

2010-2011 Stanislaus County Civil Grand Jury's  
Response to the City of Oakdale Response  
as prepared by the Oakdale City Attorney

Listed below are the original findings and recommendations of the 2009-2010 Civil Grand Jury regarding case 10-09C, the response from the City of Oakdale, and the 2010-2011 Civil Grand Jury's response (in italics). **For confidentiality reasons, the Civil Grand Jury does not reveal identities of individuals involved in its investigations. The names listed in this document were revealed by the Oakdale Police Chief and/or the Oakdale City Attorney. The Civil Grand Jury neither confirms nor denies whether the names listed below were part of the investigation.**

**F2 - The Civil Grand Jury finds that the Oakdale Police Department mishandled the case investigated in this complaint by focusing on the adult in an apparent attempt to reduce or counteract his crime while ignoring the plight of the juvenile.**

OPD response:

There is no evidence to support a finding that the Oakdale Police Department mishandled the case against either offender. The Oakdale Police Department's investigation was submitted to the Stanislaus County District Attorney's Office and the Stanislaus County Probation Department, as is common practice in law enforcement. The District Attorney's Office noted a lack of evidence against the 18-year-old offender and did not file criminal charges. The District Attorney's Office (Juvenile Division) dismissed charges against the juvenile offender and closed the case against him for reasons undisclosed.

As stated by Stanislaus County District Attorney Birgit Fladager, "there is no indication that anyone at OPD withheld information or in any way interfered with the investigation or referral of either of the two suspects' cases."

Civil Grand Jury response to OPD's response:

*The OPD response misses the point. Although the OPD did submit its investigation to the Stanislaus County District Attorney's office and to the Stanislaus County Probation Department, essential evidence was not submitted. It appears that submission of incomplete cases is not an uncommon occurrence among agencies, and for this reason, the District Attorney's office noted a lack of evidence necessary to prosecute the case. Therefore, the case was rejected pending follow-up. The inclusion by OPD of a quote by Stanislaus County District Attorney Birgit Fladager as published in an article in the Modesto Bee that ". . . there is no indication that anyone at OPD withheld information or in any way interfered with the investigation or referral of either of the two suspects' cases. . ." is a factual statement, but the point is that the OPD did not follow up with the submission of essential evidence. By failing to follow up, and by responding to community concerns about the adult without apparent concern for the juvenile, gives the appearance of unfair treatment.*

**F3 – The Civil Grand Jury finds that the Chief of Police failed to enforce the law equally for the two suspects and for the best interests of the residents of the City of Oakdale.**

OPD response:

There is no evidence to support this finding. Chief West was not involved in the arrest of either offender. He first learned of the crime on Monday, May 4, 2009, three days after the arrest of the offenders, when he received an e-mail inquiry from Ceres Police Chief Art DeWerk. At the time, he was out of town attending a conference. DeWerk expressed concerns in his e-mail that Oakdale officers arrested and charged two boys with a felony for what he described as a harmless juvenile prank. At the time, Chief West telephoned Lieutenant Gladney to inquire about the case. Gladney informed West that two males, an 18-year-old and a 15-year-old, had been arrested attempting to detonate a dry ice bomb under a park bench in Valley View Park. At the time of the incident, it was raining and the park was unoccupied. The bomb had not detonated and there was no damage to the park. West learned from Gladney that both males had been arrested for a felony. In addition, the District Attorney's Office noted that it did not believe they could meet their burden of proof if the case went to trial.

Civil Grand Jury response to OPD's response:

*Whether or not the incident was just “. . . a harmless juvenile prank. . .” is missing the point. The violation of California Penal Code Section 12303.2 is a **felony**. The District Attorney's Office could not meet their burden of proof because essential evidence never reached the District Attorney's Office.*

**F4 – The Civil Grand Jury finds that on May 13, 2009, the Chief of Police issued and implemented a highly unusual verbal “standing order,” also known as a departmental verbal policy. This standing order mandates that officers receive departmental and administrative approval prior to arresting suspects up to nineteen years of age on explosive charges.**

OPD response:

The City disagrees with this finding. Chief West does not have a “departmental verbal policy” mandating that officers receive departmental and administrative approval prior to making any arrest. However, he has had a longstanding practice of requiring the lieutenants, sergeants, or watch commanders to notify him of major crimes and unusual occurrences that come to their attention. This bomb incident was an unusual case. West's practice of requiring notification allows him the opportunity to provide direction and guidance to his staff regarding the handling of critical incidents.

Civil Grand Jury response to OPD's response:

*As stated in the original written report, it is clear that, by a preponderance of evidence, a verbal “standing order” was issued that mandated that officers obtain departmental and administrative approval prior to arresting suspects up to nineteen years of age on explosives charges.*

**F5 – The Civil Grand Jury finds that the Chief of Police demonstrated poor leadership in the handling of this case by being influenced by another police chief and by failing to follow through to make sure both suspects were treated equally under the law.**

OPD response:

The City disagrees with this finding because Chief DeWerk's e-mail did not influence Chief West to make the inquiry anymore than any other e-mail or phone call from a citizen would have influenced him. After Lieutenant Gladney provided him with the facts of the case, he agreed with DeWerk that the facts did not support a felony charge under the specified Penal Code

section. At West's direction, Gladney placed calls to the District Attorney's Office and the Probation Department expressing concerns that the actions of the suspects did not appear to fit the elements of the crime. Again, the District Attorney's Office found that there was nothing that was improper about the referral of either case, and that they did not believe they could meet their burden of proof in the adult's case.

Civil Grand Jury response to OPD's response:

*As stated in the original written report, it is clear that, by a preponderance of evidence, a verbal "standing order" was issued that mandated that officers obtain departmental and administrative approval prior to arresting suspects up to nineteen years of age on explosives charges.*

**R1 – The Civil Grand Jury recommends that the Chief of Police of Oakdale initiate improved communication and leadership within the police department.**

OPD response:

The Chief of Police is committed to continuing to enhance communication and leadership within the Oakdale Police Department. As recently as August, 2009, the Chief organized a three-day management retreat that was facilitated by a professional consultant. The consultant was one of several firms that had been recommended by the State of California, Commission on Peace Officers Standards and Training. The Chief and his managers and supervisors were active participants at the retreat. At the recommendation of the consultant, the City Manager attended an afternoon session to further enhance communication. The retreat was dedicated to creating a dialogue in a setting that would lead to a list of new goals and tasks to be completed.

Communication and leadership were topics that were discussed during the three-day session. The Chief remains committed to scheduling these types of on and offsite sessions using outside facilitators to promote communication and leadership within the Oakdale Police Department.

Civil Grand Jury response to OPD's response:

*The above response fails to explain how communication and leadership has changed as a result of the three-day retreat.*

**R2 – The Civil Grand Jury recommends that the Chief of Police follow the practice of unbiased and fair law enforcement.**

OPD response:

The City of Oakdale disagrees with this recommendation because there is nothing in the facts presented in the grand jury report to suggest that Chief West was biased or unfair to either offender in this case. Throughout his 36-year career, Chief West has always followed the practice of unbiased and fair law enforcement.

Civil Grand Jury response to OPD's response:

*The handling of the case and the facts presented in the grand jury report indicate the appearance that the two suspects were not treated fairly. A felony was committed, and the lack of evidence presented to the District Attorney's Office effectively ended the prosecution of the suspects. The adult was free of any consequences, and the juvenile still has the case on file until the juvenile reaches the age of 18, and then would have to pay a fee of over \$100 to have the record expunged.*

**R3 – The Civil Grand Jury recommends that the Chief of Police withdraw the verbal “standing order” mandating that officers receive departmental and administrative approval prior to arresting suspects up to nineteen years of age on explosives charges.**

OPD response:

The City disagrees with this recommendation because no such verbal standing order exists. However, Chief West will issue a written directive reiterating that departmental and administrative approval is not required prior to arresting offenders. However, the directive will remind the lieutenant, sergeants, and watch commanders of the requirement that they notify Chief West of any serious or unusual law enforcement-related event occurring in the City. It is also his intent to continue to provide direction and guidance to his employees. If he determines that their actions are inappropriate or could potentially subject the City or any employee to criminal or civil liability, then he will take the appropriate measures necessary to prevent such a development.

Civil Grand Jury response to OPD’s response:

*The Civil Grand Jury stands behind its report. There is a preponderance of evidence that indicates that the Chief issued a “standing order” on May 13, 2009.*