career in the criminal justice system.

Partnership Against Chronic Truancy (PACT): This early prevention program works with schools, the Juvenile Court, the Public Defender's Office, and the Department of Human Assistance to combat truancy and keep kids in school.

Youth & Community Connect: We helped develop a mobile app to assist families, agencies, youth, and others with information and resources available to them in the community. This app is the first of its kind specifically dedicated to our youth and was created in partnership with La Familia Counseling, Inc., Always Knocking, Inc., and Brother to Brother.

In addition to the above programs, my office is also involved in the community in many other ways. The District Attorney's Office attends many multi-cultural events, including, but not limited to: Crime Victims United, MLK Annual Celebration, My Sister's House Anniversary Gala, SacLEGAL Annual Founders Award, National Night Out, Legal Fusion Dinner/Gala, A Community for Peace Celebration of Hope Dinner, Annual CAIR of Sacramento Valley Celebration Banquet, CAPITAL Celebrasian Dinner, Chicks in Crisis Celebration Dinner, City of Refuge – the Table Event, Emerging Latino Foundation Event, Mothers Against Drunk Driving (MADD) Annual Dinner, Robert's Family Development Center Event, Sacramento Valley Crime Stoppers Event, WEAVE Anniversary Celebration, Asian Resources Annual Reception, Asian Peace Officers Association Annual Community Service Dinner, Friends-Care Dinner, Asian Pacific Bar Association of Sacramento Annual Dinner Gala, Friends of the Wiley W. Manuel Bar Association Dinner, and the Unity Bar Association Dinner.

In September 2018, my office hosted its 14th Annual Diversity Open House and Reception in collaboration with the University of Pacific, McGeorge School of Law; University of California, Davis School of Law; and Lincoln Law School. This event affords law students an opportunity to talk with attorneys and other staff about career opportunities at the District Attorney's Office. During this event, students also get to meet the District Attorney, learn about summer employment opportunities, and sign up to shadow a deputy district attorney for the day.

My office has a Community Prosecution Unit (CPU), which provides further opportunities for public interaction with my office. The CPU prosecutors work in neighborhoods throughout the county and in the cities of Sacramento and Rancho Cordova. CPU prosecutors focus on crimes and code enforcement issues to uphold quality of life in our neighborhoods. They partner with law enforcement, community, and public and private organizations to identify community issues and prevent crime. In 2018, six CPU prosecutors attended over 320 community meetings and over 222 neighborhood meetings. They are regular members of more than 30 neighborhood partnerships, associations, property business improvement districts, and neighborhood watch groups. Particular projects handled by CPU prosecutors include the following:

Abandoned Properties: This partnership with the Sacramento County Sheriff's Department, Code Enforcement, and county staff works to eliminate nuisances on vacant, open, and accessible properties—both residential and commercial.

Business Watch: This program is designed to encourage businesses to take an active role in preventing crime by sharing information, raising awareness, and training employees to recognize criminal activity. Business Watch signs, decals, and pamphlets are distributed to participating businesses.

Multi-Agency Graffiti Intervention Committee (MAGIC): This task force involving law enforcement, city and county agencies, and community members promotes community awareness in eradicating graffiti.

Sacramento Red-Light Abatement Collaboration (SRAC): SRAC is a collaborative program that helps educate property owners on issues involving massage establishments. The program will teach property owners on how to recognize and reduce illegal activity and how to avoid the danger of potential criminal and civil penalties. This program is set to begin on August 20, 2019.

One project CPU worked on resulted in substantial funding being distributed to various Sacramento community groups. After years of high rates of calls for service at Motel 6 locations throughout the county, CPU led an effort to encourage this national business to make significant changes in the way they operate. The goal of these changes was to improve quality of life and enhance public safety within the communities in which their motels were located. After months of discussion, Motel 6 made significant improvements. All motel employees received training in detection of human trafficking, gang, and narcotic activity. As a result, calls for service were dramatically reduced.

Motel 6 also agreed to provide \$750,000 toward an investment in a community fund. Forty-five disbursements were given to various non-profits for youth intervention, human trafficking, and domestic violence programs from 2016-2018. In 2018, the following groups received funds: A Community for Peace, Always Knocking, Inc., Asian Resource, Inc.-Youth RISE, Neighborhood Wellness Foundation-Brother to Brother Program, Chicks in Crisis, Community Against Sexual Harm, City of Refuge, La Familia Counseling Center, Inc., My Sister's House, Rancho Cordova Police Activities League, Reading Partners, Roberts Family Development Center, Sacramento Police Foundation, Sacramento Regional Family Justice Center, Sheriff's Activities League, and WEAVE. Also, \$10,000 was donated in scholarships to four Grant High School graduating seniors who are pursuing a career in law enforcement or public service.

In addition to our community involvement and communication, there are several other mechanisms currently in place that hold my office accountable, including:

- Constitutionally-mandated oversight by the California Attorney General.

- Complaints/inquiries made by citizens either directly to my office or to the Board of Supervisors. My office responds to these complaints/inquiries. I meet quarterly with the Board of Supervisors to maintain a positive working relationship with them.
- Attorneys in my office are bound by the Rules of Professional Conduct and are subject to discipline by the California State Bar, which conducts investigations and makes findings if there is misconduct.
- The daily decisions of my office are public and are subject to scrutiny by the media and others.
- I am elected and am subject to being re-elected or removed from office by the public.

The report mentions that a commission could examine and make recommendations to improve our Victim Witness Unit, including the facilitation of better communication and cooperation between the District Attorney's Office and affected families during high profile cases. It is unclear from the report what specific shortfalls are perceived with our Victim Witness Unit. By all accounts, the unit has operated for several decades at the highest professional level. During the 2018-19 fiscal year the unit provided services to 9,750 victims. Those services included, but were not limited to: crisis intervention, providing information about the criminal justice system, providing information about victims' rights, notification of criminal justice events, assistance with victim impact statements, restitution assistance, court accompaniment, and accompaniment to interviews. The advocates attend court with the victims' families throughout the entire criminal case.

Sacramento County has a disproportionate number of homicide victims that belong to an ethnic or racial minority population group. Our office has long recognized that these often marginalized, socially isolated, and disenfranchised family members of homicide victims are sometimes unconnected to the larger community, unfamiliar with the criminal justice system and governmental agencies, and, for a variety of reasons, unable to navigate the complexities of the criminal justice system without some form of specialized assistance. With that in mind, our Victim Witness Unit has two full-time advocates dedicated to assist underserved homicide survivors. Both advocates have master's degrees in social work and are certified African-American culture social workers. Other advocates assist and have special skills certification in Latino language and culture, Vietnamese language and culture, Russian/Ukrainian language and culture, and have years of experience in working with diverse cultures and have expertise in working with cross-cultural issues and varied populations.

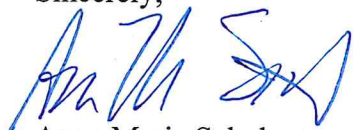
The unit also offers victims assistance in applying to the California Victim Compensation Program. The Victim Compensation Program pays for services such as funerals, wage or income loss, crime scene clean-up, home security improvements, medical or counseling costs, relocation costs, and home or vehicle modifications when needed. The unit also assists victims in obtaining these services from various agencies in the Sacramento community.

Clearly, 2018 involved unprecedented attention towards the District Attorney's Office because of a single matter: the officer-involved shooting of Stephon Clark. Our legal decision in that case was met with a mix of support, disagreement, anger, frustration, and even legislative process.

Regular protests occurred in front of our building. Members of the public voiced their opinions during these protests and through other channels we established. In addition, we made repeated efforts during the process to educate the public about the District Attorney's role in and review of such matters.⁶ Within a few days of our decision, the California Attorney General announced that he had reached the exact same conclusion after independently and impartially examining the evidence and the law.

My office will continue to be responsive to the community we serve while retaining our independence in evaluating cases objectively under the law as we follow our mission statement to "Seek Justice, Serve Justice, Do Justice."

Sincerely,



Anne Marie Schubert
DISTRICT ATTORNEY

Cc: Becky Castaneda, Grand Jury Coordinator
Sacramento County Board of Supervisors

⁶ Written correspondence to our office was received and reviewed. We established a phone number and an email account dedicated to this case to further allow the community to voice their opinions. Our website includes a copy of our officer-involved shooting protocol and a FAQ portion to further explain the review process. Outreach was also conducted in the community explaining what review would take place and the District Attorney's role in officer-involved shootings.