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August 14, 2009

AUG 17 2009

The Honorable Gary Nadler
Presiding Judge
Sonoma County Superior Court
Sent Via Courier Mail

Hand

RE: Response to the 2008-2009 Grand Jury Report

Dear Judge Nadler,

Enclosed is the District Attorney's response to the Grand Jury Final Report for 2008-2009. Please let me know if you have any questions or concerns.

Sincerely,

Stephan R. Passalacqua
District Attorney

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enclosure

cc: Board of Supervisors
Chris Thomas, Acting County Administrator
Janice Atkinson, County Clerk



SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE
RESPONSE TO THE 2008-2009 GRAND JURY REPORT

OFFICER INVOLVED FATAL INCIDENT REPORTS

Recommendation R-1, Page 13:

The District Attorney should make a realistic assessment of his resources and ability to prepare Reports as now mandated by the Protocol. If warranted by the honest reflection, the District Attorney should pursue and effect an appropriate modification to the protocol.

Response: The recommendation has been implemented.

The District Attorney appreciates that the Grand Jury has recognized the professionalism, thoroughness and outstanding work our staff provides in assisting in and analyzing these cases. We concur that additional time may be needed in the more complex cases that we review. Therefore we generally agree with the finding of the Grand Jury that the critical incident reports were completed outside the 60 day time period required by the Protocol. To that end, the Sonoma County Law Enforcement Chief's Protocol on Critical Incidents has been amended to allow the District Attorney 90 days from the time ALL reports, investigations, forensics and supplements have been forwarded to our office to complete our review process. The District Attorney does believe this time period is realistic. During the past year, the District Attorney encountered several extenuating circumstances causing the unfortunate delay in completing the reports. These delays are not anticipated to repeat themselves. Several factors contributed to the delays: extremely serious homicide cases presented themselves, District Attorney resource issues, and the number of critical incidents being reviewed in the District Attorney's office at one time was extremely high and atypical. As the Grand Jury report mentions, four reports were completed and reviewed by the 2008 - 2009 Grand Jury, and three additional reports were completed by the District Attorney which are to be reviewed by the 2009-2010 Grand Jury.

The District Attorney has implemented a more comprehensive review and follow up based on the increase in reports submitted during the previous year, and based on that experience believes the District Attorney can meet the new 90 day requirement set forth in the Protocol.

OFFICER-INVOLVED FATAL-INCIDENT REPORTS

Summary

The 2008-2009 Sonoma County Civil Grand Jury reviewed four (4) Fatal-Incident Reports (Reports) regarding officer-involved shootings or employee-involved fatal incidents. Two of the incidents involved in-custody deaths, one incident involved use of a Taser by officers in making an arrest, and one incident involved a paroled felon who was killed after shooting a uniformed deputy at point-blank range. Each Report reflected a thorough and detailed investigation of the subject incident. The District Attorney concluded in each Report that the death was not by criminal act, unlawful act or an omission to act. The Grand Jury found that all Reports were well documented and objective. Based on the evidence provided, the Grand Jury agrees there was no criminal wrongdoing regarding any involved party, including law enforcement employees. However, the District Attorney routinely provides Reports much later than existing policy requires.

Reason for Investigation

The Grand Jury reviews all Fatal Incident Reports received from the District Attorney's Office during its term. They do so to provide an independent citizen review of the District Attorney's conclusion regarding the absence of criminal behavior, and to ensure that county law enforcement agencies complied with established investigative procedures and protocols.

Background

The California Penal Code requires that a formal investigation of an officer-involved critical incident be conducted to determine if a criminal violation has occurred. The Sonoma County Law Enforcement Chiefs Association Employee-Involved Fatal Incident Protocol 93-1 (Protocol), establishes the countywide policy and procedures for prompt and efficient investigation of officer-involved critical incidents.

The Protocol dictates that a task force consisting of the District Attorney, an outside law enforcement agency not involved in the incident, and the primary law enforcement agency involved in the incident conduct the criminal investigation. Once the investigation is completed (a process that can take many months in complicated situations), the District Attorney, based on the evidence gathered in the

investigation, determines the presence or absence of criminal liability and prepares a written District Attorney's summary. This Report is required to be prepared within sixty (60) days of receiving the completed investigation. The Report details the evidence, and cites the District Attorney's conclusions. It is provided to the Sonoma County Civil Grand Jury for an independent review.

Review of previous Sonoma County Grand Jury reports indicates that during at least the past seven years, concerns have been raised about the District Attorney's lack of timely preparation of Reports.

Investigative Procedures

The Grand Jury reviewed the following completed Critical Incident reports:

- 4/22/2007 Suspect who was tasered preceding arrest, fell and sustained a serious head injury. Consequential medical condition deteriorated leading to death.
- 5/4/2007 Armed felon shot and killed.
- 6/17/2007 In-custody death at Main Adult Detention Facility.
- 4/18/2008 In-custody suicide at Main Adult Detention Facility.

In addition the Grand Jury received 3 other completed Critical Incident reports late in its term and did not have sufficient time to complete its review. These 3 reports will be passed on to the 2009-2010 Grand Jury.

Findings

F-1 Each agency involved in the subject incidents properly implemented the Protocol following the deaths of each party.

F-2 In each of the incidents reviewed in this report (and in each of 5 other fatal incidents for which investigations have now been completed pursuant to the Protocol), the District Attorney's failed to prepare and provide a written summary within the sixty (60) days required by the Protocol. The time that it has taken to prepare the Reports has ranged from seven to twenty months.

F-3 The District Attorney's conclusions that there was insufficient evidence of criminal liability in each case was warranted.

Conclusions

The Grand Jury believes that the Protocol sets forth reasonable procedures and guidelines for Sonoma County law enforcement agencies to use in the criminal investigation of fatal incidents involving law enforcement employees. The District Attorney has generally fulfilled his responsibilities under the Protocol. However, the present Protocol, requiring a written summary within sixty (60) days, has been routinely violated. The Grand Jury believes that the public would be better served by the establishment of a realistic deadline that the District Attorney's Office is able to meet, with limited and reasonable exceptions.

Recommendations

R-1 The District Attorney should make a realistic assessment of his resources and ability to prepare Reports as now mandated by the Protocol. If warranted by that honest reflection, the District Attorney should pursue and effect an appropriate modification to the Protocol.

Required Responses to Recommendations

District Attorney — R1

LETTER of August 14, 2009
REC 9/25/09 by GJ

