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August 15, 2005

The Honorable Marie Sovey Silveira  
Presiding Judge of the Superior Court  
P.O. Box 1011  
Modesto, CA 95353

Re: Response to Stanislaus County Grand Jury Report #05-12

Dear Judge Silveira:

The Stanislaus County District Attorney's Office strives to maintain a high standard of conduct in staff relationships to the public and other county and department members. The 2003-2004 Civil Grand Jury investigated the incident in question and the District Attorney responded to those findings and recommendations in the filed response. The 2004-2005 Civil Grand Jury reviewed testimony from various individuals and transcripts from the 2003-2004 investigation.

District Attorney James C. Brazelton retired effective July 29, 2005. Since the findings and recommendations were directed specifically at Mr. Brazelton, the District Attorney during these investigations, my response will be limited to those areas that are applicable to the effective and efficient operation of the District Attorney's Office. It is my goal and ultimate responsibility to maintain a working environment for employees that is free of any type of inappropriate conduct.

I will respond to the report of the Civil Grand Jury Findings and Recommendations as follows:

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.**

*Unable to respond to this finding, as the testimony is secret and known only to the witnesses and Grand Jury members. The District Attorney retired effective July 29, 2005.*

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.**

*The subject of the Investigation retired effective July 29, 2005.*

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.**

*See response to Finding #2.*

4. **The 2003/2004 Grand Jury, based on sworn testimony, determined that the DA did not 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.**

*See response to Finding #2.*

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 Police. 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 VLA (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.**

*See response to Finding #2.*

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 the policies by any employee of the county would be subject to disciplinary action, up to and including immediate termination.**

*See response to Finding #2.*

7. **The 2003/2004 Grand Jury panel testimony regarding internet email incidents involving derogatory and/or inflammatory remarks that 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.**

*See response to Finding #2.*

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.**

*See response to Finding #2.*

9. **The complainants requested this grand jury to consider an accusation proceeding under Penal Code Section 919c 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 does have the authority to take action against him for his misdeeds in the form of a salary reduction.**

*See response to Finding #2.*

*The Board of Supervisors determines the salary for all county elected officials.*

**RECOMMENDATIONS:**

1. **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.**

*Agree with the first sentence. The District Attorney and subject of the recommendation retired effective July 29, 2005. The current administration will strive for compliance by staff with all County policies.*

2. **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.**

*Any misconduct or inappropriate conduct by any employee will not be tolerated and all employees are encouraged to report any violations to supervisors per existing county policies and procedures.*

3. **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.**

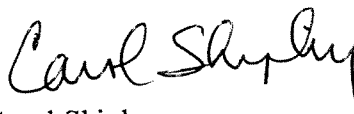
*Directed to Board of Supervisors.*

4. **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**

*Directed to Board of Supervisors.*

Very truly yours,



Carol Shipley  
Assistant District Attorney