

**Stanislaus County District Attorney
Civil Grand Jury Case No. 05-12
2004-2005**

SUMMARY

The Stanislaus County Civil Grand Jury received a complaint regarding the Stanislaus County District Attorney (DA), James C. Brazelton. The complaint, signed by multiple parties, expressed concern with regards to the DA's questionable actions and behavior. Based on the findings of the previous 2003/2004 Civil Grand Jury, the complainants requested that the current 2004/2005 Grand Jury consider an accusation proceeding¹ against the DA under Penal Code Section 919 (c) and Government Section 3060. The 2004/2005 Grand Jury found that the points outlined in the new complaint warranted review. The findings did not support a formal accusation proceeding. Although the DA is elected to his office, he is also a county employee subject to all county regulations, guidelines, and restrictions. He is ultimately responsible to the California State Attorney General.

The 2004/2005 investigation revealed that the DA:

- Has a serious disagreement with his staff regarding the 2003/2004 Grand Jury testimonies.
- Consistently violates established county employee policies and state and local firearms policy.
- Disregarded Stanislaus County Counsel's admonishment not to contact potential witnesses involved in the investigation.
- Has a negative impact on the morale of the people around him with his habit of making inappropriate violence-related comments as expressed to third parties and aimed at members of the media.
- Acts in a manner that reflects a low degree of integrity. It is questionable that he can effectively perform the duties of his elected position.
- Commits offenses serious enough to warrant disciplinary action by the county.

The 2004/2005 Civil Grand Jury recommends:

- The DA shall immediately comply with all established county and state firearm policies.

¹ "Accusation. A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime", p. 15" – from Black's Law Dictionary, abridged sixth edition, West Publishing Company, St. Paul, Minnesota, 1991.

- Staff members be protected under the law from fear of intimidation or retribution from any new adverse actions of the DA. They shall immediately report new incidents to a supervisor (other than the DA), with the supporting time and date of the incident. The new incident shall be immediately reported by the supervisor through established proper county channels.
- The Board of Supervisors shall take immediate action against the DA in the form of a salary reduction and/or public admonishment upon reports of new incidents.

INTRODUCTION

The contentions of the complaint are that the DA:

- Committed perjury in his original deposition or members of his staff committed perjury in their depositions to the 2003/2004 Civil Grand Jury.
- Disregarded the Stanislaus County Counsel's admonishment not to contact potential witnesses involved in the investigation.
- Violated the Stanislaus County Workplace Security and Anti-violence Policy.
- Violated the Stanislaus County firearms policy and state firearms policies².
- Acted in a manner that reflects a low degree of integrity.
- Committed offenses serious enough to warrant disciplinary action by the Stanislaus County Board of Supervisors.

The grand jury analyzed the DA's response to the 2003/2004 Civil Grand Jury report and judged that he had been less than forth-coming in his response to the report. The Board of Supervisors failed to adequately address the issues in their response.

The 2004/2005 Civil Grand Jury reviewed the complaint and determined that it was worthy of additional investigation. The purpose of the investigation was to determine, based on the findings of the 2003/2004 Grand Jury Report, the DA's response to that report and the points outlined in the new complaint, if an accusation proceeding was warranted.

METHOD OF INVESTIGATION

This grand jury interviewed under oath the 2003/2004 witnesses and recertified their testimony as to accuracy. This year's grand jury also deposed a complainant, a representative from the Stanislaus County Counsel's Office, and the Stanislaus County DA. The grand jury researched and reviewed:

- Previous depositions.

² 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".

- Penal Code Section 919 (c).
- Government Code Section 3060.
- Stanislaus County Employee Conduct/Behavior Expectations February 2, 2000, Internet and E-mail Policy.
- Stanislaus County Civil Grand Jury Final Report, 2003/2004.
- The 2003/2004 Civil Grand Jury files on complaint number 04-39, in its entirety.
- Media accounts of related events.

FINDINGS

- 1) All witnesses, including the DA, confirmed the accuracy of their prior sworn testimony. The 2004/2005 Grand Jury determined that there were significant differences in the original testimony of the DA and members of his staff.
- 2) The 2003/2004 and 2004/2005 Grand Juries found that staff members felt intimidated and feared retribution from the DA if they reported any violations made by the DA. Testimony indicated that the DA repeatedly undermined the credibility of staff members.
- 3) According to the 2003/2004 testimony and by the DA's own admission he failed to comply with the County Counsel's admonishment not to contact the witnesses.
- 4) The 2003/2004 Grand Jury, based on sworn testimony, determined that the DA did make threatening comments and he did simulate the act of drawing, pointing, and firing a weapon while making comments regarding local members of the media in front of his staff. The DA's response to that report was that he denied "brandishing" a weapon in his office. The 2003/2004 Grand Jury report did not state that he brandished a weapon and this grand jury agrees that his actions did not meet the legal definition of brandishing.
- 5) This grand jury believes that the DA's intentions, comments and the act of simulating the drawing of a weapon, actual or not, is inappropriate and in direct violation of the Stanislaus County Workplace Security and Anti-violence Policy. This grand jury concurs with the law that under no circumstances is it appropriate for the chief law enforcement officer of the county to engage in this type of conduct. The DA admitted in his response to the 2003/2004 Civil Grand Jury Final Report that he did display a weapon in the palm of his hand in the office while discussing different types of weapons. The grand jury determined that this display is in violation of the following:
 - Section VI.A (DISPLAY OF FIREARMS) and Section X.A (SAFETY CONSIDERATIONS) of the County Firearms Policy.
 - The State of California Department of Justice Standard Application for License to Carry a Concealed Weapon.

- 6) The 2003/2004 Grand Jury reported that the DA carried a concealed weapon after his license had expired. The DA violated the Stanislaus County Firearms Policy that he himself signed one month prior to the incident based on his own response to that report. It was determined by both Grand Juries that the DA violated the Stanislaus County Workplace Security and Anti-violence Policy, Stanislaus County Firearms Policy, and the California Department of Justice Standard Application For A License to Carry a Concealed Weapon Policy. As a department head, the DA has a higher responsibility for following and enforcing the above policies that he violated. Violation of these policies by any employee of the county would be subject to disciplinary action, up to and including immediate termination.
- 7) The 2003/2004 Grand Jury panel testimony regarding internet email incidents involving derogatory and/or inflammatory remarks that were made by the DA was confirmed by the 2004/2005 Grand Jury panel. The incidents were in direct violation of the Stanislaus County Internet and E-mail Policy. The county internet policy states that use of county computers is only intended for county business. It also states that the county network access or individual computer usage may not be used for transmitting, retrieving, receiving or storing of any communication with derogatory or inflammatory remarks. The policy does not differentiate between work time, lunchtime, break time, or after hours. The *Modesto Bee* reported on August 1, 2004, that the DA used his county computer and logon identification to send a joke that contained questionable political humor. Since the DA selected the "reply to all" button the e-mail message was sent to a group of people that included a *Modesto Bee* editor. As a department head, the DA has the greater responsibility for following and enforcing county policy.
- 8) The DA's comments about the media and its employees are inappropriate and unacceptable. Neither is it acceptable to joke about violence toward people or property. The fact that the DA chooses to make comments of this nature has a negative impact on those around him, specifically the staff in his office. Therefore, this behavior must stop now.
- 9) The complainants requested this grand jury to consider an accusation proceeding under Penal Code Section 919(c) and Government Code Section 3060. The Grand Jury established that the DA is guilty of inappropriate behavior in violation of multiple county policies. However, it was determined that the criteria for beginning an accusation proceeding have not been met with the evidence. As an elected official he is ultimately accountable to the voters. The DA stated in last year's response that he is a county "employee" as well as an elected official, and he is responsible to the State of California Attorney General's Office for his actions. The DA stated in last year's response that the Board of Supervisors controls his salary. This grand jury verified that the Board of Supervisors does have the authority to take action against him for his misdeeds in the form of a salary reduction.

RECOMMENDATIONS

- It is the responsibility of the DA to lead by example as the county's chief law enforcement officer. The DA shall immediately comply with all policies established for county employees.
- Staff members shall immediately report new incidents to a supervisor (other than the DA), with the supporting time and date of the incident. The new incident shall be immediately reported by the supervisor through established proper county channels.
- The Board of Supervisors shall take immediate action against the DA in the form of censure and/or a salary reduction for any future county or state policy violations.
- The Board of Supervisors shall admonish the DA within 90 days of the policy violations listed below. This admonishment shall include instructions that the DA immediately complies with all county and state policies.
 - a) Stanislaus County Workplace Security and Anti-violence Policy
 - b) Stanislaus County Harassment Policy
 - c) Stanislaus County Firearms Policy
 - d) California Department of Justice Standard Application For A License to Carry a Concealed Weapon

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