

JUSTICE FOR ALL?

BACKGROUND:

The Tulare County Grand Jury is a part of the California Superior Court and has the legal authority to conduct investigations into the affairs of County, City, and Special Districts under Penal Code (PC) §925 et seq. This authority is found primarily in statutes: PC §888-§940 and Government Code §3060 - §3075. Per PC §919(a): the grand jury may inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted. Per PC §919(b): the grand jury shall inquire into the condition and management of the public prisons within the county. Per PC §919(c): the grand jury is authorized to inquire into the willful or corrupt misconduct in office of public officers of every description within the county.

REASON FOR INVESTIGATION:

The Tulare County Grand Jury received a complaint on July 6, 2015, from an inmate in a Tulare County Jail. The complaint alleged physical abuse by jail staff. The complaint involved several staff members employed by the Tulare County Sheriff's Department on duty at the time of this incident.

METHOD OF INVESTIGATION:

The Tulare County Grand Jury began an investigation into this complaint by interviewing the complainant on two separate occasions. The Grand Jury reviewed numerous documents, videos and photographs. The Tulare County Sheriff's Department staff and Office of the Tulare County District Attorney staff were also interviewed.

FACTS:

1. The evidence substantiated that the complainant was involved in an incident occurring in the Tulare County Jail.
2. The Sheriff's Department has video cameras in place in the jails for purposes of safety and documentation.
3. Sheriff's Department staff is routinely provided training in the appropriate use of force.
4. On December 16, 2014, (seven months prior to the grand jury receipt of the complaint), the Internal Affairs Division of the Sheriff's Department began an investigation of this incident.
5. On January 13, 2015, the Internal Affairs Division report on the incident was completed and forwarded to the Office of the District Attorney for review and possible criminal prosecution.

6. On January 20, 2015, the Internal Affairs Division was advised by the Office of the District Attorney that criminal charges would not be pursued against Tulare County Sheriff's staff.
7. Administrative action was taken against Tulare County Sheriff's staff involved in this incident.
8. The Office of the District Attorney has the prosecutorial discretion to determine which cases will be prosecuted and those which will not.

FINDINGS:

- F1. The Tulare County Sheriff's staff did not follow established use of force policies and procedures.
- F2. The Tulare County Grand Jury found inconsistencies between written reports and video footage.
- F3. Evidence reviewed by the Grand Jury did not indicate if additional training and/or discipline had been administered to all participants in the incident.
- F4. Subsequent to the Grand Jury's receipt of this complaint, the Tulare County Sheriff's Department has instituted: a) comprehensive correctional officer training; b) reforms in hiring practices; c) review of disciplinary processes; and, d) upgraded technology.
- F5. The Tulare County Grand Jury found misconceptions to exist on the part of the staff of the Office of the District Attorney with respect to the investigative role, jurisdiction, and responsibilities of the Grand Jury.
- F6. After review of all evidence presented, the Grand Jury determined that physical abuse occurred and unwarranted force was used.
- F7. The Grand Jury was not advised by the Office of the District Attorney as to the rationale for declining prosecution of this case.

RECOMMENDATIONS:

- R1. Consider the expansion of sensitivity and stress reduction training.
- R2. Expand the implementation of body cameras for custody personnel.
- R3. Include audio as part of video footage monitoring system.

REQUIRED RESPONSES:

1. Tulare County Sheriff's Department
2. Office of the Tulare County District Attorney



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE

Tim Ward, *District Attorney*

March 31, 2016

The Hon. Bret Hillman
Presiding Judge
Tulare County Superior Court
County Civic Center, Room 303
221 S. Mooney Blvd.
Visalia, CA 93291

Re: Grand Jury Report entitled "Justice for All"

Dear Judge Hillman:

On March 29, 2016, the Office of the District Attorney received a copy of a portion of the 2015/2016 Tulare County Grand Jury Final Report related to the Department for review and response. The report had no recommendations for the Department. It did contained seven findings which are addressed in an attached letter, but there was a Fact that warrants clarification.

Fact 5: On January 13, 2015, the Internal Affairs Division report on the incident was completed and forwarded to the Office of the District Attorney for review and possible criminal prosecution.

This is factually inaccurate as the District Attorney does not review Internal Affairs investigative reports as those are not available to the District Attorney per law. Criminal investigative reports, which are separate and distinctive, were submitted for review by the Tulare County Sheriff on January 16, 2015.

With this issue clarified, please consider this letter the required response of the District Attorney to the above referenced report.

Findings

1. The Tulare County Sheriff's staff did not follow established use of force policies and procedures.

Not within the purview of the District Attorney.

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2. The Tulare County Grand Jury found inconsistencies between the written reports and video footage.

The District Attorney can neither agree nor disagree with this finding as it would require speculation into what the Grand Jury determined to be inconsistent.

3. Evidence reviewed by the Grand Jury did not indicate if additional training and/or discipline had been administered to all participants in the incident.

Not within the purview of the District Attorney.

4. Subsequent to the Grand Jury's receipt of this complaint, the Tulare County Sheriff's Department has instituted: a) comprehensive correctional officer training; b) reforms in hiring practices; c) review of disciplinary processes; and, d) upgraded technology.

Not within the purview of the District Attorney.

5. The Tulare County Grand Jury found misconceptions to exist on the part of the staff of the Office of the District Attorney with respect to the investigative role, jurisdiction, and responsibilities of the Grand Jury.

The District Attorney disagrees with the finding. The Office of the District Attorney is well versed in the role, responsibility and jurisdiction of both the civil and criminal grand jury process.

6. After review of all evidence presented, the Grand Jury determined that physical abuse occurred and unwarranted force was used.

The District Attorney can neither agree nor disagree as it would require speculation as to what legal provisions or standard of review the grand jury considered. The grand jury was privy to information not legally shared with the Office of the District Attorney such as the aforementioned confidential internal affairs investigation. Internal affairs investigations as they relate to personnel actions are not in the purview of the District Attorney.

The State Attorney General's Office was provided all investigative reports and evidence considered by the Office of the District Attorney and subsequently determined that the decision not to file charges was reasonable and the District Attorney did not abuse its discretion by not filing charges. The State Attorney General's Office informed the grand jury of their conclusions in writing.

7. The Grand Jury was not advised by the Office of the District Attorney as to the rationale for declining prosecution of this case.

The District Attorney disagrees with this finding. The Grand Jury was informed of the decision and the standards followed by the office in making filing decisions. These include the requirement that a case not be filed unless it can be proven beyond a reasonable doubt to a criminal jury based on uniform crime charging standards including the definition of reasonable doubt, all of which are not familiar to the civil grand jury. The Grand Jury was informed that certain information considered by the District Attorney was confidential per California Law and could not be disclosed to the grand jury without a court order, though it would necessarily be disclosed to the defense should there be a criminal complaint filed, and the confidential information would have a significant impact on the decision of a criminal jury in determining guilt.

Recommendations

1. Consider the expansion of sensitivity and stress reduction training.

Not within the purview of the District Attorney.

2. Expand the implementation of body cameras for custody personnel.

Not within the purview of the District Attorney.

3. Include audio as part of video footage monitoring system.

Not within the purview of the District Attorney.

Very truly yours,



Timothy Ward,
District Attorney

TW:rg

cc: Tulare County Grand Jury, 5963 S. Mooney Blvd., Visalia, CA 93277

Tulare County Board of Supervisors, 2800 W. Burrell Ave., Visalia, CA 93291



Tulare County

SHERIFF

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Investigations
(559) 735-1898

Operations
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May 26, 2016

The Honorable Judge Bret Hillman
County Civic Center, Room 303
221 S. Mooney Boulevard
Visalia, CA 93291

Re: Grand Jury Report: Justice for all?

Honorable Judge Hillman,

The following is my response concerning the findings and recommendations of the Grand Jury Report 2015/2016 entitled Justice for all?

The Tulare County Grand Jury received a complaint on July 6, 2015, from an inmate in the Tulare County Jail. The complaint alleged physical abuse by jail staff. The complaint involved several staff members employed by the Tulare County Sheriff's Department on duty at the time of this incident.

Fact 1: *The evidence substantiated that the complainant was involved in an incident occurring in the Tulare County Jail.*

Correct statement of fact.

Fact 2: *The Sheriff's Department has video cameras in place in the jails for purposes of safety and documentation.*

Correct statement of fact.

Fact 3: *Sheriff's Department staff is routinely provided training in the appropriate use of force.*

Correct statement of fact.

Fact 4: *On December 16, 2014, (seven months prior to the Grand Jury receipt of the complaint), the Internal Affairs Division of the Sheriff's Department began an investigation of this incident.*

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Correct statement of fact pertaining to an internal affairs Investigation being initiated. The Grand Jury was made aware the Sheriff also ordered a criminal investigation which was also initiated at the same time as the internal affairs investigation.

Fact 5: *On January 13, 2015, the Internal Affairs Division report on the incident was completed and forwarded to the Office of the District Attorney for review and possible criminal prosecution.*

Incorrect statement of fact. The internal affairs investigation was not forwarded to the District Attorney. An internal affairs investigation is an administrative investigation and cannot be used for criminal prosecution purposes. A criminal investigation was also conducted and was forwarded to the District Attorney for review as a criminal prosecution. The Grand Jury was made aware of the difference and need for two separate investigations.

Fact 6: *On January 20, 2015, the Internal Affairs Division was advised by the office of the District Attorney that criminal charges would not be pursued against Tulare County Sheriff's Staff.*

Incorrect statement of fact. On January 20, 2015, the Grand Jury was made aware that the Internal Affairs Division was not advised by the Office of the District Attorney that criminal charges would not be pursued against Tulare County Sheriff staff. The Investigation's Division that completed the criminal investigation was advised that no criminal charges would be pursued against Tulare County Sheriff staff.

Fact 7: *Administrative action was taken against Tulare County Sheriff's staff involved in this incident.*

Correct statement of fact.

Fact 8: *The Office of the District Attorney has the prosecutorial discretion to determine which cases will be prosecuted and those which will not.*

Cannot respond to this fact as it pertains to another County of Tulare Department.

Finding 1: *The Tulare County Sheriff's staff did not follow established use of force policies and procedures.*

Department agrees to the extent that the investigation concluded that there was a violation.

Finding 2: *The Tulare County Grand Jury found inconsistencies between written reports and video footage.*

Department partially disagrees. When officers write their reports from memory prior to the opportunity to review the video of the incident itself, there are times of minor inconsistencies in

their reports. The officer's original report was not written intentionally to be inaccurate. The investigations team accurately documented the video and the final report was accurate to the video with no inconsistencies. Written reports are not always entirely consistent/accurate with video if solely based on officer's memory.

Finding 3: *Evidence reviewed by the Grand Jury did not indicate if additional training and/or discipline had been administered to all participants in the incident.*

Department cannot address what evidence was reviewed by the Grand Jury. Training provided to staff is ongoing as required by Standards Training for Corrections for compliance and certification purposes. Ongoing training occurs daily, be it in the form of daily briefings in which policy and procedures are discussed or if a new policy and or directive is being implemented. Any disciplinary measures given to any employee is confidential and cannot be released per Penal Code 832.7 (d) & 832.8.

Finding 4: *Subsequent to the Grand Jury's receipt of this complaint, the Tulare County Sheriff's Department has instituted: a) comprehensive correctional officer training; b) reforms in hiring practices; c) review of disciplinary processes; and, d) upgraded technology.*

Department disagrees with this finding; incorrect statement of fact. Prior to this incident The Tulare County Sheriff's Office at the direction of the Sheriff already had in place comprehensive correctional officer training. All sworn employee's complete a five week Jail Training Program in the facility. Each sworn Correctional Deputy must successfully complete the seven week CORE Academy within one year of their hire date. This academy is approximately 285 hours of instruction which encompasses numerous subject matters pertaining to our detention facilities and those state laws that govern such.

Our hiring practices, review of disciplinary measures and upgraded technology have been in place prior to this complaint. This complaint as referenced by the grand jury was not the catalyst of our current processes.

Finding 5: *The Tulare County Grand Jury found misconceptions to exist on the part of the staff of the Office of the District Attorney with respect to the investigative role, jurisdiction, and responsibilities of the Grand Jury.*

Cannot respond to this statement of fact as it pertains to another County of Tulare Department.

Finding 6: *After review of all evidence presented, the Grand Jury determined that physical abuse occurred and unwarranted force was used.*

Cannot respond to this finding on the part of the Grand Jury. As mentioned, an internal affairs investigation along with a criminal investigation were initiated immediately by the Sheriff in 2014, nine months prior to the Grand Jury receiving said complaint. We determined there were inconsistencies with policy and disciplinary measures were taken.

Finding 7: *The Grand Jury was not advised by the Office of the District Attorney as to the rationale for declining prosecution of this case.*

Cannot respond to this statement of fact as it pertains to another County of Tulare Department.

Recommendation 1: *Consider the expansion of sensitivity and stress reduction training.*

Not Implemented: Currently this curriculum of instruction is not part of our training provided. We are researching this type of instruction through our Personnel and Training Unit for potential implementation in the future.

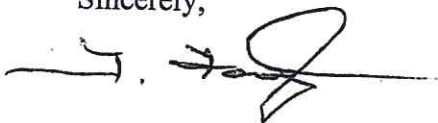
Recommendation 2: *Expand the implementation of body cameras for custody personnel.*

Partially implemented: The Grand Jury was made aware that at the direction of the Sheriff, a pilot project was already in place regarding body cameras use in our detention facilities. The Office of the Sheriff is in the process of applying for a grant for additional body cameras to equip staff at all of our facilities, further enhancing our safety and security.

Recommendation 3: *Include audio as part of video footage monitoring system.*

Partially implemented: The body cameras as mentioned in Recommendation #2 would provide both audio and video footage.

Sincerely,



Timothy Fosnaugh,
Captain

for
MIKE BOUDREAUX
Sheriff-Coroner

cc **Tulare County Grand Jury**
Tulare County Board of Supervisors