

**Stanislaus County District Attorney  
Grand Jury Case No. 04-39  
2003-2004**

**REASON FOR INVESTIGATION**

To investigate a complaint alleging that District Attorney, James Brazelton has committed acts that violate the County's Workplace Security and Anti-violence Policy and/or the Harassment Policy.

**BACKGROUND**

On unspecified dates during late August 2003, reporters from the Modesto Bee were present in the offices of the District Attorney for the purpose of reviewing the receipts of credit cards issued by the County for work related expenses incurred by officials and staff members of the District Attorney's office.

During that period of time, it is alleged that Mr. Brazelton on two occasions entered the offices of staff members and engaged in acts that violated County policies. Those actions may also have constituted misconduct.

On one occasion, it is alleged that Mr. Brazelton withdrew a firearm from its holster and displayed it in his open palm while commenting that, "This is what I would like to give ..." that reporter (name deleted), or words to that effect.

On a second occasion, it is alleged that Mr. Brazelton entered another office where employees were conversing, and made a rapid motion with his right hand as though drawing a firearm, and pointed at a wastebasket while uttering approximately the same comment as in the earlier instance. The employees were clear in their recollections that the motion made by Mr. Brazelton simulated the drawing and firing of a weapon, while making threatening comments about a reporter.

The allegations became known to the Chief Executive Officer of the County, who referred the matter to County Counsel. Accordingly, the matter was investigated by personnel from County Counsel's Office and the Office of the Chief Executive Officer to determine if violations of County policies had occurred.

**PROCEDURES FOLLOWED**

1. People Interviewed
  - a. Staff members of the District Attorney's Office
  - b. Sworn law enforcement officers
  - c. Staff from the Office of County Counsel

## 2. Documents Reviewed

- a. Report of investigation prepared by Office of County Counsel (February 17, 2004)
- b. Stanislaus County Workplace Security and Anti-violence Policy (February, 2003)
- c. Stanislaus County Harassment Policy (November 2, 1998)
- d. Stanislaus County Internet and Email Policy (April 15, 2004)
- e. Stanislaus County Policy on Disciplinary Actions (undated)
- f. Stanislaus County Code of Ethics and Conflict of Interest Policy Statement and Procedures (October 22, 1991)
- g. Office of the District Attorney, Firearms Policy (July 22, 2003)
- h. California Department of Justice Standard Application for License to Carry a Concealed Weapon (June, 2002)
- i. Registry of Concealed Weapons Permits issued by Stanislaus County Sheriff's Department
- j. Relevant sections of the California Penal Code
- k. Relevant sections of the California Government Code

## **FINDINGS**

1. The District Attorney is an elected official of the County.
2. As an elected official, the District Attorney is not accountable to the Board of Supervisors or any other County official. He is accountable only to the electorate.
3. Stanislaus County has adopted a Workplace Security and Anti-violence Policy, and a Harassment Policy. The Harassment Policy provides that it is applicable to elected officials. The Workplace Security and Anti-violence Policy states in Section I.E that it applies to employees "...or other individuals providing services or acting on behalf of the County".
4. If elected officials of the County violate County policies, there is little recourse available to the County, unless the violation constitutes a criminal act.
5. The Civil Grand Jury is required by Penal Code section 919(c) "...to inquire into the willful or corrupt conduct in office of public officers of every description in the county."
6. Prior to being interviewed at County Counsel's office, the District Attorney entered an employee's office, closed the door and stated that "Somebody has talked to the CEO's office and I'm going to find out who it is". He subsequently stated to the employee "But you know it never happened". On that occasion, the employee did report feeling personally threatened and fearful.

7. Prior to another employee's meeting with County Counsel, the District Attorney approached the employee to state that he wanted to talk about "...that gun thing". During the course of the conversation he stated that he would not do something like that, and that it didn't happen. He subsequently stated that "I am just trying to find a rat in my office".
8. The District Attorney denies that either of the two events involving weapons display, simulated or actual, occurred.
9. Following his interview at County Counsel's office, the District Attorney made contact with two of the witnesses after specifically being admonished by County Counsel not to do so.
10. Section I.C of the Stanislaus County Workplace Security and Anti-violence Policy provides that "...threats of violence...by any employee, contractor, or other person performing services for the County is prohibited and will not be tolerated".
11. Section I.D.3 of the Policy provides that a "...Type III event usually involves a threat of violence ... by a current or former worker, supervisor or manager...."
12. Section I.B. of the Stanislaus County Harassment Policy provides that "Harassment includes, but is not limited to speech such as epithets, derogatory comments or slurs and lewd propositioning on the basis of race, sex, religion, national origin, ancestry disability, medical condition, marital status, age or sexual orientation".
13. Investigators employed by the District Attorney are sworn law enforcement officers pursuant to Penal Code section 830, and are authorized to carry firearms without a concealed weapons permit. The authority of investigators to carry or use firearms is conditional upon conformance to a Firearms Policy that was promulgated, and signed, by the District Attorney. The effective date of that policy was July 22, 2003, or approximately one month prior to events at issue.
14. Section VI.A (DISPLAY OF FIREARMS) of the Firearms Policy provides, in pertinent part, as follows: "Sworn personnel should not remove their firearm from the holster for the single purpose of display". Section X.A (SAFETY CONSIDERATIONS) of the Firearms Policy provides as follows: "Investigators shall not unnecessarily display or handle any firearm".
15. Section 4 (CCW License Conditions and Restrictions) of the State of California Department of Justice Standard Application for License to Carry a Concealed

Weapon (CCW) states that "...the licensee shall not, when carrying a concealed weapon ... unjustifiably display a concealed weapon".

16. An estimated fourteen attorneys employed by the District Attorney possess active concealed weapons permits that authorize them to carry firearms. Neither the District Attorney's office nor the Office of the Chief Executive maintains records on concealed weapons permits held by employees. At the time of the two events in which it is alleged that the District Attorney displayed a firearm, or simulated drawing and firing a firearm, the District Attorney possessed a valid permit to carry a concealed weapon. The permit has since expired.
17. The District Attorney has not promulgated a policy or issued directives relative to the carrying of firearms by employees who are not sworn law enforcement officers. At present, it is permissible for every employee at the District Attorney's office to carry a firearm while in the office, provided that each employee has obtained a concealed weapons permit from the Sheriff's Department or a police department.
18. The District Attorney made comments about having missed an opportunity to strike one of the reporters with his vehicle when the reporter had walked across the street in front of him.
19. The District Attorney's office has not consistently trained staff on County policies.
20. The District Attorney has made jokes in the office about the incidents giving rise to County Counsel's investigation.

## **CONCLUSIONS**

1. The actions of the District Attorney entering the office of an employee and displaying a firearm while making comments about a reporter constitutes a violation of the Stanislaus County Workplace Security and Anti-violence Policy. Those actions constitute an act of willful misconduct.
2. The actions of the District Attorney entering the office of an employee who was conversing with a co-worker and simulating the drawing and firing of a firearm, while commenting that "This is what I would like to give ...(that reporter)" constitutes a violation of the Stanislaus County Workplace Security and Anti-violence Policy. Those actions constitute willful misconduct.
3. Comments uttered by the District Attorney regarding the opportunity to strike a reporter with his car constitute an indirect threat as defined in section I.D.4.b of the Workplace Security and Anti-violence Policy, and were made in violation of that policy. The comments constitute an act of willful misconduct.

4. The two instances in which the District Attorney approached employees to say “it did not happen” prior to their interviews at County Counsel’s office constitute two acts of willful misconduct.
5. The District Attorney’s statement to two employees that, “I am just trying to find a rat in my office”, and “I am trying to find out who talked to the CEO’s office” constitute two acts of willful misconduct.
6. The actions of the District Attorney in contacting two employees after he had been admonished by County Counsel not to do so constitute two acts of willful misconduct.

## **RECOMMENDATIONS**

1. The Stanislaus County Board of Supervisors, in a regular meeting of the Board, should recite the conclusions and recommendations contained in this Grand Jury report and publicly rebuke District Attorney James Brazelton for his actions.
2. Management personnel at the District Attorney’s office, in consultation with County Counsel’s office and the Sheriff’s Department prepare a firearms policy that sets forth the following:
  - a. A requirement that every weapon carried by non-sworn employees shall be registered with the department, and shall be identified by make, model and serial number;
  - b. The conditions under which employees may carry firearms in the workplace;
  - c. When and how firearms are to be stored at the workplace;
  - d. Safety considerations; and,
  - e. Prohibited use of firearms.

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

3. Management personnel at the District Attorney’s office should, in consultation with the Office of the Chief Executive Officer, develop a training program that identifies the training needs of all employees in the Department, the frequency with which the training should be repeated, and that includes a training schedule for each employee. The training manual should address separately professional level training courses, and training on County policies and other issues of a general nature. Completion of required training should be a rating criterion for annual employee performance evaluations.
4. Training programs should reinforce the concept that it is the responsibility of every County employee to report acts of misconduct committed by co-workers, supervisors, department heads, managers and elected officials. It is vital that

training of this nature strengthen assurances that they need not fear retaliation for reporting the misdeeds of others.

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