



2016 - 2017

ORANGE COUNTY
GRAND JURY

FINAL REPORT



ORANGE COUNTY GRAND JURY

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June 30, 2017

Honorable Charles Margines
Presiding Judge
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Margines:

On behalf of the 2016-2017 Orange County Grand Jury, I would like to thank you for your support and assistance this year and present you with the final report of our civil investigations. This report is a compilation of the ten civil investigative reports this year's Grand Jury produced and covers a diversity of topics and agencies. These investigations generated commendations and recommended positive changes.

It has been an honor and a pleasure to serve as the Foreperson for this year's grand jury. We had a rather unique year—a presidential election, a jail escape and a national scandal—were all examined by this year's Grand Jury. In addition, we investigated the county's efforts to control mosquito-borne diseases, the impact of the new vaccination law on Orange County public schools, and the cost to taxpayers for the delay of the Ortega Highway project. A comprehensive report on the state of cybersecurity was produced and a brief report on workplace conditions in the District Attorney's office was generated.

Every investigation the Grand Jury undertook was comprehensive in its scope, diligent in its verification of facts, and meticulously written and edited. The nineteen members who served this year were an exceptional group of critical thinkers and strove to ensure empirical, fact-based reports were produced free from bias or persuasive argument. Speaking truth to power is often a difficult task. The Grand Jury's role is to "watchdog" county government and I applaud the courage of this year's Grand Jury.

The work of the Grand Jury could not have been accomplished without the help of several individuals who dedicated their time and counsel to us this year. A hearty thank you to:

- Honorable Kirk Nakamura, Assistant Presiding Judge of the Orange County Superior Court
- Honorable Sheila Hanson, Supervising Judge of the Central Felony Panel of the Orange County Superior Court
- Sharon Durbin, Esq., Senior Deputy County Counsel
- Brock Zimmon, Esq., Senior Deputy District Attorney

And a special thank you to the ladies that kept the panel running:

- Theda Kaelin, Grand Jury Coordinator
- Joyce Mwangi, Legal Processing Specialist

Respectfully submitted,

Dr. Carrie L. Carmody, Foreperson
2016-2017 Orange County Grand Jury

REPORT SUMMARY

In compliance with the California Penal Code Section 933 (a), the 2016-2017 Orange County Grand Jury hereby submits its Final Report. This Final Report represents the diligent and dedicated efforts of the members of the 2016-2017 Grand Jury.

The Grand Jury is charged with "watchdog" responsibilities that include the examination of all aspects of county government, including special districts, to ensure the county is being governed honestly and efficiently and county monies are being handled appropriately. The Grand Jury writes its reports to bring to light the findings of these examinations. In a society of the people, by the people, and for the people, the people *must* be engaged. The Grand Jury is a citizen panel ensuring the people's engagement with their government.

This year the Grand Jury completed ten comprehensive and thorough examinations of county operations. These investigations yielded both commendations and recommendations for substantive change. Below is a brief synopsis of each report. We urge everyone to read the reports, in their entirety, to fully appreciate the work that went into the findings and recommendations.

No Voter Fraud Here: The Transparent Election Process

A review of the Orange County Registrar of Voters' operations and mechanisms designed to protect the right to vote and prevent fraud. Also includes observations on Orange County's early implementation of the new voting model that resulted from SB 450.

Is Orange County Ready for Zika? It Takes a Village to Handle Mosquito-Borne Viruses

An examination of how county government communicates information about mosquito-borne illnesses to the public, and what measures are being taken to control mosquitoes in the county.

The Great Escape – Never Again?

An investigation into the January 2016 Orange County Central Men's Jail escape to determine how it occurred and to evaluate what steps have been taken, and still need to be taken, to ensure there are no future escapes.

Ouch! – Now That Didn't Hurt: The Implementation of the Vaccination Bill SB 277 in Orange County Schools

A report on the impact on Orange County schools of SB277, the law passed that mandated childhood vaccinations and eliminated the personal belief exemption.

Pension Enhancements: A Question of Government Code Compliance

A review of the transparency around county pension enhancement awards in 2001, 2002, and 2004.

Unfinished Business: Responses to 2015-2016 Orange County Grand Jury Reports

A review of agency responses to recent Grand Jury reports and the mechanisms available to increase responses to future reports.

Ortega Highway: Unnecessary Delays Have Cost Us Millions

An investigation into the causes of the delay in completing the Ortega Highway project, as well as the safety implications and financial impact this delay will have on Orange County.

The Myth of the Orange County Jailhouse Informant Program

A comprehensive investigation into allegations of a systemic jailhouse informant program said to be operating in Orange County jails, and the role of the Orange County Sheriff's Department and the Orange County District Attorney's office may play in any such program.

Another Hostile Work Environment? Orange County District Attorney's Bureau of Investigation

A report detailing harassment complaints from personnel in the District Attorney's Bureau of Investigation that may indicate a hostile-work environment exists.

Orange County's Digital Data: Is it Protected from Cyber Attack?

An in-depth exploration of cybersecurity risks and threats to county information systems and the security procedures needed, and/or in place, to protect county data.



The 2016-2017 Orange County Grand Jury

Front Row: Foreperson Carrie Carmody

Second Row from left to right: Mike Fipps, Amy Rego, Megan Hertzberg, Dale Soeffner, Susan Knight

Third Row, from left to right: John Smead, Dorothy Metcalfe, Peter Riley, Karen Rapien, Doug Gillen, Svetlana Ramsay, Alexander Bardia

Top Row, from left to right: Steve Balloch, Alan Weston, John Rafter, John Lynes, Rob Kuehn, Richard Johnston



List of 2016-2017 Grand Jury Reports in Order of Release

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3. The Great Escape – Never Again?
4. Ouch! – Now That Didn't Hurt: The Implementation of the Vaccination Bill SB 277 in Orange County Schools
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**NO VOTER FRAUD HERE:
THE TRANSPARENT ELECTION PROCESS**



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SUMMARY

A bedrock of our democracy is the right to vote. Protecting the right to vote, preventing election fraud, ensuring ballot process integrity and reviewing past elections for ways to improve voting processes are crucial parts of the Orange County Registrar of Voters (ROV) activities. The Grand Jury observed ROV operations in the 2016 General Election, including Orange County's pilot implementation of the state's new election law, California Senate Bill 450 (SB450). The passage of SB450 in August 2016 provided an opportunity for Orange County to conduct early evaluation of a new voting model with the potential to increase voter participation and improve convenience and accessibility through the use of Voting Service Centers.

Preparing ballots, staffing voting sites and tallying ballots used to be a behind-the-scenes operation, but with past contested elections and a wave of current negative rhetoric, ROV actions have taken center stage, requiring a new level of transparency that was observed by the Grand Jury. The ease with which technical electronic devices can be manipulated has become a topic of public conversation. Protection against intrusion of electronic registration and voting machines presents new challenges to ensure vote integrity.

The Grand Jury was impressed with the commitment of all employees, volunteers and poll workers to maintain ballot box security and vote integrity, over and above Federal and State laws. The Grand Jury found no evidence of widespread or organized voter fraud or vote interference in Orange County election processes in this year's General Election. (See Appendix A for descriptions and types of potential voter fraud.)

COMMENDATION

The ROV along with paid employees, volunteers, and temporary help who staff the offices and provide poll support should be commended for their skills and dedication to ensure that those who are eligible to vote are given every opportunity to register and lawfully exercise their right to vote with ease. By taking a proactive position, looking for ways to improve the process, and ensuring the integrity of the voting process, the ROV promotes public confidence in the election process.

REASON FOR REPORT

Historically, Orange County Grand Juries empaneled during election years have reported on the processes and operations of the ROV. During the past twelve years, the Grand Jury has released five comprehensive reports on the election processes in Orange County. Given the unprecedented media coverage of this year's General Election, the preceding and ensuing rhetoric and accusations about the integrity of the ballot, the unique tensions surrounding this year's presidential candidates, and the many controversial local issues facing Orange County, the 2016-2017 Grand Jury sought to thoroughly examine the ROV's operations.

The Grand Jury was also interested in observing Orange County's early implementation of the new voting model that will come on-line for some counties in the state with the 2018 mid-term

elections as a result of SB450 passed in 2016. It is believed that Voting Service Centers, as detailed in SB450 (California Government, 2016), which are to be located at strategic sites throughout the County, will promote voter turnout, provide longer timeframes for ballot casting, maintain the security of the voting process, and preserve election integrity in the years ahead.

METHOD OF INVESTIGATION

To ensure a comprehensive evaluation of the voting process in Orange County, the Grand Jury examined all areas of election operations and management, including voter registration, control and use of the voter registration roster, ballot creation and production, ballot integrity and security, electronic voting systems performance, provisional ballot handling, use of pre- and post-election automation, vote-by-mail controls, handling of out-of-county voters, and voting service centers operations. The Grand Jury obtained and reviewed articles from print media, electronic media, e-mails, and alerts provided by the ROV through their web site, and each member was given a poll worker handbook.

The Grand Jury interviewed ROV administrative personnel and employees, heard a presentation from the ROV on historical voting habits in Orange County, and attended the three and one-half hour training course given to all poll workers. Members of the Grand Jury observed Logic and Accuracy Testing and, prior to Election Day, teams of Grand Jurors conducted site surveys of three pilot Voting Service Centers. On Election Day, the Grand Jury conducted polling site surveys and observed 39 polling sites representing 57 precincts in 15 cities in Orange County.

Grand Jury members also observed the start of the vote tally process the evening of November 8, the 1% audit manual count of the Voter-Verified Paper Audit Trail ballot, a parallel printout of the electronic e-slate ballot on November 18, and attended the ROV post-election debriefing session in January.

BACKGROUND AND FACTS

In the State of California, voting is regulated by Federal voting laws (USA.gov, n.d.) and the California Election Code (California Government, n.d.). The counties have implementation discretion within these regulations to provide voting services to their populations. The ROV reports to the Secretary of State and the Orange County Board of Supervisors.

As of November 2016, Orange County had 1,535,967 registered voters, a figure larger than the number of registered voters in many states. Since 2013, the ROV has taken a very proactive role in purging registration rolls of inactive voters, using several methods to cross check and authenticate voter identification. This corrective action of removing inactive voters from the rolls has led to increased voter turnout percentages at many precincts. In the 2016 General Election, 81% of registered voters in Orange County cast a vote; 58% of these voted by mail (VBM). (See graphs in Appendix D.) This shift toward VBM ballots has changed how elections are approached and how elections will be conducted in the future.

There are many elements to ensuring a legally compliant and successful election. The Grand Jury inquired into all of these elements; those areas of particular interest are listed below.

Pre-Election Day

Poll Worker Training

The ROV conducts a three-and-a half hour training session for all poll workers. The poll worker is the face of the ROV on Election Day, and ensures proper processes and voter rights are protected (California Secretary of State, 2016). The ROV training is comprehensive and includes: duties of poll workers, polling place setup, poll opening and first voter duties, checking the registered voter identification, electronic and paper ballot security, provisional ballot handling, and poll closing.

The process of registered voter identification is quite extensive and leaves little room for non-registered individuals to cast ballots in any Orange County election. Poll workers are trained to cross reference the residency of the person requesting to vote against the official roster of registered voters for that precinct. If residency cannot be verified, a provisional ballot is provided, and the verification process to determine voter eligibility is conducted later at the Registrar's office. Persons using a provisional ballot are provided with a numbered receipt so that they can check the status of their ballot. This receipt allows the voter to check online to confirm his vote has been counted. A provisional ballot allows the person to vote, but the validity of the vote is determined away from the polling site, where ample time and resources are available to make the final determination. In the rare case that attempted fraud is detected, the ROV refers the case to the District Attorney. Attempts at voter fraud are so minimal that election results are not impacted and the Grand Jury is confident that election results in Orange County are valid.

Concerns over potential voter fraud or "hacking" of County electronic voting systems are unfounded, as the electronic voting machines, called e-slates, generate a parallel paper ballot providing a hard copy of the electronic vote that is used later to validate the electronic vote tally during the 1% audit. E-slates are stand-alone equipment, referred to as "dumb" terminals, because they are not connected to the internet. Rather, all e-slates are connected to a Judge's Booth Controller (JBC), which provides the power to e-slates, as well as capturing all the information from the ballot cast by each voter. Additionally, e-slates have tamper-proof seals that are checked periodically during poll operations to ensure the integrity of the equipment. Poll workers are trained in the set-up and take-down of these machines.

Logic and Accuracy Testing

One week prior to Election Day a Logic and Accuracy test is performed at the ROV headquarters. This test, which is required by law, verifies that all combinations of the vote options for that election can be cast accurately. This testing is performed prior to each election. During the three-day process, over 500 combinations of vote options from across Orange County were tested. All 1,600 precincts and 1,093 polling sites across the County were represented in this year's test. ROV records show that in all elections since 2002, tests of the voting system

have been 100% accurate. These tests include proofing the programming of the ballot, each ballot style, and each contest position on the ballot. A statistical selection algorithm is designed to ensure that every vote option is cast at least once during the test. Before the process begins, a “zero tape” and “first voter check” are conducted to ensure no stored votes are on the system before testing commenced. The results of these tests are sent to the State for validation.

Pilot Voting Service Center Observations

Voting Service Centers are mandated by SB450 to replace the old precinct model. Orange County was the only California county to pilot test these centers in the 2016 General Election. Operating for ten days from October 29th through November 7th, 2016, the Voting Service Centers at six locations provided early electronic and paper ballot voting, drop off sites for VBM ballots, and sites where those registered to vote in Orange County could cast a ballot that was specific to their precinct, regardless of their place of residence or where the Voting Service Center was located. The use of the Voting Service Centers accounted for 27,554 early electronic ballots, 1.8% of the total votes cast.

Documented site surveys were conducted by Grand Jury members at the following three Voting Center sites:

1. Mission Viejo City Hall 200 Civic Center, Mission Viejo, CA 92691 (this site also provided drive through VBM ballot drop-off)

Surveyed on November 3, 2016, the Grand Jury team observed clear identification of the polling site and entrance location. Members were greeted and good customer relations were noted. A Coordinator from the ROV was on site helping poll workers. This site had 22 e-slates, and at the time of the survey voters were proceeding smoothly through the official table and the voting process, with an average voting time of less than 8 minutes. This site processed 852 voters on November 5th, 894 on the 6th, and 749 on the 7th for a total of almost 2,500 early voters in this three day period. Per procedures, a series of questions were asked of those requesting to vote. Inquiries by panel members about the JBC Chain of Custody prompted minor corrective action by poll workers. Bilingual voter assistance was available.

2. Orange County ROV Office 1300 S. Grand Avenue, Building C, Santa Ana, CA 92705 (this site also provided drive through VBM ballot drop-off)

Surveyed on November 4th, 2016, the following observations were made: The site had easy access, poll workers were clearly identified and the drive through VBM ballot drop-off site had a secure container for ballots. Replacement ballots were printed upon demand. Six additional e-slate voting tablets were added the day before due to long wait times for voters, bringing the total number of e-slates to 11. All elements of validation of voter eligibility and timely processing were addressed. Voter assistance included Spanish and Vietnamese language poll workers. Accommodations were provided for voters with disabilities, and personal assistance was available if requested. Almost 8,700 early voters were processed at the ROV while serving as a Voting Service Center.

No Voter Fraud Here: The Transparent Election Process3. Anaheim Civic Center 200 S. Anaheim Boulevard #217, Anaheim, CA 92805

Surveyed on November 7th, this Voting Service Center, located in the same building as Anaheim City Hall, was extremely crowded with a line of voters waiting almost one hour to proceed to the official table to sign in. The room contained 20 e-slates and five voting booths for paper ballots. Two City of Anaheim employees provided additional assistance, directing voters in support of five ROV employees. Accommodations were in place for voters with disabilities. This location processed 548 ballots on the November 5th, 603 on the 6th, and 741 on the 7th. Ballots were properly secured and the voter eligibility process followed proper procedure. One voter was directed to proceed to the county in which he was registered. There is no agreement between counties to forward provisional ballots across county lines. One comment from a voter and a survey observation was that the illumination in the room was poor. Also, one poll worker did not have proper identification in the form of a badge created by the ROV for poll workers, simply because it had broken during the day.

The Voting Service Centers were observed as part of the total 2016 Election operations and provided the Grand Jury with information about how the new voting model may be implemented in the 2018 mid-term election. (See Appendix B.)

Election Day*Polling Place Observations*

To effect uniform observations of all polling sites, the Grand Jury developed a comprehensive checklist with input from the ROV, establishing seven areas of focus. This checklist was used by Grand Jury members for their Election Day observations. (See Appendix C.) On Election Day, the Grand Jury conducted polling site surveys of 39 polling sites representing 57 precincts and 15 cities. The areas evaluated were the following:

- Polling Site Early Set-up
- Polling Site Opening & First Voter
- Validation of Voter Eligibility & Timely Processing
- Voter Assistance and Clarification of Questions
- Ballot Security
- Handling of Provisional and Paper Ballots
- Polling Site Close and Initial Tally

Polling sites were observed before they opened to voting to evaluate polling place set-up and readiness. While a few minor kinks were observed in opening day setup, virtually all polling sites were well prepared and had the required signage for disabled voters, signage at the main entrance point, and updated copies of the street index displayed outside the polling site.

Observers tracked polling site management, voter processing time, validation of voter identification, and voter assistance. Voting times varied throughout the day from eight minutes to as long as 80 minutes during the peak voting times from 5:00 p.m. until poll closing at 8:00 p.m. Inspectors of Elections were, on the whole, professional and adequately handled voters'

questions. Language assistance was observed at several sites, matching the voting population in the precinct. Poll workers were observed wearing badges indicating they spoke other languages. Outside observers were noted at one polling site, but there were no indications of voter intimidation or electioneering. Spoiled ballots were marked with large X's on both sides. VBM ballots were properly validated and dropped off. Security seals on e-slates and the JBCs were checked on schedule by an Inspector of Elections as required by procedure, with a few polling sites prompted by Grand Jury queries to sign the Chain of Custody document that notes inspections at designated times.

Polling site closures were smooth, with voters in-line at the polling place at 8:00 p.m. allowed to complete voting. Once the polling sites were clear of the last voter, the ballot box was unsealed and ballots were organized and secured. Ballot and JBC security was maintained during this process.

Provisional Ballot/Paper Ballot Observations

Polling sites located in neighborhoods with large apartment complexes nearby processed large numbers of provisional ballots due to the transitory nature of the residents. Voter rosters and street indexes were checked before providing a provisional ballot, as required by procedure. Provisional access codes and completed provisional ballots were handled correctly, and a receipt was provided to provisional voters as required.

Vote Tally Processing

Polling site materials began arriving at the ROV offices shortly after 9:00 p.m. Election process required that JBCs be driven from polling sites to a collection point, with the JBC in the Inspector's vehicle, while another poll worker followed in their personal vehicle. Once at the collection point, the JBCs were under the protection of the Orange County Sheriff, who accompanied vans loaded with JBCs to the ROV offices for electronic vote tally. Public observers wishing to witness the tally process signed in and passed through a security check point. Sheriff's officers stood guard as JBCs were unloaded onto a conveyer, opened in a secure space and one designated person removed the chip with the electronic vote information. Chips were consolidated, placed in a small cylinder, and sent via a vacuum line to the secure tabulation room where they were plugged into a computer and the contents downloaded. The process was available for the public to view in real time through the Registrar's web site.

Post-Election Day

1% Audit of Paper and Electronic Ballots

Cross checks of a representative selection of the paper tape print-outs of electronic ballots against the actual electronic ballots are used to confirm the ballot count and represent the exact tabulation of all voters' selections. These audits consist of worker teams reading paper and electronic ballots from a statistically selected 1% of Orange County precincts and tabulating the data into pre-printed tally sheets. The Voter-Verified Paper Audit Trail ballot is a parallel

printout of the electronic e-slate ballot. Once the hand tally is completed, the final number is compared to the electronic tally.

This process was mandated 51 years ago and is required by California Elections Code, Section 15360 (California Government, n.d.). This year the 1% sample covered 77 precincts and required 70 people working 12 hour days, representing over 6,000 man-hours.

Election Debrief January 2017

After the certification of election results to the California Secretary of State, the ROV takes a very proactive position in reviewing every process, with an eye on improving the next election. Representatives of all units within the Registrar's office participated in this debriefing with the goal of incorporating observations into action items. The review covered all aspects of the voting process from candidate filing, voting by mail, and ballot quality control, to polling place recruitment, the new pilot vote centers, and election night operations.

Given the diversity of voters in Orange County and the language groups represented, a crucial aspect of ballot preparation is the translation of candidate statements and ballot measures into clear and concise Spanish, Vietnamese, Chinese, and Korean. This is required by Section 203 of the Federal Voting Rights Act. Section 14201 of the California Elections Code requires that a facsimile ballot shall be posted in other languages as determined by the Secretary of State. The preparation of ballots in the various language groups was discussed at length during the debriefing.

The January 2017 debriefing of the 2016 General Election included a forum where issues of staffing and access to the pilot Voting Service Centers were raised. For this election, the Orange County ROV made every effort to mimic the legislation of SB450, as Orange County was the only county in the state to test Voting Service Centers. An item discussed during the debriefing was facilitating implementation, since these voting centers need to have large rooms with easy access that can be open for a ten day period for 28 sites, as well as four days for an additional 140 sites. (See Appendix B.) Election codes require sites be Americans with Disabilities Act (ADA) compliant, support technical needs, and provide space and consistency for the voting period. Staffing will also change for elections using Voting Service Centers, from 7,500 volunteers for the 2016 General Election to a smaller pool of short-term employees needed to manage voter turnout, which is expected to range from 10,000 to 50,000 per site. Issues of logistics for supplies and Chain of Custody for ballots and electronic equipment were also discussed.

The Future of Voting

In July 2015, the State of California began a roll-out of a single, uniform centralized voter registration database called the VoteCal Project. Beginning with Orange and Sacramento Counties, this process was completed in March 2016 to bring the State into compliance with the Help America Vote Act of 2002. Orange County was one of the first counties involved in the implementation of this new system and quickly uncovered 460 voters who had duplicate registration records in Orange and Sacramento counties (Myers, 2016). The ROV, in the normal

course of business, is constantly updating registration records. This process takes time, but there are other checks already in place to ensure voters do not vote more than once, such as address verification on Election Day.

With its completion, this new system connects all 58 county Election Management Systems with each other, as well as with other state agencies that provide information on the 19.4 million registered voters in the state. By connecting to the California Department of Corrections and Rehabilitation, persons with felonies are removed from registration rolls. Data from the California Department of Public Health provides a timely way to remove voters who are deceased, as well as block those seeking to register under the name of a deceased person. The California Employment Development Department and the California Department of Motor Vehicles update addresses and provide a way to update voter registrations (California Secretary of State, 2016).

The ROV interfaces with the Multi-State Information Sharing and Analysis Center, the Department of Homeland Security (DHS), and the Federal Bureau of Investigation (FBI). Prior to the election ROV received flash reports and kept in close contact with the FBI and DHS as part of DHS's Cybersecurity Team. Testing of the ROV data system was conducted by a vendor prior to the election.

Electronic Voter Registration data bases in Arizona and Illinois were hacked in July 2016, compromising personal voter records but not threatening the election process (Tribune News Services, 2016). To protect voter registration data, the Orange County ROV maintains their own parallel data base for Orange County's registered voters, which is updated daily. Should the State system go down or be impacted by outside agencies, the parallel system in Orange County is protected with independent servers under the ROV's control that are not connected externally. This redundant system provides security of the voter registration database.

With passage of SB450 in August 2016, all registered voters in the state will receive a VBM ballot and local precincts will be eliminated, replaced by "voter service centers" located close to where people work, shop, or congregate. This model will also provide a ten day window for voters to either drop off their VBM ballots, or go to a vote center and cast an electronic ballot. With the new statewide registered voter database, a person living in Yorba Linda can go to a voting center in San Clemente, prove that they are a registered voter in Orange County and be provided with a ballot that includes elected offices and issues that are specific to the community and precinct where they live in the language they prefer. This model has been used in Colorado since 2014, with a significant increase in voter turnout. Since voter turnout in California ranked 43rd among the 50 states and the District of Columbia in 2014, these two new voting tools could have an impact on increasing voter turnout (Senate District 26, 2017).

The six Orange County Voting Service Centers used during the 2016 General Election could be considered a beta test for the new voting system. SB450 permits 14 counties to opt in to the new system beginning in 2018, with Orange County one of the first to implement this new process. The key elements of SB450 and the impact on voters in Orange County are:

- Every eligible voter will receive a mailed ballot 29 days before Election Day.

No Voter Fraud Here: The Transparent Election Process

- The in-person voting option is available for 10 days.
- 28 vote centers will be open for 10 days (1 for every 50,000 Registered Voters).
- 140 vote centers will be open for 4 days (1 for every 10,000 Registered Voters).
- 93 secure drop off locations in the County (1 for every 15,000 Registered Voters).
- Orange County is listed in the bill as having an option in 2018 to use Voting Service Centers.

Pilot Voting Service Centers located in Anaheim, Costa Mesa, Irvine, Mission Viejo, Westminster, and the ROV offices in Santa Ana provided a new way for registered voters in Orange County to cast a ballot during the General Election of 2016. With the passage of SB450, these Voting Service Centers are models of what voting will look like in the near future for some California counties.

Prior to the first full countywide implementation of Voting Service Centers, the ROV will begin a massive outreach program to Orange County residents clearly explaining how this new voting process will function. While the state requires at least two informational mailings on the new process, the ROV is planning on as many as ten to ensure that information is widely disseminated and understood. With approximately 60% of votes cast in Orange County by mail, using Voting Service Centers represents a significant behavior change for many Orange County residents.

One way the ROV hopes to face these challenges and promote change is through their outreach program, clearly defining the numerous advantages that Voting Service Centers provide. These include:

- Polling will be more convenient and open for a longer period of time.
- Reducing the number of polling places lowers the cost of elections and increases efficiency.
- Adding additional ballot drop off locations makes it easier for voters,
- Voting Service Centers will be staffed by paid employees, not volunteer poll workers, providing more control of each polling site and improving efficiency.
- The number of provisional ballots will be reduced, and almost eliminated, with the only exception being those who register the same day as they vote.
- Larger voting sites will make it easier to provide easy access and ensure compliance with ADA standards.
- Increasing voter turnout.

CONCLUSION

The Grand Jury found that the Orange County ROV operations assure that the right to vote is protected for county citizens, with effective mechanisms in place to prevent fraud. Allegations of voter fraud, vote rigging and illegal voters casting ballots have been found to be without merit in Orange County. The ROV continues to take a very proactive approach to improving the voting process for the citizens of Orange County. Training, implementation and follow-up are all in compliance with California Election Code and are attended to diligently. By being the first county in the State of California to use the new tools provided by SB450, the ROV has used the

2016 General Election as a test case for the use of Voting Service Centers and these centers will likely be the future of voting in Orange County.

FINDINGS

In accordance with *California Penal Code* Sections §933 and § 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on the investigation titled, “*No voter fraud here: The transparent election process*”, the 2016-2017 Grand Jury has arrived at six principal findings as follows:

- F.1. There is no evidence of widespread or organized voter fraud or voter interference in Orange County.
- F.2. The Grand Jury has confidence in the integrity of the ballot process and the accuracy of election results.
- F.3. The ROV office has reviewed and updated voter registration rolls per State and Federal guidelines improving voter turnout percentages.
- F. 4. The Grand Jury viewed pilots of Voter Service Centers for the 2016 General Election and found they increased accessibility and operated in accordance with Federal and State voting requirements.
- F.5. The ROV communications and outreach programs promote transparency and encourage outside observations by the voting public.
- F.6. The management skills demonstrated by ROV staff and volunteers were effective and will support moving the voting process into the new voting model under SB450.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with *California Penal Code* §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled, “*No voter fraud here: The transparent election process*”, the 2016-2017 Orange County Grand Jury has **no** recommendations.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

Orange County Board of Supervisors (Findings F.1-F.6)

Responses Requested:

Responses are requested from the following non-elected agency or department heads:

ROV (Findings F.1-F.6)

REFERENCES

- California Government. (2016, 9 29). *SB-450 Elections: vote by mail voting and mail ballot elections. (2015-2016)*. Retrieved 2 7, 2017, from California Legislative Information: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB450
- California Government. (n.d.). *Election Codes*. Retrieved 2 7, 2017, from California Legislative Information.
- California Secretary of State. (2016). *VoteCal County Questions and Answers*. Retrieved December 5, 2016, from Alex Padilla Secretary of State: <http://www.sos.ca.gov/elections/voter-registration/votecal-project/votecal-county-questions-and-answers/>
- California Secretary of State. (2016). *Voter Bill of Rights*. Retrieved 2 7, 2017, from Alex Padilla California Secretary of State: <http://www.sos.ca.gov/elections/voter-bill-rights/>
- Myers, J. (2016, March 1). *All of California's voters are now in one online database*. Retrieved December 5, 2016, from Los Angeles Times: <http://www.latimes.com/politics/la-pol-sac-california-voter-database-online-20160301-story.html>
- Senate District 26. (2017). *Bill to Modernize Elections Passes Legislature*. Retrieved November 30, 2016, from Senator Ben Allen Representing the 26th District: <http://sd26.senate.ca.gov/news/2016-08-29-bill-modernize-elections-passes-legislature>
- Tribune News Services. (2016, 9 30). *U.S. Official: Hackers targeted voter registration systems of 20 states*. Retrieved January 13, 2017, from Chicago Tribune: <http://www.chicagotribune.com/news/nationworld/ct-hackers-target-election-systems-20160930-story.html>
- USA.gov. (n.d.). *Voting and Election Laws*. Retrieved 02 07, 2017, from USA.gov: <https://www.usa.gov/voting-laws>

APPENDIX A: TERMS, TYPES OF FRAUD

Voter impersonation is a type of voter fraud in which a person claims to be someone else when casting a vote.

Double voting (ballot stuffing): One individual casts more than one ballot in the same election.

Dead voters: The name of a deceased person remains on a state's official list of registered voters and a living person fraudulently casts a ballot in that name.

Felon voter fraud: The casting of a ballot by a convicted felon who is not eligible to vote as a result of being a felon.

Voter suppression: A variety of tactics aimed at lowering or suppressing the number of voters who might otherwise vote in a particular election.

Registration fraud: Filling out and submitting a voter registration card for a fictional person, or filling out a voter registration card with the name of a real person, but without that person's consent, and forging his or her signature on the card.

Voter impersonation: A person claims to be someone else when casting a vote.

Vote-buying: Agreements between voters and others to buy and sell votes, such as a candidate paying voters to vote for him or her.

Fraud by election officials: Manipulation of ballots by officials administering the election, such as tossing out ballots or casting ballots in voters' names.

APPENDIX B: PROPOSED VOTE SERVICE CENTER LOCATIONS

Sample Vote Center and Ballot Drop-off Box Distribution

Between E-3 and Election Day

Average minimum distance between points:
Drop boxes: 1.4 miles
Vote Centers (E-3): 1.4 miles
Vote Centers (E-10): 3.4 miles

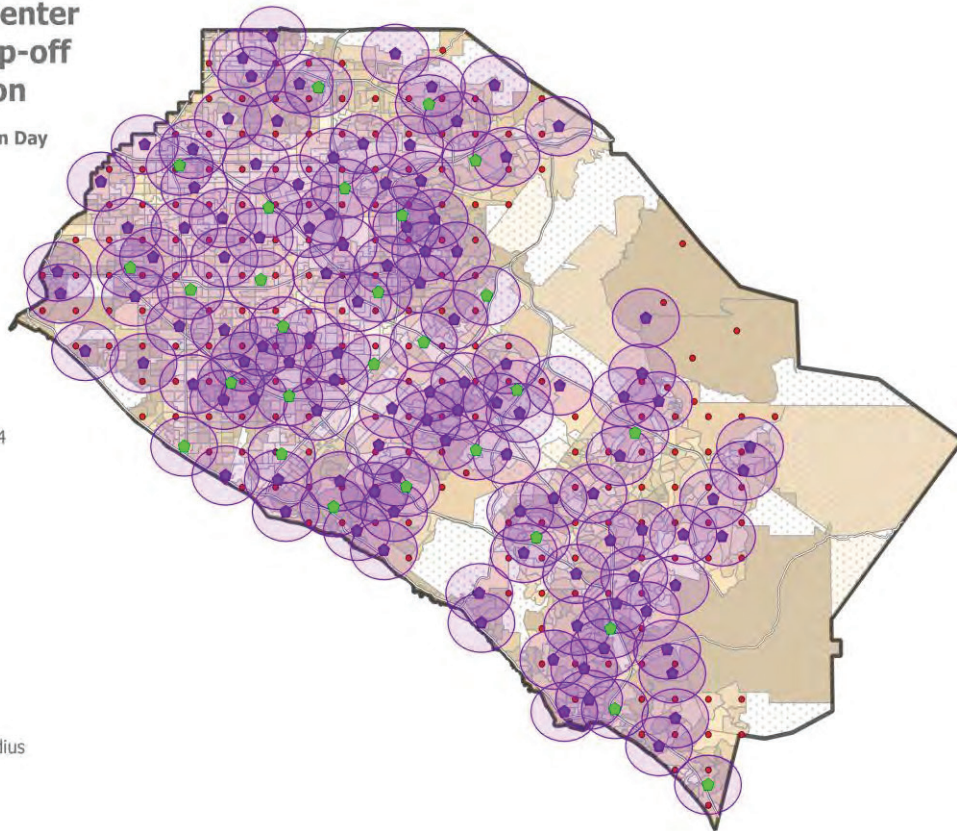
Legend

Voter Turnout, General 2014

- 0.00
- 0.00 - 0.36
- 0.36 - 0.42
- 0.42 - 0.48
- 0.48 - 0.54
- 0.54 - 1.00
- Mail Ballot

Symbols

- Vote Centers (E-10)
- Vote Centers (E-3)
- Vote Centers (E-3) Radius
- Drop Boxes
- Freeways



Benefits of Vote Center Concept

- Voter convenience
- Matches data trends and adapts to voter behavior
- Alleviates Election Day lines
- Eliminates provisional ballots cast
- Significant cost savings over time
- Reduces certification times
- Preserves in-person voting option
- Allows for voting in any vote center Countywide
- Eliminates “volunteers” and uncontrolled environment
- Increases security
- Utilizes electronic poll books
- Ability to replace damaged ballots

APPENDIX C: GRAND JURY CHECKLIST FOR POLLING PLACE OBSERVATIONS

Precinct Number:	Inspector of Elections:
Polling Place Address:	Grand Jury Member Arrival Time:
City and Zip Code:	Grand Jury Member Departure Time:
Type of Facility:	# of Poll Workers on Site:
Number of Precincts At This Polling Site:	

POLLING SITE

A = Complete B = Issue Noted C = Not Applicable

1. Polling Site Early Set Up – Before Nov. 8th	A	B	C	COMMENTS
A. Cardboard Voting Booths Set Up	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B. Inside Signs In Place	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C. E-Booth Tamper-Evident Security Seals in Place	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D. Set-Up and Daisy Chain Cables Connected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E. VVPAT Power Cords and Power Strip Installed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F. Power Strip Not Connected to Wall Outlet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G. No JBC or Paper Ballots on Site	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H. Polling Site Secured for the Evening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Polling Site Opening & First Voter				
A. County Cell Phone Turned On	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B. Oath/Payroll Page Signed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C. E-Booth Security Seals Verified/Chain of Custody Signed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D. E-Booths Set Up/# of Booths	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E. Cardboard Voting Booths Set Up	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F. Power Strip Connected and On	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G. Outside and Inside Signs in Place	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H. JBC Seals in Place/Chain of Custody Signed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I. Gray Data Cable Attached to First Booth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J. Black Power Cord Connected to Power Strip/Outlet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
K. JBC Set-Up Complete	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
L. Official Table Properly Set Up	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
M. American Flag Outside by Entrance to Polling Site	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
N. First Voter Verifies Ballot Box is Empty & Sealed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
O. First Voter Verifies that PUB Count is Zero	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
P. First Voter Signs Zero Tape for JBC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Q. Poll Worker Puts Signed Zero Tape in JBC Envelope	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

3. Validation of Voter Eligibility & Timely Processing

- A. Voter Name Verified, Voter Signs, Writes Address
- B. Street Address Confirmed
- C. JBC Assignment Completed
- D. Traffic Flow Through Polling Place Managed
- E. Time From Arrival to Vote Complete <10 Minutes
- F. Is Polling Site High Volume? Comment on Process

4. Voter Assistance and Clarification of Questions

- A. Voters Greeted
- B. Poll Workers Have Proper Identification
- C. Poll Workers Professional, Discreet, Courteous
- D. E-Slate Instructions Provided as Needed
- E. Spoiled Paper Ballots Identified and Secured
- F. Poll Workers are Proactive with Disabled Voters
- G. Language Assistance Provided Where Needed
- H. Ensures No Disruptions Allowed in Polling Site
- I. Quick Transactions for Drop Off Ballots
- J. Comment on Inspector of Elections Polling Site Management

5. Ballot Security

- A. Timely Verification of Tamper-Evident Seals
- B. Ballot Box Remains in Clear Site and Sealed
- C. Clear Lines of Site from Table to Booths/Entrance
- D. "Marked" & "Table" Street Index Updated Hourly
- E. Issues of Electioneering/Intimidation Addressed
- F. E-Booth & JBC Security Seals Verified/Chain of Custody Signed

6. Handling of Provisional and Paper Ballots

- A. Voter Requesting to Vote Properly Processed
- B. Provisional Ballot Envelop Completed
- C. Provisional Access Code Handled Correctly
- D. Provisional Ballots Secured in Envelop/Ballot Box
- E. Receipt Given to Voter for Ballot Status Check

7. Polling Site Close and Initial Talley

- A. Announcement of Polling Site Closing
- B. Last Voter in Line Identified
- C. Unused/Spoiled/Surrendered Ballots Counted
- D. Ballot Box Unsealed/Ballots Organized/Secured
- E. All Items Packed
- F. Site Cleaned

Other Observations/Comments: _____

APPENDIX D: SELECTED CALIFORNIA VOTER TURNOUT AND PERCENTAGES

Figure 1.

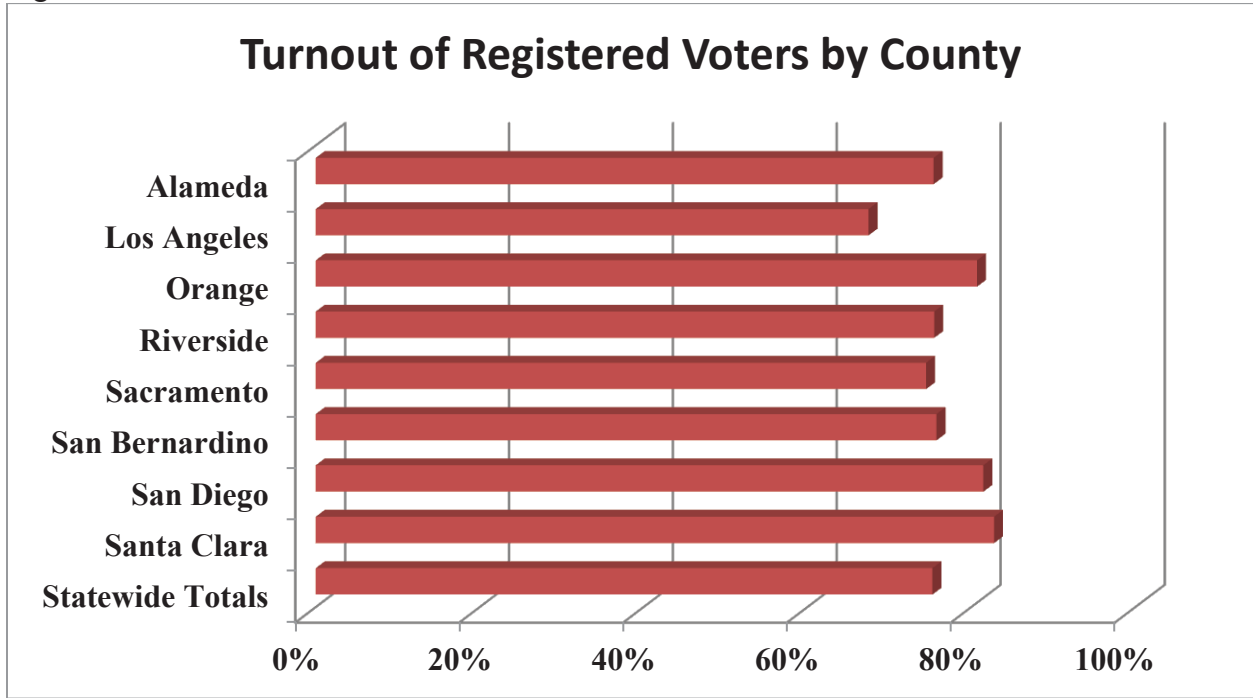


Figure 2.

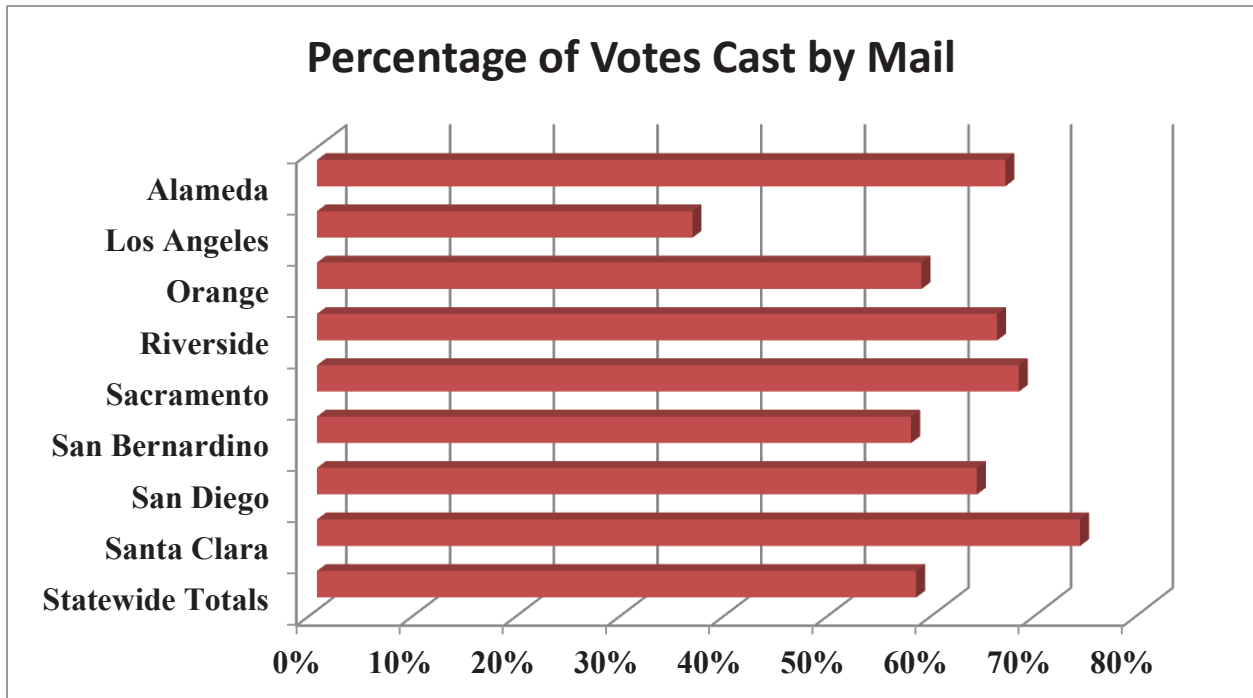
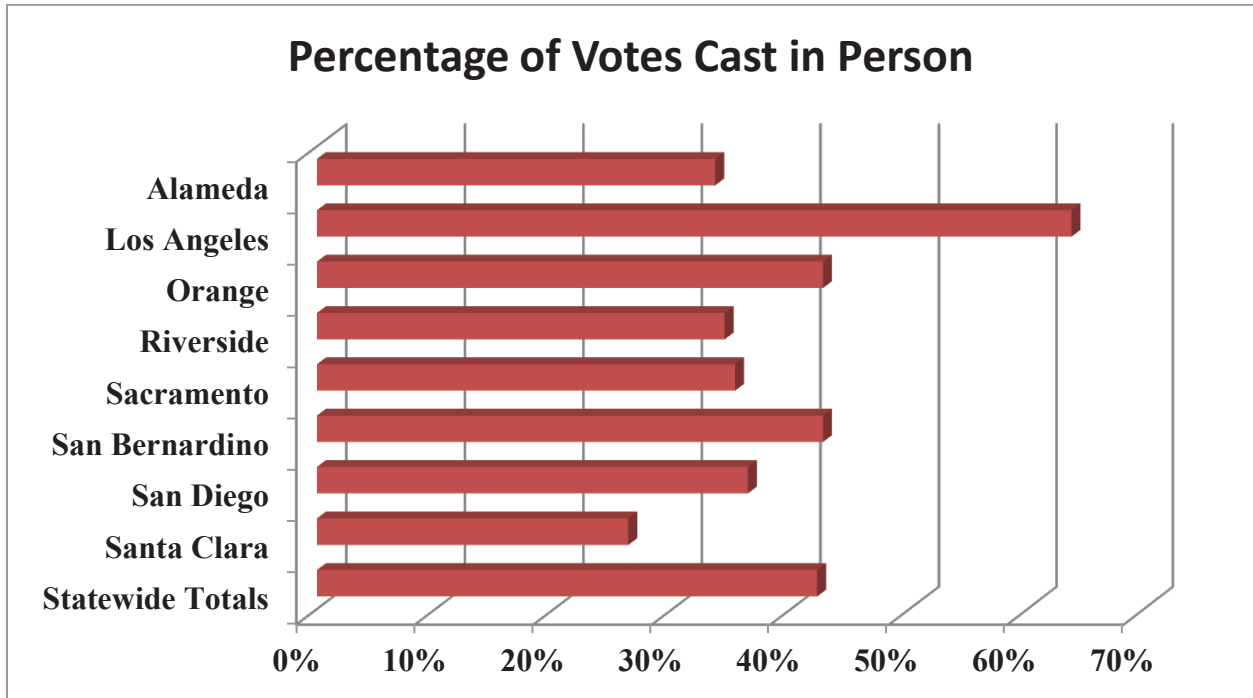


Figure 3.



IS ORANGE COUNTY READY FOR ZIKA?

IT TAKES A VILLAGE TO HANDLE MOSQUITO-BORNE VIRUSES



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SUMMARY

For a decade Orange County has been a national hot spot for serious mosquito-borne illnesses like West Nile virus (WNV). With limited resources, the Orange County Mosquito and Vector Control District (VCD) has been fighting an uphill battle to find and control the many kinds of mosquitoes that carry these potentially deadly diseases. The outbreak of Zika virus in Brazil in 2015, with its severe consequences for unborn babies, has put mosquito control in the headlines and on the agendas of many government entities worldwide, including those in Orange County.

This report identifies the difficulties with containment and treatment of mosquito-borne viruses in Orange County. The public needs to understand its important role as a partner in controlling mosquitoes in our environment and the urgent need to do so. County government entities must cooperate to protect lives through effective outreach and mosquito control measures.

In recent years the VCD has shifted to being more proactive than reactive to mosquito-borne illnesses and has expanded its toolbox for identifying and controlling the vectors that contribute to these illnesses. To become more effective, the district will need to stay focused on proactive communications with its partners, as well as proactive monitoring and eradication of mosquitoes throughout the county. They will need the help of their Board of Trustees, the Orange County Board of Supervisors, the Health Care Agency (HCA), Orange County cities, and the public in order to succeed.

REASON FOR THE STUDY

The Grand Jury was motivated to examine VCD and HCA operations by media reports and reported cases of WNV in Orange County, as well as the imminent threat of an outbreak of Zika virus, as occurred in Florida in 2016. We questioned how county government communicates information about mosquito-borne illnesses to the public; whether efforts in communications, monitoring and controlling mosquitoes and their habitats have been proactive or reactive; and how the effectiveness of their efforts are measured. The Grand Jury was also concerned with the apparent lack of public awareness of the severity of mosquito-borne illnesses and their long term effects, especially those of WNV.

METHOD OF STUDY

The Grand Jury met multiple times with staff and management of both the VCD and HCA. The VCD is an independent special district responsible for vector control throughout Orange County. It is not under the control of the County Board of Supervisors but has an independent Board of Trustees and its own headquarters. We toured the VCD facility and familiarized ourselves with the tools and methods used to control vectors in Orange County. We conducted independent internet and news media research of mosquito-borne illnesses and mosquito eradication methods. The Grand Jury evaluated information from other government entities, including the Centers for Disease Control and the World Health Organization, on the diagnosis and prognosis of mosquito-borne viral illnesses. Historical data provided by the VCD was evaluated and used to determine the likelihood of accurate predictions of future mosquito-borne illness outbreak areas and its attendant severity. We reviewed external communications used by both VCD and HCA and examined measures of their effectiveness. We also investigated and evaluated the interaction of

the VCD with the HCA regarding communications and outreach to the public and with medical and other professionals dealing with the diagnosis and treatment of vector-borne illnesses.

BACKGROUND AND FACTS

The mission of the VCD is to provide the citizens of Orange County with the highest level of protection from vectors and vector-borne diseases. A vector is an animal or insect that can transmit disease to the human population. This includes rodents, livestock, wild animals, and insects such as fleas, ticks, fire ants and mosquitos. The district has an active disease identification and treatment program in place for all vectors of concern in the county.

The HCA, among its other responsibilities, is tasked with monitoring and promoting the prevention of communicable diseases, including those transmitted via vectors. Pertinent to this mission, the agency is specifically responsible for communicating with medical professionals and is guided by strict regulations surrounding the handling of patient information. Assistance by the public in controlling vectors and protecting against vector-borne diseases are critical to the success of the VCD and HCA. Both Orange County entities have active in-person and media public outreach programs conveying the dangers of mosquito-borne illnesses and means of infection prevention.

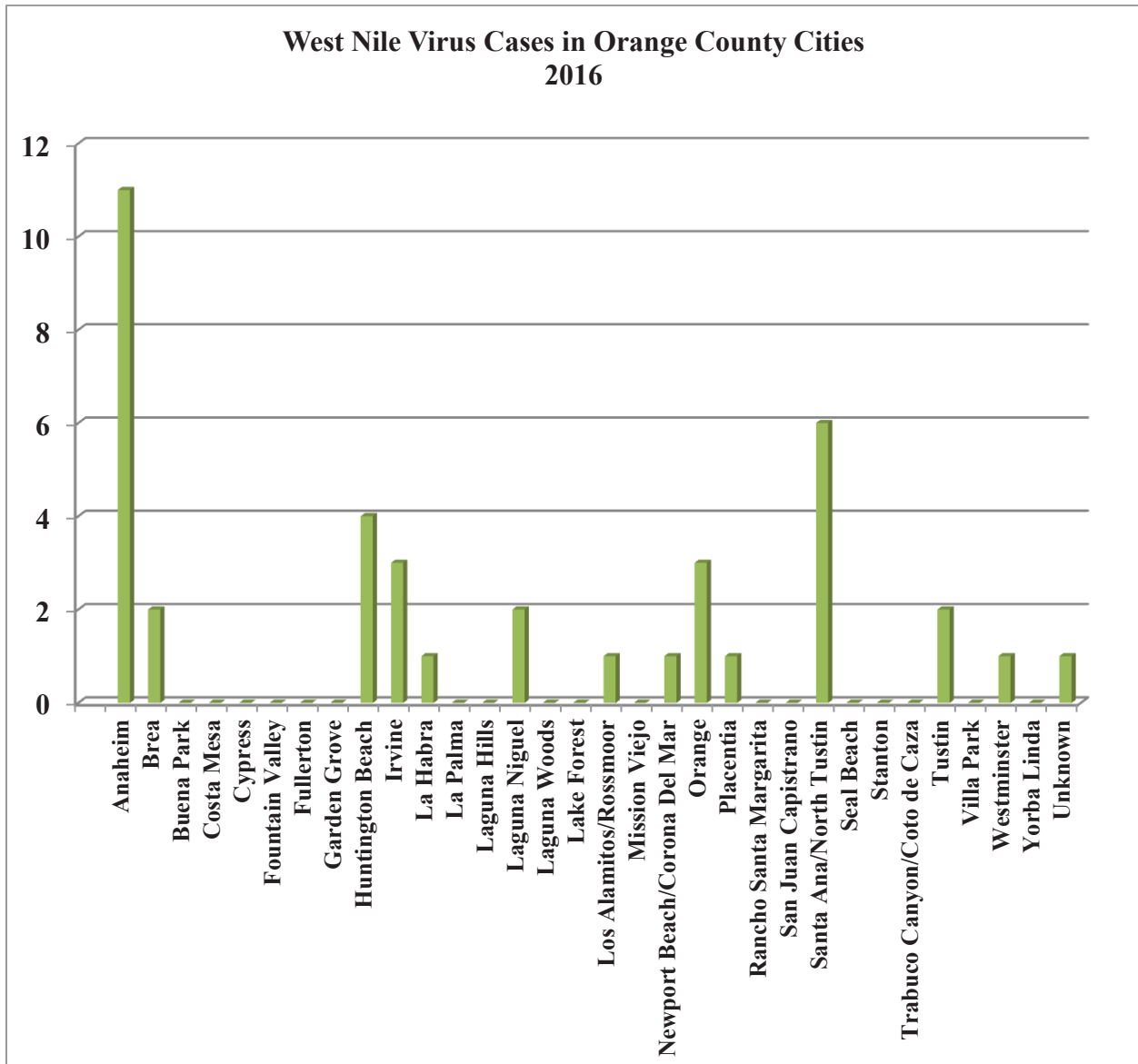
The focus of this investigation was on the spread of mosquito-borne diseases, particularly the West Nile and Zika viruses. In the past three years the county has identified over 400 cases of WNV, as well as 24 introduced cases (original infections occurring outside the county) of Zika virus in 2016 (see Table 1 and Figure 1). The mosquito problem is a seasonal one requiring year-round preparation and advanced planning year-round.

Table 1

West Nile Virus Infections and Deaths in Orange County

	2014	2015	2016
Infections	282	97	38
Deaths	7	8	1
Total	289	105	39

Figure 1



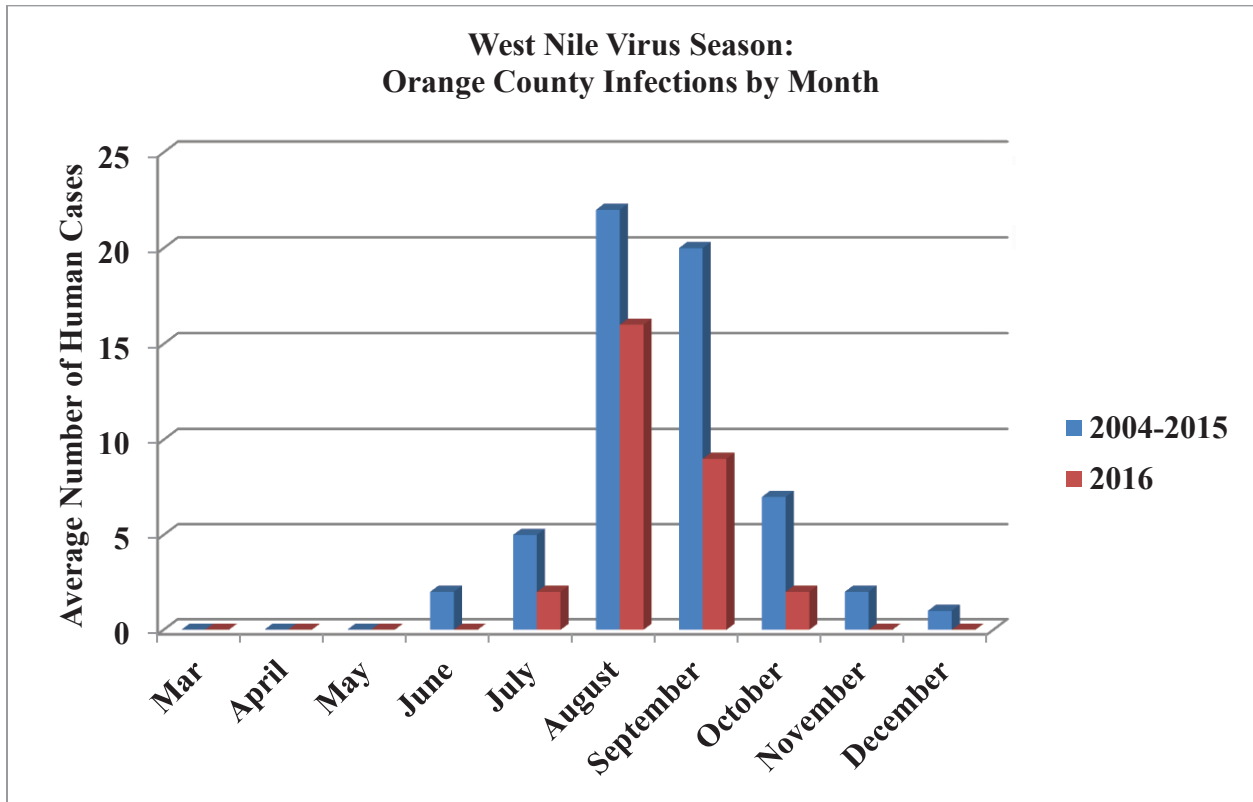
Orange County Factors Contributing to Mosquito-borne Illness

Mosquito Habitat and Flight Patterns

Mosquitoes must have standing water to breed. Moving water is unlikely to sustain breeding mosquitoes. The amount of water needed can be very small. Typical residential mosquito breeding grounds include flower pots, plant saucers, buckets and even plants that hold water in their foliage. Untended swimming pools, underground storm drains, and flood control channels are also fertile mosquito breeding grounds. The presence of backyard pools and water features is

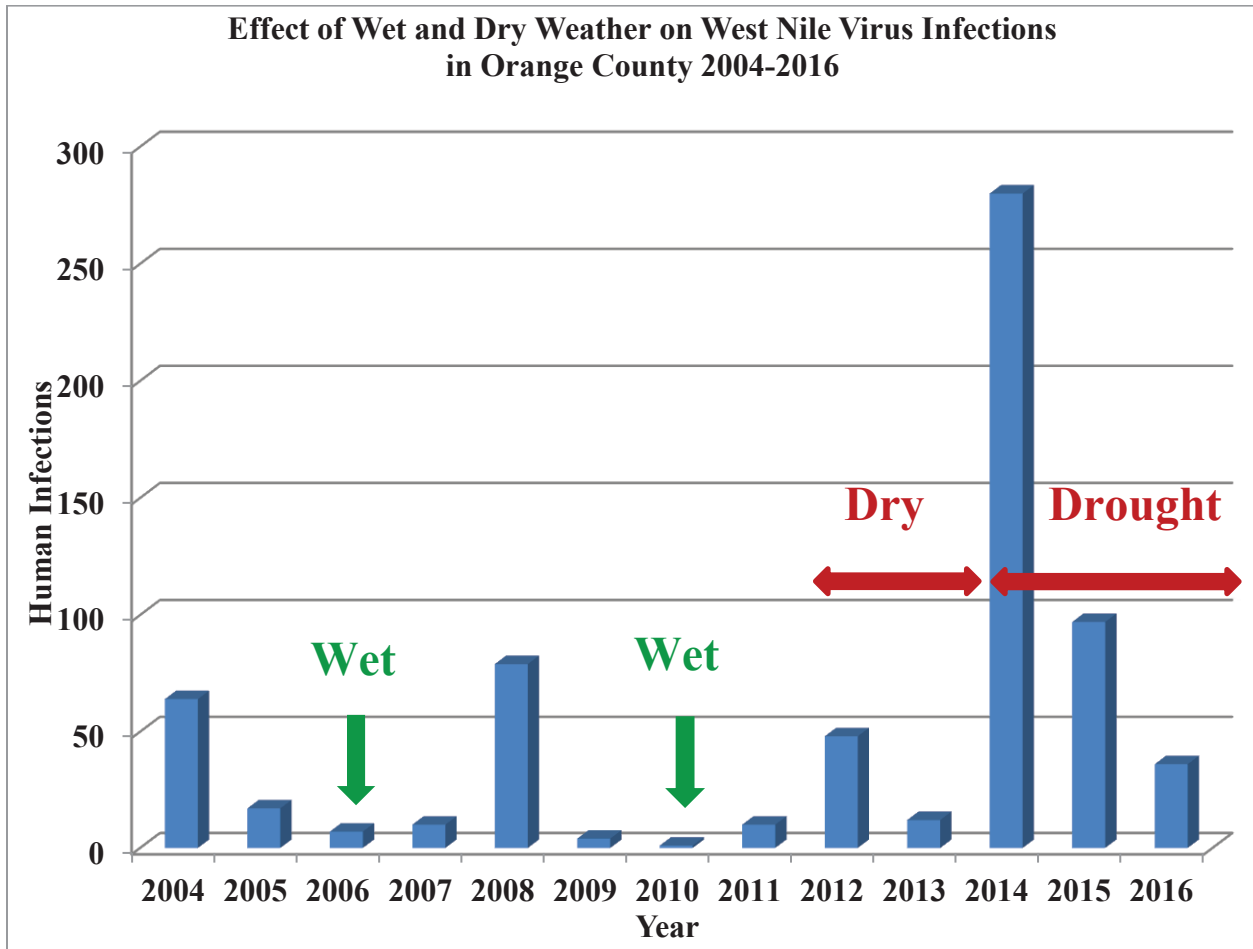
extensive in Orange County. Most adult mosquitoes can live their whole lives within one backyard and fly only short distances in their lifetime. Orange County mosquitoes that transmit disease are active in the daytime and prefer temperatures above 70 degrees. Mosquito control is largely a seasonal concern, as mosquito breeding slows down—but does not cease—in the winter (see Figure 2).

Figure 2



The county’s aging storm drain infrastructure has been identified as a significant mosquito breeding ground. Evaluation of storm drains in some Orange County cities reveals large drain areas of relatively flat elevation with minimal drainage flow. Light steady rainfall followed by a pattern of warm weather has been found to prime storm drains with the perfect conditions (warm weather with standing water) for mosquito breeding. The VCD has found that drought conditions have not dampened breeding activity (see Figure 3). Many of the county’s storm drains are compromised and require repair or replacement, as they allow seepage and other water intrusion. Vast mosquito breeding areas are hiding underground in many areas of Orange County.

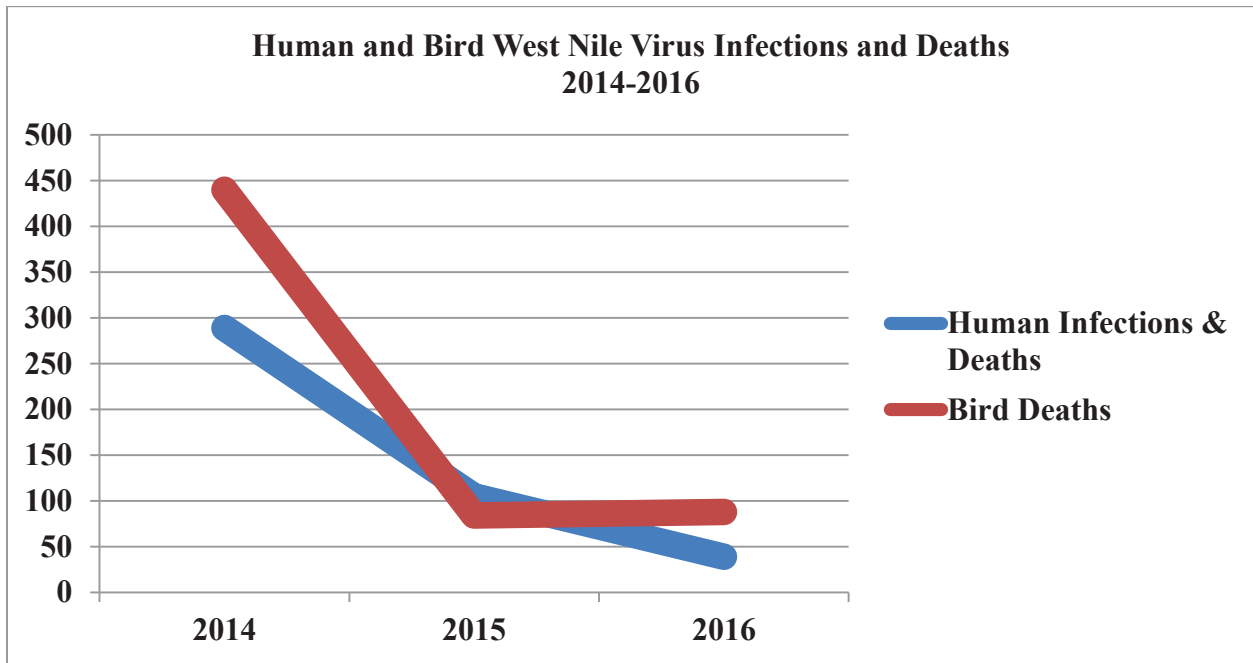
Figure 3



Mosquito Life Cycles

It only takes a week from egg to adult mosquito, though eggs can remain dormant for years awaiting the right conditions to hatch. Most mosquito-borne viruses can be found in wild birds, forming a cycle of infection with mosquitoes, separate from the cycle of infection between mosquitoes and humans. Dead birds, therefore, can be a harbinger of active disease (see Figure 4).

Figure 4



Disease-Carrying Mosquitoes

There are currently 23 mosquito species in Orange County, a number of which carry disease. These include the black-and-white striped Yellow Fever and Asian Tiger mosquitoes (*Aedes* species) that transmit Zika virus and several *Culex* species that transmit WNV.

Topography

Because water collects more readily in flat areas than hilly ones, North Orange County (Santa Ana, Anaheim, La Habra, parts of Fullerton, etc.) has more mosquito breeding grounds and therefore more related illnesses than South County. Flat areas also harbor more underground storm drains that collect standing water.

Beliefs and Attitudes of Residents

Southern California is known for sunshine and beaches, not wet and humid conditions or nuisance mosquitoes. Most people never receive (or notice) any mosquito bites throughout their Orange County residency. As a result, residents tend to dismiss alarms regarding mosquito-borne illnesses and calls-to-action regarding protection from potentially dangerous mosquito bites.

Globalization and Trade

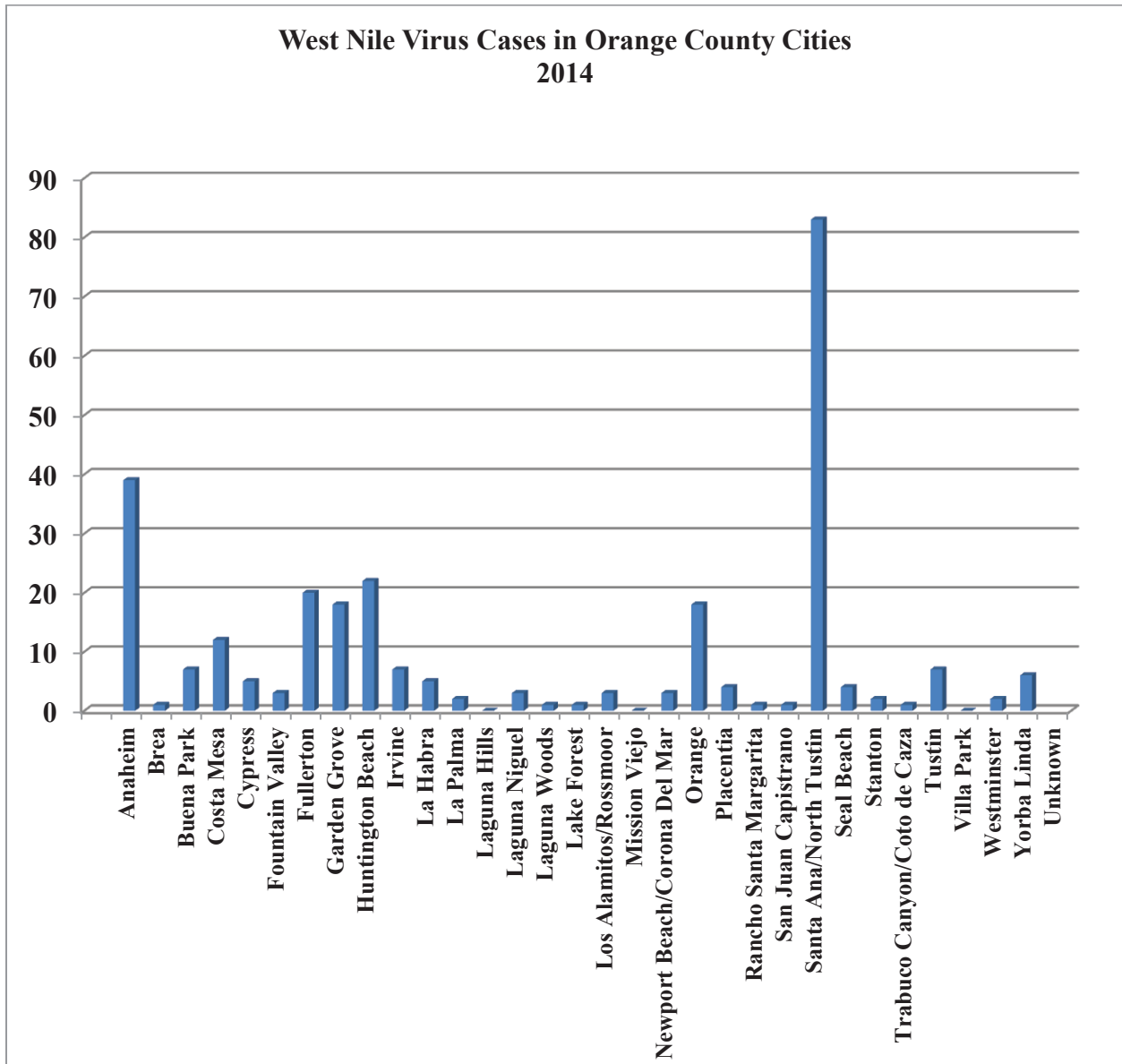
In this age of global travel and trade, vectors and infection travel great distances with ease and alarming speed. The Asian Tiger (Zika) mosquito's transfer to the U.S. is known to have been via a tire shipment in the 1980s (Saulny, 1999), and later was introduced separately into California in a bamboo shipment (University of California, Riverside, 2016).

West Nile Virus

The immediate concern of the VCD is WNV, a deadly virus with significant health impacts. WNV illness can manifest itself in three different ways: (1) In 70%-80% of those infected, there are no symptoms; (2) About 1 in 5 infected people will develop a fever with other nonspecific symptoms like headaches, body aches, joint pains, vomiting, diarrhea or rash; and (3) The most serious WNV infection occurs in 1% of infected people, particularly among vulnerable populations (e.g., those with complicated medical problems) and those over 60, manifesting in neurological illness. This neurological illness (encephalitis or meningitis) affects the brain and similar tissues, takes weeks or months to resolve, and may cause long-lasting complications or death (Centers for Disease Control, 2015). The more severe cases of WNV are primarily identified by medical specialists, such as infectious disease doctors and neurologists, and in research laboratories, including those of state and federal agencies.

Orange County has been important in the history of WNV in the United States. Researchers at the University of California, Irvine, first identified the virus from a 1999 New York City outbreak sample (Roehrig, 2013). WNV began to appear in Orange County in 2004. In 2014, Orange County was ground zero in the nation for WNV illness, with 289 confirmed cases and 7 deaths (see Figure 5). According to the VCD, a mosquito infection rate ("positive") of 5% in area trap collection is considered an epidemic. Some 2014 VCD traps had a 30% positive rate for WNV (see Appendix A).

Figure 5



Zika Virus

The spread of Zika virus, and the 2016 outbreak in Florida, have caused alarm across the nation. The U.S. Congress allocated \$1.1 billion to fight the spread and effects of the virus (Kodjak, 2016). A big concern, particularly of vector control, health care agencies and epidemiologists, has been the lack of knowledge about the short and long term effects of Zika. Information about the virus is constantly being updated, making it difficult to accurately alert the public to the definitive health risks.

Zika virus is spread mainly through the bite of two *Aedes* mosquito species, which have been found in many areas of Orange County, including Buena Park, Huntington Beach, Mission Viejo, Orange and Costa Mesa. The virus was first thought to cause only mild symptoms like a fever and rash, but in 2016 Zika was linked to severe birth defects including babies born with microcephaly (abnormally small heads) and a rare neurological illness, Guillain-Barre syndrome, that can cause death or temporary paralysis. It has also been reported that evidence of microcephaly can appear many months after birth, suggesting that other cognitive or physiological impairments in babies may not be detected until even later in their development (Belluck, 2016). These possibilities are being monitored by health agencies and researchers worldwide.

The VCD expressed concern that dominant patterns of *Aedes* behavior and life cycle relative to other coexisting mosquito populations predicts geographical expansion of their territory at the expense of other mosquitoes. If the spread of the Zika mosquito follows the predicted path, this disease will likely be of major concern in 5-8 years. If left unchecked, the sole limiting factor may be the local range of the mosquito, which is about 1,500 feet.

Recent international health agency bulletins have noted that this virus can be spread through human fluids, as well as through the more common mosquito-bite introduction. There is conclusive evidence that the Zika virus can be transmitted through sexual contact (D'Ortenaio, 2016). It is not clear how long the virus remains in the body. Initial indications suggested viral RNA can be present for up to 2 weeks, but there are now reports that elements of the virus may persist in the human body for months. There are reports of Zika virus in vaginal fluid for weeks and seminal fluid for more than six months after the first symptoms of infection (Fox, 2016) (Centers for Disease Control, 2016). Human virus carriers potentially extend the range and time of transmission of Zika virus considerably. Orange County has not yet confirmed any cases of local transmission of the virus, but it is likely just a matter of time until this happens.

A recent media release illustrates a call to behavioral change directed at Florida residents during the 2016 Zika outbreak there: *“People who recently traveled from a region affected by the outbreak...are encouraged to reduce the potential for the spread of the virus...by minimizing contact with vulnerable populations...These mosquitoes are found in areas that collect and hold water around homes in places like tin cans, old tires, buckets, unused plastic swimming pools... It’s also important to remove or refresh water in bird baths and pet dishes at least every week. Controlling these mosquitoes is really a community effort... We need all residents to look around their homes to see how they can help lower the risk of contact with these mosquitoes by eliminating unnecessary standing water.”* (Proudfit, 2016)

Other Mosquito-Borne Illnesses

In addition to WNV and Zika, cases of other mosquito-borne illness in Orange County include chikungunya, dengue fever, St. Louis encephalitis and yellow fever. Most cause a mild infection with fever and other minor symptoms. Although rarely lethal, all can cause severe and disabling symptoms to develop, especially in vulnerable people. Chikungunya, dengue fever and yellow fever are transmitted to people by *Aedes* mosquitoes, as is Zika virus. Like WNV, St. Louis encephalitis is transmitted by *Culex* mosquitoes and maintained in a cycle with wild birds. Only

yellow fever has a vaccine for the prevention of the infection. Protection against mosquito bites is the most important preventive measure for these and other mosquito-borne illnesses.

For generations, in much of the world, malaria has been—and still is—a scourge. We have seen new mosquito-borne illnesses with serious consequences appear with regularity and spread quickly across the globe. Late in 2016, there was news of an outbreak of a new mosquito-borne virus similar to chikungunya called Mayaro. More than 100,000 cases of Mayaro virus were confirmed in the Americas in September, 2016 (Sohn, 2016).

Mosquito Control Measures

Control of disease-carrying vectors, including mosquitoes, is a primary responsibility of the VCD. Their arsenal includes measures for attacking both larval and adult stages of the mosquito life cycle. They have had success with chemical and biological control of immature mosquitoes in backyard pools, fountains and other larger bodies of stagnant water. Mosquito fish that prey on mosquito larvae, an example of biological control, can be provided to homeowners free of charge.

The most basic control measures for mosquitoes, however, are homeowner activities. In addition to maintaining water features and any other potential breeding grounds around their property, residents can ensure window screens are intact and personal space is protected from mosquitoes with appropriate clothing and effective repellent.

The most controversial measure is aerial spraying. The current state of chemical warfare against mosquitoes is far advanced from the days of DDT. The amounts of chemical active ingredient used are very small and many studies have shown the newer chemicals to be harmless to humans, pets and the environment. The VCD has refined their most commonly used spraying technique to allow targeted application in small areas using backpacks. They analyze sophisticated environmental monitoring to maximize effect while minimizing side effects. The district reports that aerial spraying on a larger scale is relatively cheap and has been very effective elsewhere, including Northern California and other areas of the nation and the globe. Truck-mounted spraying is used sparingly not only because of public opposition, but because mosquitoes can build resistance to the insecticide. Aerial spraying remains a viable mosquito control measure in the VCD toolkit.

The largely undisturbed underground mosquito breeding grounds in the county, the aging storm drains, are being addressed aggressively. The VCD recently hired additional personnel to promote the mapping of the storm drains across Orange County and to work with the cities on corrective infrastructure and mosquito eradication measures. According to the district, prior to the hire only one city was mapping storm drains. Mapping is essential to developing proper remediation and treatment methods to enable seasonal eradication of the larva. This can be a costly and time consuming task.

Collection of Mosquito Population Data

The VCD collects longitudinal data on all vectors in OC. This data is used to identify and target areas for treatment and education. The district uses approximately 100 mosquito traps placed throughout the County to collect live samples for evaluation in their lab. They are able to increase sample sites in a targeted area when laboratory analyses show trigger levels of infected mosquitoes. Coupled with data from models that take a number of factors into consideration, this effort allows the district to refine their predictions of outbreak severity and focus eradication or control efforts more effectively in “hot spots” of mosquito and illness activity (see Appendix B).

These procedures for monitoring mosquito populations do not always succeed. In 2016 an outbreak of WNV in La Habra surprised the VCD, resulting in reactive responses. Unfortunately, the outbreak resulted in the first 2016 WNV death in the county. Traps were redeployed from other areas and strike teams were sent into the active neighborhoods to inspect backyards, educate residents on protection and eradication measures, and control mosquito populations.

The VCD also educates the public about indicators of disease in infected birds. They advocate reporting dead birds, and will collect them from any part of the county for laboratory analysis to detect WNV. The district also educates people that birds commonly do not fly into windows; birds that die from this should be reported to and collected by the VCD.

Revenue Sources

The VCD has three primary sources of income, Ad Valorem property taxes and two benefit assessments, Assessment District No. 1 and Assessment District No. 2. Together, these sources account for 94% of VCD’s 2016-2017 revenues.

Assessment District No. 2 (AD2) is the largest source of revenues at \$5.6 million. Known as the Mosquito, Fire Ant, and Disease Control Assessment, the AD2’s maximum authorized assessment per Single Family Equivalent (SFE) is governed by a 2004 voter-approved maximum base rate of \$5.42 SFE for that year. The ballot measure included an annual adjustment going forward of no more than 3%, based on the Consumer Price Index for the Los Angeles area. The current maximum authorized rate is \$7.10 per SFE.

Since its inception, AD2 has been consistently levied below the maximum authorized level. For this year, the actual rate requested was \$6.72 per SFE. The increase was budgeted to support VCD’s mosquito response and strike teams, a new position to address storm drain mosquito control, and pesticides for the latter effort. While the \$6.72 per SFE represents an increase over the \$6.02 per SFE in the 2015-2016 budget, it remains below the maximum authorized levy. If the VCD Board of Trustees had authorized the maximum allowed levy for 2016-2017, it would have generated an additional \$316,000 for the VCD.

Communications

Because many important mosquito control measures are under the control of members of the public, education is critical. Unfortunately, Orange County residents maintain entrenched beliefs that are counter to healthy behaviors that protect individuals and the public from mosquito-borne diseases, but concerted education efforts in other health risk arenas, such as tobacco smoking, have worked over time. Both the VCD and HCA realize the importance of communications and have active outreach efforts in place.

Given the small staff dedicated to communications, the VCD is to be commended for fostering a culture of public service in its multifaceted communications and outreach plan. In recent years, the VCD has annually conducted over 50 public outreach events and produced more than 150 media publications in multiple languages. District members also make 20-30 public presentations per year. In 2016, over 50,000 Orange County homes were visited by 80 teams going door-to-door. More than 30,000 informational flyers, posters and bulletins, many multilingual, were made available to the public, and in 2016 there were over 65,000 visits to the VCD website, which is updated weekly. The district redesigned their brochures in 2016, added universal literacy materials, created an email notification system and initiated an interpretive exhibit at the Santa Ana Zoo. A new vector exhibit at the Discovery Cube, including a teach-the-teacher program, was implemented in August 2016. The Inspector Training Course guides Cube visitors through a competitive hunt to find and eliminate mosquitoes and other backyard vectors.

The VCD works closely with the HCA, especially during mosquito season, communicating updates to the agency's health professionals and those responsible for communications regarding mosquito activity in the county, particularly in the northern part of the county. HCA's communication efforts are focused on medical professionals, using opt-in alerts about a wide range of health risks, as doctors and health care providers are an important first line of defense against the spread of infectious diseases.

Communications about patient illnesses are governed by strict guidelines. When Orange County cases of WNV or other mosquito-borne illnesses are reported, HCA is triggered to take action to prevent the spread of disease within parameters set by the 1996 U.S. Health Insurance Portability and Accountability Act (HIPAA). Working closely together, the HCA and VCD are guided by memoranda of understanding (MOUs), deciding together on actions to protect public health while maintaining patient privacy. VCD deploys teams to neighborhoods of concern, canvassing the area on foot with verbal and written communications about mosquito control measures and gathering evidence of mosquito infestation for targeted eradication activities. HCA, meanwhile, becomes more active in treatment and education efforts with medical personnel.

Being effective at community education is an important stated goal of both agencies. In 2014, VCD measured their outreach effectiveness by piggy-backing on a countywide voter telephone survey of approximately 500 residents. The three pertinent questions addressed several vectors, including mosquitoes. Results showed that only about half of Orange County residents are aware that VCD is available to help control backyard mosquitoes, despite the fact that almost

80% have contacted the district for help of some type. The VCD has also gathered online data to measure website activity levels.

CONCLUSION

The key to successful intervention in mosquito-borne virus control is proactive communication with, and education of, the public. The VCD has the tools to identify “hot spots” of vector outbreak and are doing their part in maintaining and using an array of eradication measures. The effective, early and immediate sharing of mosquito population information with the public and medical professionals is crucial. The VCD has been more reactive to vector outbreaks in the past, but is now moving towards being proactive. They have the personnel and tools in place to maintain communication with the public at the current levels. However, increases in personnel or refocusing existing personnel into areas of communication and education will aid the district in being more proactive and expanding their reach. The district has an experienced and well-equipped lab to identify disease agents. Increasing the number of mosquito traps and lab personnel will enable the VCD to determine the presence of a virus more quickly.

Mosquitoes are equal-opportunity vectors. While focus on historical areas of infection is a good use of resources, the La Habra surprise outbreak points out the weakness of this approach. With the expected growth, development and demographic shifts in South Orange County, historically a low risk area, it behooves VCD to be proactively vigilant across the county.

In recent years the VCD has expanded its toolbox for identifying and controlling the vectors. To become more effective, the district and its partners at the HCA need to stay focused on proactive communications. In addition, the VCD must be proactive in monitoring and eradicating mosquitoes, but will need the help of their Board of Trustees, the County Board of Supervisors, the HCA, Orange County cities, and the public to succeed.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Is Orange County Ready for Zika? It Takes a Village to Handle Mosquito-Borne Viruses,” the 2016-2017 Orange County Grand Jury has arrived at 9 principal findings, as follows:

- F.1. The VCD and HCA have primarily responded to vector outbreaks in a reactive manner in the past. The VCD wants to be more proactive in the future.
- F.2. The VCD relies on the public to help identify new sources of infestation. This cooperation is essential for future success.
- F.3. The VCD uses multiple media, including print materials, their website, email and social media, as well as in-person activities, as part of their outreach efforts. The HCA focuses on print and opt-in email alerts and bulletins to medical professionals.

- F.4. The presence of undocumented storm drains in Orange County cities makes control of mosquito vectors more difficult.
- F.5. Communication about vector diseases directed to treatment facilities such as private and public clinics, hospitals, nursing homes and doctor offices has not translated into timely and effective public education about the prevention and avoidance of infectious diseases.
- F. 6. Mosquito control and education efforts in the county are concentrated on historical areas of infestation and illness in North County.
- F. 7. The VCD Board of Trustees' spending authorization has not been sufficient to accomplish VCD's current goals.
- F. 8. In delineating responsibilities of each agency, the existing MOUs between VCD and HCA do not adequately promote effective communications about mosquito-borne diseases and their remediation to the public, including medical professionals and their patients.
- F.9. Despite significant scientific and experiential evidence that aerial spraying is effective and safe, the regional public and the VCD Board of Trustees are reluctant to support the use of aerial spraying when recommended by VCD.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Is Orange County Ready for Zika? It Takes a Village to Handle Mosquito-Borne Viruses," the 2016-2017 Orange County Grand Jury makes the following 9 recommendations:

- R.1. VCD must continue to prioritize its funding allocations for communicating with the public. To increase this effort, the Grand Jury recommends that the district ask their Board of Trustees to authorize maximizing the District 2 assessment for the benefit of VCD by June 30, 2017. These funds should be used first by the VCD for more proactive outreach efforts throughout the county.
- R.2. The Grand Jury recommends that efforts focusing on early education information of school children be expanded in content and reach by December 30, 2017.

- R.3. Getting information to vulnerable populations (seniors, the chronically ill, pregnant women, etc.) is critical. The Grand Jury recommends that detailed plans for implementing new or expanded programs targeting vulnerable populations all over the county should be in place by VCD and HCA by June 30, 2017, for implementation no later than March 31, 2018.
- R.4. The Grand Jury recommends that the VCD provide the Orange County Board of Supervisors with a ranked list of cities that represent primary concern for storm drain mosquito infestation, as soon as possible to facilitate remediation efforts by the next mosquito season, but no later than June 30, 2017.
- R. 5. The Grand Jury recommends that, by June 30, 2017, the Orange County Board of Supervisors notify each city of concern in their Supervisorial Districts that their storm drains represent significant sources of mosquito breeding grounds.
- R. 6. The Grand Jury recommends that the Orange County Board of Supervisors advise cities of concern to schedule by September 30, 2017, and fund by December 31, 2017, thorough mapping of storm drains within city limits, as well as assessment of the condition and need for storm drain repairs. The Grand Jury recommends the Board of Supervisors financially support this effort.
- R.7. The VCD must work with HCA to expand efforts to proactively reach clinics, nursing homes and medical agencies with communications that will protect patients from mosquito-borne illnesses. The Grand Jury recommends that the MOU between the VCA and the HCA regarding such communications be updated by June 30, 2017.
- R. 8. The HCA should be more active in communicating with medical professionals using targeted and opt-out alerts and bulletins, as well as instituting measures of effectiveness in these targeted messages. Where possible, they should take advantage of mobile technology to immediately reach physicians and others in the health care trenches earlier in the cycle of mosquito infestation, even before illness is reported. An HCA Communications Plan that addresses these issues should be completed by June 30, 2017, and implemented by December 31, 2017.
- R. 9. The VCD needs new, valid and reliable qualitative and quantitative measures of outreach effectiveness to guide their communications program and make best use of their resources. This element should be added to the VCD Communications Plan by June 30, 2017, and implemented by March 30, 2018.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the

case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding;
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action;
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation;
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report;
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required or requested from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of publication of this report:

Board of Trustees, Orange County Mosquito and Vector Control District (Findings 1-9; Recommendations 1 - 4, 7, 9).

Orange County Board of Supervisors (Recommendations 4-6, 8).

Responses Requested:

Responses are requested from the following agency within 90 days of the date of publication of this report:

Orange County Health Care Agency (Findings 1, 3, 5, 8; Recommendations 3, 7-8).

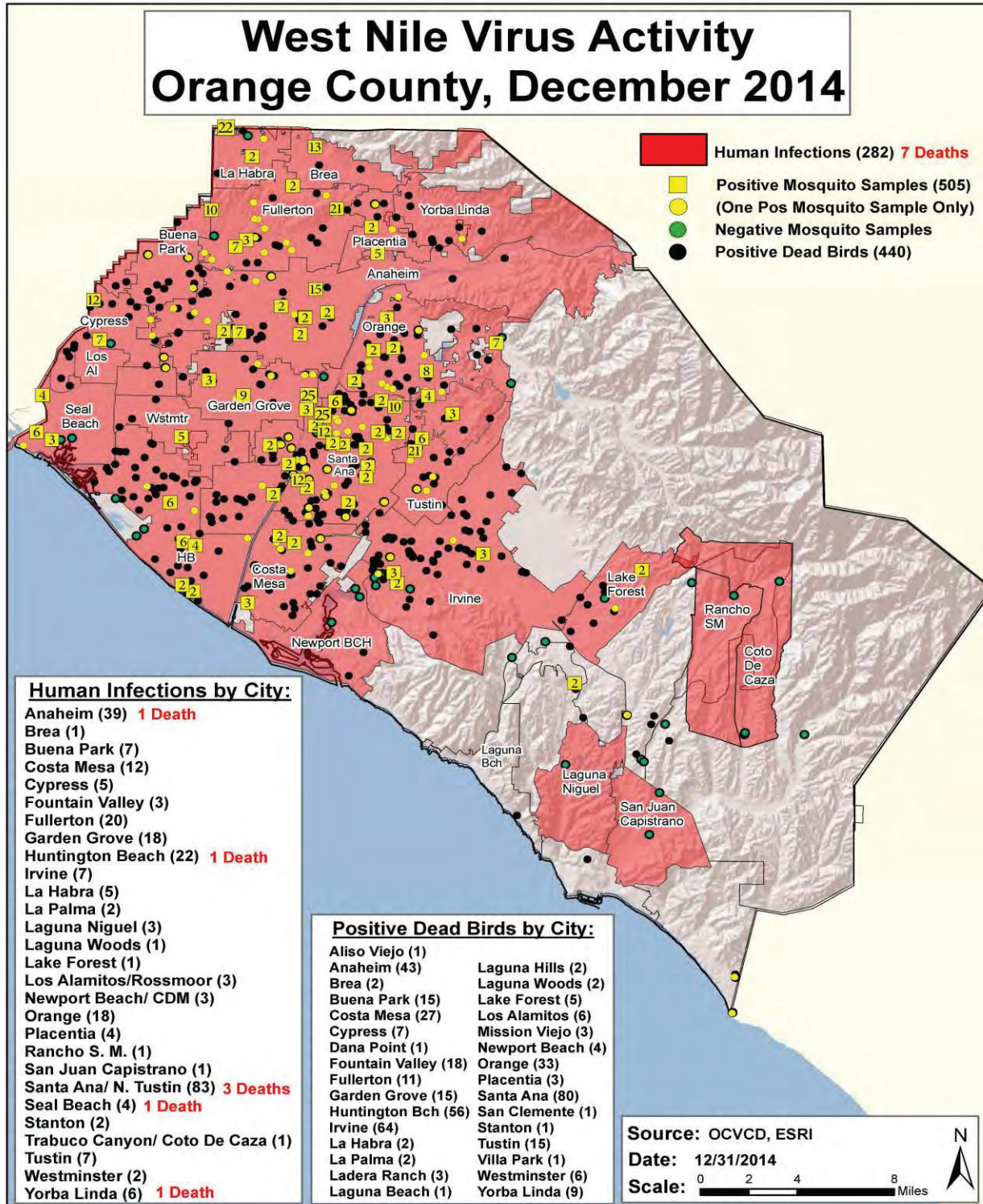
REFERENCES

- Belluck, P. (2016, November 23). *Microcephaly Found in Babies of Zika-Infected Mothers Months after Birth*. Retrieved January 17, 2017, from The New York Times: https://www.nytimes.com/2016/11/22/health/zika-microcephaly-babies.html?_r=0
- Centers for Disease Control. (2015, February 12). *West Nile Virus Symptoms & Treatment*. Retrieved January 17, 2017, from Centers for Disease Control and Prevention: <https://www.cdc.gov/westnile/symptoms/index.html>
- Centers for Disease Control. (2016, November 17). *Clinical Guidance for Healthcare Providers for Prevention of Sexual Transmission of Zika Virus*. Retrieved January 17, 2017, from CDC Centers for Disease Control and Prevention: <https://www.cdc.gov/zika/hc-providers/clinical-guidance/sexualtransmission.html>
- D'Ortenaio, e. a. (2016). Evidence of Sexual Transmission of Zika Virus. *New England Journal of Medicine*, 2195-2198.
- Fox, M. (2016, October 18). *Zika Virus Found in Woman's Vagina for Weeks*. Retrieved February 21, 2017, from NBC News: <http://www.nbcnews.com/storyline/zika-virus-outbreak/zika-virus-found-woman-s-vagina-weeks-n668171>
- Kodjak, A. (2016, September 28). *Congress Ends Spat, Agrees to Fund \$1.1 Billion to Combat Zika*. Retrieved January 17, 2017, from NPR: <http://www.npr.org/sections/health-shots/2016/09/28/495806979/congress-ends-spat-over-zika-funding-approves-1-1-billion>
- Proudfit, C. (2016, February 19). *Orange County Continues Proactive Measures to Combat Mosquito-Borne Zika Virus*. Retrieved January 19, 2017, from Orange County Government Florida: <http://www.orangecountyfl.net/Newsroom/OrangeCountyContinuestoCombatZikaVirus.aspx#.WLCJlm8rJdh>
- Roehrig, J. T. (2013). West Nile Virus in the United States--A Historical Perspective. *Viruses*, 3088-3108.
- Saulny, S. (1999, August 8). *Asian Tiger Mosquito Spreads Trouble*. Retrieved February 14, 2017, from Washington Post: <http://www.washingtonpost.com/wp-srv/local/daily/aug99/mosquito8.htm>
- Sohn, E. (2016, October 8). *Why Scientists Are Keeping an Eye on a Little-Known Virus*. Retrieved January 17, 2017, from NPR: <http://www.npr.org/sections/goatsandsoda/2016/10/08/496894601/why-scientists-are-keeping-an-eye-on-a-little-known-virus>

University of California, Riverside. (2016, August 8). *Asian Tiger Mosquito*. Retrieved February 14, 2017, from University of California, Riverside:
http://civr.ucr.edu/asian_tiger_mosquito.html

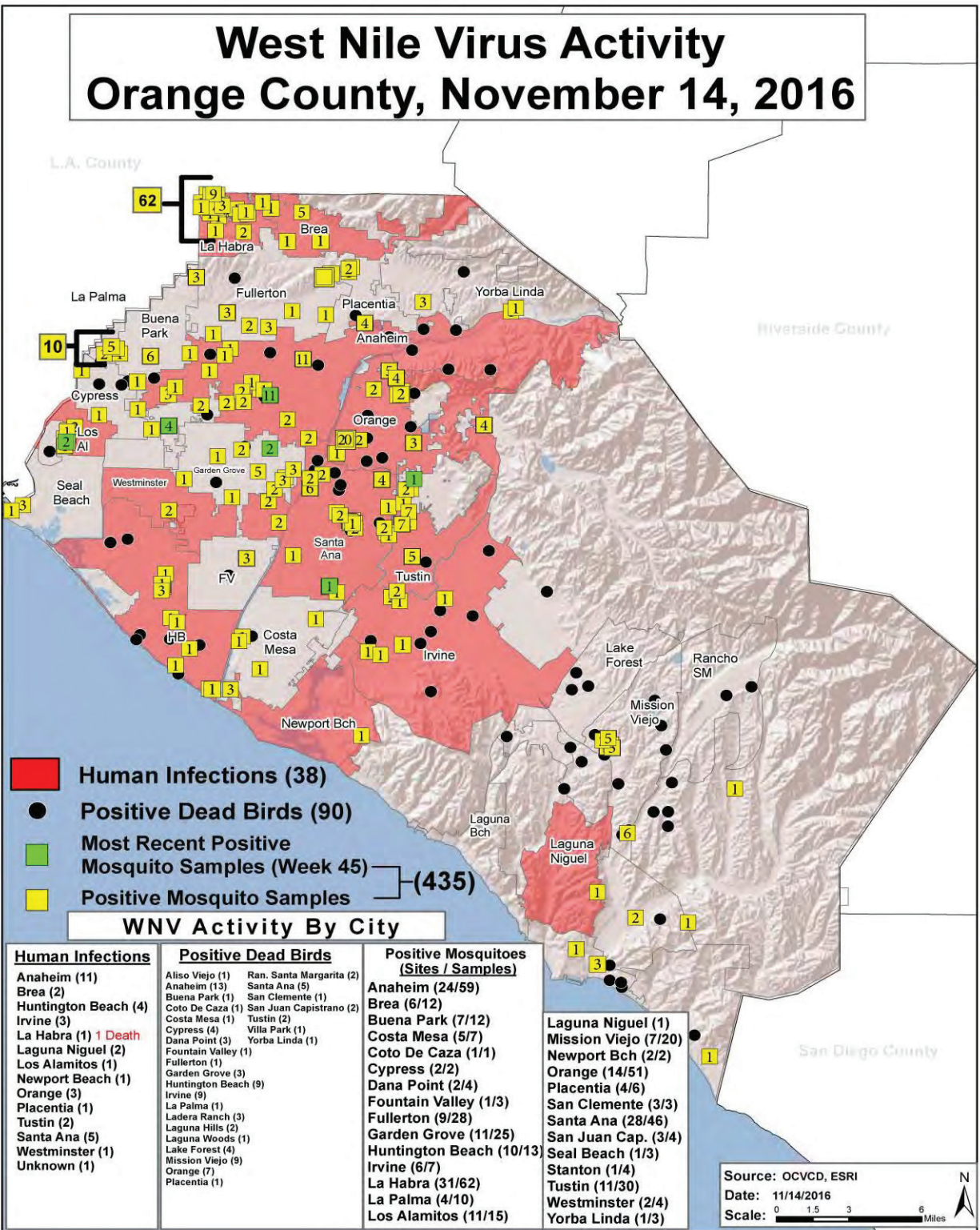
APPENDICES

Appendix A



Source: http://www.ocvector.org/Maps/2014_update_map.jpg

Appendix B



Source: http://www.ocvector.org/Maps/2016_update_map.jpg

THE GREAT ESCAPE – NEVER AGAIN?



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SUMMARY

On January 22, 2016, three inmates escaped from the Orange County Central Men’s Jail (CMJ). The Grand Jury investigated the escape to determine how it occurred and to evaluate what steps have been taken, and still need to be taken, to ensure there are no future escapes.

Many factors contributed to the escape. Key among them were the lack of compliance with existing policies and procedures by a number of jail personnel and deficiencies in the training provided to Orange County Sheriff’s Department (OCSD) deputies assigned to the jail. Some CMJ personnel did not correctly follow procedures regarding counts of inmates, and did not conduct inspections of plumbing tunnels and other infrastructure as required. Some staff was not trained adequately and consistently and supervision of staff was insufficient. Additionally, relevant sections of the OCSD’s policy and procedures manual were confusing, allowing some deputies to ignore key security responsibilities. These personnel issues, combined with long-identified shortcomings in the CMJ’s video security equipment, created an environment conducive to escape.

Since the January 2016 escape, the OCSD has taken various initial steps to physically and procedurally correct the deficiencies or ‘harden’ the jail. Additional closed circuit television (CCTV) cameras, improved lighting, added fencing, and modifications to grates and bars have all been put in place. Proper inmate counts and inspection procedures have been clarified and are being used. Policy enforcement by management has increased significantly. In spite of this, questions persist as to how and what type of tools were smuggled in and why none of the inmates in the same cell as the escapees claimed to have any knowledge of the escape, despite the likely months-long planning and execution process.

Additionally, the Orange County Board of Supervisors (Board of Supervisors) has provided a five-year \$10.9 million budget plan, with funding to be approved each year, to upgrade video cameras and recording equipment in the CMJ and Theo Lacy Facility maximum security jail complex.

REASON FOR THE STUDY

On January 22, 2016, the CMJ experienced its first jail break in many years and the most significant jail escape in the history of Orange County. Three incarcerated individuals planned and carried out an elaborate escape that was likely months in the making. The trio eluded law enforcement for more than a week before being caught and returned to custody. The escape served as a wake-up call for the OCSD and the Orange County community. Additionally, an assessment revealed, and a lawsuit charged, that conditions in the CMJ were in need of structural renovations and procedural changes, piquing the interest of the Grand Jury.

Penal Code section 919 (b) requires that “*The grand jury shall inquire into the condition and management of the public prisons within the county.*” As part of this charge, the 2016-17 Grand Jury chose to investigate the events leading up to and surrounding the escape, as well as what has been done to improve conditions to avoid future escapes.

METHOD OF STUDY

Numerous news articles have been written about the details of the escape and the Grand Jury familiarized itself with information already in the public domain by reviewing approximately 30 articles published in the Orange County Register, Los Angeles Times, The Seattle Times, Chicago Tribune, Press-Telegram, Reuters, The Mercury News, OC Weekly, CNN.com, ABC7.com, SCPR.com, and CBSlocal.com, as well as OCSO press releases. The Grand Jury then sought to verify what actually happened.

The Grand Jury toured the Orange County Central Jail which is comprised of the Intake and Release Center, the Central Men's Jail, and Women's Jail. During this tour, Sheriff deputies were very forthcoming about the escape and willingly showed Grand Jury members the cell, the vent, the plumbing tunnel areas and the roof area used in the escape. Conversations with deputies during the tour included speculation about how the inmates had staged the escape. Several additional tours of the CMJ were then conducted in an effort to place newly learned information in context. Prisoner counts were observed. As a method of comparison, the Grand Jury also toured other Orange County jails, including the Theo Lacy and James A. Musick facilities.

Follow-up interviews with over two dozen OCSO personnel were conducted where details of the jail conditions leading up to the escape and correctional changes put in place as a result of the escape were discussed.

Several thousand pages of OCSO internal reports, policy documents, training materials, and policy and procedure manuals were reviewed. The court documents, motions, and filings in the 2016 suit by the Association of Orange County Deputy Sheriffs (Association of Orange County Deputy Sheriffs vs Sheriff-Coroner Sandra Hutchens, 2016) were reviewed.

The Grand Jury evaluated the potential impact of 2011 realignment legislation addressing public safety (AB 109), as well as staffing levels at the CMJ, but found neither of these issues directly or indirectly led to the escape.

BACKGROUND AND FACTS

The CMJ is one of several facilities operated by the OCSO that houses prisoners incarcerated in Orange County. In addition to the CMJ, other facilities include the Central Women's Jail, the Intake/Release Center, the Theo Lacy Facility, and the James A. Musick Facility. The CMJ is a maximum security facility which opened in 1968. Sections of the CMJ are "linear" in design such that jail deputies are at one end of a long walkway and must traverse that walkway to observe and count inmates housed in cells or dormitories in that section. When deputies are observing inmates at one end of the walkway, they cannot observe inmates at the opposite end of the walkway, essentially leaving these inmates unsupervised (Smith, 2013). Although the CMJ was state-of-the-art when it was built in the late 60's, the current or "new-generation" approach to jail construction provides a central secure viewing area for guards from which they can observe all prisoner housing areas at all times. Additionally, a linear layout requires moving prisoners from their housing area to other areas of the jail for various services (meals, health care, etc.). New-generation jails allow services to be brought directly to prisoners in their housing areas/cells.

The Great Escape - Never Again?

On January 22, 2016, the OCSD discovered that three inmates had escaped from the roof of the CMJ. While there have been several jailbreaks from the CMJ since it opened - the last was in 2007 when an inmate worker walked through an open gate during a delivery at a loading dock - the last major jailbreak was almost 30 years prior to the 2016 escape.

The 2016 jailbreak was not a spur of the moment event; rather, it likely involved several months in planning and execution. The escapees sawed through a metal bunk and grate to access a plumbing tunnel. They then sawed through another series of bars in the tunnel to access a ventilation shaft that provided access to an area of the roof outside of the fenced exercise zone. On at least two occasions, the escapees lowered a line to the ground from the edge of the roof where they had prearranged to have an accomplice attach a backpack with clothing, shoes, rope, and cell phones. The prisoners raised the backpack to the roof and later used the smuggled rope to climb down from the roof where a getaway vehicle awaited. It is still unknown who provided the escapees with the cutting tools or how the tools were smuggled into the jail, however the escapees did use the jail phone to arrange for the clandestine delivery of other items that aided in their escape.

The Grand Jury uncovered several troubling factors that contributed to the escape and these are detailed in the following sections.

Inmate Counts

Per the current policy and procedures manual used by the OCSD relative to custody operations and procedures, inmate counts are to be conducted at set times each day. There are two basic types of counts: Module Book Counts and Statistical Body Counts. Module Book Counts are to be conducted twice daily, once in the early morning and again late at night, while Statistical Body Counts are to be conducted three times a day.

Module Book Counts require the deputy to compare each inmate to their module card photo. Module card books contain photographs of each prisoner assigned to a specific cell/housing area of the jail. Housing staff makes an announcement over the housing area's public address system for all inmates to be awake and standing by their assigned bunk for the count. All inmates return to their assigned housing location. A deputy takes the module card book into the housing area and conducts the count. The deputy asks the inmate's last name and requires the inmate to answer with either their correct first name, date of birth, or other descriptor as necessary to identify the inmate. After the deputy matches all module cards to the corresponding inmates, they check the total at the bottom and electronically sign the count sheet. A facility-wide notification is made when the count is clear.

Statistical Body Counts require the deputy conducting the count to count all inmates in an area. Inmates will be on their assigned bunks during this count. The deputy verifies that each person counted is human and not an object intended to appear as a person. However, some inmates may be in court, in class, or receiving medical care. Such inmates are identified on an electronic count sheet. The deputy must reconcile the number physically counted with the number on the electronic count sheet. Once the count has been reconciled, a facility wide notification is made over the public address system.

The Grand Jury found that, prior to the escape, the CMJ Statistical Body Counts were not being conducted as required by the policy and procedures manual. Many deputies at CMJ were

The Great Escape - Never Again?

conducting what was called a “Paper Statistical Count” during which no actual bodies were counted. The module book cards were simply compared to the electronic count sheet. Previous editions of the policy and procedures manual contained references to conducting “paper counts” at certain times at the CMJ; however, the sections of the manual defining when and how Module Book Counts and Statistical Body Counts were to be conducted applied to all Orange County jail facilities. Most deputies were not aware that they were not following proper count procedures, because they had done counts this way since they were first assigned to the CMJ and, in fact, were trained to perform counts this way at the CMJ so that the erroneous “paper count” procedure became the de facto operating method. Apparently, counts had been done this way for many years.

Contributing to the inadequacy of the statistical body counts was the fact that inmates’ bunk assignments were not consistently enforced, which made it easier for inmates to confuse deputies. Some OCSA staff complained that there was a large degree of complacency among many deputies. All of these factors helped account for a lapse of about 15 hours before the escape was discovered. It may have been that the escapees knew that actual bodies were not being counted and took advantage of this procedural error.

Approximately one year prior to the escape, OCSA personnel who had recently been assigned to the CMJ raised concerns about how the counts were being conducted. They had previously been assigned to another facility where the importance of conducting the counts “by the book” had been emphasized and strictly enforced. They brought this concern to CMJ leadership. These concerns were never acted upon. CMJ management decided to continue to conduct the counts the way they had been incorrectly conducted for many years, despite the count policy dictating otherwise. After the escape, discrepancies between the required count procedure and actual in-place count procedures became obvious and were immediately addressed by the OCSA. Deputies were re-briefed on the proper procedure and now strictly follow this procedure. Sergeants and lieutenants monitor and observe counts visually on a regular basis. The prisoner count is supervised at least once a day at random, thereby increasing accountability. New deputies now have more extensive training relative to proper count procedures and all references to “paper counts” are being removed from the policy and procedures manual.

Tenting and Ratlines

Prior to the jail escape, tenting and ratlines were common in housing locations. Tenting prevents deputies from directly observing inmate activity. Inmates hang sheets or blankets across their bunks allowing them to conceal their activities from the deputies. Ratlines are ropelike lengths constructed from clothing, bedding, etc., that can be strung from bunk to bunk to enable tenting and can be used to pass “kites” (notes) from one cell to another. Because some staff did not strictly account for inmate clothing and bedding ratlines were not difficult to construct. It was reported the escapees frequently had tenting around their bunks, which helped them to carry out their escape.

It should be remembered that the linear layout of the CMJ makes it difficult to continuously supervise inmate activity. While there was some CCTV monitoring capability in the CMJ it was not extensive, nor was it state of the art. Cameras were not directly pointed inside all housing areas, further making monitoring of inmates difficult. When deputies observed tenting and ratlines, they were required to have inmates immediately remove them. However, once deputies were out of sight, inmates would reconstruct their fortresses. Because of the constant vigilance

needed to carry out the enforcement of the tenting and ratline policies, some deputies were lax in administering the policy and some supervisors did not follow-up to ensure enforcement was occurring. Also, there was little consequence for inmates destroying county property by constructing tents with prison-issued sheets and clothing. Since the escape, several changes have been made. Additional cameras have been installed, including CCTVs that point directly into inmate housing areas. Deputies have become more diligent in enforcing existing rules and procedures. Prisoners who violate policies can have privileges taken away. CMJ staff now strictly accounts for all prison-issued items and enforces tenting and ratline policies.

Plumbing Tunnels, Grills, Vents, Bars, and Roof

The escapees from CMJ used a plumbing tunnel as a route to reach the roof. Plumbing tunnels are enclosed maintenance corridors adjacent to inmate housing areas. The escapees, hidden from view by tenting, managed to cut through a metal bunk gaining access to a metal grate, which they sawed through to make their way to a plumbing tunnel. From the plumbing tunnel, they sawed through more metal and rebar, accessing a ventilation shaft to make their way to the jail's roof.

After the escape, it was discovered that some CMJ personnel failed to comply with various sections of the OCSD policy and procedures manual. One such policy requires a physical check of the plumbing tunnels once per shift. The purpose of this inspection is to locate signs of tampering, identify any unsafe conditions, and observe inmates. Findings are to be documented on the applicable station log. In spite of clear policy, plumbing tunnels were not regularly checked by some deputies prior to the escape. Although maintenance workers went into the plumbing tunnels, it was only for repair and maintenance of plumbing and electrical issues and they were not responsible for inspecting the tunnels for signs of criminal activity. Since the escape, deputies now follow procedure and check plumbing tunnels for signs of illicit activity at least once per shift. In addition, plumbing tunnels have been thoroughly cleaned, existing light bulbs have been replaced with brighter bulbs, and additional lighting and motion detectors have been installed.

Additional components of the hardening process, recommended by an OCSD Jail Hardening Team formed shortly after the jail escape, include the addition of metal grills to plumbing tunnel wall vents; addition of secondary grills to existing security grates; and an upgrade to high density LED lighting on the roof and perimeter of the building (see Figures 1 and 2). Part of the long term hardening desired by the OCSD is to fence the roof completely. If that proves to be too costly, fencing will be added around air handler/roof vent units, which were used by the inmates to access the roof and escape.

Jail Perimeter Lighting: Before and After the January 2016 Escape



Figure 1 (Before)



Figure 2 (After)

Additional levels of security subsequently added to the CMJ include:

- CCTV in the plumbing tunnels
- Motion sensors
- Radio frequency identification (RFID) tags for all inmates
- Vent bars (see Figure 3)
- Security mesh bars

Vent Bar Reinforcement: After the January 2016 Escape



Figure 3

Funding

Several recent Grand Jury reports (2011/12 – 2013/14) identified the need for the installation of new, and upgrade of existing, video surveillance systems. Video surveillance systems in Orange County jails have been described as antiquated, inadequate, and of poor quality. These Grand Jury reports also recognized that an up-to-date video surveillance system would improve the safety of inmates, staff, and visitors. The OCSD responded to these recommendations indicating that they agreed that more efficient video equipment would improve the monitoring of prisoners.

In response to these earlier findings, and as confirmed by the recent jail escape, the OCSD has recognized the need for more adequate video equipment in jail facilities. The OCSD has responded to previous Grand Jury findings and recommendations that:

- The cost to implement the recommendation is significant (Hutchens, 2013).
- New cameras will be added “as funding becomes available” (Hutchens, 2014).
- The addition of upgraded video equipment has been listed as an improvement project for several years but has not been completed due to lack of financial resources (Hutchens, 2014).

In response to the 2013/14 Grand Jury report, the Board of Supervisors agreed that “budget constraints have impacted the ability to upgrade video equipment” and that “a plan has been developed to upgrade the video camera/recording equipment over the next five years.” A tentative plan was provided for fiscal years 2015/16 through 2019/20 for a total of \$10.9 million to upgrade equipment at the Theo Lacy Facility and the CMJ. The 2015/16 budget allocation of \$2.03 million was received and used to upgrade video equipment (Giancola, 2014). Moreover, after the jail escape an additional \$100,000 was spent at the CMJ on video upgrades. It remains critical for the Board of Supervisors to provide adequate funding for the implementation of additional security measures deemed necessary by the OCSD and identified by numerous previous Grand Jury reports. The overall budgets of individual County departments are approved by the Board of Supervisors. It is therefore the Board of Supervisors’ responsibility to provide the OCSD with adequate funding for jail upgrades to ensure public safety.

Other

Contraband is any item found in the jail that is not permitted by the policy and procedures manual. In general, the smuggling of illicit items such as drugs, cigarettes, and cell phones continues to be a significant problem throughout jails, and Orange County jails are no exception. Jail staff, non-deputized employees, family members, or any visitors can be involved in contraband smuggling. Prior to the escape there was a lack of consistent policy enforcement regarding searches of non-deputized employees and there were no metal detectors in the CMJ. The escapees used smuggled cell phones to communicate with co-conspirators outside the jail, who aided and abetted in their escape. On the night of the escape, the trio had the supplies they needed: three sets of clothing, three pairs of shoes, two coils of rope, and two get-away cars. Subsequent to the escape, to counter contraband coming into the jail, a metal detector has been installed, random searches have been initiated, and a canine team is now in use.

In order to cut through metal bars and saw through metal grates, the escapees had to use some specialized type of tool. Without this tool, this escape would have been impossible. While there is no direct evidence, there are several different theories of how this tool got into the jail. There has been speculation that the tool may have been smuggled in by a visitor, vendor, or even non-

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sworn OCSD personnel. Further, while it has been suggested by a few OCSD personnel that the tools conceivably could have been provided by sworn OCSD staff, no such formal allegations have been made and no such evidence has been discovered. The Association of Orange County Deputy Sheriffs have alleged that jail contractors, screened by non-sworn employees, inadvertently left construction equipment in the areas “easily accessible by inmates” (Association of Orange County Deputy Sheriffs vs Sheriff-Coroner Sandra Hutchens, 2016) and that Sawzall® reciprocating saw blades, designed to cut wood and metal, were discovered on two separate occasions in inmate housing areas in months leading to the escape. On August 14, 2015, two manufactured weapons were found hidden inside a brown paper commissary bag in the escapees’ housing area. The weapons were made of serrated blades with torn sheets wrapped around one end to make a handle.

New tool inventory and visitor search protocols were established after the escape. Extensive changes of security procedures for non-sworn employees and volunteers are being implemented, including, but not limited to, mandatory searches, use of Live Scan fingerprinting, required reference letters, and an on-site check of applicants’ residences. Special attention is now being paid to incoming personnel and visitors, and to the discovery of hidden contraband.

Unanswered Questions

While the Grand Jury has identified various factors that either directly or indirectly led to the January 2016 escape from the CMJ, there are two key questions that remain unanswered – questions that, if answered, could provide valuable insight into preventing future escapes.

It is still unknown who initially provided the tools to the escapees and what specific tools were used to saw through the bunk, cell grates, and bars in the cell, plumbing tunnel, and ventilation shaft. The Grand Jury could not obtain an explanation as to how the inmates obtained the tools that were essential to the escape, or even what type of tools were used, and no definitive tool has been located.

An additional issue relative to the escape that has never been fully explained is the fact that not one of the 38 inmates sharing the housing area with the three escapees informed deputies during the several month period that the preparations for the escape were likely underway. In an environment where it is not uncommon for inmates to inform on one another for a violation of jail policy in return for a reward as simple as a cigarette, it is extremely difficult to understand that not one inmate came forward with information on the on-going escape preparations during the period prior to the actual escape. Additionally, when interviewed by OCSD personnel after the escape, not a single inmate claimed to have any knowledge that the three inmates were planning the escape, sawing the bunk and the grates, etc. The Grand Jury was unable to determine if the larger “snitch controversy” that was, and still is, a major issue in Orange County had a bearing on the inmates’ silence.

CONCLUSION

On January 22, 2016, three inmates escaped from the CMJ. Problems in daily operations and with the dated design of the CMJ were magnified by the escape. The OCSD had to address these problems quickly, and it did so in varying degrees. The actions taken immediately after the escape included: securing points of exit used by the escapees, re-emphasizing proper procedures

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for conducting inmate counts, and instituting a tool inventory and a visitor search protocol. Additionally, a Jail Hardening Team was formed to develop a plan to make physical improvements to the facility to ensure that future escapes would not occur. The plan to further harden the CMJ includes two phases: short-term improvements, which could be instituted within six months, and long-term improvements for additional hardening, as funds became available.

After conducting a comprehensive study, problems with both supervision and training became obvious. Lack of compliance with existing policies and procedures by various OCSD personnel at all levels was the primary factor responsible for the escape. In many instances, required inmate count procedures were not followed; mandatory jail inspections of various areas were not conducted; appropriate training was not provided; supervision of deputies by management was inadequate; and confusing language in relevant sections of the OCSD's policy and procedures manual all combined to enable the escape to occur.

Subsequent to the escape, the OCSD has taken various steps to harden the jail both physically and procedurally. CCTV cameras, motion detectors, improved lighting, additional fencing and modifications to grates and bars have been installed. Proper count and inspection procedures have been clarified and emphasized, and management supervision has been significantly increased. Tighter controls on visitors and areas for potential contraband smuggling have been implemented. However, several questions remain unanswered. It is baffling how and who provided the inmates with the cutting tools used in the escape, and how the inmates executed the months-long planning and execution of the escape from a dormitory cell housing 38 other prisoners without one of those prisoners informing deputies of the escape. Without answers to these questions, the OCSD may never be able to fully close the book on this escape or ensure it won't happen again.

A \$10.9 million five year plan to update video equipment, to be funded annually, was adopted by the Board of Supervisors after the 2013/14 Grand Jury report. It remains for the Board of Supervisors to continue to provide funding for the implementation of this plan and provide additional funding for security measures deemed necessary by the OCSD and identified by several previous Grand Juries. Without additional security measures being addressed, the public cannot feel fully confident that everything that can be done has been done to prevent future escapes.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the jailhouse escape of 2016, the 2016-2017 Orange County Grand Jury has arrived at seven principal findings, as follows:

F.1. Failure to follow procedures

Some OCSD staff allowed prohibited behavior by inmates and failed to follow written procedures, including:

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- Properly conducting inmate counts
- Adequately searching plumbing tunnels, if at all
- Conducting comprehensive roof searches
- Requiring inmates remove and cease the use of tenting and ratlines
- Adequately searching inside the cells themselves
- Accounting for all prison-issued sheets and clothing

F.2. Lack of funding

Several past Grand Jury reports noted inadequacies in the video monitoring of inmates in the CMJ and recommended funding to update the systems. Such funding was not approved by the Board of Supervisors until the 2014-2015 fiscal year. In addition to the need to update video equipment, the OCSD has identified, and this Grand Jury agrees, that there is a crucial need to fund the following:

- An updated computer system to facilitate the completion of RFI throughout all of the jails
- Full body scanners and/or additional metal detectors
- Additional CCTV systems including coverage of all roof areas and an employee who monitors the screens in real time
- Additional fencing on the CMJ roof

Funding of these additional security components will greatly enhance security. Failure to provide funding for these needed upgrades will severely impact the OCSD's ability to prevent future escapes.

F.3. Lack of supervision/oversight

There was a lack of consistent supervision at the CMJ to ensure that counts, searches, and logs required by the policy and procedures manual were completed and conducted according to procedure. There was an overall lack of consistent supervision regarding plumbing tunnel checks, tenting and ratlines, inmate counts, etc. Additionally, inmate count issues raised by sergeants and lieutenants were not acted upon by executive jail management. Subsequently, OCSD has adequately addressed the personnel issues that led to the escape.

F.4. Confusion within the policy and procedures manual

The OCSD policy and procedures manual regarding inmate counts was confusing. Proper count procedure was defined in an inconsistent manner in the manual. The improper count procedure contributed to the escape and the approximately 15 hour delay in discovering the missing inmates. The escapees' awareness of insufficient accounting for inmates' whereabouts may have played a part in the inmate's planning the escape.

It should be noted that the OCSD is in the process of revising appropriate sections of the policy and procedures manual to eliminate any confusion and inconsistencies regarding proper count procedure.

F.5. Inadequate security measures

The security measures in place at the CMJ were inadequate. Non-sworn employees, vendors, and visitors entering the facility were not searched on a regular basis, nor were their belongings; sworn deputies are never searched. With proper search and security measures in place and in practice, including searching all non-sworn employees and visitors, accounting for tools brought in by maintenance workers and vendors, and documenting the disposal of contraband, the tools that aided in the January 2016 escape would likely not have been smuggled into the jail.

F.6. Training

All deputies receive additional training upon assignment to the CMJ. Because of inconsistencies within the policy and procedures manual regarding inmate counts and a long-standing practice of conducting “paper counts”, incoming deputies to the CMJ were trained improperly. Changes to the manual were not adequately emphasized. Regular reminders of appropriate security and safety procedures were likewise inadequate.

F.7. Unanswered Questions

The Grand Jury is concerned that there are key elements that remain unanswered about the escape, such as the silence of the 38 inmates who shared housing with the escapees, and what tools were used and how they were brought in, leaving doubts as to whether the current upgrades will prevent future escapes.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the jailhouse escape of 2016 in Orange County, the 2016-2017 Orange County Grand Jury makes the following five recommendations:

R.1. The Board of Supervisors should continue to provide funding as outlined in the five year plan and provide additional funding in the FY 2017-18 budget as detailed in the OCSD Jail Hardening Report to complete the long term hardening requirements requested by OCSD.

R.2. Within 6 months of the publication of this report, the executive staff of the OCSD should develop and implement guidelines to hold all staff accountable for conducting their jobs in compliance with policy and procedures manual.

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R.3. The OCSD should continue to review the department's policy and procedures manual on at least an annual basis, update it when necessary, and expeditiously inform all personnel of changes to the manual.

R.4. Within 6 months of the publication of this report, the OCSD should put additional security guidelines in place to provide security screening for visitors, vendors and staff. This may include full body scans, additional metal detectors, bag searches, and additional drug detection dogs.

R.5. Within 6 months of the publication of this report, the OCSD should institute a policy of on-going training of all staff members to ensure understanding of jail policy and procedures.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

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(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses are required from the following governing body within 90 days of the date of publication of this report: **Orange County Board of Supervisors (Finding 2; Recommendation 1)**

Responses are required from the following elected agency or department head within 60 days of the date of publication of this report: **Orange County Sheriff/Coroner (Findings 1, 3-7; Recommendations 2-5)**

REFERENCES

Association of Orange County Deputy Sheriffs vs Sheriff-Coroner Sandra Hutchens, 30-2016-00835821-CU-WM-CJC (Orange County Superior Court February 11, 2016).

Giancola, M. (2014, November 18). *Orange County Grand Jury*. Retrieved March 3, 2017, from <http://www.ocgrandjury.org>:
http://www.ocgrandjury.org/pdfs/2013_2014_GJreport/2014-11-18_County_Executive_Officer-Amended_Response.pdf

Hutchens, S. (2013, August 7). *Orange County Grand Jury*. Retrieved March 3, 2017, from <http://www.ocgrandjury.org>:
http://www.ocgrandjury.org/pdfs/2012_2013_reports/OCSheriff-Coroner080713.pdf

Hutchens, S. (2014, July 24). *Orange County Grand Jury*. Retrieved March 3, 2017, from <http://www.ocgrandjury.org>:
http://www.ocgrandjury.org/pdfs/2013_2014_GJreport/2014-7-24_Orange_County_Sheriff_Coroner.pdf

Smith, A. (2013, April 8). *A Look at the "New-Generation" Jail*.

**OUCH! – NOW THAT DIDN'T HURT:
THE IMPLEMENTATION OF THE VACCINATION BILL SB 277
IN ORANGE COUNTY SCHOOLS**



**Ouch! - Now That Didn't Hurt:
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**Ouch! - Now That Didn't Hurt:
The Implementation of the Vaccination Bill SB 277 In Orange County Schools**

SUMMARY

Vaccination requirements for California children in public schools significantly changed in June 2015 with the passage of Senate Bill 277 (SB 277). The law, which went into effect on July 1, 2016, eliminated personal belief exemptions, leaving only physician-authored medical exemptions from vaccinations for all school age children. Orange County school districts have historically included districts with high percentages of vaccinated children and those with low and decreasing vaccination rates. Low rates of vaccinated students put children at risk for a variety of childhood diseases.

School districts in Orange County took the change in law as a challenge. Each district planned well in advance of the change and acted early and successfully in their efforts. Districts that already had high percentages continued to achieve those results by relying on tried and true methods. Districts that started with lower percentages made use of trained staff, direct mail and a variety of outreach methods to educate parents about SB 277, and significantly increased their numbers of vaccinated students.

REASON FOR THE STUDY

On June 30, 2015 SB 277 was passed mandating childhood vaccinations and eliminating personal exemptions to mandatory vaccinations. Only those exemptions required for medical reasons are now allowed. Many Orange County public schools report rates of unvaccinated children below the 92-94% threshold required for herd immunity. Herd immunity is the percent of individuals in a society needed to be vaccinated to prevent the spread of disease. The impact of this increased requirement had the potential to place a large administrative burden on Orange County public schools. In addition, a reduction in enrollment was possible if those parents who had filed personal belief exemptions (PBE) refused to comply with the new law and removed their children from public school. This potential reduction could result in additional fiscal restrictions on school districts and increase the number of students home schooled in certain areas, thus undermining the purpose of public education.

The start of the 2016-17 school year would be the first challenge many school districts faced in ensuring compliance. The Grand Jury wanted to understand how Orange County School Districts sought to ensure compliance with the new law; the methods and effectiveness of communications districts used to inform parents; district plans for vetting students for compliance on the first day of school; any proposed assistance schools offered for acquiring or providing vaccinations; potential resulting loss of average daily attendance (ADA) monies due to non-attendance; and plans to offset any potential financial costs associated with implementation.

METHOD OF STUDY

The Grand Jury investigated a cross section of school districts throughout Orange County to determine how compliance to the new law was implemented, examining districts with both high

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and low vaccination compliance rates, how compliance was achieved, and districts' plans to ensure new students met SB 277 standards.

The Grand Jury familiarized itself with the language of SB 277 and then sought data from California Department of Public Health (CDPH) on the current vaccination rates in Orange County public schools. While SB 277 also applies to private schools, the Grand Jury does not have jurisdiction to investigate them.

Interviews were conducted with experts from the Orange County Health Care Agency (HCA), the Orange County Department of Education (OCDE), a number of school district superintendents and other district personnel involved in the implementation of SB 277 to determine what plans they had put in place to ensure compliance with the new law. Documents responsive to our inquiries were also provided by the districts. These included sample letters sent home to parents notifying them of the change in law, fliers to local health clinics and additional materials concerning vaccinations. Data available from the CDPH on historical vaccination rates was compiled and compared to vaccination rates for the first day of school in 2016 to determine if there were changes in vaccination rates and to measure how well communication efforts on the part of the districts were effective in ensuring compliance.

BACKGROUND AND FACTS

Historical Perspective

Since the 1800's vaccinations have been a public concern, particularly regarding school children, and numerous laws have been implemented for childhood immunizations over the years. In 2014, a measles outbreak involving a number of patients that reported visiting a local theme park prompted the California legislature to revisit the required vaccinations of California school children. Exemptions had been allowed for parents who did not want to vaccinate and the rates of unvaccinated children had slowly increased with some schools reporting dangerously low levels of vaccinated children. For vaccinations to have an impact on eradicating diseases in a society, or what is referred to as herd immunity, a minimum immunization rate is required. On June 30, 2015, Governor Jerry Brown signed a new vaccination law (SB 277) requiring all children enrolled in day-care facilities and public or private schools in California to be fully vaccinated against several communicable diseases (diphtheria, hepatitis B, Haemophilus influenza type B, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, and varicella) and removing most of the exemptions previously allowed. These mandatory vaccinations must be done at specific ages that correspond with the grade level gateways in public schools. There are four distinct stages in a child's life when vaccinations should be administered: birth to preschool (0- 3 years), kindergarten (4-5 years), grades 1-6 (6-11 years), and grades 7-12 (12-18 years).

Vaccination exemptions also date back to the 1800s. There was a time when parents and guardians had the choice to refuse vaccinations for their children. Some of these decisions were based on the belief that vaccines would not work properly to help eradicate various childhood diseases, or that side effects of the vaccines were more harmful than the vaccine was beneficial. Some parents did not want their children injected with a foreign substance, citing First

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Amendment protection rights. Many exemptions were based on religious or personal beliefs. The government sought vaccination compliance before children attended school, fearing illnesses would spread through a vulnerable population with the potential to destroy entire communities.

When it became clear that parents would not voluntarily immunize their children, it became necessary to legally mandate that vaccinations be administered. Eventually vaccinations became mandatory before children could attend school. However, in many instances parents could still claim a Personal Belief Exemption (PBE), an opt-out practice that parents with strong anti-vaccination beliefs have used for years to avoid immunizing their school-age children against communicable diseases. SB 277 eliminated the PBE. Students entering kindergarten and seventh grade are now required to have up-to-date vaccinations. Medical exemptions are still allowed and require a physician to provide the school district with a letter certifying certain medical concerns including, but not limited to, family medical history (H & S Code Section 120370). A lawsuit to block the law was dismissed by the Court and SB 277 is now state law.

The OCDE and the HCA have no direct role in the implementation of SB 277. Rather, these agencies assume supporting and advisory roles to the school districts. They can be thought of as resources for the districts. However, OCDE is itself a school district, specifically responsible for education of students in the juvenile justice system, high need students, and students in designated alternative schools and in certain charter schools.

Implementation and Outreach

When Governor Jerry Brown signed SB 277 into law in June 2015, Orange County school districts began to determine how to address its implementation, and considered the impact on staffing, enrollment, and other resources. Some districts became very proactive as soon as the law was signed, reviewing it and asking other government agencies such as the OCDE and the HCA for clarification and legal advice. The State of California considers a school district to be in compliance with the law if all of their students are either up-to-date with their vaccination, are conditionally enrolled, have a personal belief exemption grandfathered in, or have a valid medical exemption.

The high level of compliance to SB 277 throughout Orange County can be attributed to outreach provided by school districts and individual schools. OCDE and HCA informed school districts exactly what immunizations the new law required students to have and the possible exemptions available. The HCA's role was to clarify for the individual districts what the requirements of SB 277 were and to provide support as needed. Additionally, the HCA provided resources for school districts to help facilitate the smooth and orderly implementation of the new immunization requirements.

Once these questions were answered, materials were prepared for school staff responsible for the implementation and immunization tracking. Successful districts started their campaigns for vaccinations well in advance of the start of the new school year. Schools reached out, focusing first on families who would be enrolling students in kindergarten, one of the new gateways for immunization verification. With students arriving for kindergarten enrollment representing the

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largest population of unvaccinated students, districts used Kinder-Round-Ups, generally held in March, to inform parents about the kindergarten enrollment process, as well as the new vaccination requirement. This advance contact provided parents with enough time to ensure that children could be fully vaccinated when school began.

Districts realized that personal contact was the best method for information dissemination and compliance. Parents of students transitioning to the 7th grade, who previously had personal belief exemptions, were personally called and advised of the new legislation and the need for vaccinations. While this required extra work by school staff, the benefit was that students arrived at enrollment ready to begin class.

School districts in the county either had school nurses available on site or health clerks in charge of student medical records. Nurses and health clerks periodically notified parents of children who lacked vaccinations that deadlines for compliance were approaching. Those with temporary medical exemptions were notified that they would need to obtain a permanent medical exemption (PME) or comply with the vaccination requirements. Others modified district and school web sites, quoting the new law and informing parents of this new requirement. Resources such as “*Shots for Schools*,” an information platform provided by the CDPH were referenced on web sites as ways for parents to gain a better understanding of the new law. In addition to newsletters and robo-calls, telephone calls from school nurses and health clerks provided a personal touch. A tool that had a major impact in the success of district outreach programs was the use of bilingual school staff to explain in concise terms to non-English speaking parents what was required prior to student enrollment. Social media also made the notification of parents easier since many schools use Facebook to keep parents informed.

The Impact of SB 277 on Orange County School Districts

Although the tightening of vaccination requirements for all California schools was predicted to be troublesome, it proved to be the opposite. While it was thought that public school enrollment in the county would decline, losing students to home schooling, the numbers of student remained essentially unchanged. Statistics provided by the CDPH for the 2016-2017 school year indicate that there was no decline in total kindergarten enrollment in the county due to the implementation of SB277.

Orange County Kindergarten – Total Enrollment Public & Private Campuses

	<u>2016-2017</u>	<u>% of Total</u>	<u>% Change</u>	<u>2015-2016</u>	<u>% of Total</u>
Total Students	42,389			42,007	
# w/All Shots	40,490	95.5%	+3%	38,848	92.5%
Conditionals	847	2.0%	-2.2%	1,749	4.2%
PME’s	348	0.8%	+0.6%	92	0.2%
PBE’s	269	0.6%	-2.4%	1,270	3.0%

The financial impact to Orange County schools was minimal. By anticipating implementation, the personnel and resources required for the change in the law were already in place. Overall,

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vaccination rates rose in Orange County school districts with historically low vaccination participation and remained high in the others.

To quantify the impact of SB277 on Orange County school districts, a four year digital picture was created from the CDPH immunization status report. The objective was to track changes in kindergarten compliance percentages and conditional enrollment from 2013 to 2017 in light of changes in immunization exemptions.

PUBLIC SCHOOL IMMUNIZATION STATUS AT KINDERGARTEN ENROLLMENT
2013 through 2017 School District Immunization and Conditional Enrollment Statistics

School District	2013-2014** % Immunized/%Conditional	2014-2015** % Immunized/%Conditional	2015-2016** % Immunized/%Conditional	2016-2017* % Immunized/%Conditional
Anaheim City	98%/1.5%	96.0%/3.8%	96.2%/3.3%	97.9%/1.5%
Brea-Olinda Uni.	94.4%/3.7%	91.4%/5.8%	96.4%/1.3%	96.5%/2.2%
Buena Park Elem.	98.2%/1.1%	95.6%/3.6%	94.6%/5.1%	97.8%/1.7%
Capistrano Uni.	72.9%/15.9%	79.7%/10.5%	84.4%/4.7%	90.2%/3.9%
Centralia Elem.	91.8%/6.4%	94.1%/4.5%	97.1%/2.6%	97.4%/1.4%
Cypress Elem.	95.2%/2.9%	89.2%/9.3%	95.4%/4.4%	96.8%/2.8%
Fountain Valley Elem.	89.5%/6.5%	93.9%/3.3%	93.6%/3.3%	97.4%/1.9%
Fullerton Elem.	94.4% /2.2%	96.7%/0.7%	96.2%/1.0%	97.0%/2.2%
Garden Grove Uni.	95.9% /3.0%	94.8%/4.2%	96.7%/2.5%	97.1%/2.7%
Huntington Beach	82.7%/10.2%	83.8%/9.1%	85.3%/7.8%	93%/2.3%
Irvine Unified	84.5%/10.6%	87.9%/9.1%	91.3%/5.4%	94.5%/4.1%
La Habra Elem.	96.7%/1.0%	96.9%/2.3%	97.1%/1.6%	98.8%/1.3%
Laguna Beach Uni.	71.1%/13.2%	76.9%/17.4%	81.2%/3.0%	86.5%/0.5%
Los Alamitos Unified	92.6%/3.3%	95.2%/0.7%	96.4%/0.6%	98.2%/1.2%
Magnolia Elem.	95.8%/3.7%	94.3%/4.9%	98.6%/1.0%	98.1%/1.8%
Newport-Mesa Uni.	83.4%/9.9%	82.4%/12.3%	85.6%/8.3%	94.8%/3.0%
Ocean View	89.9%/4.2%	92.0%/4.6%	92.2%/5.3%	95.9%/2.5%
Orange Unified	84.7%/12.5%	90.2%/7.0%	94.4%/3.3%	95.7%/3.4%
Placentia-YL	88.1%/7.6%	91.5%/4.8%	93.7%/3.1%	96.4%/3.0%
Saddleback Valley	82.6%/10.3%	80.8%/14.8%	85.7%/10.6%	94.4%/2.6%
Santa Ana Unified	93.8%/5.5%	93.9%/5.3%	96.0%/2.9%	97.5%/1.2%
Savanna Elem.	87.4%/11.7%	85.1%/14.6%	87.9%/12.1%	97.5%/1.75%
Tustin Unified	87.8%/9.3%	90.9%/5.7%	91.9%/4.2%	95.6%/2.9%
Westminster Elem.	93.4%/4.8%	96.3%/1.6%	96.4%/2.6%	97.2%/2.5%

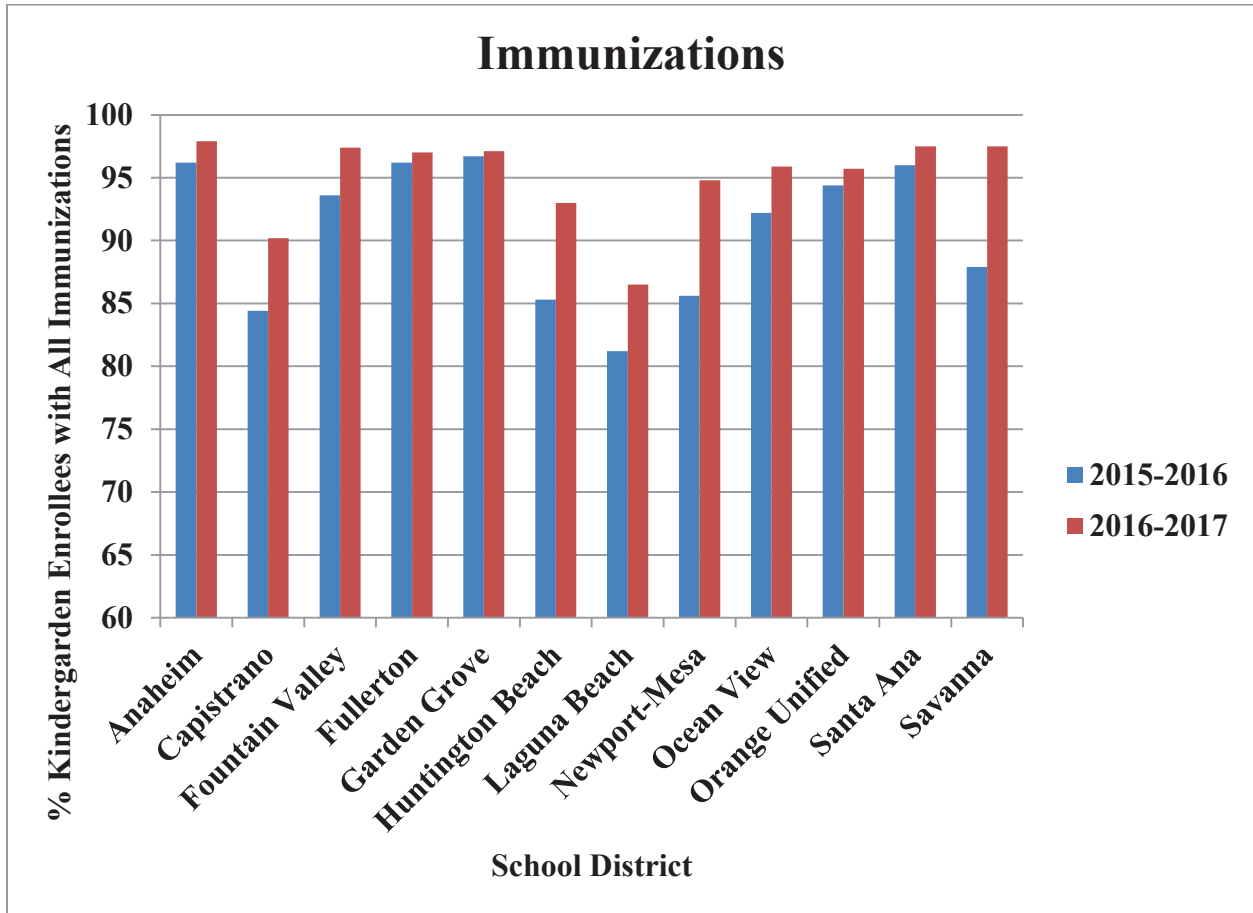
School District numbers in **Red** indicate historic trends of kindergarten immunization percentages below CDC recommended herd immunity levels of 92-94%. Conditional students are those who do not meet all vaccination requirements. The vaccination schedules for these students require timely follow-up by school health or office staff, because the student lacks (i.e., is not yet due for) at least one vaccination, does not have a personal belief or permanent medical exemption, or has a physician affidavit of Temporary Medical Exemption for one or more vaccinations; or is a transfer student who has no vaccination record available yet.

School District Data Sources: State of California, Immunization Branch & County of Orange, Health Care Agency
 **Data Prepared by: County of Orange, Health Care Agency

*Data from California Department of Public Health (Averaged from data from all public schools in the district)

**Ouch! - Now That Didn't Hurt:
The Implementation of the Vaccination Bill SB 277 In Orange County Schools**

For the twelve Districts surveyed, increases in vaccination compliance ranged from .4% to 9.6%. Even districts with previously high levels of compliance increased the number of students with up-to-date vaccinations. Two districts that had previous low vaccination rates made significant increases of 7.7% and 9.6% and are now above the herd immunity threshold. Two others increased the number of vaccinated students, but remained below the recommended herd immunity threshold.



One curious item noted during data collection for the 2015-2016 period was the fact that larger districts with 20 to 40 campuses and 2,600 to 4,600 kindergarten enrollees were able to obtain high levels of vaccination compliance, while some smaller districts with fewer than 10 campuses and 700 kindergarten enrollees were unable to increase their compliance numbers significantly.

CONCLUSION

SB 277 is being principally implemented at the school district level. Investigation of representative school districts spread across Orange County paints a picture of timely and orderly response to the law. There is tremendous oversight today from the school districts to ensure that parents are in compliance with the vaccination law. Free clinics are available offering vaccinations, pamphlets of information are circulated and school administrators have been available by phone and in person to answer any questions or concerns.

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School districts in Orange County will still need to track students with grandfathered personal belief exemptions to ensure these students have the required vaccinations before they reach the next reporting levels. In addition, districts should continue to monitor student vaccination percentages to maintain the threshold defined by the CDPH.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Implementation of the Vaccination Bill, SB 277, in Orange County Schools, the 2016-2017 Orange County Grand Jury has arrived at five principal findings, as follows:

Findings for Impact of SB 277 on school districts:

- F.1 The impact of SB 277 on school districts in Orange County was minimal. Districts were prepared and staffed with well trained personnel.
- F.2 There were very few problems that arose with medical exemptions for vaccinations. Health clerks and school nurses were able to handle any discrepancies.
- F.3 Personal belief exemptions that were grandfathered in are professionally tracked with timely notifications to parents as to when vaccinations are due to be completed.
- F.4. Orange County school districts made every effort to make vaccination information available using social media, direct mailings and links on school websites to clinics in the area.
- F.5 School nurses, LVN's and health clerks directly notified the parents of students with vaccination lapses and those requiring boosters for pre-K, kindergarten and 7th grade well in advance of the due dates.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

**Ouch! - Now That Didn't Hurt:
The Implementation of the Vaccination Bill SB 277 In Orange County Schools**

RECOMMENDATIONS

In accordance with *California Penal Code* §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court

Based on its investigation titled, “*Ouch! - Now That Didn't Hurt: The Implementation of the Vaccination Bill, SB 277 in Orange County Schools*” the 2016-2017 Orange County Grand Jury has 2 recommendations.

R.1 School districts should continue to track students with grandfathered personal belief exemptions to ensure these students have the required vaccinations before they reach the next reporting levels.

R.2 .Districts should continue to monitor student vaccination percentages to maintain the threshold defined by the CDPH

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to

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be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from the governing body of each of the following districts within 90 days of the date of publication of this report:

Anaheim Elementary School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Capistrano Unified School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Fountain Valley School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Fullerton Elementary School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Garden Grove Unified School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Huntington Beach City School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Laguna Beach Unified School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Newport-Mesa Unified School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Ocean View School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Orange Unified School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Santa Ana Unified School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)
Savanna School District, Findings (F.1 – F.5.) and Recommendations (R.1 & R.2)

Responses are requested from the following within 90 days of the date of publication of this report:

None requested.

**PENSION ENHANCEMENTS:
A QUESTION OF GOVERNMENT CODE COMPLIANCE**



REPORT
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SUMMARY

The unfunded pension liability of the Orange County Employees Retirement System (OCERS) has grown exponentially since 2000. Between 2000 and 2005, county officials contributed to this unsustainable trajectory by awarding generous retirement benefit increases to several groups of employees participating in OCERS. These benefit improvements increased OCERS' unfunded actuarial accrued liability (UAAL) by \$574.6 million (Delaney, 2015) and may threaten the county's ability to provide public services. See Appendix A for glossary of financial terms.

The County Employment Retirement Law (CERL) of 1937, as codified in the State of California Government Code (Appendix C), contains specific requirements that county and local governments must follow when considering pension enhancements, giving the public ample opportunity to review and comment (State of California, 1937). The 2016-2017 Orange County Grand Jury (OCGJ) found that the Orange County Board of Supervisors (BOS) complied with these CERL codes when granting pension enhancements. However, Orange County Fire Authority (OCFA) documentation indicated one week's notice of the hearing was provided rather than the two weeks' notice required, and the Orange County Sanitation District did not provide documentation showing compliance with any of the specific transparency code requirements.

Pension reforms put in place in recent years have mitigated the effect of such past code violations and addressed the burgeoning pension debt, fundamentally changing retirement systems. Orange County's Measure J, passed in 2008, strengthened the public's oversight of pension enhancements. Still, adherence to transparency requirements by county officials remains important to pension reform.

REASON FOR THE STUDY

Precipitated by public concern about the ballooning UAAL, five grand jury reports have addressed the subject in Orange County (Appendix B). These reports focused on the financial impact of the UAAL on Orange County cities, the county, and taxpayer interests. The 2013-2014 OCGJ and 2015-2016 OCGJ reported on the history and status of the UAAL for Orange County cities and the County of Orange, respectively. They did not, however, report on transparency.

The 2016-2017 OCGJ, also concerned about the UAAL, was alerted by a citizen complaint letter, as well as activism and lawsuits in Northern California (Citizens for Sustainable Pension Plans, 2016), that noncompliance with CERL fiscal and notification requirements may have occurred when the 2000-2005 pension enhancements were approved. Recently, other California grand juries (2014/2015 Marin County Grand Jury, 2015) (2015-2016 Sutter County Grand Jury, 2016) found a number of government code violations occurred in their counties during the approval of pension enhancements between 2000 and 2005.

Given the generous retirement enhancements that occurred and the seriousness of the resulting Orange County pension debt, the 2016-2017 OCGJ sought to determine if county pension enhancement awards in 2001, 2002, and 2004 complied with the fiscal and disclosure requirements of CERL as specified in California Government Code sections §7507, §23026, §31515.5, and §31516. Although benefit increases occurred in Orange County cities during this time that also added to the county's UAAL, the scope of this investigation did not extend to the cities.

METHOD OF STUDY

The 2016-2017 OCGJ interviewed Orange County financial executives and representatives of OCERS and the Sanitation District, studied reports about the OCERS Trust Fund, read news articles on pension debt, and reviewed relevant county government internal audits and financial documents. The 2016-2017 OCGJ also solicited all relevant documents related to the approval of pension enhancements for the years in question. This included meeting agendas, minutes, and resolutions of the respective boards governing pension approvals; actuarial reports, financial statements, and audit reports; and memorandums of understanding as a result of pension-related negotiations between unions and Orange County officials representing employees anticipating retirement changes.

The 2016-2017 OCGJ also reviewed previous OCGJ reports on pensions (Appendix B), as well as other California grand jury reports addressing transparency in pension enhancements. We examined the provisions of California CERL government code sections §7507, §23026, §31515.5, and §31516 in effect during the period under review (Appendix C).

BACKGROUND AND FACTS

Transparency Requirements

CERL governs state employee pensions, detailing fiscal and transparency requirements when pension changes are being considered. These government codes contain specific requirements in California Government Code sections §7507, §23026, §31515.5 and §31516 that county and local governments must meet before awarding pension enhancements to public employees (Appendix C). These code sections require governing boards to do the following:

- Give notice to the public of the proposed pension increase on a board meeting agenda;
- Obtain an actuarial valuation of the future cost; and
- Present the proposed increase with the actuarial report and explain the impact of the increase on the pension plans' financial health and funding.

(State of California, 1937)

Pension Enhancements 2000 - 2005

By 2000, Orange County employees had begun lobbying for better pensions. In 2001, the BOS approved a change in the retirement benefits of Orange County deputy sheriffs. This increased

the UAAL by \$119.5 million (Delaney, 2015). Pension benefit improvements approved in 2002 for probation and OCFA employees increased the UAAL by \$89.7 million. In 2004, the BOS and the Sanitation District Board of Directors approved changes in retirement benefits for County of Orange general members, probation and sanitation employees, collectively increasing the UAAL by \$365.4 million (Delaney, 2015). Although other influences made a greater contribution to the growth in the UAAL, these enhancements were significant contributors, adding a total of \$574.6 million to the UAAL. See Appendix D for details of the 2000-2005 pension enhancements.

Compliance with Transparency Regulations

Based on a review of documentation, the 2016-2017 OCGJ determined that the BOS, in approving pension enhancements for the Orange County deputy sheriffs, probation, and general Orange County employees, complied fully with the requirements of government code sections §7507, §23026, §31515.5, and §31516. The boards of directors for the Sanitation District and OCFA approved pension enhancements, but the approval process did not comply with all aspects of the government transparency codes.

The Sanitation District Board of Directors approved a pension benefit enhancement but the 2016-2017 OCGJ found no evidence from the documentation provided that they complied with the requirements of the transparency regulations (CERL sections §7507, §23026, §31515.5 and §31516). That is, they did not show evidence that they provided notice to the public of the proposed pension increase on a board agenda or present the actuarial valuation of the future cost at a public meeting at least two weeks before approval of the increase, nor did they publicly explain the impact of the proposed increase on the pension plan's financial health and funding within the appropriate timeframe.

The 2016-2017 OCGJ reviewed documents from the OCFA and found the agency deviated from the requirement in CERL code sections §7507 and §31516 (State of California, 1937) that "*the future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary, shall be made public at a public meeting at least two weeks prior to the adoption of any increases in public retirement plan benefits.*" The public notice of changes in the pension plan was posted only one week prior to the meeting.

Subsequent Events

Subsequent to the 2000-2005 pension enhancements, the County of Orange supported pension reforms that mitigate concerns about past government code noncompliance, and some have served to lower pension costs.

Measure J, approved on November 4, 2008, by 75.2% of Orange County voters, amended the County's charter to require a vote of the people on any pension enhancement, ensuring transparency and public awareness of the associated financial impact (County of Orange, 2009).

The 2012 California Public Employees' Pension Reform Act (AB 340) addressed pension debt. In accordance with AB 340, the BOS adopted resolutions that lowered pension costs by changing

pension benefit formulas and requiring employees to share in the cost. These changes included, among other things:

- Setting a new maximum benefit with a lower cost pension formula for safety and non-safety employees with requirements to work longer in order to reach full retirement age.
- Placing a cap on the amount used to calculate a pension.
- Reforming pension spiking for new and existing employees.
- Requiring three-year averaging of final compensation for new employees.
- Providing counties with new authority to negotiate cost-sharing agreements with current employees.

(State of California, 2012)

Pension reform measures changed the landscape of pension awards, strengthened the opportunity for public scrutiny of retirement changes, and mitigated the impact of code violations.

CONCLUSION

This investigation highlights the importance of transparency and public engagement in civic government. The 2016-2017 OCGJ determined that the statutory pension-related procedural requirements fostering public transparency were met by Orange County governing officials representing law enforcement, probation, and the county for general members. OCFA officials apparently gave only one week public notice of impending pension enhancements, rather than the two weeks required by code sections §7507 and §31516. There was no evidence of public notice or other compliance with CERL transparency codes for sanitation district employees' pension enhancements.

Since 2005, concern about the UAAL has galvanized Orange County officials to support pension reforms. Measure J ensured public awareness of future pension enhancements, mitigating the effects of code violations in the past. Notwithstanding the positive effect of Measure J, Orange County governing boards should comply with all fiscal and transparency requirements of CERL before awarding pension enhancements to public employees.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 OCGJ requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Pension Enhancements: A Question of Government Code Compliance," the 2016-2017 OCGJ has arrived at two principal findings, as follows:

- F. 1. When the OCFA Board of Directors approved 3% at 50 for firefighters in 2002, only one week notice was given to the public.

F.2. The Sanitation District did not provide documentary evidence that the operative code requirements were met by the Sanitation District Board of Directors when they approved 2.5% at 55 pension formula for sanitation workers in 2004.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 OCGJ requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Pension Enhancements: A Question of Government Code Compliance,” the 2016-2017 the OCGJ has the following recommendations.

R.1 The OCFA should implement procedures that ensure compliance with all transparency requirements including those relating to the approval of pension enhancements.

R.2 The Sanitation District should implement procedures that ensure compliance with all transparency requirements including those relating to the approval of pension enhancements.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding;
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action;
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation;
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report;
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required or requested from:

Responses are required from the governing body of each of the following entities within 90 days of the date of publication of this report:

Orange County Fire Authority (F. 1 and R.1)
Orange County Sanitation District (F. 2 and R.2)

Responses are requested from the following non-elected agency or department heads:

None requested.

REFERENCES

- 2002-2003 Orange County Grand Jury. (2003). *Who Represents Orange County Taxpayers?* Retrieved 2016, from Orange County Grand Jury Reports: <http://www.ocgrandjury.org/pdfs/gjrepresent.pdf>
- 2004-2005 Orange County Grand Jury. (2005). *Another County Crisis: Pensions, Health Care, and Other Benefits.* Retrieved 2016, from Orange County Grand Jury Reports: <http://www.ocgrandjury.org/pdfs/pension.pdf>
- 2011-2012 Orange County Grand Jury. (2012). *Transparency Breaking UP Compensation Fog-- But Why Hide Pension Costs?* Retrieved 2016, from Orange County Grand Jury Reports: <http://www.ocgrandjury.org/pdfs/transparencybreakingupcompensationfog.pdf>
- 2013-2014 Orange County Grand Jury. (2014). *OC grand Jury Reports.* Retrieved 2016, from Orange County Pension Liabilities: Budget Transparency Critically Needed: http://www.ocgrandjury.org/pdfs/2013_2014_GJreport/PensionReport.pdf
- 2014/2015 Marin County Grand Jury. (2015). *Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency.* Retrieved April 25, 2017, from County of Marin: <https://www.marincounty.org/depts/gj/reports-and-responses/reports-responses/2014-15/pension-enhancements>
- 2015-2016 Orange County Grand Jury. (2016). *Orange County's \$4.5 Billion Unfunded Pension Liability & Retirement Plans.* Santa Ana: Orange County Superior Court.
- 2015-2016 Sutter County Grand Jury. (2016). *Pension Enhancements: A Case of Government Code Violations and a Lack of Transparency.* Yuba City, California: Sutter County Superior Court.
- California Policy Center. (2017). What is the Average Pension for a Retired Government Worker in California? California, USA.
- Citizens for Sustainable Pension Plans. (2016). *Chronology of David Brown's Challenge to Address the Illegally Granted Pension Increases for Marin County Employees.* Retrieved April 25, 2017, from Marin County Pensions: <http://marincountypensions.com/news-archives.html>
- County of Orange. (2009). *Section 1: Article III, Section 301, Charter of Orange County.* Retrieved February 11 13, 2017, from https://web.archive.org/web/20120202190321/http://ocvote.com/election/gen2008/OC_FT.pdf
- Delaney, S. (2015, December 31). *The Evolution of OCERS Unfunded Actuarial Accrued Liability.* Retrieved from Orange County Employees Retirement System: www.ocers.org/pdf/finance/actuarial/evolution_of_uaal.pdf

Pension Enhancements: A Question of Government Code Compliance

State of California. (1937). *The County Employment Retirement Law of 1937. CERL.*
Sacramento, California, USA: State of California.

State of California. (2012, September 12). *Public Employees Pension Reform Act of 2013.*
Retrieved 2016, from California Legislative Information: http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0301-0350/ab_340_bill_20120912_chaptered.html

APPENDICES

APPENDIX A: Glossary

Actuarial Report (Valuation) - The valuation is an appraisal which requires making economic and demographic assumptions in order to estimate future liabilities. The assumptions are typically based on a mix of statistical studies and experienced judgment.

Audit Report - The auditor's report is issued by either an internal auditor or an independent external auditor as a result of an internal or external audit, giving assurance for the user to make decisions based on the results of the audit. Audits may be financial or operational in nature.

Pension Benefit Formula - A formula to calculate the amount of pension benefit an employee would receive in retirement. For example, the term 3% @ 50 means three percent of final compensation, multiplied by the number of service years, for an employee retiring at the age of fifty. A hypothetical employee with final annual compensation of \$100,000 at age fifty, with 30 years of service, would receive an annual pension of \$90,000, or 90% of final compensation.

Liabilities - Debts or obligations owed by one entity (debtor) to another entity (creditor) payable in money, goods, or services.

Pension - A regular payment made during a person's retirement from an investment fund to which that person or their employer or both have contributed during their working life.

Pension Debt (Liabilities) - Future payouts that a pension fund is obligated to make.

Unfunded Actuarial Accrued Liability (UAAL) - The excess of the actuarial accrued liability over the actuarial value of assets; also referred to as “unfunded pension liability.”

Pension Plan Assets - The term pension plan assets refers to the funds available to meet future compensation obligations to retired employees. Pension plan assets consist of cash as well as investments.

Memorandum of Understanding (MOU) - Describes a bilateral or multilateral agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action. As pertains to this report, an agreement is between a county agency and the members association (a union).

Pension Spiking- Sometimes referred to as “salary spiking,” this is the process whereby public sector employees grant themselves large raises, artificially inflating their compensation in the years immediately preceding retirement in order to receive larger pensions than they otherwise would be entitled to receive. This inflates the pension payments to the retirees and, upon retirement of the “employee,” transfers the burden of making payments from the employee’s employer to a public pension fund. This practice is considered a significant contributor to the high cost of public sector pensions.

APPENDIX B: Past Orange County Grand Jury Reports on Pension Funding

- 2002-2003 Who Represents Orange County Taxpayers?
<http://www.ocgrandjury.org/pdfs/girepresent.pdf>
- 2004-2005 Another County Crisis: Pensions, Health Care, and Other Benefits
<http://www.ocgrandjury.org/pdfs/pension.pdf>
- 2011-2012 Transparency Breaking Up Compensation Fog—But Why Hide Pension Costs?
<http://www.ocgrandjury.org/pdfs/transparencybreakingupcompensationfog.pdf>
- 2013-2014 Orange County City Pension Liabilities: Budget Transparency Critically Needed
http://www.ocgrandjury.org/pdfs/2013_2014_GJreport/PensionReport.pdf
- 2015-2016 Orange County’s \$4.5 Billion Unfunded Pension Liability & Retirement Plans
http://www.ocgrandjury.org/pdfs/2015_2016_GJreport/2016-06-15_Website_Report.pdf

APPENDIX C: California Codes Relevant to Pension Enhancement Requirements

Note: Emphases added.

California Government Code Section §7507

CERL Code §7507 requires city and county governing boards when considering changes in retirement benefits to “...secure the services of an actuary to **provide a statement of the actuarial impact upon future annual costs**, including normal cost and any additional accrued liability, before authorizing changes in public retirement plan benefits. The future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary, **shall be made public at a public meeting at least two weeks prior to the adoption of any increases in public retirement plan benefits.**”

California Government Code Section §23026

CERL Code §23026 specifies requirements that a board of supervisors must fulfill before enhancing pension benefits. The board shall:

“...**make public, at a regularly scheduled meeting of the board, all salary and benefit increases** that affect either or both represented employees and non-represented employees.”

“...**include notice of any salary or benefit increase...on the agenda for the meeting as an item of business.**”

“...provide notice prior to the adoption of the salary or benefit increase.”

“...**include an explanation of the financial impact that the proposed benefit change or salary increase will have on the funding status of the county employees’ retirement system.**”

California Government Code Section §31515.5

CERL Code §31515.5 states that, “...**the board of supervisors**, in compliance with Section 23026, **shall make public at a regularly scheduled meeting of the board, all salary and benefit increases** that affect either or both represented employees and non-represented employees. Notice of any salary or benefit increase shall be included **on the agenda for the meeting as an item of business**. Notice shall occur **prior to the adoption of the salary or benefit increase, and shall include an explanation of the financial impact** that the proposed benefit change or salary increase will have on the funding status of the county employees’ retirement system.”

California Government Code Section §31516

CERL Code §31516 states that “...**the board of supervisors**, in compliance with Section 7505, **shall secure the services of an enrolled actuary to provide a statement of the actuarial impact upon future annual costs before authorizing increases in benefits and that the future annual costs as determined by the actuary shall be made public at a public meeting at least two weeks prior to the adoption of any increase in benefits.**”

APPENDIX D: Pension Enhancements 2000 – 2005

A change in the retirement benefit for law enforcement (safety) was approved in 2001, effective June 28, 2002, for a benefit formula of 3% of the member's final compensation for all years of service (retroactive) rendered at age 50. This increased the future UAAL by \$119.5 million (Delaney, 2015).

In 2002, the retirement benefit formula for firefighters was approved by the OCFA Board of Directors, as was an increase for Probation Services Unit employees who became Safety members. These benefit improvements increased the future UAAL by \$89.7 million (Delaney, 2015).

In 2004, a number of benefit formulas were enhanced by the plan sponsor; probation members adopted the 3% @ 50 formula, Orange County Sanitation District adopted a 2.5% @ 55 formula, general members of the County of Orange adopted the 2.7% @ 55 formula, collectively increasing the UAAL by \$365.4 million (Delaney, 2015).

The benefit enhancements noted above, in the aggregate, increased the UAAL by \$574.6 million (Delaney, 2015).

**Unfinished Business:
Responses to 2015-2016 Orange County Grand Jury Reports**



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SUMMARY

The Orange County Grand Jury (OCGJ) functions as a civil watchdog, investigating county government departments and agencies, as well as joint powers authorities, special districts and city governments. Over the course of a one year term of service, the OCGJ completes multiple investigations addressing all manner of topics across the county. Reports are written and published with findings and recommendations, and include due dates for responses from the entities investigated. The California Penal Code defines precisely the manner and timeframe for responses. Because the term of each OCGJ is limited, tracking of these responses becomes the responsibility of subsequent juries.

The 2016-2017 OCGJ found that while the majority of responses to findings and recommendations are made in the required format and in a timely manner, a significant number are submitted late, use an improper format, or occasionally, are not submitted at all. To ensure that the work of the OCGJ remains relevant and transparent to the public, the 2016-2017 OCGJ will be implementing an ongoing mechanism to track and publicly report on all outstanding commitments by county government entities, including a means for the county Chief Executive Officer (CEO) to contribute to these efforts. It is hoped that the implementation of this tracking and reporting system will encourage greater agency compliance. While we make specific recommendations to the county CEO, we encourage all local Orange County government agencies to implement efforts to increase timely and substantive responses.

REASON FOR THE STUDY

Grand jury investigations have little value unless recommendations are taken seriously by responding entities and are addressed in a manner transparent to the public. Six past OCGJ reports have proclaimed the importance of tracking report responses, yet late, incomplete, and missing responses continue to drop out of public view. The 2016-2017 Grand Jury sought to determine the level of response of each agency recently investigated by the Grand Jury and what mechanisms may be available to increase agency response.

METHOD OF STUDY

The 2016-2017 OCGJ reviewed news articles regarding responses to prior OCGJ reports, read continuity reports published by other California grand juries, and studied relevant sections of the California Penal Code. The Grand Jury also reviewed Orange County Board of Supervisors' meeting agenda items and minutes regarding prior OCGJ report responses. We studied other models for tracking grand jury reports and then created a comprehensive system for reviewing, analyzing, and tracking responses to previous OCGJ reports. This system was then piloted to

track our continuity function. We documented any required grand jury report responses still outstanding from the 2015-2016 jury term as well as any prior Grand Jury report responses that were still open. An open response was defined as one that falls into either the “Will be Implemented” (WBI) or “Requires Further Analysis” (FA) category as defined by the California Penal Code, but in which a final resolution has never been reached or communicated. Building on the work of the 2015-2016 OCGJ, the 2016-2017 OCGJ sought to create a framework that could be used by succeeding juries to keep open OCGJ reports in public view and responding agencies accountable. We envision each subsequent OCGJ will continue to update the model to reflect not only the report tracking for the prior year, but also to monitor and address older open responses.

BACKGROUND AND FACTS

Continuity in the OCGJ Civil Function

The civil role of county grand juries in California is unique. Its role in the judicial branch is to examine and investigate county government functions and make recommendations to improve systems, procedures, and methods of operations promoting honest, efficient government in the best interests of the people (Administrative Office of the Courts, 2005).

While a grand jury has special powers to conduct investigations, including the power to subpoena witnesses, it has no authority to enforce the implementation of report recommendations. The grand jury can only ensure that the reports and affected agencies’ responses are published for public scrutiny, including those responses in which a department or agency indicates that it will take specific action in the future.

The lasting value of a grand jury investigation is diminished when findings and recommendations are not appropriately addressed by the affected agencies. Often an agency will respond either that it intends to implement a recommendation at a later date or that a recommendation requires further study, leaving the report “open.” Recommendations aimed at fixing complex problems or calling for expensive solutions can often run up against the realities of the budgeting and procurement processes or leadership changes. It is not surprising that implementation timeframes are often extended. But regardless of these difficulties or the granting of extensions, investigated agencies are still responsible to provide substantive responses in compliance with Government Code requirements.

Tracking and follow up of open responses is made all the more challenging as reports are typically published at or near the end of the OCGJ’s one year term of service. Diligent follow up by local agencies and succeeding grand juries is therefore needed in order to ensure that all open responses are appropriately closed with published responses, lest they fall off the public’s radar.

While responses to reports by the immediate prior grand jury are generally followed up by the succeeding panel, the problem arises when responses extend beyond the term of the succeeding grand jury and a new subsequent grand jury – now two years removed from the grand jury issuing the report – is impaneled. Many open responses originate from OCGJ reports published two or more years in the past. Due to the passage of time between response and completion of

the action to which the county entity has committed, responses of “will be implemented in future” and “requires further analysis” are most susceptible to falling by the wayside without follow-up and, therefore, dropping out of public view.

Tracking Mechanisms

Tracking responses to previous grand jury reports is an internal function of the sitting OCGJ. The 2016-2017 Grand Jury used the tracking structure provided by a previous grand jury and expanded the structure into a robust tracking system which will be passed on for the 2017-2018 OCGJ’s use, populated by all of the responses to the 2015-2016 reports including any outstanding open responses. In addition, the 2016-2017 Grand Jury will set up the tracking matrix for the following Grand Jury complete with the current year’s reports. A mechanism to track and report on all outstanding responses, diligently maintained, will go a long way toward preserving the positive impact of OCGJ reports.

2015-16 Response Statistics

There were twelve reports published by the 2015-2016 OCGJ containing a total of 901 required responses to Findings and 1053 required responses to Recommendations by 101 affected government agencies and other respondents (Appendix A). The 2016-2017 OCGJ tracked and published responses received from 97 of the 101 respondents. Of the 101 total respondents, 15% were late, necessitating a reminder letter. Responses from four respondents have still not been received as of the publication of this report, despite one and sometimes two reminder letters from the 2016-2017 OCGJ. Fully 20% of the 97 responses received were vague and/or incomplete, such that supplemental responses had to be requested in order to comply with the requirements of the California Penal Code. At the time of this report, 128 of these future actions resulting from 2015-2016 report responses are still pending and will need to be provided by the investigated agency.

The CEO’s Continuity Responsibilities

In their report, the 2015-2016 OCGJ recommended reinstatement of a response review procedure with the county CEO, wherein the CEO would report annually to the OCGJ on the status of open report responses from county agencies and departments. The CEO implemented this recommendation and submitted a written update in March 2017, addressing open responses from last year’s reports (Appendix B). County executives continue to provide contextual insights about and for the OCGJ continuity function.

CONCLUSION

The OCGJ annually completes its term of service in a flourish of published reports on completed civil investigations. These reports generate scores of findings and recommendations, in turn often necessitating hundreds of required responses. The Grand Jury’s investigation revealed that



a significant number of required agency responses remain incomplete and that more consistent follow up by investigated agencies of “open” responses is needed. It is anticipated that the implementation of new tracking and reporting mechanisms will encourage greater agency compliance. Reporting publicly on the completion of previously committed actions goes a long way toward enhancing the positive impact of the OCGJ in its role as a public watchdog.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation entitled “*Unfinished Business: Responses to 2015-2016 Orange County Grand Jury Reports*” in Orange County, the 2016-2017 Orange County Grand Jury has arrived at three principal findings, as follows:

- F.1. Some County responses to Grand Jury Reports are submitted after the date due by law or not at all. Greater County follow-up is necessary to ensure responses are submitted.
- F.2. Many responses to Grand Jury reports are not submitted in the format required by law and/or are incomplete. Greater follow-up by the County is needed to ensure required responses to findings and recommendations are submitted on time and in the appropriate format.
- F.3. Many responses to Grand Jury reports declare that the recommendation “will be implemented in the future” or that the recommendation “requires further analysis” with future dates for implementation. Implementation of recommendations aimed at fixing complex problems or calling for expensive solutions can often run up against the realities of the budgeting or procurement processes. Improved mechanisms are required to ensure these responses come to fruition.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation entitled “*Unfinished Business: Responses to 2015-2016 Grand Jury Reports*” in Orange County, the 2016-2017 Orange County Grand Jury makes the following recommendation:

- R.1. The CEO should meet with each sitting OCGJ by March 31st of each year to provide a status report of open responses to previous grand jury reports. The status report should include a brief Executive Summary covering financial challenges and opportunities facing the county that could impact the timing of response implementation.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding;
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action;
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation;
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report;
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Unfinished Business: Responses to 2015-2016 Orange County Grand Jury Reports

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of publication of this report:

Orange County Board of Supervisors (Findings 1-3; Recommendation 1).

Responses Requested:

Responses are requested from the following non-elected agency or department heads:

Orange County Chief Executive Officer (Findings 1-3; Recommendation 1).

REFERENCES

2015-2016 Orange County Grand Jury. (2016). *To Be Continued...Follow-Up for Open Formal Grand Jury Report Responses*. Retrieved from Orange County Grand Jury:
http://www.ocgrandjury.org/pdfs/2015_2016_GJreport/2016-05-03_Responses_Website_Report.pdf

Administrative Office of the Courts. (2005). *Model Guide for California Grand Juries*.

APPENDICES

Appendix A: 2015-2016 Grand Jury Reports Responses



Unfinished Business: Responses to 2015-2016 Orange County Grand Jury Reports

APPENDIX A

2015-2016 GRAND JURY REPORT RESPONSES

	<u>Report Description</u>	<u>RESPONSES</u>											
		# of			# of Findings		# of Recommendations				Status of Response		
		Respondents	Findings	Recommendations	Disagree	Agree	No	Yes	Will be Implemented	Further Analysis Rqd	No Response	Received	Remaining
1	Gray Matters – A Look at the Orange County Office on Aging	2	20	24	6	14	12	10	2	0	0	2	0
2	To Be Continued...Follow-Up for Open Formal Grand Jury Report Responses	2	16	9	8	8	0	9	0	0	0	2	0
3	Light Rail: Is Orange County on the Right Track?	5	9	9	2	7	1	4	3	1	0	5	0
4	Fostering a Better Foster Care System	3	30	51	27	3	30	15	4	2	0	3	0
5	Sheriff's Temporary Detention/Holding Areas, Patrol Areas, and Special Services	4	35	25	12	12	10	10	4	0	1	3	0
6	Changing of the Guardian: Life After Reorganization of the Public Administrator and Public Guardian Offices	4	67	66	62	5	12	54	0	0	0	4	0
7	Drones: Know Before You Fly	36	239	206	74	158	55	69	54	22	2	34	0
8	Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails	3	50	32	42	8	15	17	0	0	0	3	0
9	Orange County's \$4.5 Billion Unfunded Pension Liability and Retirement Plans	2	13	12	5	8	9	3	0	0	0	2	0
10	Dealing with Asbestos in Orange County Public Schools	27	324	539	291	9	389	128	0	2	1	26	0
11	Office of Independent Review: What's Next?	6	56	36	36	20	8	5	0	23	0	6	0
12	Procurement – Big Budget, Low Priority	7	42	44	39	3	20	13	7	4	0	7	0
TOTAL		101	901	1,053	604	255	561	337	74	54	4	97	0

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Appendix B: Follow Up Responses to Recommendations 2015-2016 Grand Jury Reports





**Follow up Responses to Recommendations
2015-16 Grand Jury Reports**
Updated February 27, 2017

Attachment A

RECOMMENDATIONS AND RESPONSES:

GJ Report	Recommendation	Response	Follow up Response
"Gray Matters - A Look at the Orange County Office on Aging"	R.2. The Office on Aging should apply any increased funds received above the current baseline to restore service levels and to provide strategic leadership countywide.	The recommendation has not yet been implemented, but will be implemented in the future, to the extent increases in funding are approved for the Office on Aging.	The recommendation has not yet been implemented, but will be implemented in the future, to the extent increases in funding are approved for the Office on Aging.
"Gray Matters - A Look at the Orange County Office on Aging"	R.5. Initiate a recruitment to fill one vacant longstanding Senior Citizen Representative position in the Information and Assistance Call Center by January 1, 2017	The recommendation has not been implemented but will be implemented in the future. The County will initiate the recruitment for the vacant Senior Citizen Representative in FY 2016/17.	The recommendation is partially implemented. The County has initiated a recruitment for the vacant Senior Citizen Representative position on 12/5/16 and is currently back filling the position with an Extra Help employee.
"Gray Matters - A Look at the Orange County Office on Aging"	R.7. Update and upgrade the Office on Aging website to provide for mobile device access and an on-line chat function by December 31, 2017.	The recommendation has not yet been implemented, but will be implemented in the future. The department is working with CEO-IT to implement mobile device access and to determine the feasibility of online chat capabilities by June 2017.	The recommendation is partially implemented. A mobile Senior Resource application is expected to launch May 1, 2017. The department continues to work with CEO-IT to determine the feasibility of online chat capabilities.



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<p>"Gray Matters - A Look at the Orange County Office on Aging"</p>	<p>R.10. Institute an annual Board of Supervisors Volunteer of the Year Award for senior services rendered in the form of recognition and an award funded by the County by December 31, 2016.</p>	<p>The recommendation has not yet been implemented, but will be implemented in the future. The volunteer recognition may not be completed by December 31, 2016 as recommended but the Office on Aging will work with the Board of Supervisors to make the volunteer recognition program a priority in FY 2016/17.</p>	<p>The recommendation is partially implemented. The department is in the design phase of creating a volunteer recognition program. The Office on Aging will work with the Board of Supervisors to make the volunteer recognition program a priority in CY 2017.</p>
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**Follow up Responses to Recommendations
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GJ Report	Recommendation	Response	Follow up Response
<p>"Gray Matters - A Look at the Orange County Office on Aging"</p>	<p>R.11. Add a requirement in the next Request for Proposal for the Senior Non-Emergency Transportation Program to require the subcontractor to handle the physical and mechanical inspection of vehicles at subcontractor's cost with documentation required by the Office on Aging that the inspection was conducted at the County's Public Works/Fleet Services Division.</p>	<p>The recommendation has not yet been implemented, but will be implemented in the future. The requirements will be included in the next RFP, which will be released in early 2017.</p>	<p>The recommendation is fully implemented. The requirements are included in the next RFP, which will be released on February 1, 2017.</p>
<p>"Gray Matters - A Look at the Orange County Office on Aging"</p>	<p>R.12. Add a requirement in the next Request for Proposal for the Senior Non-Emergency Transportation Program that the sub-contractor produce mileage verification data obtained through MapQuest or similar software and require contractors to submit mileage verifications with payment request.</p>	<p>The recommendation has not yet been implemented, but will be implemented in the future. The requirements will be included in the next RFP, which will be released in early 2017.</p>	<p>The recommendation is fully implemented. The requirements are included in the next RFP, which will be released on February 1, 2017.</p>





**Follow up Responses to Recommendations
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GJ Report	Recommendation	Response	Follow up Response
<p>"Fostering a Better Foster Care System"</p>	<p>R.3. Dedicate available AB403 funds to enable foster parents to participate in recruitment efforts, serve as mentors and attend professional events beginning in County Fiscal Year 2016-2017.</p>	<p>The recommendation requires further analysis. At this time, the State budget for FY 2016-17 has not been approved; thus, it has not yet been determined how all aspects of AB403 funds may be utilized. Once the State has provided determination of how AB403 funds may be utilized, SSA/CFS will work with the County Procurement Office and Auditor-Controller on processes to implement the use of the funds by December 31, 2016. It is important to note that there is already an established foster parent mentor program; that foster parents participate in various meetings, including the Quality Parenting Initiative (QPI); participate in various professional events, including the QPI Conference and the County Welfare Directors Association of California Conference; and that there are foster parents who co-train trainings for new foster parents.</p>	<p>SSA/CFS is working to establish a mechanism to be able to use AB403 funds to enable foster parents to participate in recruitment efforts, serve as mentors and attend professional events. Due to funding and contractual restrictions, direct payments to foster parents cannot be made. However, SSA/CFS recognizes the significant value added by foster parents in recruitment efforts and anticipates having a mechanism in place by June 30, 2017.</p>



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GJ Report	Recommendation	Response	Follow up Response
<p>"Fostering a Better Foster Care System"</p>	<p>R.6. Document the use of the County Efforts to Outcomes database to track and evaluate the success of foster parent recruitment and retention efforts.</p>	<p>The recommendation requires further analysis. Social Services Agency/Children and Family Services (SSA/CFS) utilizes the Efforts to Outcomes (ETIO) database to track several data elements of recruitment, including: point of contact, placement preference, caregiver ethnicity and language capacity. The intent of the ETIO database is to identify the initial point of contact with the resource family all the way through placement in order to gather data to measure recruitment and retention efforts. However, SSA/CFS recognizes that it does not currently fully utilize ETIO to track information regarding licensing and adoptions retention and outcome data. SSA/CFS will be evaluating the capabilities of the ETIO and anticipates that an analysis will be complete by December 31, 2016.</p>	<p>The recommendation will not be implemented because it is not feasible. SSA/CFS has determined that the Efforts to Outcomes database will not meet its needs in order to track and evaluate the success of foster parent recruitment and retention efforts. As such, SSA/CFS is working to implement a new database that will have enhanced functionality for these purposes, as well as additional capabilities to serve as a case management tool. It is anticipated that this new program will be implemented in the fourth quarter of Fiscal Year 2016-17.</p>





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GJ Report	Recommendation	Response	Follow up Response
"Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Services"	The Orange County Sheriff should make best efforts to coordinate with the Court Facilities Manager by January 2017 to develop a plan to replace existing industrial/office grade partitions at the courthouse entrances and screening stations with ballistic partitions.	The recommendation has not yet been implemented but will be implemented in the future. The Orange County Sheriff's Department and Court Facilities Manager have been and are currently working to identify ballistic barriers to adequately accommodate the individual floor plan design and provide additional protection for our staff at each of Justice Center's screening areas. The project will be completed as funding becomes available.	There is nothing to report at this time.
"Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Services"	R.5. The Orange County Sheriff should make best efforts to coordinate with the Court Facilities Manager by January 2017 to plan for funding, procurement and installation of solid roll up doors at the inmate vehicle entrance to the Harbor Justice Center.	The recommendation has not yet been implemented but will be implemented in the future. The replacement of the roll up gates with roll-up privacy gates has been added to the security project list. Projects are completed as funding becomes available.	There is nothing to report at this time.



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GJ Report	Recommendation	Response	Follow up Response
<p>"Changing of the Guardian: Life After Reorganization of the Public Administrator and Public Guardian Offices"</p>	<p>R.24. The Public Guardian Office should integrate a Public Guardian manager or supervisor into the Behavioral Health Services quality assurance structure, with a defined role of initiating quality assurance and risk management activities, including regularly conducted internal audits specific to the Public Guardian role by December 31, 2016.</p>	<p>The recommendation requires further analysis. Quality assurance (QA) for the Public Guardian's Office will require subject matter experts on Lanterman-Petris-Short and Probate regulations and processes. Moving such staff from his/her current assignments to be integrated into Behavioral Health Services unit, dedicated to QA activities will have significant impact on our current workload and resources. Public Guardian has formed a workgroup that will explore the implementation of this recommendation. A target date of December 31, 2016 has been set for this Public Guardian workgroup to complete their analysis and make a recommendation.</p>	<p>This recommendation as worded will not be implemented due to negative impacts on workload and resources in the Public Guardian office. To address the findings related to this recommendation (F24, 25), quality assurance activities, including quarterly audits, have been integrated into the operations within Behavioral Health Services Authority and Quality Improvement Services (AQIS) Division. Public Guardian staff will co-develop an audit tool with AQIS staff, who will conduct the quarterly audits, and provide the results to Public Guardian management.</p>
<p>"Drones: Know Before You Fly"</p>	<p>R.6. The Orange County Board of Supervisors should direct County Counsel to provide a report to the Orange County Sheriff-Coroner Department and the Board of Supervisors on existing laws that can be applied to the use of recreational drones in county-governed parks and unincorporated areas by December 30, 2016.</p>	<p>This recommendation will be implemented in the future. With regards to county-governed parks, research is required to determine if the County ordinance (Sec. 2-5-42.) prohibiting radio controlled or other remotely operated model toy or similar device in parks, beaches and recreational areas sufficiently addresses the regulation of recreational drones. If directed, staff will work with the CEO and County Counsel to prepare the report for the Board of Supervisors within the required six months and report on the progress in the March 2017 Grand Jury follow-up.</p>	<p>This recommendation will not be implemented because it is not warranted. The County of Orange participates in the Drone Working Group established by the Association of California Cities, Orange County (ACC-OC) which is working to draft a model drone ordinance for consideration by jurisdictions countywide. The draft ordinance is still being finalized at the time of this update. County staff will review actions taken by cities adjacent to County unincorporated areas to ensure consistency where possible and other existing laws prior to making recommendations to the Board of Supervisors.</p>



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2015-16 Grand Jury Reports
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Attachment A

GJ Report	Recommendation	Response	Follow up Response
<p>"Drones: Know Before You Fly"</p>	<p>R.7. The County should adopt a recreational drone ownership and operation ordinance similar to Los Angeles City Ordinance #183912 for the parks and unincorporated areas under its jurisdiction by March 31, 2017, to the extent not preempted or superseded by Federal law or Federal regulations.</p>	<p>This recommendation requires further analysis. If directed, CEO staff will bring together representatives from the Orange County Sheriff's Department, Orange County Fire Authority, the Orange County City Managers Association and any other necessary stakeholders to research and determine the viability of development of a model drone ordinance. Similarly, research is required to determine if the current County ordinance that bans the use of remotely operated model toys or similar devices at parks, beaches or recreational area should be updated to incorporate elements of the City of Los Angeles ordinance regulating the use of drones. Also, staff will need to research and determine the impact of the existing state and federal laws. If directed, CEO and County Counsel will prepare the report for the Board of Supervisors. OC Parks will update procedures if the County adopts additional regulations on recreational drones that apply to property under the control of OC Parks.</p>	<p>This recommendation will not be implemented because it is not warranted. The County of Orange participates in the Drone Working Group established by the Association of California Cities, Orange County (ACC-OC) which is working to draft a model drone ordinance for consideration by jurisdictions countywide. The draft ordinance is still being finalized at the time of this update. County staff will review actions taken by cities adjacent to County unincorporated areas to ensure consistency where possible, prior to making recommendations to the Board of Supervisors.</p>

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<p>"Drones: Know Before You Fly"</p>	<p>R.8. The County should inform its citizens about laws and ordinances that apply to recreational drone operators through print media, County-related web sites, social media sites and/or public forums by March 31, 2017.</p>	<p>This recommendation will be implemented in the future. If directed, staff will work to inform citizens to inform the public of rules and ordinances that apply to recreational drones.</p>	<p>This recommendation will not be implemented because it is not warranted. If the Board of Supervisors approves a drone ordinance, County staff will develop an outreach plan to notify residents of the new ordinance and its requirements for drone operators. However, at this time, those actions would be premature.</p>
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GJ Report	Recommendation	Response	Follow up Response
"Drones: Know Before You Fly"	R.9. The County and each City should formally gather data on recreational drone incidents within their jurisdictions and review these data annually and report the results publicly. The first analysis and publication should occur within 1 year of the publication of this report.	This recommendation will require further analysis. Additional research is needed to determine the right data to collect, analyze, and report. Also, staff will make recommendations as to whether it is available from a practical standpoint and what it would cost in County resources to monitor and collect the information.	This recommendation will not be implemented because it is not warranted. If the Board of Supervisors determines the need for a drone ordinance, the County will research and determine the most cost-effective and efficient way to provide that information in conjunction with its outreach efforts.
"Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County jails"	R.4. The Sheriff's Department and the Health Care Agency/Correctional Health Services should implement a protocol to ensure an inmate in a safety cell has access to water for washing hands after using the toilet and before and after meals by September 30, 2016.	The recommendation requires further analysis. OCSD will be evaluating this recommendation from a jail safety/security perspective. Please refer to their responses.	This recommendation was implemented on 8/9/16.
"Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County jails"	R.6. The Health Care Agency/Correctional Health Services should develop a protocol by December 31, 2016 to authorize nurse practitioners to release inmates from a safety cell.	The recommendation has not yet been implemented, but will be implemented in the future. Will be implemented by 12/31/16.	This recommendation was implemented on 8/9/16.



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2015-16 Grand Jury Reports**
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GJ Report	Recommendation	Response	Follow up Response
<p>"Office of Independent Review: What's Next"</p>	<p>R.2. The Board of Supervisors should direct the new OIR Executive Director to provide the Board, within three months of the Executive Director being hired, with a plan, budget, and measurable performance outcomes for launching and operating the new OIR. The measurable performance outcomes should be traceable to the responsibilities defined in the 2015 OIR ordinance.</p>	<p>The recommendation has not been implemented but will be implemented in the future. The County will exert effort to assist the new Executive Director in completing this task within three months; however, it may take longer depending on the resources needed to complete this task.</p>	<p>There is nothing to report at this time.</p>
<p>"Office of Independent Review: What's Next"</p>	<p>R.4. The Board of Supervisors should implement the 2015 ordinance in phases, one agency at a time, with incremental process improvements after each phase.</p>	<p>The recommendation requires further analysis. Implementation of the 2015 ordinance will be a priority consideration for both the Board of Supervisors and new OIR Executive Director once he/she joins the County. As stated above, the County will implement the Grand Jury's Recommendation Two, which the County feels are necessary infrastructural needs. Only once that is complete, will the Executive Director be able to assess how best to expand coverage to the additional four agencies. This will require some research and analysis.</p>	<p>There is nothing to report at this time.</p>





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GJ Report	Recommendation	Response	Follow up Response
<p>"Office of Independent Review: What's Next"</p>	<p>R.5. As a pilot project, the Board of Supervisors should direct the new OIR Executive Director to staff, within one year of the hiring of the Executive Director, at least one well-defined, short-term, closed-end review or audit with a skilled independent contractor acting as a short-term consultant or "special counsel." The Board should direct the OIR Executive Director to provide a written report to the Board, three months after the review or audit is completed, comparing the cost and effectiveness of using a short-term special counsel with deep subject matter expertise, versus the cost and effectiveness of using and maintaining permanent staff.</p>	<p>The recommendation requires further analysis. The 2008 OIR ordinance laid out specific duties for the OIR; the 2015 ordinance does as well. Whether or not this pilot is feasible or warranted will require further analysis.</p>	<p>There is nothing to report at this time.</p>



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GJ Report	Recommendation	Response	Follow up Response
<p>"Office of Independent Review: What's Next"</p>	<p>R.6. The Board of Supervisors should direct the OIR Executive Director to work with each of the five agencies to negotiate specific, and possibly narrow, initial scopes for OIR involvement with each agency, all to be completed within three months of the Executive Director being hired.</p>	<p>The recommendation has not yet been implemented, but will be implemented in the future.</p> <p>In keeping with the spirit of the 2015 OIR ordinance, determining a plan to expand the OIR's coverage to the additional agencies is a priority. However, given that it is four additional agencies that comprise of 64% of the total County employee workforce, this recommendation may take longer than three months to complete. An appropriate time frame for completion will be a priority for the new Executive Director.</p> <p>In the meantime, the County is confident that its agencies/departments have necessary performance oversight tools in place to monitor the performance of their employees. At the Social Service Agency (SSA), there is the Quality Support Team (QST) that reports directly to the SSA Chief Deputy Director and works closely with County Counsel (CoCo), CEO Risk Management (CEO RM), and Defense Attorneys, and provides the following primary functions:</p> <ul style="list-style-type: none"> • Custodian of Records (COR) - to provide practice consistency in all document responses. The COR is the primary contact for CEO RM for document/record requests for all claims, summons, lawsuits, Public Records Act (PRAs), Juvenile Court 827 Petition Requests, etc. • Litigation Coordination - liaison between CEO RM, Defense Attorneys, and SSA staff on all matters related to litigation. • Public Inquiry Coordination - responsible for all 	<p>There is nothing to report at this time.</p>



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GJ Report	Recommendation	Response	Follow up Response
<p>"Office of Independent Review: What's Next"</p>	<p>R.7. For three years starting with the hiring of the new OIR Executive Director, the OCSD should provide the revised OIR with open access to the Sheriff's internal processes for defining, and insuring adherence to, its policies and procedures on the legal use of jailhouse informants, so that the OIR could help recommend reforms consistent with evolving best practices. This requires a continuation of the existing attorney-client relationship between the OIR and the OCSD.</p>	<p>The County defers to OCSD. OCSD's Response – The recommendation requires further analysis. It is premature to implement this recommendation without a clear understanding of how the new OIR model will work. As the new model develops, it is the expectation of the Sheriff that the Constitutional Policing Advisor will have responsibility for recommending policies and best practices with regard to jailhouse informants. The Constitutional Policing Advisor will also assist in the review of internal processes and will help insure proper procedures are being followed.</p>	<p>There is nothing to report at this time.</p>



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GJ Report	Recommendation	Response	Follow up Response
<p>"Office of Independent Review: What's Next"</p>	<p>R.8. The OCDA should add an OIR staff attorney as an "outside" or independent member of the OCDA's Confidential Informant Review Committee, in keeping with JPPEC Recommendation 2, given the following prerequisites: The Board of Supervisors should direct the OIR Executive Director to hire, with OCDA approval, and within six months of the hiring of the Executive Director, an OIR staff attorney with legal expertise in the use of informants in trials. Within one month after hiring the OIR staff attorney, the OCDA should enter into an attorney-client relationship, with OCDA as client and the OIR staff attorney as attorney, and add the OIR staff attorney to the CIRC. With confidentiality protected by attorney-client privilege, the OCDA should provide the OIR staff attorney with confidential access to all of OCDA's processes, policies, procedures, practices, protocols, records, documents, and staff related to OCDA's use of jailhouse</p>	<p>The County defers to OCDA. OCDA's Response – Partially implemented. The Cooperating Informant Review Committee (CIRC) was created to provide an effective and efficient process for reviewing informant related issues within the OCDA and to serve as a resource for prosecutors and law enforcement agencies so that proper legal standards are maintained and followed throughout the criminal justice process. The permanent members of the committee include the District Attorney, the Senior Assistant in charge of Vertical Prosecutions and Violent Crimes, the Assistant District Attorney of the Homicide Unit, the Assistant District Attorneys of the Gangs/Target Units, the Assistant District Attorney of the Narcotics Enforcement Team, the Deputy District Attorney in charge of the OCII and an appointee from outside the OCDA office. The OCDA has moved forward with finding a neutral retired magistrate to be part of the CIRC committee. In May 2016, a former Orange County Superior Court judge joined CIRC as a neutral party.</p>	<p>There is nothing to report at this time.</p>





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GJ Report	Recommendation	Response	Follow up Response
<p>"Procurement - Big Budget, Low Priority"</p>	<p>R.2. The CEO, in cooperation with Human Resources, should define a process to base the next County Purchasing Agent appointment on a nationwide recruitment, job related testing, and thorough vetting by January 1, 2017.</p>	<p>The recommendation has not been implemented, but will be implemented in the future. CEO and Human Resource Services will define the recruiting plan including a nationwide advertising plan and competitive assessment process at the time of position vacancy.</p>	<p>The recommendation has been implemented. The position continues to be filled by the same incumbent, but the recommendation will be implemented after the position is vacated.</p>
<p>"Procurement - Big Budget, Low Priority"</p>	<p>R.6. The County Executive Officer should hire a procurement Training Consultant to assess the training needs of procurement staff and submit a plan for training of new and veteran procurement employees by January 15, 2017.</p>	<p>The recommendation has not yet been implemented, but will be implemented in the future. This activity will be initiated before January 15, 2017.</p>	<p>This recommendation has been implemented. A training consultant has been hired and the work is underway. The estimated completion date of the assessment is September 30, 2017. If needed, a plan for training will be developed after the results of the assessment are known.</p>



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GJ Report	Recommendation	Response	Follow up Response
<p>"Procurement - Big Budget, Low Priority"</p>	<p>R.7. By October 1, 2016, the CEO should direct agencies to revise the practice of recommending the awarding of multi-year contracts, one year at a time, with possible four - 1 year extensions, by directing agency staff to submit contracts of three to five years; and direct contract managers to exercise the 30-day cancellation clause when warranted by poor vendor performance.</p>	<p>The recommendation requires further analysis. The Board Procurement Subcommittee is in the process of reviewing any changes to policies and procedures associated with multi-year contracts. Any recommended changes will be presented to the full Board for consideration. The timing is dependent upon completion of the subcommittee's review; however, it is anticipated that a revised CPM will be presented to the Board by March 31, 2017 consistent with R.13. below.</p>	<p>The recommendation will not be implemented because it is not warranted. The Board Procurement Subcommittee continues to work on update of the Contract Policy Manual. The tentative date for submittal to the full Board for consideration is March 14, 2017. Any modification to current practice or policy related to multi-year contracts, will be completed via the Subcommittee. However, County agencies already have the ability to submit multi-year contracts to the Board for consideration, so a change is not necessarily required.</p>
<p>"Procurement - Big Budget, Low Priority"</p>	<p>R.12. The CEO, in cooperation with Human Resources, should conduct a salary survey and make recommendations for compensation modifications to make Orange County competitive in the Purchasing/Procurement Job Classification Series by February 1, 2017.</p>	<p>The recommendation has not yet been implemented, but will be implemented in the future. Human Resource Services will conduct a classification maintenance and salary market study and make appropriate recommendations by February 1, 2017.</p>	<p>The recommendation has been implemented. Human Resource Services conducted a market salary analysis for the Buyer/Procurement Contract Specialist occupational series. The market study included salary information for comparable classifications in five surrounding Southern California counties and five large Southern California cities. Review and update of the classification specifications and organizational structure of this occupational series are in progress. Any necessary changes will be submitted for Board consideration and approval by May 2017.</p>



**ORTEGA HIGHWAY:
UNNECESSARY DELAYS HAVE COST US MILLIONS**



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SUMMARY

Continued development in Orange County and, in particular, South Orange County has resulted in increased traffic congestion during peak commuting periods on multiple arterial roadways, including California State Route 74. A roughly 29 mile section of State Route 74 from the City of San Juan Capistrano to Lake Elsinore is also known as Ortega Highway. To date, government agencies have expended tens of millions of dollars to partially widen and restructure portions of Ortega Highway. Additionally, they have budgeted and proposed millions more to complete the widening of the roughly one mile stretch of Ortega Highway from Calle Entradero to the City of San Juan Capistrano/Orange County Line, officially known as the SR 74-Lower Ortega Highway Widening Project.

After years of state, regional, and local agencies wrestling over the SR 74-Lower Ortega Highway Widening Project, a 2011 Settlement Agreement was reached between the California Department of Transportation, the City of San Juan Capistrano, and the Hunt Club Community Association that addressed the Project's aesthetics and the design and construction processes.

In January 2016, the San Juan Capistrano City Council relinquished the City of San Juan Capistrano's role as lead agency in the SR 74-Lower Ortega Highway Widening Project by reversing its December 2015 approval of an engineering consultant contract to finalize the design effort. Ongoing Project delays have resulted in the financial impact of millions of dollars to Orange County taxpayers due to increased Project costs and continue to jeopardize the safety of Orange County residents.

The Board of Supervisors recently authorized the Orange County Public Works Department to take on the role of lead agency on the Project. Accordingly, Public Works has obtained a grant from the Orange County Transportation Authority to proceed with the design engineering for the Project.

REASON FOR THE STUDY

One of the roles of county and city government is to ensure the safety of its residents. The increased development in South County, and the accompanying traffic, necessitates the timely completion of arterial roads to ensure continued safety for all residents. State Route 74 (SR 74), locally referred to as Ortega Highway, is part of the California Freeway and Expressway System and is a main traffic corridor for South County serving 43,500 vehicles daily (Caltrans, 2015).

The Master Plan of Arterial Highways (MPAH), Orange County's long-range roadway master plan, has called for a widening of Ortega Highway for more than 50 years to provide a traffic corridor for increased population (Orange County Transportation Authority, 2017). The delay of SR 74-Lower Ortega Highway Widening Project (Lower Ortega Project or Project) incurred by the actions of the San Juan Capistrano City Council (City Council) in January 2016 has the potential to cost Orange County taxpayers millions of dollars and jeopardizes the safety of those who routinely travel Ortega Highway. These concerns were brought to the 2016-2017 Orange County Grand Jury (OCGJ) in the form of a petition advocating the completion of the Lower Ortega Project. In its role as a citizen watchdog of local government, the OCGJ elected to investigate the causes for the delay, safety

implications, and financial impact this delay will have on Orange County.

METHOD OF STUDY

The OCGJ reviewed dozens of pertinent agency websites and press releases to establish an initial general understanding of the chronology of the Lower Ortega Project. Once a basic understanding of the Project was formed, members of the OCGJ conducted nineteen interviews with impacted stakeholders involved in the Lower Ortega Project, including: elected and appointed City of San Juan Capistrano (City) officials; representatives of the Hunt Club Community Association (Hunt Club), California Department of Transportation (Caltrans), the Orange County Transportation Authority (OCTA); and development representatives from Rancho Mission Viejo (RMV). The OCGJ also conducted interviews with members of the Orange County Board of Supervisors (Board of Supervisors) and representatives of elected State officials of the 73rd State Assembly District and 36th State Senate District representing the City and South Orange County. The OCGJ conducted an extensive examination of City Council records covering council agendas, resolutions, and meeting minutes pertaining to Ortega Highway for the period beginning January 2011 and through March 2017, including a review of the transportation component of the City's General Plan. The OCGJ also reviewed the 2011 Settlement Agreement between the City, Hunt Club, and Caltrans (Stipulated Judgement, 2011); Caltrans and OCTA transportation plans and control documents, including the MPAH (Orange County Transportation Authority, 2017); OCTA grants to the City; and area developer funding agreements.

BACKGROUND AND FACTS

The Lower Ortega Project

Caltrans oversees all state highways and freeways. Ortega Highway is a state highway, thus repairs and projects on Ortega Highway fall under the jurisdiction of Caltrans. Orange County has developed a Master Plan of Arterial Highways (MPAH), a countywide streets and highways plan that focuses on arterial highways consistent with existing and planned land uses. The MPAH map shows the existing and proposed circulation elements and defines their characteristics. Last updated in January 2017, the MPAH has designated Ortega Highway as a four lane arterial highway with a center two-way left turn lane and paved shoulders (Orange County Transportation Authority, 2017).

In Orange County, the MPAH is administered by OCTA. OCTA was formed through a consolidation of seven separate transportation agencies to develop and implement unified transportation programs and services throughout Orange County. As administrator of Orange County's MPAH, OCTA is responsible for maintaining the integrity of the MPAH map through its coordination with the County of Orange and its 34 cities. Local city planning documents must be consistent with the MPAH in order for cities to receive county funding for roadway improvement projects.

With approved plans to construct 14,000 homes, and nearly 5 million square feet of non-residential uses in the area east of the City over the next two decades, additional access from numerous roadways including Ortega Highway will be needed.

Data collected by Caltrans (Caltrans, 2015) on Ortega Highway showed the following five-year traffic volume increase:

	2010	2015
Peak Hour (i.e. busiest hour of the day); vehicles per hour	2,500	4,500
Peak Month (i.e. busiest month of the year); vehicles per day	28,750	45,250
Average Annual Daily Traffic (total annual count divided by 365); vehicles per day	27,500	43,500

The primary goals and benefits cited with regard to the Lower Ortega Project include the following (Orange County Public Works, 2016):

1. Enhance the safety of the road by providing a four lane divided highway with street lighting and bike lanes on both sides of the roadway.
2. Provide a four lane roadway that is consistent with the adopted City's General Plan and the MPAH.
3. Eliminate the current roadway bottle-neck and decrease the existing traffic congestion.
4. Provide drainage improvements to relieve existing flooding that occurs during heavy rains that have resulted in the closure of Ortega Highway.
5. Provide a safe crossing for pedestrians and equestrians via the traffic signal at Ortega Highway and Via Cordova/Hunt Club Drive.
6. Eliminate the current sidewalk gap on the south side of the roadway.
7. Reduce existing noise levels for residential developments by constructing sound walls and utilizing rubberized asphalt for the roadway.

Safety Concerns

The 0.9 mile segment of Ortega Highway between Calle Entradero and the eastern City limit is the last remaining section of two-lane highway between I-5 and Antonio Parkway/La Pata Avenue that remains unimproved. While this narrowing significantly reduces overall throughput (vehicles per hour) traversing Ortega Highway, it also results in several safety-related consequences. Left turning vehicles must cross traffic approaching from one direction and then merge with traffic going the opposite direction, a problematic maneuver especially when there are few, if any, breaks in the oncoming traffic (Maze, 2007).

The completion of this section of Ortega Highway would provide a center median/two way left turn lane, which serves two purposes: it provides a dedicated left turn lane for traffic on Ortega Highway, and it provides a “safe haven” for side street traffic turning left onto Ortega Highway. Additionally, a new traffic signal will provide breaks in the traffic on Ortega Highway, further enabling safer left turns onto and off of Ortega Highway from the residential areas. In order to complete this construction and meet the MPAH design, certain construction elements are necessary.

Delays to the Project

The City prides itself on effectively maintaining its open space character and nearly 40% of the City is open space and park land (City of San Juan Capistrano, 2017). The Hunt Club is a gate-guarded, private residential development that borders on the segment of Ortega Highway that will be affected by completion of the Lower Ortega Project. In 2011, residents of the City, Caltrans, and the Hunt Club differed on what they believed should be the proposed construction elements of the final project and legal objections to the expansion were filed. This delayed work on the widening project.

In 2011, a settlement agreement between all the parties was reached that explicitly detailed the aesthetics, the need for proper traffic control, and the physical scope of the road widening. This agreement was in compliance with the MPAH, the City's General Plan, and the required Environmental Impact Report and was binding on all the parties and their successors. However, the Settlement Agreement left undecided which entity would assume the role of the lead agency on the Project.

Caltrans is legally responsible for Ortega Highway. In keeping with Caltrans' preference to work with local governments when feasible, the Lower Ortega Project was first administered in 2008 by Public Works (Appendix A). After the Settlement Agreement, Caltrans allowed the City to take the role of lead agency. In this role, the City would have an opportunity to reflect San Juan Capistrano's singular nature and culture and address ongoing issues such as drainage and aesthetics.

The City, as the new lead agency, applied for and received grants for the Project from OCTA in the amount of \$1,050,000 for design engineering and \$3,679,800 for right-of-way (Appendix B). The City also received an additional commitment of \$450,000 from developers (City of San Juan Capistrano & Rancho Mission Viejo, LLC, 2013) and then spent funds in accordance with the Settlement Agreement. However, in 2014 a new City Council was elected and sought to oppose the widening project despite the language in the Settlement Agreement specifying that the signing parties and their successors would not oppose efforts to complete the Lower Ortega Project. This further delayed the project.

During interviews with the Grand Jury, some City Council members claimed they had not heard of the Settlement Agreement and some members commented they had heard of it, but had not read it and were not convinced it was relevant to their decision to halt the Project. Further, the City Council refused to waive privilege and allow the Grand Jury to discuss the City Council's understanding of the Settlement Agreement with City staff. As a result, the Grand Jury was unable to determine if the City Council fully understood the consequences of their choice to delay the project.

Financial Impact of Delay

In December 2015, the City Council voted to award a contract for the engineering design of the Lower Ortega Project (City of San Juan Capistrano, 2015). However, in January 2016, the City Council reversed its December 2015 decision and declined to execute the design engineering contract (City of San Juan Capistrano, 2016). The City Council then negated the agreement with

developers that would have contributed \$450,000 towards completion of the Lower Ortega Project.

As a result of this action OCTA informed the City that it required the return of previously advanced funding in the amount of \$705,095, which included repayment of \$185,170. This amount included \$10,000 for lost interest on these funds and non-reimbursable spent funds in the amount of \$175,170 (Appendix C).

The obligation of \$3,679,800 in OCTA Measure M2 right-of-way funding was deferred by the City from June 2015 to June 2017. This one time deferral cannot be further extended. As the right-of-way phase cannot be initiated until the design phase is sufficiently completed, the design phase needed to be completed within 1-1/2 years of the start. Delays to the design phase, caused by the City Council actions in January 2016, resulted in the de facto forfeiture of the OCTA grant funding previously secured for the right-of-way phase, as the design work could not be completed in time.

Funding for the right-of-way phase that the City previously secured through a competitive Measure M2 grant from OCTA will need to be reapplied for by Public Works as they take on the role of lead agency.

The postponement of the Lower Ortega Project had or will have the following financial impact to San Juan Capistrano residents and ultimately on the taxpayers of Orange County:

1. Due to the January 5, 2016, reversal of the City Council position on the Lower Ortega Project, the City authorized the City Manager to reimburse OCTA for grant funds advanced to the City for the Lower Ortega Project in the amount of \$705,095 (Swegles, 2017).
2. The above total included \$175,170 that the City had already spent on the Lower Ortega Project, but that OCTA determined to be ineligible, and \$10,000 interest on the grant funds advanced to the City by OCTA. The City Manager was directed to appropriate the \$185,170 from the Capistrano Circulation Fee Program for Fiscal Year 2016/2017 to reimburse OCTA (May, 2017).
3. From 2013 to 2016 Lower Ortega Project construction costs increased from \$19,305,000 to \$30,533,305 (Orange County Transportation Authority, 2013) (Orange County Public Works, 2016).
4. From 2013 to 2016 Lower Ortega Project right-of-way costs increased from \$6,133,000 to \$12,118,000 (Orange County Transportation Authority, 2013) (Orange County Public Works, 2016).

Interested readers are referred to Appendices A, B, and C for a detailed Lower Ortega Project chronology and list of funding and expenditures.

Future of the Project

In October 2016, Public Works was authorized to take on the role of lead agency via a Resolution of the Board of Supervisors (Orange County Board of Supervisors, 2016). Public Works subsequently submitted an application to OCTA for Measure M2 grant funding of \$1,950,000 for initial engineering costs. Ultimately, Public Works expects the Project to cost

over \$52 million, including engineering, right-of-way, and construction (Orange County Public Works, 2016). Upon the notification of actual award of the initial OCTA funding, Public Works plans to enter into cooperative agreements with developers for matching funds, and with Caltrans to begin the Project approval and environmental documentation phase. In addition, this cooperative agreement would obligate Caltrans to provide matching funds and future funding for Project cost escalation. Public Works also intends to “federalize” the project by updating the environmental documentation for the Project to meet federal National Environmental Policy Act (NEPA) standards, enabling Caltrans to apply to the U.S. Department of Transportation, Federal Highway Administration, so that the Lower Ortega Project would be eligible for future federal funds as they become available.

CONCLUSION

Traffic congestion in South Orange County will continue to be impacted by population growth as well as residential and commercial development. Ortega Highway is one of the main east-west traffic corridors in the area. Caltrans is ultimately responsible for managing the operations of state highways. Public Works, in accordance with Caltrans and OCTA, is responsible for resolving Orange County traffic corridor issues. Both agencies prefer, but are not required, to work through local city governments on such projects.

The City Council’s January 2016 reversal on executing the design engineering contract for the Lower Ortega Project took the City out of the role of lead agency and cost San Juan Capistrano residents \$185,170 in ineligible expenditures and interest. In rejecting the role as lead agency, the City also lost an advantage of having some influence over potential design aspects that could be tailored to the particular aesthetics and culture of San Juan Capistrano.

Continued delays and an inability to move forward with the Lower Ortega Project is a detriment to the mobility of the citizens of South Orange County. Regardless of the agency that takes the lead role in the Project, the following fact is inescapable: Since 1997, when Caltrans initiated the planning for the Lower Ortega Project, roadway construction costs have increased significantly.

While Project cost estimates prepared subsequent to the 2011 Settlement Agreement totaled approximately \$25 to \$30 million for design, right-of-way, and construction, the current Project estimate by Public Works for these same project components totals more than \$52 million. This increase is directly attributable to the over five year delay of the Project by the City.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on the investigation of, “Ortega Highway: Unnecessary Delays Have Cost Us Millions” in Orange County, the OCGJ has arrived at three principal findings, as follows:

F.1. As lead agency, the City Council’s minimal action from 2011 to 2015 and their January 2016 vote to rescind approval of the engineering design contract unnecessarily delayed the Lower Ortega Project and cost the county millions of dollars.

F.2. Traffic will continue to increase in South Orange County and Ortega Highway is one of the main arterial roads on which this traffic will travel. Until the Lower Ortega Project is complete congestion and safety concerns will remain.

F.3. The costs for completion of the Lower Ortega Project have escalated and are probably still understated. Further delay will result in additional costs for the taxpayers of Orange County.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.”

Based on the investigation titled, “*Ortega Highway: Unnecessary Delays Have Cost Us Millions*” in Orange County, the OCGJ makes the following three recommendations:

R.1. OCTA should continue to actively work to resolve future traffic concerns on Ortega Highway.

R.2. City staff should prepare a report for presentation to the City Council and the citizens of San Juan Capistrano by September 1, 2017, assessing any fiscal consequences to the City incurred by their withdrawal from the active participation on the Lower Ortega Project so that citizens are advised of the full impact of actions taken with respect to the Project. This includes fiscal damages, claims, and penalties.

R.3. The County should continue to work towards timely completion of the Lower Ortega Project.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

1. Orange County Transportation Authority Board of Directors (F.2., F.3., R.1.)
2. Orange County Board of Supervisors (R.3.)
3. San Juan Capistrano City Council (F.1., F.3., R.2.)

Responses are requested from the following non-elected agency or department heads within 90 days of the date of the publication of this report:

1. Orange County Public Works (F.2., F.3., R.3.)

REFERENCES

- Caltrans. (2015). *2015 Traffic Volumes on California State Highways*. Sacramento: Caltrans, Division of Traffic Operations.
- City of San Juan Capistrano & Rancho Mission Viejo, LLC. (2013, October 15). Funding Assistance Agreement. San Juan Capistrano, CA.
- City of San Juan Capistrano. (2015, December 15). *Minutes - San Juan Capistrano City Council Regular Meeting, Item E2a*. San Juan Capistrano, CA: City of San Juan Capistrano.
- City of San Juan Capistrano. (2016). *Minutes - San Juan Capistrano City Council Regular Meeting, Action Item 2*. San Juan Capistrano, CA: City of San Juan Capistrano.
- City of San Juan Capistrano. (2017). <http://www.sanjuancapistrano.org/index.aspx?page=3>. Retrieved March 23, 2017, from City of San Juan Capistrano: <http://www.sanjuancapistrano.org/index.aspx?page=3>
- May, S. P. (2017, February 7). *San Juan Capistrano City Council Agenda Report*. Retrieved May 1, 2017, from <http://sjc.granicus.com>: http://sjc.granicus.com/Viewer.php?view_id=3&clip_id=1426&meta_id=80602
- Maze, T. (2007, May 17). *Access Management Handbook*. Iowa State University. Ames: Center for Transportation Research and Education.
- Orange County Board of Supervisors. (2016, October 11). Resolution No. 16-097, Item 20. *Resolution of the Board of Supervisors of Orange County, California*. Santa Ana, CA: County of Orange.
- Orange County Public Works. (2016, October 21). Ortega Highway Widening Improvement - PA & ED Phase. *OCTA - M2 Regional Capacity Program, Arterial Capacity Enhancement*. Santa Ana: Orange County Public Works.
- Orange County Transportation Authority. (2013). *2013 Measure M2 Regional Capacity Program Call for Projects - Programming Recommendations*. Retrieved May 1, 2017, from <http://www.octa.net>: <http://www.octa.net/pdf/2013RCPAllocationSummary.pdf>
- Orange County Transportation Authority. (2017). *OCTA*. Retrieved March 22, 2017, from <http://www.octa.net>: <http://www.octa.net/News-and-Resources/Open-Data/MPAH-Overview/>
- Stipulated Judgement, 30-2009-00328947, (Superior Court of California, Orange County, Case No. August 11, 2011).

Swegles, F. (2017, February 14). *San Juan Capistrano to Repay OCTA \$705,095 from Canceled Road Project*. Retrieved May 1, 2017, from <http://www.ocregister.com>:
<http://www.ocregister.com/2017/02/14/san-juan-capistrano-to-repay-octa-705095-from-canceled-road-project/>

APPENDICES

APPENDIX A

LOWER ORTEGA PROJECT CHRONOLOGY

- 1997
Caltrans initiates planning for the State Route 74- Lower Ortega Highway Project.
- 2004
The RMV Plan is approved by the Board of Supervisors. The approval includes a condition requiring South County Road Improvement Program (SCRIP) fees to support the Lower Ortega Project.
- January 18, 2005
The City Council adopts a Resolution supporting Orange County's request to the OCTA Combined Transportation Funding Program for funding of the Lower Ortega Project from Calle Entradero to the eastern City limits. Additionally, RMV and Orange County agencies enter into funding agreements; RMV begins design of various new local roadways.
- 2006
California Environmental Quality Act (CEQA), a mandated environmental document required to address potential environmental impacts, is certified for the widening for Orange County portion of the Lower Ortega Project (east of the City limit).
- May 30, 2006
The City Council and Planning Commission, in a joint meeting with Caltrans and Lower Ortega Project consultants, discussed design alternatives related to Caltrans' proposed widening of the Lower Ortega Highway and established a general consensus for project elements.
- March 6, 2007
The City Council approved the proposal to retain an environmental consultant to review the proposed Mitigated Negative Declaration (MND) or other related environmental documentation for the Lower Ortega Project and directed staff to request a full Environmental Impact Report (EIR) from Caltrans.
- May 1, 2007
The City Council (as part of a City Council Action item) shared a letter from the Orange County Fire Authority Division Chief, Dave Pierce, supporting the Ortega Highway widening to four (4) lanes to increase safety for firefighters and citizens.
- 2008
Design for the Orange County portion of the Lower Ortega Project is approved by Caltrans and Public Works and construction begins.

- January 6, 2009
The City Council provides comments on Caltrans' draft of the Lower Ortega Project Environmental Impact Report (EIR).
- March 17, 2009
City Mayor, Mark Neilson, authorizes Caltrans to proceed with the Lower Ortega Project.
- November 30, 2009
Caltrans issues Final Environmental Impact Report (FEIR).
- December 17, 2009
The Hunt Club files a Writ of Mandate and an Administrative Writ of Mandate seeking to invalidate the Lower Ortega Project claiming inadequacies in the FEIR.
- December 29, 2009
The City files a Writ of Mandate seeking to invalidate the Lower Ortega Project claiming inadequacies in the FEIR.
- November 16, 2010
Caltrans issues an addendum to the FEIR that incorporates certain features, improvements, and mitigating measures negotiated through a 2011 Settlement Agreement.
- July 14, 2011
Caltrans, the City, and the Hunt Club reach a settlement of their disputes regarding the FEIR and the Lower Ortega Project and execute the 2011 Settlement Agreement.
- August 11, 2011
The 2011 Settlement Agreement was incorporated in a Judgement entered and stipulated by the Superior Court that decreed:

“Neither the Hunt Club’s filing of its Verified Petition for a Writ of Mandate and an Administrative Writ of Mandate in this proceeding nor the filing of the City CEQA action shall prevent or restrain Caltrans from implementing the "State Route 74-Lower Ortega Highway Widening Project" as described in the FEIR and Addendum, so long as: (a) Caltrans' implementation of that Project is in all respects consistent with the FEIR and Addendum, (b) the Project implements all of the mitigation measures described in the FEIR and reflected in the Addendum, and (c) Caltrans complies with an (d) implements each and all of the terms, conditions, requirements and restrictions imposed upon Caltrans in connection with the implementation and construction of the Project by the 2011 Settlement Agreement incorporated by reference into this Judgment.”

Additionally Section 5.5 of the Executory Agreements Agreement stipulates:

“The City, for itself, its officers, councilmembers, employees, successors and assigns, agrees not to challenge or oppose the implementation of the Project, or seek judicial relief against the Project under the lawsuit, so long as the Project is constructed in accordance with the Project CEQA clearance and this Agreement.”

- November 4, 2011
OCTA and the City execute a Measure M2 Master Funding Agreement in which the City is identified as the lead agency for the design phase of the Lower Ortega Project.
- 2011/12
Construction of Orange County portion of the Lower Ortega Project improvements completed.
- February 5, 2013
The City Council resolves to amend their seven year Capital Improvement Program and submits a Measure M2 Grant Request to OCTA.
- April 8, 2013
OCTA agrees to provide \$1,050,000 in Measure M2 grant funds to the City for the engineering design of the Lower Ortega Project.
- October 15, 2013
The City Council approves a Funding Assistance Agreement with RMV, LLC to secure developer matching funds in the amount of \$450,000 for the engineering design of the Lower Ortega Project.
- November 5, 2013
The City Council approved a Personal Services Agreement with HDR Engineering, Inc. for \$911,013 to prepare plans, specifications, and cost estimates for the Lower Ortega Project; and adopted a Resolution authorizing submission of an application for grant funds through the OCTA "Call for Projects" to fund the Lower Ortega Project's right-of-way phase.
- 2014
The City resumes design on Lower Ortega Project.
- 2015
Caltrans completes construction of Ortega Highway interchange with 1-5.
- March 3, 2015
The City Council approved the request for the OCTA M2 Arterial Capacity Enhancement Program funding deferral for the right-of-way phase.
- April 7, 2015
Approval of closed session minutes from March 17, 25, and 30, 2015. No apparent public notice of the subject matter of the closed session.

- May 26, 2015
The Planning Commission forwarded a resolution for the proposed Fiscal Year 2015/16-2020/21 Capital Improvement Program to the City Council with a recommendation for adoption, based on a finding that the Capital Improvement Program is consistent with the General Plan.
- December 15, 2015
The City Council approves the Professional Services Agreement with Anderson-Penna Partners in the amount of \$1,545,000 million to prepare plans, specifications, and cost estimates for the Lower Ortega Project. Additionally, the Council approves the 1st amendment to the Funding Assist Agreement with RMV.
- January 5, 2016
The City Council approved new Rules of Order and Procedure that will allow discussion and possible actions to reconsider the December 15, 2015 motion regarding the Lower Ortega Project. The City Council cancels design contracts and funding from OCTA and RMV for the Lower Ortega Project.
- June 13, 2016
OCTA, based on the March 2016 Semi-Annual Review of their comprehensive Transportation Funding Programs, cancels grants 13-SJCP-ACE-3657 (\$1,050,000) for engineering design and 14-SJCO-ACE-3723 (\$3,679,800) for right-of-way based in the final action taken by the City Council at the January 5, 2016 meeting that directed staff not to proceed with the Lower Ortega Project.
- August 16, 2016
The City Council directs staff to communicate with OCTA to see if they can delay repayment of grant funds while the City reconsiders being lead agency for the Lower Ortega Project.
- October 11, 2016
Board of Supervisors Resolution authorizing Public Works to apply for OCTA Measure M2 grant monies for initial engineering costs essentially makes Public Works the new lead agency for the Lower Ortega Project.
- October 21, 2016
Public Works submits an *Arterial Capacity Enhancement Application for Ortega Highway Widening Improvements - Project Approval and Environmental Document Phase* to OCTA for initial Lower Ortega Project funding of \$1,950,000.
- February 7, 2017
Due to the January 5, 2016 relinquishment by the City Council as lead agency of the Lower Ortega Project, the City Council authorized the City Manager to reimburse OCTA for grant funds advanced to the City (plus interest earned on the funds) for the Lower Ortega Project, in the amount of \$703,812. Additionally, because the City spent \$175,170 on the Lower Ortega Project that OCTA determined to be ineligible, and the

City earned \$10,000 on the grant funds advanced to the City by OCTA, the City Manager was directed to appropriate \$185,170 from the Capistrano Circulation Fee Program for Fiscal Year 2016/2017 for reimbursement to OCTA.

APPENDIX B

LOWER ORTEGA PROJECT - Funding History				
Source	Amount	Date	Purpose	Action(s)
OCTA	\$1,050,000	April 8, 2013	M2 Grant 13-SJCP-ACE-3657 provides funds for engineering design of the Lower Ortega Project.	The City of San Juan Capistrano applied for M2 grant funds.
RMV	\$450,000	October 15, 2013	South County Road Improvement Program funds for engineering design of the Lower Ortega Project.	The City of San Juan Capistrano approves Funding Assistance Agreement with RMV.
OCTA	\$1,050,000 \$3,679,800	June 13, 2016	13-SJCP-ACE-3657 (\$1,050,000) engineering design and 14-SJCO-ACE-3723 (\$3,679,800) right-of-way.	Based on the City of San Juan Capistrano's failure to perform, OCTA cancels OCTA grants totaling \$4,729,800.
OCTA	\$1,950,000	October 21, 2016	CP-3455 engineering design of the Lower Ortega Project.	Public Works applies for engineering design funding.

APPENDIX C

LOWER ORTEGA PROJECT - Expenditures (Planned & Actual)				
Source	Amount	Date	Purpose	Action(s)
OCTA	\$1,050,000	April 8, 2013	M2 Grant 13-SJCP-ACE-3657 provides funds for engineering design of the Lower Ortega Project.	City of San Juan Capistrano applied for M2 Grant funds.
City of San Juan Capistrano Capital Improvement Program (CIP-14107)	\$911,013	November 5, 2013	To prepare plans, specifications, and cost estimates for the Lower Ortega Project.	Approved Personal Services Agreement with HDR Engineering, Inc in conjunction with Resolution 13-11-05-02.
City of San Juan Capistrano Capital Improvement Program (CIP-14107)	\$1,545,000	December 15, 2015	To prepare plans, specifications, and cost estimates for the Lower Ortega Project.	Approved Personal Services Agreement with Anderson-Penna Partners, Inc. This approval was later cancelled by the City Council with Resolution 16-01-05 adopted on January 5, 2016.
Capistrano Circulation Fee Program	\$185,170	February 7, 2017	OCTA grant reimbursement.	The San Juan Capistrano City Council directed the City Manager to appropriate \$185,170 from the City's Circulation Fee Program to reimburse OCTA for funds advanced for project administration that were determined to be ineligible. This amount included \$10,000.00 earned interest.

REPORT
7

THE MYTH OF THE ORANGE COUNTY JAILHOUSE INFORMANT PROGRAM



“The first, best, and most effective shield against injustice for an individual accused, or society in general, must be found not in the persons of defense counsel, trial judge, or appellate jurist, but in the integrity of the prosecutor. Some readers may view this concept with skepticism. Yet this notion lies at the heart of our criminal justice system and is the foundation from which any prosecutor’s authority flows”

-Carol Corrigan, Hastings Law Review

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SUMMARY

Significant media coverage, finger pointing, and speculative rhetoric have been published about the alleged jailhouse informant program that is said to exist in the Orange County jails. Due to this persistent media attention, the negative impact on previous convictions, and the continued erosion of confidence, the 2016-2017 Orange County Grand Jury elected to undertake an investigation into the allegations.

A three-pronged approach was employed: a review of the structure and use of jailhouse informants; an investigation into the Orange County District Attorney's operations surrounding the use of in-custody informants; and an investigation into the Orange County Sheriff's Department operations surrounding the use of in-custody informants. In all, the 2016-2017 Orange County Grand Jury spent more than 3,500 man hours, read more than 40,000 pages of documents, listened to dozens of hours of tapes and interviewed more than 150 people in its investigation of the criminal justice system in Orange County.

The Grand Jury found that there have indeed been discovery violations in a small number of cases. Both the Orange County District Attorney and the Orange County Sheriff's Department allowed employees to drift from the core organizational mission of their agencies and this lax supervision has unfortunately resulted in the erosion of trust in the criminal justice system. Both agencies are aware of these shortcomings and have implemented organizational changes to repair the damage.

The Grand Jury found no definitive evidence of a structured jailhouse informant program operating in the Orange County jails. Allegations of intentional motivation by a corrupt district attorney's office and a conspiracy with a corrupt sheriff's department to violate citizen's constitutional rights are unfounded. Disparate facts have been woven together and a combination of conjecture and random events have been juxtaposed to create a tenuous narrative insinuating nefarious intent. That narrative does not stand up to factual validation.

Although the use of in-custody informants does occur, it is generally organic in nature, case specific and does not represent a conspiracy between the Orange County Sheriff's Department and Orange County District Attorney's office.

While the Grand Jury has now finished its investigation, the California Attorney General and the United States Department of Justice have ongoing investigations. Any further explorations of potential widespread, systemic institutional wrongdoing surrounding discovery violations or informant issues in Orange County would be better suited to these investigations; not in the trial court for the largest confessed mass murderer in Orange County history.

REASON FOR THE STUDY

The 2015-2016 Orange County Grand Jury determined that an investigation was warranted to restore confidence in the Orange County justice system, following accusations by the Orange County Public Defender's office that the Orange County District Attorney (OCDA) was engaging in prosecutorial misconduct by withholding discovery material in collusion with the Orange County Sheriff's Department (OCSD). Following in the footsteps of the 1989-1990 Los Angeles Grand Jury, the 2015-2016 Orange County Grand Jury began an investigation into the use of jailhouse informants. Per Penal Code section 936 they requested the California Attorney General provide legal counsel to assist in the investigation. The Attorney General's involvement in issues tangential to the controversy necessitated the hiring of an outside special counsel. This created a delay that prevented the 2015-2016 Grand Jury from completing the investigation.

Due to the persistent media attention, the negative impact on previous convictions, and the continued erosion of confidence, the 2016-2017 Orange County Grand Jury (OCGJ) elected to take up the investigation. The Attorney General retained outside legal counsel for the OCGJ while it performed an exhaustive investigation into the jailhouse informant controversy. A three-pronged approach was employed: (1) a review of the structure and use of jailhouse informants; (2) an investigation into the OCDA's operations surrounding the use of in-custody informants; and (3) an investigation into the OCSD operations surrounding the use of in-custody informants.

To date, there has been significant media coverage, finger pointing, and much speculative rhetoric published, but the actual *facts* surrounding the use of in-custody informants remain unreported. The OCDA commissioned an outside review of informant policies and practices. In June 2016, the OCDA reported to the Orange County Board of Supervisors (Board of Supervisors) that the OCDA had implemented seven of the ten recommendations put forth in the review and that proposals for two other recommendations were forthcoming. However, no outside entity has followed-up to ensure implementation has actually occurred. There has also been no outside review of the Orange County Sheriff's Department operations surrounding the use of jailhouse informants.

It is important to note that the OCGJ is charged with investigating *civil* issues within Orange County government and as such an investigation of *specific* criminal activities and *specific* civil rights violations are outside its charge. However, it is within the jurisdiction of the Civil Grand Jury to investigate the operations of county and city government, including the OCDA's office and OCSD, and other local law enforcement agencies. As allegations have been made that these entities have standard practices wherein they routinely violate defendants' rights in their "quest to win," it falls to the OCGJ to investigate these allegations.

METHOD OF STUDY

The OCGJ began its investigation by reviewing more than 2,000 pages of initial court documents related to the *People v. Dekraai* and *People v. Wozniak* cases where allegations of the existence and use of jailhouse informants in Orange County were first brought to light. In addition, the OCGJ reviewed articles in *The Orange County Register*, *Voice of OC*, *The New York Times*, *OC Weekly* and *The Intercept*; read more than 60 press releases from the OCSJ and OCDA; reviewed the 1990 Los Angeles County Grand Jury report; and watched videos of town hall meetings and interviews with the OCDA and the Sheriff. Additionally, the OCGJ studied the 2016 Informant Policies and Practices Evaluation Committee Report (IPPEC report), the 2002-2003 Orange County Grand Jury investigative report of the OCDA's office, the 2006 California Commission on the Fair Administration of Justice report and the 2007 and 2015 Internal Audits of the OCDA's office. This initial document review formed the basis for an interview list and further document requests.

The OCGJ subpoenaed more than 8,000 pages of documents from the OCDA and obtained more than 3,000 pages of documents from the OCSJ. These documents contained policy manuals, training materials, performance evaluations, meeting minutes and agendas, contracts with outside evaluators and auditors, organizational charts, and discovery documents in informant cases, as well as hundreds of hours of tape-recorded informant conversations and the OCSJ special handling log. The OCGJ interviewed more than 150 individuals including active and retired deputy district attorneys, senior deputy district attorneys, assistant district attorneys, investigators, and executive staff. Interviews were conducted with dozens of OCSJ personnel including special handling deputies, classification deputies, training deputies, retired deputies, members of the new Custody Intelligence Unit, and current and retired command staff.

The OCGJ also interviewed nationally recognized legal scholars, public defenders, private criminal defense lawyers, local law enforcement detectives and commanders, judges, members of the Board of Supervisors, as well as authors of various reports and audits to gain additional insight on previous recommendations, the current and legal use of jailhouse informants, and application of relevant case law.

The OCGJ was given access to the Orange County Informant Index (OCII) in the OCDA's office as well as the inmate classification records (aka TRED) used by deputies in the Orange County jails to ascertain what information is stored and available in the databases of these two offices regarding jailhouse informants. The OCGJ toured the Intake Release Center (IRC) multiple times to better understand operations and housing moves of inmates as well as a geographical understanding of Module L and Module J referred to in press accounts as the "snitch tank."

The OCGJ attended hearings in both the *Dekraai* and *Wozniak* cases, and attended multiple training sessions for prosecutors, investigators, and OCSJ deputies. Inquiries were made of neighboring district attorney and sheriff's departments about the policies used regarding jailhouse informants to better understand alternative methods of classifying inmates and tracking jailhouse informant activity. Legal Counsel dug into previous Orange County cases where illegal informant use had been alleged, in an attempt to verify the allegations of systemic prosecutorial misconduct. Members of the OCGJ read extensive law review articles to better

understand the constitutional and legal issues under discussion. In all, the OCGJ spent more than 3,500 man hours, read more than 40,000 pages of documents, listened to dozens of hours of tapes, and interviewed more than 150 people in its investigation of the criminal justice system in Orange County.

All the facts contained in this report had a minimum of three corroborating pieces of evidence and the OCGJ believes this investigation has been thorough and comprehensive in its attempts to speak with all sides of the criminal justice system. This investigation was conducted independently from all other OCGJ investigations into the OCDA and OCSD.

It is also important to note that both the OCDA's office and the OCSD command staff were cooperative and transparent with the OCGJ team throughout the investigation.

BACKGROUND AND FACTS

In October 2011, Scott Dekraai walked into a Seal Beach beauty salon and committed the largest mass murder in Orange County history. There was never any doubt about his guilt; multiple witnesses, overwhelming physical evidence and a valid confession clearly implicated Dekraai. This was believed to be a slam-dunk case and the OCDA announced he would seek the death penalty. Hearing and trial dates were set and Dekraai was appointed an assistant public defender. However, in January 2014, after nearly three years of defense delay, his public defender cried prosecutorial misconduct and claimed that Dekraai's civil rights had been violated.

In the defense motions and subsequent court proceedings, it was alleged that the OCDA, OCSD, and many local law enforcement agencies were complicit in not only the use of an illegal informant program, but had actively attempted to hide and deny the existence of the program for more than 30 years. In March 2015, the court, in an unprecedented move, recused the entire OCDA's office from continuing to adjudicate the case and ordered it assigned to the State Attorney General's office. This sent shock waves through Orange County and started a national debate on the integrity of the Orange County justice system. This came at a time when national distrust of the criminal justice system was running high. Multiple incidents of misconduct on the part of law enforcement continue to be reported in the news nightly, and the systems that our society relies on to instill order are, in some cases, proving deeply flawed.

Media accounts of the Orange County informant "scandal," editorials, and exposés abounded including a New York Times op-ed in September 2015, calling for a federal investigation into the "blatant and systemic misconduct" of the OCDA. More than 30 renowned and respected legal scholars concerned about civil rights violations wrote a joint letter in November 2015, urging the United States Department of Justice to investigate the use of the informant program. In December 2015, the Orange County Register ran a series of articles titled "Inside the Snitch Tank" and hosted a public forum in March 2016 that sought to inform the public of the events. The CBS news magazine, *60 Minutes*, broadcast the story to a national audience in May 2017.

From the beginning, the OCDA and the OCSJ have maintained that there is no jailhouse informant program, informants are incidental to any investigation, that their use was never hidden, and that the use of informants has been greatly distorted, exaggerated, and misconstrued in the press. In response to the media outcry, the OCSJ announced the implementation of remedial improvements to ensure training and prisoner safeguards are in place and the OCDA's office convened a team of outside legal investigators to review prosecutors' use of informants. This outside evaluation team, the Informant Policies & Practices Evaluation Committee (IPPEC), produced a report in January 2016, in which they outlined ten detailed steps the OCDA should take to improve operations that they claimed were factors that contributed to the office culture that has led to the informant scandal.

As the IPPEC team had to rely solely on public documents and voluntary witnesses, they further recommended that “*an entity with document subpoena power and the ability to compel witnesses to be questioned under oath*” conduct an actual investigation into the truth of informant use. They suggested the OCGJ, the California Attorney General, or the United States Department of Justice as potential investigatory entities. The Attorney General's office has opened an investigation into allegations of misconduct of law enforcement individuals in the *Dekraai* case and originally indicated there was no plan to open a wider civil rights investigation. The Civil Rights Division of the Department of Justice eventually announced an investigation into possible inmate civil rights violations in November 2016.

Jailhouse Informant Controversy

Dekraai & Wozniak: The Use of Informants in Orange County

In spite of the fact that Dekraai had confessed, the prosecution was concerned that he would attempt an insanity defense similar to that in the 1977 *Allaway* case. In that case, the previously largest mass murder in Orange County history, Edward Allaway was convicted by a jury but avoided the death penalty and was committed to a mental institution. The OCDA held a press conference hours after the Dekraai shooting stating he would seek the death penalty against Dekraai. The office was concerned that Dekraai would successfully plead insanity and another Orange County mass murderer would escape justice. So, when notified by an OCSJ deputy that there was an inmate who reportedly had an in-custody conversation with Dekraai, the prosecution team interviewed the inmate to determine if the conversation would provide evidence to counter an insanity defense. This interview formed the basis for the defense allegations of civil rights' violation in *Dekraai*.

The prosecution, who has steadfastly held that they were unaware of the informant's background during this initial interview, immediately decided they would not use his testimony and setup a secondary legal method for capturing Dekraai's in-custody conversations by recording his conversations with the informant. Conversely, the defense has argued that the OCSJ intentionally placed an informant near Dekraai, that prosecutors should have been aware of the informant's background, and any conversations the informant had with Dekraai were at the request of the prosecution team, thus violating his Sixth Amendment right to counsel. The defense further argued that by not turning over all the background on the informant as part of discovery, the prosecution team further violated Dekraai's Fifth Amendment right to due

process. While it's true that the prosecution did not readily provide the requested informant background information to the defense, they argued the defense was not entitled to it because they had no expectation of using the informant's testimony at trial.

Once under court- order to produce the background documents to satisfy discovery rules, the prosecutors provided all the requested documentation in their possession. Unfortunately, many of these records were held by federal law enforcement officials and it took substantially longer than expected for them to be produced. The OCGJ subpoenaed documents from the federal government relevant to this investigation and also experienced a substantial delay in receiving them. The OCDA's complaints of slow actions on the part of the federal government that delayed the production of discovery materials in *Dekraai* appear to be credible.

The *Wozniak* case is different. Daniel Wozniak murdered his neighbor, and then murdered a friend to cover up the original murder. He did not immediately confess to the murder and entered a plea of not guilty, thus requiring the prosecution to prove his guilt in court. Convicting Wozniak was a priority for the OCDA's office and, seeing an opportunity to advance a personal agenda, a prolific informant took the initiative to solicit information from Wozniak while in custody. Given the prior use of incentives provided to this informant, it isn't a stretch of the imagination to believe that he saw in Wozniak another opportunity to ingratiate himself with law enforcement. So he reached out to a special handling deputy who notified the prosecution team that a known informant had information about their case. The prosecution met with the informant and after a single meeting determined that they would not use the informant or any information produced by him. Unlike in *Dekraai*, this prosecution team did not set up any recordings to capture future conversations and informed the defense early in the process that there was an informant who would not be used.

Emboldened by the rulings in *Dekraai*, the defense sought in *Wozniak* to again argue against the death penalty by claiming OCDA misconduct, and filed an extensive brief again alleging a secret informant program that undermined Wozniak's rights. The defense was notified early that there had been an informant, but when information on the informant was requested a year later, the request was denied. Again, the prosecution team argued that because the informant would not directly testify in court and no information presented in court came from the informant, they were not bound by *Brady* or *Rules of Evidence* to release any informant information to the defense. Ultimately, the court, in this case, did not find the defense's argument compelling and Wozniak was found guilty and sentenced to death in September 2016. The OCGJ did not find any persuasive or material evidence that the informant was intentionally placed near Wozniak and the OCDA and OCSD version of events seems credible. The court did not find any violation of Wozniak's rights and no informant was used in his prosecution.

The Legal Use of Jailhouse Informants

The use of jailhouse informants in the criminal justice system is not new and Orange County's use of informants mirrors that of jurisdictions across the nation. The Supreme Court has ruled that the use of informants is a valuable tool in "society's defensive arsenal" (*McCray v. Illinois* (1967) 386 U.S. 300, 307). In *United States v. Dennis* (183 F.2d 201, 224 2d Cir. 1950), the judge stated, "*Courts have countenanced the use of informers from time immemorial; in cases of*

conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely on them or upon accomplices because the criminals will almost certainly proceed covertly.” Still, the use of jailhouse informants has a record of abuses and in many cases has resulted in wrongful prosecutions. However, the incentives for using jailhouse informant testimony are many – and this is as true for the prosecutor building his case as it is for the informant seeking favorable consideration. Several exposés have been written by local media citing excessive compensation for informants’ testimony and the 1989-90 Los Angeles Grand Jury provided an extensive and comprehensive report on the abuses that existed in their county’s use of jailhouse informants.

Until 2014, the use of jailhouse informants in Orange County was likely unknown to the general public. Then, the motion presented by the defense in *Dekraai* alleging outrageous government conduct, including an unlawful systemic use of jailhouse informants, led to the unprecedented decision by the court to remove the entire OCDA office from continuing to prosecute the case, and assigned the case to the Attorney General’s office, who appealed the decision.¹ This recusal decision created shock waves through the local criminal justice community and ignited a national firestorm of criticism of the OCDA. Articles, exposés, and op-eds appeared, and continue to appear, at regular intervals in the media.

Defining “Jailhouse Informants”

The word informant has been used extensively in court motions and press articles but has different meanings. In the general vernacular an informant is someone who informs; however, within the context of jail communities the term has fundamentally different meanings. It is important to define this term to ensure consistency in use.

Co-defendants and Percipient Witnesses

It is important to clarify that a co-defendant in a case is not an informant. Neither is a percipient witness (an eyewitness) to a crime. Many of the allegations in the *Dekraai* and *Wozniak* briefs refer to co-defendants and percipient witnesses as “informants.” This confuses the issue to the benefit of the defense’s claims.

Sources of Information (SOI)

Within the jail community there are also varying types of “informing” and it is important to make this distinction clear. The recent informant “scandal” has necessitated, for the better, the OCSJ to codify these differences in order to establish stricter control and procedures surrounding jailhouse informants.

It is imperative for jailers to have inside information of jail politics in order to adequately ensure the safety of inmates and the security of the jail. These informants are often merely sources of information (SOI’s), who, for their own safety, tip off jailers to potential fights or violations of jail protocols. SOI’s have no expectation of compensation for the information provided. So, while they may be “informing” jailers of potential problems within the jail that pose safety or security risks, they are not what a deputy would consider an in-custody informant. There is no formal agreement kept

¹ The Court of Appeals upheld the recusal on November 23, 2016.

between the jailers and an SOI to provide information. Allegations that this is a new category of informant are not accurate as there have always been SOIs within a jail community.

Jailhouse Informants

In jail, information is currency. There are inmates who have information about crimes, both inside and outside of jail, and want to “sell or trade” their information for some form of compensation. This compensation could be as minimal as an extra phone call or a housing change, or it could be more substantial such as a sentence reduction. It is important to recognize that this type of informant will typically approach jailers *unsolicited* in an attempt to make a deal and is not recruited by deputies. In fact, this happens daily in a jail population of several thousand inmates and is encouraged to maintain jail safety. This is not a civil rights violation or an illegal practice. In a community where the prisoners outnumber the guards by nearly 20:1, it is a necessity. This type of informant often does not start with any kind of a formal agreement with jailers, is not initially an agent of or directed by jailers, and elicits information from fellow inmates of their own accord then seeks out deputies to “sell or trade” the information.

If the information provided to jailers by this type of informant involves an in-custody crime or violation, it is acted on at the custodial level by deputies who have been assigned to investigate in-custody crimes. Due to the recent controversy, and the OCSD’s desire to use best practices, deputies will now create a formal agreement that is signed with the OCSD documenting the informant and the agreement of compensation within the jail. The cooperation of the OCDA’s office is needed if any reduction in sentencing is offered.

If the information provided involves a crime that has occurred or will occur outside the jail, the information is passed to the appropriate local law enforcement (LLE) agency to act upon. The custodial deputies within the jail act as facilitators of communication between the informant and the police agency that is handling the informant and are ultimately not responsible for any part of the criminal investigation subsequent to the informant’s disclosures. It is the responsibility of LLE to vet the information for accuracy and usefulness. If the information proves useful, LLE could choose to enter into an agreement with the informant. It is important to note that a prosecutor may not know of the informant’s existence until local law enforcement decides to use information provided by the informant to build their case, enters into an agreement, and then notifies the OCDA.

Mercenary Informants

Mercenary informants, commonly referred to as “snitches,” are a specific type of informant that has been widely reported to exist *en masse* in the Orange County jails. This type of informant signs an agreement with law enforcement to act as an agent to gather information from a suspected criminal and is promised payment either in cash, or reduced sentencing. Mercenary informants can be solicited by law enforcement or can approach law enforcement of their own accord with an offer to cooperate. This type of informant has a specific target or case that they work with law enforcement to solve and

have a signed agreement spelling out their duties as an agent of law enforcement. The OCGJ was unable to identify any of this type of informant currently housed in any Orange County jail.

While the trial court in *Dekraai* has stated that the question of the existence of a “jailhouse informant program has left the station,” the OCGJ disagrees. The mere existence of informants in the jail is not conclusively indicative of a program. The OCGJ found no direct, material evidence of an organized, recognized ‘program’ of jailhouse informants. A program requires certain elements to be in place. The OCGJ did not find a strategic plan or schedule for jailhouse informants. The OCGJ found no formal training, no dedicated budget, no codified job descriptions, no calendaring of events, no advance scheduling of activities nor any approved recruitment material of OCSD personnel for a jailhouse informant program. There are no formal discussions with inmates during or after booking to place inmates into an organized, structured jailhouse informant program, such as those that exist for mental health, language classes, or legal assistance. No outside agency supplies dedicated personnel or resources supporting jailhouse informants, running jailhouse informants, supervising jailhouse informants or supplying jailhouse informants as seen in other program offerings within the jail communities. In short, the OCSD does not have a stable of informants that they routinely disperse throughout the jail to gather evidence on crimes either legally or illegally.

This is not to say that the OCSD is not using or has not used jailhouse informants. However, this use is almost always organic in nature, narrowly focused, and primarily to ensure the safety and security of the jails, and not to investigate crimes. A handful of special handling deputies drifted from their custodial duties, over a period of years, into investigating crimes. The lack of proper supervision and appropriate policies allowed this to continue longer than it should have. This drift does not constitute an OCSD jailhouse informant program, but rather the work of a few rogue deputies who got carried away with efforts to be crime-fighters. The negative effect was enhanced by inadequate supervision of these activities, as well as the deputies’ unawareness of consequences of their actions and a lack of knowledge for the scope and breadth of their discovery obligations as part of the prosecutorial team.

Abuses of the Law: Massiah and Brady

The motion to dismiss filed in *Dekraai* alleged that an informant was used by the prosecution to obtain evidence against Dekraai in violation of his Sixth Amendment rights and that information on this informant was not disclosed to the defense team as required by law. On the heels of the *Dekraai* motion, the defense filed a similar motion in *Wozniak*. This motion also outlined the use of jailhouse informants in several Orange County capital cases extending back to the 1980’s. This fueled more speculation and confusion and has resulted in some pending cases being dropped or charges being reduced.²

The United States criminal justice system is predicated on the basic principle that an individual is innocent until proven guilty. The state must make its case to a jury of citizens who must then believe beyond a reasonable doubt that the defendant has committed the crime of which they are accused. The state has overwhelming resources at its disposal for prosecuting and the

² *People v. Ortiz, People v. Palacios, People v. Vega, People v. Rodriguez*

constitution has built protections for the individual into the very fabric of the nation. These are enshrined in the Bill of Rights which includes the Fifth and Sixth Amendments, detailed through case law such as *Brady v. Maryland* and *Massiah v. United States*.

The Fifth Amendment protects the individual from self-incrimination and guarantees due process. In *Brady*, the Supreme Court established the prosecution has an affirmative duty to ensure due process and to disclose any evidence that could exonerate or mitigate the case against an individual. The Sixth Amendment confers the right of an individual to legal counsel and to confront witnesses. A violation of either of these legal principles would constitute a violation of an individual's civil rights. *Massiah* clearly outlined when an accused's Sixth Amendment right is triggered. This occurs at the moment an individual is charged with a crime. At that point the state must work to prove its case BUT may not elicit statements from the accused about themselves or the crime of which they are accused without the presence of legal counsel. The law in California is very clear: The State may not attempt to elicit evidence from an accused once they are charged with a crime without the presence of legal counsel. This includes the use of agents of the State, i.e., informants. The State may NOT place an informant with an accused individual *after* they have been arraigned, with the intention of *eliciting* information about the crime for which they have been charged. However, they may place an informant with an incarcerated defendant to elicit information about a *different, non-charged* crime. And, to ensure due process, any information that is obtained from an informant about this other crime, along with information about the informant who helped to obtain it, should be disclosed to the defense if new charges are brought.

The OCGJ heard several prosecutors claim this is an evolving area of the law. Most legal scholars and judges believe there is a "bright line" when it comes to what qualifies as *Brady* material that should be handed over to the defense. Case law has repeatedly sought to clarify the spirit enshrined in the Fifth and Sixth Amendments, not change it. However, it does appear that what qualifies as *Brady* material is an increasingly expanding list of potential evidence that requires continual training to ensure all prosecutors are educated on current expectations. The new California law AB1909, in part inspired by *Dekraai*, has upped the ante on withholding discovery and violating *Brady* obligations. This law now makes violations a felony, sending a strong message that justice is more important than a conviction.

Perkins Operations

In *Illinois v. Perkins (496 US 292, 1990)*, the U.S. Supreme Court ruled in keeping with *Massiah* that law enforcement officers and their agents could legally question a suspect in jail without notifying them of any constitutional rights as long as they were not interrogating the suspect about the crime with which they were charged. An undercover operation performed in a jail environment under these conditions is now referred to as a *Perkins* operation. If a person of interest in a cold case is arrested on an unrelated charge, a mercenary informant, as an agent of law enforcement, may be used to elicit incriminating statements from the suspect. Local police agencies have run *Perkins* operations to specifically work cold cases (cases which have not been solved and are generally several years old). In the majority of jailhouse informant cases the OCGJ inquired into, OCSJ personnel merely facilitated placement and movement for *Perkins* operations but were not actively involved in investigating the crimes in question.

Federal Perkins Operations: Black Flag and Smokin' Aces

The heightened influence of prison gangs in California is increasingly dangerous and Orange County is no exception. In the early 2000's, one of the most prolific prison gangs with national reach, the Mexican Mafia, had a presence in Orange County that extended beyond the cells of the County jail and into the streets. A local "leader" ran gang activities including narcotics sales, on behalf of a national gang leader both inside and outside of jail. Profits from local narcotics sales were taxed and sent to the national leader. A fight for leadership in 2009 led to several assaults and attempted murders of incarcerated gang members and created serious safety issues in the Orange County jails.

A Federal task force, with assistance from the OCSD, Santa Ana Police Department and the OCDA, was formed to investigate and break-up gang influence in Orange County. As many members of the Mexican Mafia were locally incarcerated, the investigation extended into Orange County jails. This investigation had a national focus with the code name of Operation Black Flag where the Department of Justice filed cases, as well as a local focus that went by the code name Operation Smokin' Aces where the OCDA filed cases.

In order to infiltrate the prison gang, informants were necessary. In 2009, two prominent Mexican Mafia members were incarcerated in the Orange County jails and agreed to work as informants participating in *Perkins* operations for the federal task force in exchange for lighter sentences. The OCGJ wants to particularly note that these federal informant operations were not under the control and direction of the OCDA or LLE. The informants signed written contracts with the federal government and provided copious notes to their handlers on gang activity both within and outside the jails. These notes later provided the fodder for the *Dekraai* and *Wozniak* defense motions.

Operations Black Flag and Smokin' Aces concluded in July 2011 with indictments for more than 100 known gang members. One of the informants was housed in the Intake/Release Center (IRC) for his safety, awaiting relocation as part of his deal when, in October 2011, Dekraai committed his crime and was placed in the IRC on suicide watch, awaiting arraignment. There has been testimony surrounding the placement of Dekraai next to a prolific informant, but both the court and the OCGJ have found no direct evidence that this placement was more than coincidental. There are only a small number of cells for high profile or special custody inmates, and both the informant and Dekraai would have needed to be placed in protective custody. The placement of Dekraai was reasonable within this context. There is no direct evidence of a conspiracy to place an informant near Dekraai prior to his first conversation with an informant. Months of testimony and review of jail records have been unable to substantiate the claim of intentional placement and the OCGJ did not uncover any additional information that would definitively demonstrate otherwise. In fact, all the evidence and testimony the OCGJ reviewed points squarely to a coincidental placement of Dekraai next to a prolific informant who personally saw an opportunity to expand his portfolio with law enforcement and provide evidence on a high profile inmate.

Office of the Orange County District Attorney

As of 2015, there had been many press reports about alleged errors and possible misconduct by members of the OCDA's office related to in-custody informants. In response to the continuing questions and requests to revisit several cases, the OCDA contracted for an operational audit. The audit resulted in several recommendations surrounding operational structure and personnel training. It did not, nor was it intended to, address the specific use of jailhouse informants. Not satisfied with an internal audit, the OCDA hired an independent, external committee to thoroughly investigate and examine the policies and practices surrounding the use of jailhouse informants. The OCDA has maintained from the beginning that the use of in-custody informants is few and far between and no systemic attempt to hide their use was ever made. In fact, many inside the OCDA's office repeatedly stated to the OCGJ that there is no informant "program" and they are more than reluctant to use jailhouse informants in prosecuting cases.

The Informant Policies & Practices Evaluation Committee (IPPEC)

After a six-month evaluation, the Informant Policies & Practices Evaluation Committee (IPPEC) issued its report in December 2015. The report outlined several deficiencies in the OCDA's office which the authors believed led to an office culture that allowed for a careless use of informants. The committee reported that they interviewed over 75 individuals and reviewed over 2,000 pages of legal briefs and internal OCDA training materials. They proposed ten in-depth recommendations for policy, training, and personnel changes to be implemented to ensure the proper and legal use of jailhouse informants by the OCDA's office. However, little of the report dealt directly with the procedures and protocols surrounding the use of informants. Instead the report focused on issues of culture and concluded rather tenuously that this led, albeit indirectly, to discovery abuses and recommended an outside monitor to ensure implementation.

The OCGJ found that the interviews conducted by the IPPEC were primarily limited to lower level staff and, in fact, only one of the executive staff was interviewed. Many of the recommendations of the IPPEC were already being implemented prior to their investigation and including them as unique recommendations does a disservice to the work the OCDA had already implemented, particularly in the training unit. In June 2016, the OCDA reported that seven of the ten recommendations had been implemented, two were forthcoming, and one was declined. In August 2016, the OCDA requested, per the IPPEC recommendation, that the Board of Supervisors approve a \$300,000 two-year contract for outside legal assistance to the OCDA to consult and advise on the implementation of the IPPEC recommendations.

The IPPEC report found that less than 1% of cases involved the use of jailhouse informants, a number they determined after surveying the entire prosecutorial staff. This appears to be an accurate number. The OCGJ interviewed dozens of prosecutors, but only one prosecutor stated being comfortable using jailhouse informants, and then only to solve cold cases. The OCGJ uncovered no systemic or wide-spread use of jailhouse informants by the OCDA, nor any intentional attempts to violate defendant's rights through the use of jailhouse informants.

The OCGJ did find instances where there were discovery failures in a few cases where informants were used. The IPPEC characterized these types of failures as a result of a "win-at-

all-costs” mentality. However, the OCGJ spoke with many credible witnesses who disputed the existence of such a mentality. Instead, the OCGJ found these discovery errors to generally be the result of high caseloads, communication breakdowns with outside LLE agencies, and an inexcusable inattention to discovery issues by a few individuals. This handful of individuals showed a lack of understanding of the critical importance of strict adherence to constitutional, statutory, and ethical standards even in the face of strong evidence of guilt in the most serious crimes. These errors do not indicate a system of abuse, but rather a lack of supervision and laziness in the practice of law.

Lack of Leadership

The IPPEC report cited a clear lack of leadership, oversight, supervision, and training in the OCDA’s office. This should have come as no surprise as a 2002 Orange County Grand Jury report also found a lack of leadership in the OCDA’s office. The 2002 recommendations were disregarded and 14 years later, the IPPEC Report concluded that the culture had not changed. After nearly 100 interviews with OCDA personnel, it became clear to the OCGJ that lack of leadership persists. The structure of the OCDA’s office, its vertical reporting chains that create silos operating independently within the organization and its recent lack of meaningful training and oversight, combine to create an office where abuses are seldom caught and prosecutors have almost unlimited autonomy to prosecute cases as they deem fit. In fact, during interviews for this investigation the OCGJ heard statements that indicated some prosecutors felt they did not need anyone second guessing their case or that they would quit if someone tried to tell them how to run a case.

Individuals can become emotionally invested in a case and lose sight of the greater job of upholding the system of fairness required for our justice system to function properly. Without management oversight, this human tendency cannot be countered. In the case of the recent informant controversy, it is clear to the OCGJ that had individuals charged with supervising prosecutors been more aware of how those prosecutors were conducting business, their high caseload, and shoddy record-keeping habits, this entire episode could have been avoided.

The OCGJ also found there is no standardized process for supervisory promotions. The OCGJ is not impugning the promotion of any of the personnel currently in these roles. Rather the OCGJ wishes to make the point that a lack of documented standards and promotional vetting exposes the OCDA to criticism of promoting primarily for successful interpersonal relations rather than job competence. The requisite management and supervisory skills necessary to supervise a team of individuals are not related or equivalent to one’s legal skills or acumen. Currently, managers are not required to have training in management or supervisory skills. Promoting an individual because they are a good lawyer is not adequate criteria for an administrative role and can lead to sloppy management and autonomy that runs amok.

Training

“The court...finds these prosecutorial ‘errors,’ as they were characterized by counsel during argument, constitute significant negligence and that they therefore rise to the level of misconduct....The court further finds that the misconduct was the product of woefully inadequate legal training along with a lack of professional energy and strategic imagination.” (People v. Dekraai, Ruling, August 4, 2014, p.8)

The OCGJ was provided nearly 7,000 pages of training documentation including content and attendance lists. A review of this material confirmed the serious deficiencies in past training that had been called out in previous operational audits of the OCDA. The OCGJ heard from many witnesses that from 2009 to 2015 training was not a priority, was regularly dismissed as merely credit for mandatory continuing legal education, and the lawyers assigned to teach too often had other full-time responsibilities.

In early 2013, a newly appointed training coordinator developed significant and comprehensive recommendations for office-wide training in multiple venues, but it was not until two years later that the OCDA began to implement the internal and external recommendations for increased training and created an internal training unit. Staffed by two full-time lawyers devoted to training, the unit is augmented by the twelve appellate lawyers who add insights to the trial performance of the OCDA based upon their evaluation of transcripts and perform training duties as needed.

The training unit has made a good beginning and has provided more than 460 training sessions since its inception. This includes more than 40 one-to-two hour training sessions on *Brady*, *Massiah*, *Perkins* and the use of jailhouse informants presented by senior lawyers in the OCDA’s office to personnel in the many LLE agencies. They have also presented more extensive programs at the OCSD Sheriff’s Regional Training Academy to all new recruits.

While the implementation of this training is to be applauded, there does not appear to be a clear metric that establishes the effectiveness of the current training program in ensuring content is retained and implemented. So far, all the training offered is provided through a passive, one-way delivery of information. The question of whether the newly implemented training program can shift the culture remains a concern. The OCGJ heard from some of the more senior prosecutors that they thought the training had the law “wrong.” There did not appear to be any intention on the part of these prosecutors to change the way they interpreted *Brady*, *Massiah*, or *Perkins*.

Additionally, training on legal content should be standard in any law office. Its absence for a number of years is troubling and speaks to a lack of priorities for keeping abreast of legal changes. Organizations need to keep current in their respective field and every agency should share the same priority for trained leadership.

The OCDA revised the procedures for using informants and produced a new Informant Policy Manual that was approved and released in August 2016. Unfortunately, when asked about it in OCGJ interviews as late as November 2016, many prosecutors told the OCGJ they had not read or even been aware the new manual was available. The revised manual explains the OCDA’s

amended informant record-keeping system and emphasizes the need to report timely and accurate information, as well as the consequences for failing to report the necessary information. The lack of awareness about changes in informant policy is an example of the poor communication, leadership deficiencies, and current training gaps in the OCDA's office.

Accountability

The IPPEC recommended the OCDA form a Confidential Informant Review Committee (CIRC) to review any use of jailhouse informants in the prosecution of cases. Prior to the IPPEC evaluation and recommendation, the OCDA had already formed this committee and the OCGJ subpoenaed all the policy, agenda, and supporting documents related to the CIRC. It appears that very few requests are being made to use jailhouse informants and this seems to validate other information that indicates the current use is very low.

The IPPEC also recommended the formation of a Conviction Integrity Unit (CIU) in the OCDA's office to review post-conviction claims of innocence where an informant may have been used. The OCDA responded that they already operate several conviction integrity reviews in the office and would be establishing another for post-conviction claims of innocence not covered by the established review units. After the allegations in *Dekraai* and the disclosure of the Special Handling Deputy Log (Log), new concerns arose about the integrity of cases where an informant may have been used but not disclosed to the defense.

Following disclosure of the Log, the OCDA assigned four full time lawyers to review the 1100 plus pages of notes for potential discovery issues specifically surrounding informants. The group identified more than 3,000 individuals named in the Log, categorized them based on frequency and associations, and determined that approximately 10% should be reviewed for issues surrounding the possible use of an informant. The OCGJ reviewed several of these identified cases in depth and in a large majority of cases, initiation of inmate contact for the purposes of gathering information was made by outside police agencies and not the OCDA or the OCSD. In very few instances is there any reference to OCDA contact. The OCGJ is satisfied that the OCDA is comprehensively reviewing all Log entries for potential discovery issues and informing defense counsel of any additional discovery that may result. To date, the OCDA has found very few that require a full conviction integrity review.

Orange County Informant Index (OCII)

Voluntary records on confidential informants have been maintained by the OCDA since the 1970s, first on index cards and later converted to a computer database which is now called the Orange County Informant Index (OCII). This informant database includes the name of the informant, the name of the case, case number, the date and synopsis of any testimony, and any consideration given. The OCII system was created to establish a record of the history of use, credibility, and reliability issues surrounding the use of potential confidential informants in narcotics cases and has grown to incorporate informants in general. Due to the possible incentives to inform, the motivation of an informant is always suspect and each informant must be vetted and their credibility challenged. If an informant is found to be unreliable, this should be noted in the OCII, however there is no current way to enforce this.

An informant's entry in the OCII is predicated on LLE notifying the OCDA that they relied on an informant when building their case. This notification is voluntary and LLE is often reluctant to disclose information on a confidential informant. However, courts have established that any prior history of informing qualifies as *Brady* material, thus records need to be kept. In a case where the prosecution intends to use informant testimony, the defense must be notified if a history of informing exists. Depending upon the sensitivity of the inmate's identity, some information cannot be shared in open court and must be handled either in a closed court evidentiary hearing or *in camera* (a hearing held before the judge in private chambers). The final decision to disclose informant information to the defense rests with the court. Unfortunately, there have been incidents where individual prosecutors themselves made the call, often using flawed legal reasoning. Due to the sensitive information contained in the OCII, the file is kept secure and access is restricted to only three individuals in the OCDA's office. Currently all witnesses listed in the OCDA case management system (CMS) are screened through the OCII.

The value of the OCII database is evident when considering the extent of discovery requirements and the affirmative effort required to disclose the full history on an informant linked to a case. However, the voluntary nature of providing information to the OCDA for entry into the OCII is a weakness in the effectiveness of the OCII as a complete repository of informant information. In one of the cases reviewed by the OCGJ it was noted that an informant, who worked on a case in 2009, had not been included in the OCII. It is not known how many other times this has occurred. There has been a concerted effort by the OCDA to train prosecutors on the use and value of the OCII post *Dekraai*. OCDA staff has conducted 30 training sessions on the importance and use of the OCII for new prosecutors, LLE, and OCSD personnel since 2014.

Technology

The OCGJ received overwhelming input that the current case management system (CMS) used by the OCDA is inadequate; it is only moderately useful and does not enable any reliable search of the database. However, fixing this problem has not been a top priority for budget allocations. The exponential increase of digital data from body cams, cell phone videos, and other sources makes the need for an updated system more urgent. It is the responsibility of the OCDA to meet all discovery obligations. Without proper accounting and tracking of discovery material, prosecutors cannot be certain they have fulfilled their lawful discovery obligations. Failures to meet these obligations are likely to continue to occur without new and upgraded data search and retention capabilities. In the absence of a modern capable system many prosecutors have felt the necessity to create their own system of discovery notification and records retention. This invariably results in differing discovery outcomes that are a potential liability to the county.

Office of the Sheriff-Coroner

The OCSD has also been accused of colluding on a jailhouse informant "program." However, like the OCDA, the OCSD has steadfastly denied the existence of an informant program. Much has been made in court filings about training materials within the OCSD that reference "developing" informants and how to use the information. This is portrayed as proof of an informant program. The OCGJ is confident there is **no** program of jailhouse informant use for

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criminal investigation in the Orange County jails. The OCGJ has found that there is a policy and practice of in-custody informant use for facility, staff, and inmate safety and that the referenced training materials related to this subject matter. There were a limited number of incidents in the recent past where OCSD personnel sought to use mercenary informants to assist LLE and these attempts were not handled properly. The OCSD has now implemented new policy to ensure these errors do not re-occur.

Lack of Supervision

As within the OCDA's office, the OCSD suffered from weak supervision of key personnel that created an environment where individuals were allowed to drift from their core mission. Without proper training or legal knowledge, these custodial deputies engaged in activities that had the potential to jeopardize cases. The OCSD requires all new deputies to be assigned to the jails for a period of time before they go to a patrol unit. Promotion to sergeant requires another assignment in the jails as a supervisor. Many sergeants merely bide their time until they can be reassigned to the field. Individuals who wish to remain assigned to the jails often have more institutional knowledge of jail protocol and politics than their newly appointed supervisors. This promotion assignment process allowed special handling deputies to operate with more knowledge than their immediate supervisors and some of them lost sight of their primary function. Without proper supervision, these custodial deputies crossed into the realm of investigations on behalf of LLE and a federal task force, although the OCGJ found no evidence that their intent was to violate or deny inmates of their rights.

TRED

An inmate classification system is a critical element of smooth and safe jail operations. The safety of jail staff and inmates is of paramount concern, and the proper classification and housing of inmates is a vital aspect of maintaining order. Every jail facility has a classification system. The inmate classification methodology within the Orange County jail gained the nickname TRED many years ago. TRED is a record of inmate movement and serves as a classification database. It is a methodology for classifying and housing an inmate in accordance with various criteria, a partial listing of which includes gang affiliation, race, the nature of the offense, prior incarceration history, political and religious beliefs, and sexual orientation.

Typically an inmate is interviewed by a classification deputy upon arrival at the county jail. Based on the information gathered at this interview, the inmate is assigned appropriate housing within the jail. Informally this is characterized as housing "like with like." A classification record is thus created for each inmate as he is processed. For a returning inmate, the previously established record is updated during this intake processing. An inmate's classification record or "TRED" is updated throughout his incarceration. Changes in housing status, disciplinary incidents, and sometimes informant activity will trigger an entry onto an inmate's TRED.

This inmate classification database is a repository of highly sensitive information, yet of limited value to any prosecution as the data contained occurs after the crime for which an inmate is arrested. Access to TRED records is generally provided only under subpoena in most counties and few would question the lengths to which this data is protected or the strictly limited access

that is imposed. The OCSD asserts privilege to protect inmates and jail staff and the judicial system alone retains the authority to determine what and when information can be disclosed. In the *Dekraai* motions, the Public Defender's Office has alleged that TRED records are an organized system of informant documentation modified regularly by OCSD personnel. It is further alleged that these records were regularly kept from the Public Defender's Office in spite of defendant's discovery rights, as a further attempt by the OCSD to collude with the OCDA in a conspiracy to violate defendant rights.

After extensive documentation review and interviews, the OCGJ has concluded that the TRED system is not only similar to systems used throughout all jails in California, but is a necessary system to record the movement and classification of all inmates for the protection of the inmates, the facility, and OCSD personnel. TRED was never designed to be, and is not, a repository of information about an inmate's informant activity.

Special Handling Deputies and the Log

Prior to 2016, special handling deputies were used to coordinate informants and informant information. Much has been made of the role of special handling deputies and their Logs. Special handling deputies were a subset of classification deputies whose original role was to keep jail personnel informed about jail politics and gang interactions as well as facilitating safe movement of inmates within the jail.

The OCSD special handling deputies assigned to Operation Black Flag were managed and directed by federal agents during the operation with respect to the federally contracted informants. Some of these deputies, who received special schedule and uniform considerations, appear to have developed a perception that they had a role as investigators in addition to their responsibilities as custodial deputies within the Orange County jails. It appears to the OCGJ that this shift in perceived duties was reinforced by LLE agencies who would frequently call to inquire about various inmates and request assistance from special handling deputies to help with their active cases, cold-case development, and/or *Perkins* Operations.

The OCSD provided the OCGJ with an unredacted copy of the Log. After review, the OCGJ concluded that the Log was primarily a shift record initiated by special handling deputies to document daily events and occurrences in order to facilitate the exchange of information during shift changes. There is no doubt that comments in the Log were often juvenile, ethnically insensitive, and embarrassing to the OCSD. The Log, however, was not created as a repository of information on informants and their testimony or the purposed movement of informants within the facility.

The OCGJ was able to verify that in many incidences where notations in the Log represented movement, pertinent information had also been noted in TRED. The OCGJ did not find any occasions where the Log reflected notes on the suppression of discovery material or any notation to reflect conspiratorial coordination with the OCDA. Following disclosure in court that the Log existed, the OCSD then directed a review take place to learn of any other unauthorized records within the OCSD.

This off-the-books journal kept by the special handling deputies, unknown to both OCSD command staff and the OCDA's office, further confused the discovery issues in *Dekraai* and angered the court. The value-add from the discovery of this Log to the defense case for misconduct has been greatly exaggerated. The contents of this Log shed little light on Dekraai's movements while in-custody. It would seem that it was the failure to disclose the Log, rather than the actual contents, that created much of the angst.

Proactive OCSD Response to Controversy

The IPPEC only evaluated the OCDA office but in response to the IPPEC report the OCSD also implemented training and structural changes. These included tighter controls on the reporting and movement of all types of informants in the jails; increased training on *Brady* and *Massiah* requirements to ensure that deputies are aware of the constitutional issues surrounding the use of informants; and the hiring of a constitutional policing advisor whose role is to ensure policy and operations meet all legal requirements. The OCSD also conducted an initial internal review of the department resulting in limited disciplinary actions and some reassignments.

In response to the internal review of these issues, the OCSD has implemented policy changes to define and strengthen the procedures to be followed whenever LLE agencies request the services of OCSD jail personnel in an investigation. In particular, strict reporting procedures and approvals are now in place for any use of a mercenary informant or when directing a *Perkins* operation. This policy now requires a written request from the command staff of the LLE agency. Additionally, the request will be reviewed by OCSD command staff to verify the appropriate use of informants, including that they are properly registered, their signed informant contracts are in order, and detailed record keeping of all activities and conversations surrounding any informant are properly maintained. Direct involvement of the OCDA's office is also now required when any information is pertinent to an existing case or could rise to the possibility of additional charges against an inmate. The OCGJ was advised that since this policy was implemented in 2016 there have been no further requests for this support.

Following an internal review, the OCSD has discontinued the special handling deputies class and created the Custody Intelligence Unit. These personnel are now investigators rather than deputies and the unit reports directly to command staff within the OCSD. They retain the responsibility to manage SOI and jailhouse informant information for the safety of inmates and OCSD personnel and to ensure all discovery material is properly recorded and maintained.

The OCGJ notes that a complete internal investigation of OCSD performance or policy violation issues raised during this controversy is on hold until outside investigations of possible criminal charges and civil rights violations are completed. Investigations by the OCSD's Internal Affairs Bureau have been initiated, but cannot be completed pending the outcome of these outside investigations. Numerous personnel have been reassigned and mandatory training for all current and incoming personnel has been implemented in areas of *Brady* and evidence discovery. This is in accordance with Internal Affairs Bureau policy as well as the Police Officers Bill of Rights.

Local Law Enforcement: *Perkins* Operations & the Anaheim Police Department

The OCGJ found that the architects of most *Perkins* operations run in Orange County jails were NOT OCSD personnel but other LLE Agencies. Orange County has 25 local policing agencies, including two University Departments. Several of the departments have their own jail or detention center, operating independently of the OCSD. As the primary investigative agency for a criminal case in Orange County, the particular LLE has initial responsibility for collecting and cataloging evidence. Prosecutors urge LLE detectives to consult with them in the early stages of a criminal investigation, to ensure all discoverable evidence is accounted for and communicated appropriately.

Starting in 2011, the Anaheim Police Department (APD) conducted, or was involved in, dozens of *Perkins* operations, resulting in more than 30 gang-related cases referred to the OCDA for criminal prosecution. All of these cases were developed using two confidential informants who had conducted more than 100 *Perkins* operations in Los Angeles County. Much has been made of these cases in the press as proof of an OCDA informant program. Regrettably, prosecutors assigned to some of these cases learned for the first time at a preliminary hearing that APD did not share all the information about these informants or that the informants had financial contracts with APD. This left the county vulnerable to accusations of civil rights violations and collusion in the prosecution of these cases. A search of the OCII indicated that information about these informants had not been provided to the OCDA, so the failure to turn over pertinent information about the informants was not intentional on the part of the prosecutor.

This highlights a weakness in the prosecutorial team that can set a challenging obligation for the OCDA, who bears the affirmative burden for ensuring justice is done. In order for discovery to be properly gathered and provided to the defense in the statutorily required manner, it is essential that LLE agencies understand their obligations to share information about informants and informant operations with the OCDA. Effective training and communication are central to this coordination. The OCDA has made an excellent beginning providing more than 40 training sessions on *Brady*, and the proper use of *Perkins* operations and jailhouse informants, to sworn personnel in nearly all of the LLE agencies in Orange County. The OCDA further intends to provide follow-up training to each department at least once a year.

The issues uncovered in the APD cases serve as an urgent warning about the lack of uniformity in gathering, cataloging, maintaining, and turning over discovery throughout the Orange County judicial system. For the past two years the OCDA has dedicated a full-time prosecutor to uncovering and sharing all pertinent discovery material in these cases and the OCGJ has been advised that efforts are underway to implement a standardized record keeping system for discovery.

CONCLUSION

There have been discovery violations in a small number of cases, over a period of years, due to a number of factors that are indicative of what happens to all organizations that are not diligent in maintaining awareness of their core mission. Both the OCDA and the OCSD allowed

individuals to drift from the core organizational mission and that laxness in supervision has had the unfortunate result of an erosion of trust in the criminal justice system. Both agencies are now aware of this shortcoming and have implemented organizational changes to repair the damage.

Allegations of a corrupt OCDA's office conspiring with the OCSD's office to violate citizen's constitutional rights are unfounded. Disparate facts have been woven together and a combination of conjecture and random events have been juxtaposed to create a tenuous narrative insinuating nefarious intent. That narrative does not stand up to factual validation.

The OCGJ found no concerted effort by personnel in either the OCDA or the OCSD offices to circumvent the law in order to ensure successful prosecutions. The vast majority of prosecutors we spoke with are ethical, hard-working individuals who have not, and will not, file a case if they do not believe in the guilt of the accused. In an office where more than 15,000 felony cases are filed annually and nearly 97% are settled before they get to trial, allegations of wide-spread jailhouse informant use are not factually supported.

The current search to get to the bottom of potential discovery violations in the *Dekraai* case has devolved into a witch-hunt for agency corruption; a search that after 5 years and more than 40,000 pages of court documents remains fruitless. Previous convictions have been questioned and new trials sought for individuals who claim they may have benefitted from the right to know about the use of an informant in their case. This unfortunate episode has eroded trust in the Orange County criminal justice system, not only within the Orange County legal community, but among the public at large. However, the OCGJ found no evidence to support claims of a systemic, widespread informant program, and reports of such have been exaggerated in the press.

The violations uncovered in *Dekraai* have remedies under existing law. The remedy for evidence obtained illegally in violation of *Massiah*, such as the taped conversation between Dekraai and a jailhouse informant, is the rejection of that evidence into the trial. This has been done: The tape has been thrown out and the jury will never hear it. The remedy for prosecutorial misconduct, such as that due to egregious discovery violations, is the recusal of the prosecutor. This has also been done; the OCDA has been recused and is no longer prosecuting the penalty phase of the case. While the OCGJ has now finished its investigation, the California Attorney General and the United States Department of Justice have ongoing investigations. Any further investigation of potential widespread, systemic institutional wrongdoing surrounding discovery or informant issues in Orange County would be far more appropriately addressed by these agencies and not by the trial court for the largest confessed mass murderer in Orange County history.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled, “*The Myth of the Orange County Jailhouse Informant Program*,” in Orange County, the Orange County Grand Jury has arrived at thirteen principal findings, as follows:

F.1. The myriad definitions and nuances of what constitutes an “informant” have caused confusion and may have contributed to the current controversy and unnecessary erosion of trust.

F.2. There is no structured jailhouse informant program operating in the Orange County Jails. The existence of informants in the Orange County jails does not constitute a program. The use of an in-custody informant is generally organic in nature, and narrowly focused.

F.3. Violations in discovery and/or *Brady* disclosure in the *Dekraai* case are limited to the actions of a few members of the OCDA and a few OCSD personnel. This does not represent a conspiracy between the OCSD and OCDA.

F.4. The OCII is an incomplete repository of informant information and history due to the voluntary discretion of LLE Agencies to contribute to it.

F.5. LLE Agencies are, and continue to be, a weak link on the prosecution team. While OCDA has no authority over these agencies, they can certainly use the bully pulpit to raise awareness of the problem and encourage participation and commitment to proper legal standards.

F.6. The elevation of personnel in the OCDA to supervisory positions is not the result of standardized, objective hiring standards and does not include any required training in management or supervisory skills training.

F.7. The OCDA needs to continue and expand the existing training programs to include objective standards in place to evaluate the actual effectiveness of OCDA training. Doubts continue as to whether training, in its current format, will make any substantial difference without metrics to measure impact.

F.8. Interoffice communication within the OCDA is often lacking and contributes to the absence of a unifying vision or sense of leadership. This allows for individual prosecutors to drift and create individualized record-keeping systems that could pose a liability for the County. It is an untenable position to argue that poor communication within the OCDA is the culprit to explain away constitutional discovery and *Brady* obligations.

F.9. Hiring an independent monitor to oversee work recommended by IPPEC and already completed by the OCDA is a waste of County money.

F.10. Mistakes were made by personnel in the OCSD and the OCDA. In response to internal investigations, the OCSD has taken disciplinary action to the extent it is able to do so at this time. There appears to have been minimal consequences for personnel in the OCDA.

F.11. Both the OCSD and the OCDA need updated technology and record keeping systems.

F.12. In spite of no official completed investigations, the OCSD has proactively made structural and organizational changes to address the issues that arose as a result of the informant controversy.

F.13. The current promotion process in the OCSD that requires patrol officers to be reassigned to the jail contributes to a culture of inadequate supervision of long-term jail personnel.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled, “*The Myth of the Orange County Jailhouse Informant Program*” in Orange County, the Orange County Grand Jury makes the following ten recommendations:

R.1. The OCDA should prioritize updating the current case management system to better track all constitutional and statutory requirements and better interface with LLE agencies and the OCII.

R.2. The OCDA should continue working to improve and prioritize its training program by designing and implementing follow-up measurements to determine the effectiveness and impact of current training content and methods.

R.3. The OCDA should implement standardized management hiring and training practices for all supervisory personnel and review employee disciplinary practices to ensure they are sufficient responses to employee actions.

R.4. The OCDA needs to send a clear message to local law enforcement agencies that successful case prosecution relies on the sharing of information, and agencies should be encouraged to share all informant information with the OCDA for input into the OCII.

R.5. Prosecutors within the OCDA need to recognize that the OCII is a tool of limited utility and should not rely solely on the OCII to vet potential witnesses. They should continue to do their due diligence in background checks of all witnesses in their prosecutions.

R.6. The OCDA should standardize its discovery record-keeping system for recording and tracking discovery materials and ensure all prosecutors are aware of and use the new uniform system.

R.7. The OCDA should review their management and communication to improve inter-office communications and break-down the negative effect of silo-ed operations

R.8. The Board of Supervisors should review and consider canceling, within the next 90 days, the OCDA independent monitor contract implemented on recommendations from the IPPEC and approved by the Board in August 2016.

R.9. The OCSD should standardize and consolidate jail activity records that have potential discovery repercussions, and minimize multiple filing systems for recording potentially discoverable material within the jail management system.

R.10. The OCSD should improve supervisor training for newly promoted sergeants that includes demonstrated supervisory skills before rotation back to the field.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or

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personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required as follows:

Responses are required from the following elected officers within 60 days of the date of the publication of this report:

The Orange County District Attorney (F.1-11; R.1-7)

The Orange County Sheriff-Coroner (F.1-3, 10-13; R.9,10)

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

The Orange County Board of Supervisors (F.9, R.8)

**Another Hostile Work Environment?
Orange County District Attorney Bureau of Investigation**



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SUMMARY

In the course of an investigation into the Orange County criminal justice system, the 2016-2017 Orange County Grand Jury became aware of personnel concerns in the Orange County District Attorney's Bureau of Investigation. The Grand Jury interviewed nearly 100 employees in the Orange County District Attorney's office and heard multiple admissions of sexual relationships and numerous complaints about preferential treatment and retaliation within the Bureau as a result of these relationships. The Grand Jury is not charged with investigating specific employee allegations. The Grand Jury is therefore unable to confirm whether or not any specific allegation is true. However, whether or not the specific allegations presented to the Grand Jury are true, the sheer volume and pervasiveness of the perception of favoritism and retaliation based on sexual relationships is problematic as that perception alone can create a hostile work environment. A hostile work environment can undermine morale, reduce productivity, negatively impact agency operations and can pose a financial liability for the county.

REASON FOR THE STUDY

In the course of our investigation into the Orange County criminal justice system, the 2016-2017 Orange County Grand Jury (OCGJ) became aware of personnel concerns in the Orange County District Attorney's (OCDA) Bureau of Investigation (Bureau). The OCGJ heard complaints about misconduct and retaliation by some Bureau management. Whether or not these allegations are true, the pervasiveness of the concerns appears to have created a hostile work environment for many in the Bureau. A hostile work environment can undermine morale, reduce productivity, and negatively impact agency operations. Given that concern the OCGJ sought to investigate the Bureau's personnel operations.

METHOD OF STUDY

The OCGJ interviewed nearly 100 employees of the OCDA's office including deputy district attorneys, senior assistant district attorneys, investigative assistants, paralegals, investigators, human resource staff and managers, supervisors, commanders and executive staff. Individuals from the county Human Resource Services Department and Equal Employment Opportunity (EEO) Access Office were also interviewed. The OCGJ reviewed the hiring, promotion and evaluation policies of the Bureau as well as those of investigative bureaus of neighboring counties. OCGJ also reviewed the county human resources policies and training materials of both the general OCDA office and the Bureau specifically. The 2002 Orange County Grand Jury report (Orange County Grand Jury, 2002), and the 2006 and 2015 operational audits of the OCDA, both of which reference personnel issues within the Bureau, served as the initial basis for interview questions. The OCGJ read multiple research articles on sexual harassment and the creation of hostile work environments, examined case law, reviewed the 2013 Orange County Grand Jury report on harassment within the county (Orange County Grand Jury, 2013), and consulted U.S. Bureau of Labor Statistics publications to be better informed on the issue.

BACKGROUND AND FACTS

As the largest law firm in Orange County, the OCDA employs more than 270 attorneys whose mission it is to “*enhance public safety and welfare and create a sense of security in the community through the vigorous enforcement of criminal and civil laws in a just, honest, efficient and ethical manner*” (Orange County District Attorney, 2017). The tremendous workload of processing in excess of 60,000 criminal filings annually requires extensive support staff to ensure that the mission of the office is achieved. An important and strategic element of that support is the Bureau.

The Bureau is the OCDA’s investigative division providing support and trial preparation assistance to the deputy district attorneys. The Bureau employs more than 250 personnel including investigators, assistant investigators and administrative staff and accounts for a third of the \$138 million OCDA budget. Similar to most Southern California district attorney offices, a large number of the investigators in the OCDA are sworn peace officers (182), most of whom have been recruited from other law enforcement agencies. It also employs 76 non-sworn support team members.

Investigators within the Bureau conduct difficult, sensitive, and complex criminal and civil investigations involving the gathering of evidence for the apprehension and prosecution of people and entities suspected of violating the laws (Appendix A). They prepare and serve search and arrest warrants and collect additional evidence for prosecution. The Bureau develops interviews and locates additional witnesses, including uncooperative or reluctant witnesses. During trial, investigators ensure the safety of victims and witnesses and engage in trial strategy with their deputy district attorney partners. The Bureau is also often called upon to help local law enforcement agencies in the development of their cases.

The Bureau is divided into 32 divisions that support all areas of the OCDA. There are also several units within the Bureau that have responsibility for independent investigations into organized crime, major fraud, police brutality, and political corruption cases that could not be handled by a city police department. Most employees at the commander and supervisor levels interviewed by the OCGJ stated that the role of the Bureau is to facilitate the prosecution of crime and to work with the attorneys. However, the OCGJ heard from some within the Bureau that some Bureau management perceive the Bureau’s role as one that more closely aligns the Bureau with a police department first and an attorney support unit second.

The Shifting Role of the Bureau

The OCGJ had several witnesses’ state that, over the years, the Bureau has shifted away from its mission as a support unit for trial preparation and evolved into a separate law enforcement agency. Some current Bureau management see this as a necessary response to increasing hostility toward police, so investigators are now further trained in weapons, subduing suspects, use of force, and risk management. The Bureau has hired its own range master to assist with investigators’ required firearm certification. We heard from several investigators that this training was *proactive* as there has yet to be an instance in Orange County when an investigator has needed these increased skills. But many believe that the current climate in the country

means it's just a matter of time before an investigator comes under physical attack. Others however, left jobs in police agencies to escape that aspect of a law enforcement job. This split in the perceived role of the Bureau has caused tension in the office that has led to early retirement, relocation, and hard feelings by some investigators.

Shifting the Bureau's identity away from a law office support unit to a separate police agency can change the office culture that can make the reporting of personnel concerns more difficult. The solidarity of law enforcement personnel has been well documented and it was apparent to the OCGJ that many of the individuals we interviewed believe any problems faced by Bureau employees should be dealt with in-house and not discussed outside the Bureau. This fact is significant when examining the organizational leadership of the Bureau and allegations of favoritism, sexual impropriety, and retaliation (DuBois, 2014) (Trautman, 2000). If the various allegations presented to the OCGJ are true, OCGJ believes that at least some of the employees of the Bureau that raised these concerns to the OCGJ may have been reluctant to speak out within the Bureau as doing so could be perceived as being disloyal and violating the policeman's code of solidarity.

Leadership in the Bureau

Chain of Command

The OCDA is structured such that the Bureau has its own chain of command, separate from the district attorneys. The Chief Investigator, as the head of the Bureau, reports directly to the District Attorney, bypassing the Chief Assistant District Attorney. Bureau management also includes an assistant chief, five division commanders and multiple supervisors. Every unit within a division has its own supervisor. Investigators assigned to prosecutorial units report to a Bureau supervisor and not to the attorneys from whom they take direction. This often causes confusion and inefficiencies in case development, as investigators can be removed and transferred among units for the needs of the Bureau, not always in the best interests of case development.

The OCGJ heard from several witnesses that some members of current Bureau management often skipped the established chain of command when issuing assignments and directions. Supervisors and commanders reported that work instructions were frequently sent from some members of management to them through subordinates whom they supervised who were friendly with those members of Bureau management. This apparent disregard for a proper communication chain of command left many investigators with the perception there were favorites in the Bureau and that management's authority had been undermined.

Employee Perception of Fair Leadership

Leadership should be fair, transparent, and consistent. In interviews conducted by the OCGJ many employees complained that some Bureau management came up short. There exists among some Bureau employees a perception that a "good old boys club" ("A" team) exists in the Bureau. Further, it is believed by several Bureau employees that this "A" team receives preferential assignments and promotions due to their favored status. Individuals reported that to

become a member of this group, and thus a favorite of Bureau management, a Bureau employee must socialize and participate in a variety of afterhours activities with the “A” team members. While socializing outside of work hours is common in any workplace, it should never be used to determine who is worthy of a promotion or considered first for transfers to more desirable positions. Individuals who have family obligations or do not want to socialize outside of work reported they felt ignored when it came to promotions and preferential assignments in favor of those who were perceived to be “A” team members.

While the OCGJ did not investigate the factual basis of this “A” team’s existence, and did not find any job requirement in writing that requires participation in extra-curricular activities for promotion, the mere fact that this perception was repeated multiple times in interviews leads the OCGJ to question the managerial effectiveness of some members of Bureau management. Either the actions on the part of some Bureau management have actively fostered a perception that there are those who are part of an inner circle and those who are not or, if this perception is not true, Bureau management has not taken effective action to identify and diffuse this perception.

Assignment Rotation

Most investigators come to the Bureau from local law enforcement agencies and have investigative experience as detectives. The published job description requires seven years of previous law enforcement work with several years of case management experience. Bureau management believes that to be a good Bureau investigator an individual must have substantial prior investigative experience, preferably in a law enforcement organization. However, investigators in the Bureau are assigned to specific units on a rotational basis and often these assignments do not take advantage of an individual’s previous knowledge and/or experience in specialized areas such as gangs, robbery, narcotics, homicide, or family protection. Often investigators have to learn new areas, new specific vernacular, and unique strategies on the job. In interviews with the OCGJ, investigators stated they are frequently rotated around units and as a result do not always have the opportunity to become adequately experienced in an assigned area before rotating to another unit. Position rotations occur very frequently and assignments often appear to be random in their matching of an investigator with their skill set. When promotions occur, this can be a detriment.

Every six months investigators submit to Bureau management a so-called “wish list,” in which they state their three most preferred assignments within the Bureau. Some positions are more desirable than others. The OCGJ found no formal protocol outlining the assignment and rotational process, and therefore no transparency in assignments. This lack of transparency has added to the belief that favoritism exists in assignments. Many investigators we spoke with feel the wishes of employees are largely ignored, and the OCGJ heard of incidents in which employees believe they were rotated as a retaliatory response to a complaint or concern they had voiced. Greater transparency in rotation assignments would help diffuse this perception.

Performance Evaluations

The OCGJ spoke with many employees, supervisors, and several attorneys who feel that their opinions on individual investigators’ performance are often ignored, and many reported they no

longer voice their opinion believing it to be a useless effort. Several of the individuals with whom the OCGJ spoke regarded this evaluation as a formality rather than as a real performance evaluation, and did not feel that performance evaluations were reflected in promotions and/or assignments. Again, Bureau management has either taken actions that foster these perceptions or not taken adequate measures to identify and diffuse these perceptions.

Sexual Relationships and a Hostile Work Environment

The OCGJ had several interviews with Bureau employees who admitted to, or had heard rumors of, consensual sexual relationships between supervisors and subordinates. While the sexual encounters relayed to the OCGJ appear to be consensual, this does not excuse the fact that many were between supervisors and subordinates in an obvious power differential. This power differential has been argued to remove the possibility of consent as it can be difficult for a subordinate to consent to a relationship with a supervisor because of the inherent pressure and influence of his or her advances (Murad, 2013). Even if consent is agreed upon, supervisor-subordinate relationships can hurt morale as the relationship can lead to claims of favoritism or cause other coworkers to feel uncomfortable and create a hostile work environment.

The California Supreme Court ruled in *Miller v. Department of Corrections (S114097, WL 1661190 Cal. 2005)* that a supervisor's sexual relationships with a subordinate may create a hostile work environment for coworkers, even if those coworkers were not propositioned by the supervisor. This case was significant because it expanded an employer's liability by allowing employees to bring claims based on consensual sexual relationships between supervisors and subordinates.

Indeed, some investigators the OCGJ talked with believed that several promotions and assignments within the past two years had been the result of favoritism related to these sexual encounters and that certain individuals were immune from discipline for inappropriate behavior. The EEO Commission policy states "*if favoritism based upon the granting of sexual favors is widespread in the workplace both males and females who do not welcome that conduct may establish a hostile work environment claim, regardless of whether any objectionable conduct is directed at them and regardless of whether those who were granted favorable treatment willingly participated in the sexual conduct.*" Whether specific alleged acts of favoritism occurred or whether some employees actually do receive "immunity," the perception that such is the case can negatively impact employee morale.

Finally, in addition to the consensual sexual relationships that were reported to the OCGJ and the resulting belief that favoritism exists, allegations of sexual harassment were relayed to the OCGJ. It is not within the jurisdiction of a civil grand jury to investigate individual allegations of sexual harassment. Therefore, the OCGJ has not investigated and cannot say whether specific alleged acts occurred. If they did occur, the negative impact on employee morale and the possible liability to the County is clear. If they did not occur, the OCGJ is still concerned about the state of employee morale in the Bureau in that many employees appear believe these activities to be occurring. The allegations reported to the OCGJ by some Bureau employees include:

- Multiple incidents of transmission of sexually suggestive pictures through emails and text messages.
- Inappropriate sexual and racial jokes and pictures transmitted via email and text messages.
- Unwelcome sexual behavior between some members of management and subordinates.
- Unwelcome touching.
- Sexual encounters at training conferences.
- Sexually explicit comments about coworkers' body parts.

Sexual harassment is not a unique problem in the modern workplace. Most employers require regular sexual harassment training of supervisors and nearly all companies have a sexual harassment policy in place (Bureau of Labor Statistics, n.d.). While the Orange County Board of Supervisors has passed resolutions addressing EEO concerns since 1965, a more comprehensive anti-harassment policy has been in place since 1999 and was last updated on November 13, 2015. This policy defines harassment and retaliation and clearly states that such incidents will not be tolerated. It also states that “[county] Agencies/Departments are expected to investigate and remedy promptly any seemingly minor acts of harassment to avoid the development of a hostile work environment” and “..... [a hostile] environment exists when there is conduct severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees” (Appendix B).

The current county policy encourages employees to immediately report incidents of inappropriate behavior to their supervisor, manager, agency or department human resources staff, or the Human Resources Services Department/EEO Access Office. The OCGJ was skeptical of multiple claims of sexual improprieties because individuals overwhelmingly stated they had not reported any incidents of harassment or hostile work environment to any supervisory entity. However, research has repeatedly demonstrated that large numbers of employees who experience sexual harassment in the workplace do not report it (Johnson, Kirk, & Keplinger, 2016).

The number one reason cited by researchers for failure to report harassment is fear of retaliation. Employees in the OCDA office articulated this same concern. Individuals who felt they had been subjected to harassment or had witnessed harassment of others told the OCGJ that they would not report it because either 1) they believed there would be retaliation by career curtailment or job loss or 2) nothing would be done. Many who the OCGJ spoke with stated they feared reporting incidents of harassment to Human Resources in the OCDA because they believed it would be reported back to the harassers. The OCGJ was told of past investigations of complaints that lacked thoroughness. It should be noted that previous botched investigations within the county have resulted in decisions costing the county millions of dollars (Orange County Grand Jury, 2002). Whether retaliation or adequate investigation would have occurred, the fact that such perceptions are held by some employees can negatively impact employee morale and an agency's effectiveness and can reduce needed reporting of inappropriate behavior.

Additionally, when harassment is reported, organizations often trivialize or minimize the behavior. Unfortunately, research has demonstrated that those alleging harassment are often disregarded and their complaints are deemed non-credible (Fitzgerald, Swan, & Fischer, 1995).

In fact, when the OCGJ asked individuals in OCDA management positions about the various complaints of inappropriate behavior, the complaints were often passed off to the OCGJ as either false or inaccurate with comments that likened the actors to kids in a candy store when they gained positions of power over female subordinates or the behavior was passed off as just chasing skirts. In interviews with management in the OCDA office there often did not seem to be recognition of the severity of the alleged behavior but rather a discounting and a dismissive “boys-will-be-boys” mentality.

Sexual Harassment Training

The OCDA training on sexual harassment consists of several approaches. Employees are required to take a computer generated interactive training program. Management is required to participate in a biannual in-person training session. In these training sessions issues of harassment are defined and examples are given. Also, the procedures for filing of complaints are discussed and there is an annual memo regarding the importance of preventing and reporting harassment in the workplace. However, this training does not appear to be sufficiently effective.. The OCGJ found few Bureau employees interviewed were aware of codes of conduct and sexual harassment policies and even fewer knew how to report any concerns. Some employees could not remember when or if they received harassment training; others had taken the training over a year ago.

Bureau Code of Conduct

The OCGJ examined the current policy manuals of the Bureau. The Bureau Policy Manual currently in effect was last updated in May 2006 and makes reference to the Code of Professional Conduct and Responsibilities for Peace Officers developed by the California Peace Officers Association and the Law Enforcement Code of Ethics.

It should be noted that there is presently an effort, which has been ongoing for more than a year, to create a new Bureau policy manual. The OCGJ reviewed this Draft Policy Manual and noted specifically that Module Policy No. 315, Standards of Conduct contains sections with detailed Code of Conduct guidelines specifically addressing any breach as a cause for disciplinary action (Appendix C).

CONCLUSION

The OCGJ heard numerous complaints of personal relationships and preferential treatment within the OCDA Bureau. The OCGJ is not charged with investigating specific cases of inappropriate employee behavior. The OCGJ is therefore unable to confirm the accuracy of any specific allegation. However, whether or not the specific allegations presented to the OCGJ are true, the sheer volume and pervasiveness of the perception of favoritism and retaliation based on sexual relationships is problematic as it can suggest the existence of a hostile work environment. A hostile work environment can undermine morale, reduce productivity, negatively impact agency operations and can pose a financial liability for the county.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of “*Another Hostile Work Environment? Orange County District Attorney Bureau of Investigation*” in Orange County, the 2016-2017 Orange County Grand Jury has arrived at eight principal findings, as follows:

F.1 Multiple consensual relationships involving some members of Bureau management have contributed to a perception of favoritism and cronyism among some in the Bureau. This perception stems from the promotion of some who have been engaged in intimate relationships with their supervisors, whether or not those promotions were deserved, and a belief by some that participation in activities that occur outside the workplace impact promotion decisions. This has created the perception of a hostile work environment for some.

F.2. Current county sexual harassment training for Bureau employees does not appear adequate. Many Bureau employees appear to be unaware of the policy. Some OCDA management seemed unaware of the implications of a hostile work environment and what constitutes sexual harassment.

F.3. The current county sexual harassment policy does not prohibit supervisor-subordinate intimate relationships.

F.4. The absence of a transparent assignment process that uses investigators’ skill sets has contributed to the perception of favoritism among some investigators.

F.5. Supervisor and commander positions lack an adequate management training requirement. This has led to either a failure to uniformly enforce OCDA and county policies surrounding work place behavior or at least a perceived failure to do so.

F.6. Some employees report they do not feel comfortable going to OCDA or county Human Resources Services staff to report incidents of harassment for fear they will not be afforded confidentiality, the complaint will be dismissed, or they will face retaliation.

F.7. Under the current leadership, the Bureau is run much more like a police department than a support unit for a law firm and this has led several employees to invoke the law enforcement code of silence about alleged inappropriate behavior in the Bureau.

F.8. There is a perception among some Bureau employees that some members of OCDA management have not consistently enforced the Orange County zero-tolerance policy towards sexual harassment.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of “*Another Hostile Work Environment? Orange County District Attorney Bureau of Investigation*” in Orange County, the 2016-2017 Orange County Grand Jury makes the following six recommendations:

R.1. The OCDA should implement comprehensive management training of all management in the Bureau.

R.2. The OCDA should ensure all employees receive comprehensive sexual harassment training annually and periodically follow up to ensure policies are being followed.

R.3. Bureau management should recognize the Bureau’s role in the mission of the OCDA, prioritize assignments accordingly, and develop an assignment process that better uses the experience and skills of investigators.

R.4. The county should consider implementing a policy that prohibits intimate supervisor-subordinate relationships and prohibits all individuals holding a senior leadership position in any county agency from engaging in any intimate relationships with anyone in the agency they supervise.

R5. The county should review the current sexual harassment training provided to all county employees and include metrics for impact and effectiveness.

R6. The Board of Supervisors should hire an outside, independent investigator to investigate why the OCDA and county Human Resources Services departments are not being used in reporting by individuals in the Bureau.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County

official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Orange County District Attorney F. 1-8, R.1-3

Orange County Board of Supervisors F. 2-3, R.4-6

REFERENCES

- Orange County Grand Jury. (2002). *Office of the District Attorney, An In-Depth Investigation*. Santa Ana: Superior Court of California.
- Bureau of Labor Statistics. (n.d.). *Survey of Employer-Provided Training*. Retrieved May 31, 2017, from United States Department of Labor, Bureau of Labor Statistics: <http://www.bls.gov/ept/eptfaq.html#formal>
- DuBois, S. (2014, March). An Exploration of the Blue Code of Silence. *University of Portsmouth Institute of Criminal Justice Studies*.
- Fitzgerald, L., Swan, S., & Fischer, K. (1995, April). Why Didn't She Just Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment. *Journal of Social Issues, Vol. 51, No.1*, pp. 117-138.
- Johnson, S., Kirk, J., & Keplinger, K. (2016, October 4). Why We Fail to Report Sexual Harassment. *Harvard Business Review*.
- Murad, A. (2013, February 14). [foxbusinessnews.com/features/2013/02/14](http://www.foxbusinessnews.com/features/2013/02/14). Retrieved June 1, 2017, from foxbusinessnews.com: <http://www.foxbusiness.com/features/2013/02/14/rules-office-dating-game-what-acceptable-rules-office-dating-game.html>
- Orange County District Attorney. (2017). *Bureau of Investigation Policy Manual (Draft)*. Santa Ana: Orange County District Attorney.
- Orange County District Attorney. (2017). *DA Office Mission Statement*. Retrieved June 1, 2017, from Orange County District Attorney: orangecountyda.org/office/mission.asp
- Orange County District Attorney. (DRAFT). *Bureau of Investigation Policy Manual*. Santa Ana: Orange County District Attorney.
- Orange County Grand Jury. (2002). *Office of the District Attorney, An In-Depth Investigation*. Santa Ana: Superior Court of California.
- Orange County Grand Jury. (2013). *The Culture of Harassment: Change on the Horizon*. Santa Ana: Orange County Grand Jury.
- Trautman, N. (2000). Police Code of Silence Facts Revealed. *International Association of Chiefs of Police Annual Conference Papers*. International Association of Chiefs of Police.

APPENDICES

APPENDIX A: Orange County Job Description for District Attorney Investigator

County of Orange
Class Code: 6504PO
Established: 10-12-07

DISTRICT ATTORNEY INVESTIGATOR

DEFINITION

Under general supervision, to conduct difficult, sensitive and complex criminal and civil investigations for the District Attorney's Office, Sheriff's Department, Municipal Police Agencies and the Grand Jury involving the gathering of evidence for the apprehension and prosecution of person/entities, suspected of violating the laws and to do other work as required.

CLASS CHARACTERISTICS

Incumbents independently perform a wide range of criminal investigations including the more difficult; provide technical guidance and training to investigative staff and may serve as team leaders of investigative activities. Incumbents exercise independent judgment and action in the analysis of evidence in order to determine whether a crime was committed or to obtain or develop additional evidence to support criminal prosecution. The District Attorney Investigator class requires that then incumbent possess experience in conducting wide variety of criminal investigations including specialized crimes and grand jury investigations.

EXAMPLES OF DUTIES

1. Plans, conducts and coordinates investigations to support prosecution of a wide variety of criminal and civil cases including complex fraud, environmental crimes, organized crime and political corruption.
2. Investigates complex crimes under the jurisdiction of the Orange County Grand Jury, violations of corporate laws and highly sensitive or confidential criminal or civil matter referred to the District Attorney by municipalities.
3. Gathers and obtains critical information and evidence through interviews of victims, suspects and witnesses; investigates crime scenes; conducts intelligence gathering by establishing and maintaining relationships with key informants and conducting stationary and mobile surveillance.
4. Prepares reports and makes recommendations to attorneys regarding the filing of criminal complaints. Assist attorneys in the preparation of cases for trial; requests and/or prepares

subpoenas for witnesses, participates in, prepares subpoenas for witnesses, participates in, prepares and/or executes and conducts search warrant operations.

5. Establishes and maintains strong cooperative relationships with other law enforcement and public agencies.

6. Testifies in court as the investigating officer.

7. Acts as a liaison and coordinates investigative activities with law enforcement officers from various agencies; coordinates the appearance of witnesses at trial and explains court procedures; conducts background investigations on new staff.

8. Serves criminal and civil process documents, makes arrests as necessary based on probable cause, bench warrant and criminal complaints.

9. Transports and stores evidence; operates technical investigative equipment such as computers, recorders, cameras and electronic sound equipment.

10. Explains District Attorney Policies and Procedures as well as applicable laws and regulations to the public, other government agencies, witnesses, suspects, and victims.

11. Prepares and maintains statistical and operational logs, records and reports; maintains computer data bases relevant to assignment.

12. Participates in Federal, State, and local law enforcement intelligence activities.

13. Performs extradition of prisoners from other jurisdictions.

14. Performs County-wide criminal investigations on elected officials, attorneys, law enforcement officers and other sensitive and high profile matters. Reviews and evaluates records maintained by any state or local agency pursuant to authorization of penal code section 832.7.

15. Assists out of state law enforcement agencies.

16. Provides expertise in investigative specialty areas such as narcotics, gangs, domestic violence, organized crime, officer involved shootings, and a variety of complex frauds.

17. Transports witnesses to and from court, provides witness protection and witness relocation assistance as needed.

MINIMUM QUALIFICATIONS

Special Requirements for Peace Officer Status: Applicant must:

Be a citizen of the United States or qualify for Peace Officer status under California Government Code Section 1031.5; be at least 20 years of age; not have been convicted of a felony.

Be free from any physical, emotional or mental condition which might adversely affect exercise of peace officer powers, as determined by a licensed examining authority in accordance with California Government Code Section 1031.

Have graduated from high school, attained a satisfactory score on a G.E.D. test or passed a California high school proficiency examination.

Pass a background investigation conducted in compliance with California Government Code Section 1031, to the satisfaction of the Sheriff-Coroner or District Attorney.

Possess a current and valid California Peace Officer Standards and Training (P.O.S.T.) Basic Certificate or Basic Course Waiver as of date of appointment.

License Required

Possession of a valid California Driver License by date of appointment.

General Knowledge

Methods and techniques of criminal investigation including the gathering and presentation of evidence; laws of arrest, rules of evidence and courtroom procedure; methods and use of technical investigative equipment.

Ability to

Gather, assemble, analyze and evaluate facts and evidence, draw logical conclusions and make sound recommendations; obtain information through interview and interrogation; prepare clear, concise, comprehensive reports; work effectively with a variety of law enforcement agencies; operates various technical investigative equipment.

Use firearms skillfully; operate police vehicles and other equipment under a variety of adverse field conditions; pass a medical examination for peace officers whose duties demand top physical fitness and agility and/or carry out a conditioning program to maintain good fitness; subdue and restrain a subject resisting arrest with due concern for safety of prisoner, bystanders and self.

Experience

Five years of experience as a law enforcement officer in accordance with California Penal Code Section 830.1 or its equivalent including two years of experience performing investigations of felony and high misdemeanor crimes

**APPENDIX B:
Excerpt from the Orange County EEO and Harassment Policy**

COUNTY OF ORANGE EQUAL EMPLOYMENT OPPORTUNITY and ANTI-HARASSMENT POLICY AND PROCEDURE

C. Harassment

1. Harassment consists of unwelcome conduct, whether verbal, physical, or visual...
2. ...A hostile work environment exists when harassing conduct is severe or pervasive enough to alter the conditions of employment...so as to create an abusive working environment...Agencies/Departments are expected to investigate and remedy promptly even seemingly minor acts of harassment to avoid the development of a hostile work environment.

Examples of harassment include, but are not limited to:

- Explicitly or implicitly conditioning any term of employment... (e.g., continued employment/placement, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
 - Participating in conduct the purpose or effect of which is to unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment;
 - Unwelcome touching or grabbing any part of an employee's...body;
 - Continuing to ask an employee...to socialize on or off-duty when that person has indicated she or he is not interested;
 - Displaying or transmitting, in person or through any media, sexually suggestive pictures, words, objects, cartoons, or posters if it is known or should be known that such behavior is unwelcome;
 - Sending sexually suggestive notes or letters if it is known or should be known that the recipient does not welcome such behavior;
 - Telling sexual jokes or using sexually vulgar or explicit language in the presence of another person;
 - Using foul language or gestures;
 - Harassing acts or behavior directed against a person on the basis of his or her sex or any other protected classification;
 - Derogatory or provocative remarks about or relating to an employee's...sex or appearance;
 - Off-duty conduct which falls within any of the above that nonetheless affects the work environment; and
 - Making unwelcome or inappropriate inquiries about a person's private or personal behavior.
3. Any person who believes he or she has been the victim of unlawful harassment should report the incident immediately to his or her supervisor, manager, Agency/Department

Human Resources staff, or the Human Resource Services/EEO Access Office. All allegations will be investigated promptly. Complaints will be kept as confidential as possible. If the allegation is sustained, prompt, appropriate remedial action shall be taken...

4. The County of Orange will not tolerate harassing conduct that affects tangible job benefits, that interferes unreasonably with an individual's work performance, or that creates an intimidating, hostile, or offensive work environment. Whenever an employee...alleges harassment, or at any time when it is believed that harassment is taking place, the County of Orange will act promptly to investigate and take swift and appropriate remedial action in dealing with those found in violation of the County's EEO and Anti-Harassment Policy.
5. Harassment in the form of retaliation for complaints of discrimination will likewise not be tolerated.
6. Harassment is misconduct which could result in discipline, up to and including discharge.

D. Retaliation

1. Retaliation is defined as taking an adverse employment action(s) against an employee...because of her/her protected activities, including but not limited to the reporting of violations of law or policy, unlawful discrimination, harassment, retaliation, and any other violation of this policy. Adverse employment actions may include, but are not necessarily limited to, denial of a promotion, refusal to hire, and/or imposition of discipline...
2. Any person who believes he or she has been the victim of retaliation should report the incident immediately to his or her supervisor, manager, Agency/Department Human Resources staff, or the Human Resource Services/EEO Access Office. All allegations will be investigated promptly. Complaints will be kept as confidential as possible. If the allegation is sustained, prompt, appropriate remedial action shall be taken...
3. Retaliation is misconduct which could result in severe discipline up to and including discharge.

**APPENDIX C:
Excerpt from OCDA Bureau Policy Manual**

ORANGE COUNTY DISTRICT ATTORNEY BUREAU OF INVESTIGATION
POLICY MANUAL (DRAFT)

Policy 315 – Standards of Conduct

315.2 Policy

The continued employment or appointment of every member of the orange County District Attorney shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off- duty, may be cause for disciplinary action.

315.5 Causes for Discipline

The following are illustrative of causes for disciplinary action. The list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient Bureau service:

315.5.4 Relationships

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on--duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.

315.5.9 Conduct

- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this Bureau or the County.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this Bureau.
- (m) Any other on- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this Bureau, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this Bureau or its members.

**ORANGE COUNTY'S DIGITAL DATA:
IS IT PROTECTED FROM CYBER ATTACK?**



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SUMMARY

Today, for better or worse, we live in a digital world, and cybersecurity has become a household word. Information that defines our identity, health, finances, communications, and personal and commercial transactions is all saved on computers connected to the internet. Sensitive information is subject to attack and damaging use by hackers, criminals and even other nations. Many devices that control our public utilities and household systems are being exploited by malicious parties. The most recent example of cyber threat is the May 2017 WannaCry virus that used a Windows vulnerability to infect and encrypt files in thousands of computers in 150 countries. Affected systems included hospitals, railway networks, banks, automakers, and telephone companies.

Orange County is in the forefront of cybersecurity defense in many areas but there is still much work that needs to be done. One of the five California fusion centers (information sharing entity representing local, state and national agencies) devoted to identifying and issuing alerts on cybersecurity threats is located in the county. To further its cybersecurity initiatives, the county has both a seasoned chief information security officer (CISO) and an experienced county privacy officer (CPO) in place within the Orange County Information Technology department (OCIT), and has a firewall-protected centralized network configured to prevent the spread of malicious attack, as well as centralized email monitoring. Anti-virus protection and data backup programs are installed in most county agencies, all of which would welcome a central repository of cybersecurity alerts, best practices, firewall rules, procedural templates and early threat notifications.

There are also a number of county cybersecurity initiatives in development which show promise. With the full support of the Orange County Board of Supervisors (BOS), elected and appointed agency heads, and well trained county staff, county data and systems can remain protected and functional.

REASON FOR THE STUDY

The security and reliability of Orange County's digital information and information systems is critical to the ongoing efficient and effective functioning of county government and the protection of its citizens. Cyber threats to government and private information, as well as systems and associated digital data are in the news daily and of increasing concern.

Unfortunately, cybersecurity breaches are becoming more common and the personal, financial and reputational impact can be severe. In the past year, Orange County experienced a successful cyber attack involving the penetration of the Orange County Transit Authority (OCTA) systems through a third-party vendor. This resulted in the encryption of valuable data, a ransom demand for its return, permanent loss of some irreplaceable data, and an expense in excess of \$700,000 to recover data and restore systems.

An additional breach occurred in which the confidential information, including member names, demographic information, Social Security numbers and other health plan details of about 56,000 CalOptima members may have been accessed. It is no longer a matter of *if*, but *when* an organization will experience a cybersecurity breach (NIST, 2012).

Orange County's Digital Data: Is It Protected from Cyber Attack?

Due to the seriousness of the threats, the 2016-2017 Orange County Grand Jury's (OCGJ) investigation explored the extent to which OCIT and other county entities responsible for information systems and digital data have identified cybersecurity threats and instituted comprehensive security procedures.

METHOD OF STUDY

The 2016-2017 OCGJ interviewed 31 employees of the county, including both management and staff, in some cases multiple times. These included senior officials in the offices of the chief executive officer (CEO), OCIT, and those with elected heads, as well as people in charge of information technology and cybersecurity in most county agencies. To validate information and ensure depth of understanding across the county, we also interviewed certain employees of special districts, chosen for the critical nature of their digital data. The OCGJ also interviewed a selection of key city officials, chosen to represent both larger and smaller cities, as well as some deemed particularly vulnerable to cyber threats.

County documents relating to cybersecurity from multiple government entities were reviewed, including audit and testing reports, training records, strategic plans, information technology policies and standard operating procedures. The OCGJ also conducted thorough literature searches regarding cybersecurity in the government sector and reviewed national directives and material from standards-setting organizations on the subject. Current cybersecurity standards and best practices from respected sources were reviewed, including the framework from the National Institute for Standards and Technology (NIST), standards from the International Organization for Standardization (ISO) and the International Electrotechnical Commission (ISO/IEC), and the Department of Homeland Security (DHS) communications (Appendix A).

BACKGROUND AND FACTS

The Digital Environment

Cybersecurity is the ability to protect or defend the use of cyberspace from cyber attacks. (Appendix B details typical types of cyber attacks.) This applies to personal use by an individual as well as an organization's use of the internet, and typically encompasses people, processes and technologies. Cybersecurity focuses on how to protect the confidentiality, integrity and availability of information from unauthorized access, modification or disruption (NIST, 2016).

For purposes of this report, a cybersecurity incident is an event that compromises the confidentiality, integrity or availability of an information asset; a cybersecurity breach is an incident that results in the confirmed—not just potential—disclosure of data to an unauthorized party (Verizon, 2016).

There can be significant costs connected to a cybersecurity breach. The recent Target settlement of \$18.5 million with the states over its 2013 data breach (Masunga, 2017) is just one example,

but damage to an organization's reputation and credibility is also one of the biggest potential costs to an organization, because a cyber breach means lost business and requires action to regain trust (Ponemon Institute, 2016).

Nature and Sources of Cyber Risk in Orange County

Orange County has a great deal of potentially sensitive information stored on or accessed by its various digital systems. The volume of this information can be very large, giving rise to high levels of potential risk in the case of a breach. The type of information is varied and includes:

- Personal identification information, such as social security numbers, names and addresses.
- Personal health information and confidential medical records.
- Personal credit information such as names, credit card numbers and expiration dates.
- Law enforcement information including data about juveniles, sexual offenders, arrest records and jail management.
- Child Welfare System records.
- California Aid and Family Support information.
- Data on pending criminal and civil litigation.
- Building permits and county property records.
- County investment portfolio information.

Data on any county device connected to the internet is at risk from a variety of potential attackers such as criminals, hackers, hacktivists, nation-state actors and even organization insiders. These malicious agents are pervasive, persistent and agile. Over 2,642 total data breaches have occurred across public and private organizations from 2010 to 2016 (Privacy Rights Clearinghouse, 2017). Advanced cyber attacks can go undetected for approximately 200 days on average, allowing cyber criminals ample time to harvest sensitive data, including passwords and other credentials to be used in subsequent attacks following the initial breach (Microsoft, 2016).

No one is immune. All county organizations need to determine what their high-risk assets consist of, who controls them, and who makes informed decisions as to how much risk the organization is willing to incur, balancing the benefits of technology to satisfy user requirements against keeping sensitive data secure.

In 2015, the public sector accounted for 74% of all reported cyber incidents and 9% of reported breaches nationally (Verizon, 2016). Several Orange County government departments reported multiple sensitive privacy information breaches in 2016. The majority were fraudulent email incidents, all of which were contained. There were nine reported incidents involving county systems in 2015 and the first half of 2016. Two widely published breaches involving other county governmental entities, the OCTA and CalOptima, occurred in 2016.

Public Sector Initiatives to Combat Cyber Attacks

As the focus on cybersecurity has increased in response to an increasing number of incidents and breaches over recent years, all levels of the public sector have ramped up their cybersecurity activity. At the federal level, the Cybersecurity Act of 2015 provided important tools necessary

Orange County's Digital Data: Is It Protected from Cyber Attack?

to strengthen the nation's cybersecurity, making it easier for government entities such as the County of Orange and private companies to share cyber threat information with each other.

Part of this effort was the establishment of fusion centers, owned and operated by state and local government and supported by the DHS's Office of Intelligence and Analysis and the Federal Emergency Management Agency, providing these multi-agency centers with resources, training, and other coordinated services. The collaborative nature of these government entities maximizes their ability to detect, prevent, investigate and respond to criminal and terrorist activity. Located in primarily major urban areas throughout the country, fusion centers are uniquely situated to empower front-line law enforcement, public safety, fire service, emergency response, public health and other local entities to lawfully gather and share threat-related information. One of California's five fusion centers, the Orange County Intelligence Assessment Center (OCIAC), is located in Orange County and provides cybersecurity alerts and information to OCIT.

In 2016, California state assembly bill 1841 mandated that cybersecurity incident response standards be included in each state agency's technology recovery plan. Orange County has included the development of a centralized incident response plan template in OCIT's five year cybersecurity "roadmap." A beta version of this incident response plan is currently under review by the Orange County Cybersecurity Joint Task Force.

Orange County Cybersecurity Defenses

Cybersecurity vulnerabilities are produced by weaknesses in technology (operating systems, applications and tools) and people (training and awareness). Large organizations such as the County of Orange are faced with maintaining complex systems that have evolved over time. For example, OCIT alone supports over 630 servers across more than 38 locations and manages over 80 routers, 380 switches, 42 wireless bridges and 173 wireless access points across 83 locations in addition to a large number of laptop and desktop computers and over 100 software applications for various county agencies (Orange County Information Technology, 2017). All of these systems and devices, plus many more government devices not under OCIT's control, must all be maintained and protected from cyber attack.

Key areas of cybersecurity defense for Orange County are described in detail in the following sections.

Executive Support

County Board of Supervisors

Support from top management is critical to the success of any cybersecurity program. Highlighting the importance of board and executive level support, the 2017 update of the National Association of Corporate Directors (National Association of Corporate Directors, 2017) cyber risk oversight handbook includes the following five recommendations for boards of directors:

- Approach cybersecurity as an enterprise-wide risk management issue, not just an information technology issue.
- Understand the legal implications of cyber risks.

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- Boards should have adequate access to cybersecurity expertise; cyber risk management should be given adequate time on board agendas.
- Directors should set expectations that management will establish an enterprise cyber risk management framework.
- Boards need to discuss details of cyber risk management.

The OCGJ found that the BOS has heightened awareness of cybersecurity threats and is very supportive of cybersecurity efforts, partly given the 2016 OCTA ransomware incident, which had a significant and widely publicized impact. County executives are leading efforts to provide centralized support for countywide cybersecurity efforts and, with other county leaders, recognize the sensitivity and vulnerability of the digital information the county manages. The BOS and county CEO recently supported the deployment of mandatory annual online cybersecurity awareness training for all county employees, including the BOS staff. Initiated in 2017, this training also includes mandatory review by each employee of the county IT use policy. Mandatory two-hour biennial fraud training provided by the county district attorney (DA) and auditor-controller was instituted in 2016.

Funding

A key indicator of executive support is the amount of funding allocated to the effort. In 2016, an OCIT request for a \$98,000 comprehensive (“defense-in-depth”) cybersecurity initiative was not approved. For the fiscal year ending 2017, however, the budget for the CISO’s group was increased from \$1.8 million to \$2.2 million to cover a specific cybersecurity project addressing zero-day infections (those that result from previously unknown vulnerabilities). A contract was recently awarded by the BOS to an outside vendor for a countywide cybersecurity vulnerability assessment program. The BOS approved the \$2.5 million cost of the assessment program and requested that all county departments and agencies complete assessments by June 30, 2018.

The Grand Jury had difficulty identifying financial commitments to cybersecurity across all county agencies and departments, as cybersecurity is not currently split out as a separate line item in county information technology (IT) budgets. Cybersecurity budget requests are approved as part of overall IT requests and are basically responsive to perceived immediate cybersecurity threats.

Cybersecurity Strategic Planning

Most county agencies and departments do not appear to have any cybersecurity strategic plans in place. No current OCIT cybersecurity strategic plan exists, but cybersecurity is part of the broader IT strategy. The OCIT Enterprise Security group is currently working on a five year cybersecurity strategic plan and has developed a tentative five-year roadmap for cybersecurity which could develop into a strategic plan at some point in the future. Plan elements include county programs for cybersecurity auditing and assessment, policies and procedures, training and updating various hardware and software cybersecurity defenses. It is important to note that many of the items on the roadmap are not yet approved or budgeted by the BOS, therefore implementation and timing of these programs is tenuous.

The IT Cybersecurity Joint Task Force, recently formed and headed by the county CEO, is a key entity for accomplishing cybersecurity planning, in part by creating a county cybersecurity policy manual that would apply to all departments. The policy manual completion is expected in March 2018. Approval is slow because the county process requires review by all stakeholders, including county counsel, the county CEO, unions, administrative services, risk management and others. With the cyber threat landscape changing constantly, counties are as much as 10 years behind the federal government, and cities 10 years behind the counties in their implementation of current best practice cybersecurity measures, according to OCIT.

Oversight

It is common for government entities to set up oversight bodies for important projects and programs. There are several such IT entities that oversee, review, advise and inform on cybersecurity efforts in county agencies and departments.

Examples of cybersecurity oversight at the Orange County department and agency level include:

- The Sheriff's cybercrimes unit, which handles cybersecurity oversight for the Sheriff's department.
- The DA's cybercrime investigation unit is headed by a supervising investigator, who handles cybersecurity oversight for the office. However, the unit currently only has one analyst, who is on loan to another agency. Staffing plans for this group envision growth to five analysts, but this is dependent on funding.

The OCGJ found no evidence of any other regularly scheduled reviews of cybersecurity procedures and readiness, so it is unclear how much oversight or even discussion of cybersecurity matters occurs at the departmental level.

Physical Security Management

The management of physical assets, such as facilities, servers, network equipment, PCs and mobile devices, is an important component of cybersecurity, including safeguarding access to digital equipment and data, as well as the safe return of intact data from employees leaving county service or transferring between county departments.

When under physical control of management, equipment with digital data can be more easily subject to cybersecurity controls. The county uses a number of physical entry and exit controls, including guarded entry points, key cards and combination locks on doors to sensitive areas. At the Registrar of Voters (ROV), for example, all these physical security measures are in use, as well as voting equipment seals and tags.

A growing number of employees conduct county business with county smartphones, tablets and laptops, posing several security concerns. For example, the practice of issuing devices to users rather than departments becomes a potential cybersecurity issue when individuals transfer between county departments taking their mobile devices with them. Other mobile management issues include device theft; a need for consistent policies across departments and agencies, and

the large number of different devices and operating systems in use across the county. This all makes the protection of digital privacy data and timely updating of mobile operating systems and applications a complex and problematic effort.

In addition, some county digital assets are housed outside the county. For example, the local nonemergency government 311 phone services data are located on a server in the Midwest. The county also maintains a secure offsite location for long term data backup with a data storage company. The county is considering requiring that data that is stored on third party servers in the cloud be housed only within the U.S. by cloud service providers accredited by the Federal Risk and Authorization Management Program (FedRamp). FedRamp is a government-wide program providing a standardized approach to security assessment, authorization and continuous monitoring, meeting federal cybersecurity standards for cloud products and services. Certification of cloud services by this body provides confidence in the data security of third party cloud service vendors.

Some Orange County agencies and departments have employee exit procedures that reflect best cybersecurity practices, but none are comprehensive. For example, the county revokes access on exit and retrieves all county devices, but does not currently do a comprehensive check of USB drives and other devices having storage capability, prior to their re-use, scrap or sale. To avoid data breaches when equipment is lost or stolen, all sensitive data or, better yet, entire hard drives should be encrypted.

Sensitive digital personal health information was removed on a USB drive from an Orange County government entity in 2016. The county is currently reviewing its employee exit processes, which are now managed and enforced by human resources staff assigned to individual agencies.

Digital Security Management

The Centralized County Network

The county network is the first layer of defense against cyberattack. Aspects of network cybersecurity defense include:

- Firewalls and email traffic monitoring systems.
- Regular maintenance and review of logs.
- Routers with passive vulnerability scanners.

Aspects of effective cybersecurity defense that apply to all county digital devices include:

- Monitoring of outbound traffic as well as inbound traffic for suspicious activity.
- Regular and timely patching (“bug fixes”) of software and operating systems.
- Regular and timely updating (installing new versions) of software and operating systems.

The county's centralized network is segmented with multiple firewalls to prevent the spread of any malware, and uses intrusion detection and email filtering systems to detect and deter malware from entering the network. The remaining departmental networks are generally

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segmented and include some provision for intrusion detection. For example, an application for enterprise-wide visualization, alerting, reporting and real-time situational awareness, is used by the Sheriff's department to prevent network intrusion.

The county oversees the county network support vendor to ensure the vendor follows contractual service level agreements, conducts monthly testing and provides both monthly and quarterly reports on network security status. In addition, the county has the contractual right to conduct annual audits of the vendor's service levels and security activities. This vendor conducted penetration testing and a security assessment of the OCIT network in 2016. OCIT is considering future implementation of network-based data loss prevention technology, which would monitor all traffic leaving the network and provide immediate alerts of any potential loss of sensitive information, but this has not yet been approved or funded. Monitoring of email traffic using this technology is currently scheduled to be implemented by fall of 2017. This is an important step in detecting and preventing, or at least mitigating, a cyber breach. A physical device currently monitors and logs incoming traffic on the county network for suspicious activity and issues alerts, which have resulted in mitigating cyber attacks. However, the volume of data is so large that the logged traffic data is difficult to analyze in a timely fashion. The device can only hold approximately two weeks' worth of data and the presence of dormant malware can go undetected for over a year, if not identified in the first two weeks.

County Websites and Internet Access

County public websites are typically air gapped (not connected to the internal county network) to prevent cyber attacks. A web filtering system is also used to control access to questionable or problematic web sites that are accessed through the county network by county employees (end users).

Cybersecurity Defense for County Endpoints (Computers, Laptops, and Tablets)

The third party vendor that manages the county desktop support services and service desk services and is contractually obligated to issue monthly status reports, service level assessments and regular vulnerability assessment audits. In addition, vendor service level requirements are reviewed at the end of each contract year for possible improvement.

OCIT is currently in the process of making advanced threat protection available for email for countywide computers. This software identifies and strips dangerous contents, such as hyperlinks, from emails before they reach county employees.

The county is also looking at using regional cooperative agreements (RCAs) for anti-virus software, as well as for more sophisticated endpoint protection software that addresses as-yet-unknown malware. An RCA negotiated by OCIT would allow departments, agencies or other countywide government entities to acquire software much more efficiently without conducting a separate request for proposal (RFP) process. OCIT is also considering implementing computer-based data loss prevention technology, which would block the loss of sensitive privacy information from files and attachments on user workstations as well as from the network.

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Several individual county agencies have also taken steps to improve cybersecurity. For example, the Health Care Agency (HCA) recently purchased a user “sandbox” system (secure and contained) to detect and arrest malware. The Sheriff's department mobile units are now password protected and data is encrypted in transit. At least one county agency is moving to full disc encryption on all laptops for maximum protection from loss or theft.

Password Management for All County Devices

Weak, default or stolen passwords accounted for 63% of confirmed data breaches in 2015 (Verizon, 2016). The increasing use of email addresses instead of more unique user names or passwords is exposing an even greater number of users to attack (Phishlabs, 2017). Best practices recommend regular password maintenance and the use of multi-factor authentication. Multi-factor authentication includes, in addition to a strong password, an additional layer of user-unique information, which could include physical access tokens or biometrics, e.g., fingerprints. Different passwords for each application and system the user accesses are generally recommended in order to limit vulnerability when one system or application is compromised.

The county does not currently mandate multi-factor authentication on county endpoints, such as workstations, laptops, tablets and smartphones and password management is typically under the control of the end user, rather than the organization. Employees who connect to county systems remotely, however, use encrypted access to the county Virtual Private Network (VPN) using multi-factor authentication with a token or a special numeric code.

Patch and Update Management

Over 80% of cybersecurity incidents are thought to stem from the exploitation of known vulnerabilities (Verizon, 2016). The timely and complete installation of patches and updates as they are released by vendors is therefore key to maintaining cybersecurity endpoints. This was highlighted by the WannaCry virus attack in May 2017. At the time of the attack, the Windows vulnerability was known and a patch for Windows was available but, in spite of this, over 200,000 servers and computers in over 150 countries were infected. This suggests that organizations are slow to patch significant vulnerabilities. As vulnerabilities are identified by manufacturers or users, including “white hat” (friendly) researchers, vendors issue patches to their applications and operating systems that eliminate these access points. Instituting preventive measures, such as patching and version updates, promptly are therefore more valuable than increased vulnerability testing (SANS Institute, 2017).

County agencies and departments often resist system downtime necessary to install patches, but most conduct nightly user data backup to mitigate the potential impact of a breach. While timely backup can be effective against “phishing” attacks (those that gain access through fraudulent emails) the backup itself can become corrupted if the attack is not discovered in time.

In a recent shared services pilot report, OCIT noted that there were over 60 different endpoint operating system configurations in use just in the pilot group. This is another indication of the diversity that exists in the county that makes timely patching and updating of county endpoints

difficult. In 2017, OCIT developed and received approval for consistent guidelines for this pilot group as to when and how county computers receive patches and updates (Orange County Information Technology, 2017).

Data Encryption

Data encryption (encoding) of sensitive data is a very effective defense against cyber attack, especially in the case of mobile devices. Data encryption safeguards data even if a hacker successfully penetrates county systems or comes into possession of a mobile device that contains sensitive data. The encrypted data is useless to them without the access key. Encryption of county data across agencies is not consistent, but may not be required, depending on the nature of the information and the risk associated with its loss. Currently, some data stored at the IT Data Center (e.g., HCA data) on dedicated servers is encrypted, and at least two agencies, the HCA and Social Services Agency (SSA), are moving to full disk encryption on all laptops. OCIT is also including implementation of both at rest and in transmission encryption of sensitive data in the county's formative 5-year cybersecurity roadmap.

New Cyber Defense Tools

Application of artificial intelligence and machine learning (ML) technologies to cybersecurity has been identified as one of five key cyber trends for 2017 (Straight, 2017). OCIT is currently evaluating an ML endpoint anti-malware system which is promising for detecting new cyber threats. It includes identification of zero day vulnerabilities (so-called because they come to light when there are zero days to fix them) and a sandbox in which malicious websites, downloads, or attachments are isolated, keeping county data secure.

Typically this technology performs real-time monitoring, correlation and analysis of logged event data, and activity using advanced applied mathematical models to alert cybersecurity to suspicious items. In addition, ML can be used to identify previously un-encountered threats that would otherwise go undetected.

Mobile Device Security Management

The use of mobile devices (smartphones, tablets) are becoming universal and can pose their own unique security challenges to an organization. Various protective measures can be deployed to mitigate the risk of a breach through mobile devices, including:

- Robust access control, including two-factor password authentication and biometrics.
- Encryption.
- Automated backup.
- Remote “find and wipe” tools that search for and destroy malicious files.
- Regular and timely updating of the operating system.
- The installation of applications only from trusted sources.
- Denying “jailbreaking,” which removes manufacturer or carrier restrictions on mobile devices.
- Regular and timely updating of applications.
- Regular maintenance of all third-party passwords.

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- Awareness of phishing emails or alerts.

While the county uses a VPN and secure File Transfer Protocol (FTP) for external communications and data transfer, mobile devices may be compromised in several ways. When employees transfer between departments, they currently may take their county-issued mobile devices with them without any IT review. Also, mobile devices, their operating systems, and their applications are currently not patched and updated in a timely fashion. Mobile devices, of which there are many in county government, are particularly subject to theft and subject to different policies across departments and agencies. Most departments are using mobile device management software, but this is not centralized or standardized as yet, and many devices are not currently registered in the management software and so are not currently included.

Collaboration

Collaboration has been the cornerstone of federal and state strategies for strengthening the nation's cybersecurity. Orange County is fortunate to have one of the five California fusion centers in the state, activating the collective strategy. Implementing collaboration at the local level, however, has been mixed.

Part of OCIT's mission is to foster a work environment that values collaboration and teamwork and leverages the diverse skills and experiences of the organization, but this is challenging with 22 different agencies, particularly from a technology standpoint (Orange County Information Technology, 2017). OCIT's authority only extends to appointed department heads and arises through the support of the CEO and the BOS. County government entities generally operate independently of the BOS, however, supervisors often sit on the entities' governing boards. These independent entities include elected agency executives, who have complete authority over the function of their departments with the exception of budget issues; Joint Power Authorities (JPA); city governments; special districts; and school districts. The actual cybersecurity effort is focused at the county department and agency level and is heavily dependent on the number of staff and funds available in a given entity.

Information technology departments across the county have operated using a decentralized model since 1996, with agencies independently staffing personnel and procuring products and services. This has resulted in reliance on systems using outdated technology; inconsistent and inadequate security standards, policies and training; and low levels of cross-agency collaboration and teamwork (Orange County Information Technology, 2017). County departments and agencies are generally very concerned with end user convenience and achieving business goals and are reluctant to accept what they perceive as a one-size-fits-all approach to cybersecurity. For example, the OCGJ heard that stringent network filtering was responsible for slower response times and user dissatisfaction. Departments feel that centralized alert notification, vulnerability, penetration testing, policies, procedures and standards, while helpful in some respects, should be individually tailored to enable rather than restrict the unique business of the department. OCIT is sensitive to these concerns. For example, an exception procedure is proposed within standardized county cybersecurity policies and procedures to accommodate individual departmental business needs. In addition, the county Technology Council meets

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bimonthly to identify and recommend business process improvements and facilitate agencies' collaboration on cybersecurity.

The cybersecurity joint task force of the county IT Executive Council, representing OCIT, the county counsel, county risk management and several departmental administrative services, facilitates collaboration and visibility of countywide efforts, meeting monthly to jointly develop best-practices-based policies and procedures.

In general, county departments and agencies are interested in receiving timely information about cybersecurity, but there are currently only a few avenues to do so. Most departments tend to collaborate with similar agencies but do not actively seek out and collaborate with OCIT. Some agencies and departments, including the Public Defender, HCA and SSA, are beginning to collaborate with OCIT. Some county entities that have had the opportunity to foster cybersecurity collaboration between county groups include:

- The Cybersecurity Task Force: This body was established in April of 2017 with a goal of putting cybersecurity standards in place.
- The Cybersecurity Working Group: The original county bimonthly working group was not effective because it was not made up of decision makers and participation was not mandatory; it was discontinued in 2016.

To foster collaboration, awareness and visibility of cybersecurity issues, and adoption of best practice security activities and programs, OCIT staff attend meetings of other county government entities, including cities; are developing a cybersecurity website, scheduled to be available in the summer of 2017; make cybersecurity presentations to county department heads; and negotiate RCAs for cybersecurity products and services that allow all county government entities to use these products and services through sub-agreements without having to go through a separate RFP process.

Pooling resources to monitor cybersecurity alerts, ensure rapid alert dissemination, and share cybersecurity standards and best practices can reduce the resources required to effectively defend against cyber attack. Orange County currently collaborates with several government sources of cyber threat alerts, including:

- The Orange County Intelligence Assessment Center (OCIAC).
- The Multi-State Information Sharing and Analysis Center.
- The United States Computer Emergency Readiness Team.
- Homeland Security's FireEye Insight Portal, which includes unclassified alerts without identified sources.

Alerts and advisories are currently received by OCIT and sent out through the county's central public information office to all county departments and some cities. OCIT is working to put cybersecurity alerts on a new countywide cybersecurity portal as well. This portal was recently launched for use by county departments. In addition, OCIT distributes monthly summaries of threats directed at county systems.

Sharing of best practices and standards is welcomed by county government entities, but their application varies widely across county agencies and departments and ranges from the use of best practices and standards developed internally to those developed by national bodies, such as

NIST and Homeland Security. There are a number of national, state and regulatory bodies that provide cybersecurity standards and best practices (Appendix A).

Third Party Vendor Management

The county uses two main third party IT vendors. The county's agreements with these vendors for network maintenance and desktop support, respectively, mandate that they both purchase and maintain insurance that includes "Professional Errors or Omissions" coverage or "Cyber or Technology" and "Privacy Liability" coverage with a \$20,000,000 limit.

Some of the most significant recent cyber attacks, such as the 2013 Target breach, resulting in very public consequences, originated with a third-party service provider (Chuang, 2017). In Orange County, the 2016 phishing attack on OCTA occurred through a third-party vendor and resulted in the loss of a large amount of data and significant recovery costs for the agency.

Best practice vendor management in the area of cybersecurity includes effective contract clauses with service level agreements covering cybersecurity documentation, response times, backup and recovery procedures; contractual provisions for auditing the vendor's security and their cybersecurity capabilities; and appropriate warranties and indemnities. OCIT is currently working with procurement to review the cybersecurity contract language in clauses used in their third party IT vendor contracts, and is now part of the review process for select county contracts. The most recent county contract language requires that the county be provided with copies of vendor audits. The county is also considering including a requirement in RFP's for such vendors to have at least \$1,000,000 in cybersecurity insurance. In the case of sole-source contracts through agencies, the county could be exposed in the event of a breach. OCIT is also urging the use of RCAs to ensure consistent application of best practices regarding vendor management, as well as to save resources across the county.

Administration

Documented Procedures

When a cybersecurity breach occurs, a rapid and effective response per a documented plan can be critical to mitigating the damage. This is especially important since the actual nature of the cyber threat may not be known in advance. The planned response to the incident must include stopping the attack and returning critical systems to operational status, as well as preserving the evidence to understand the attack and its origins. There are a number of good incident response plan templates published by organizations such as the U.S. Department of Justice (U.S. Department of Justice, 2015) and NIST.

Good incident response procedures include periodic testing, as well as practicing the plan internally and with vendors and partners using simulations and table-top exercises (ISO - ANSI, 2010). The county is currently working on the creation of a standard comprehensive incident response plan with an approved exception form to allow agencies to customize the plan for their specific regulatory requirements and needs. Once approved and implemented, the county intends to test the plan's effectiveness annually.

Training

The OCGJ heard from various sources that the highest and most persistent cybersecurity risks in the county are phishing attacks and lax end user practices. From November of 2016 to January of 2017, 66% of incoming county emails were identified as spam, phishing or virus laden. Only 34% were legitimate.

The county recently contracted with a third party vendor to provide cybersecurity training for county employees. This is an online, mandatory and customizable annual training program that covers ransomware, password guidelines, safe computing, social engineering, phishing, physical security, privacy, mobile devices, social media and malware. Any county entity, including the cities, can benefit from county pricing for this training program using a sub-agreement. The annual Cyber Security Awareness Training (CSAT) was implemented January 18, 2017, through a memorandum to all county employees from the CEO's office. Fully 89% of county employees with network access (5518 people) had completed the online training as of the publication of this report and full completion of the training requirements by all county employees is anticipated by the end of 2017.

Another example of countywide training that encompasses cybersecurity is the mandatory biennial two-hour fraud training program implemented in 2016 and conducted by the DA and Auditor-Controller.

At the department level, IT training that may include cybersecurity is currently provided by several third party vendors, and training materials have also been developed internally by department personnel. An example is the internal training by the ROV, which used internal training prior to the last election focused on phishing and vendor testing. Other county agencies also use outside third parties for training focused on specific areas, such as the HIPAA training conducted for the county by an insurance company. HCA, SSA, Sheriff, DA, Public Defender and ROV do the most cybersecurity-related training. The type and frequency of training varies widely in other county agencies and departments. Development of additional general employee and IT department cybersecurity training will take time due to the involvement of county unions and other stakeholders in the process.

The county would like a minimum level of IT cybersecurity training required for all county employees, to have cybersecurity management certified as Certified Information Systems Security Professionals, and for all department analysts to be qualified to handle cybersecurity incidents.

Periodic testing or auditing of training effectiveness is apparently not currently conducted by any county agencies or departments.

Cybersecurity Audits

The current contracts with the county's network support vendor and its desktop support services vendor have service level guarantees and provisions for county audits of vendor cybersecurity

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procedures. However, currently there are no countywide standard operating procedures for the conduct of cybersecurity audits and assessments and most departments do not currently audit cybersecurity.

An OCIT audit by the Auditor-Controller's office that includes cybersecurity, which is scheduled for 2017, is expected to include a review of countywide cybersecurity risk assessments that were recently contracted by OCIT.

Likely to be hampering the county's audit efforts, the county Director of Performance Audit position is still vacant and the recruiting process is ongoing as of the date of publication of this report. A few individual agencies have their own audit programs. For example, SSA has its own internal security audit program in place and the ROV has an audit pending by an outside vendor. The CPO will be conducting a HIPAA audit at the HCA in 2017 and the Sheriff did a security audit in 2015. The DA, Sheriff and Probation department are also required by the Department of Justice (DOJ) to conduct annual audits in order to maintain access to DOJ systems.

Cybersecurity Testing Procedures

Currently there are no countywide standard operating procedures for the conduct of cybersecurity penetration testing (probing for computer or network vulnerabilities), nor for one-time compromise testing, and the OCGJ found that a minimal amount of cybersecurity testing or none at all is done at the department level.

The OCIT Data Center, through the county desktop services vendor, does monthly cybersecurity testing and did a penetration test and security assessment in 2016. Examples of testing at the agency level include 2014 and 2015 HCA application penetration tests and HCA currently conducts an annual risk assessment in accordance HIPAA. The Sheriff's department conducted a recent penetration test and conducts a real-world testing exercise twice a year. The ROV conducted a simulated election night cyber attack with OCIT prior to the last election.

As to vulnerability testing and assessments, the OCGJ was informed that current departmental assessment programs are embryonic except for HCA, which is required to have robust programs in place in compliance with HIPAA and as incentivized by the Health Information Technology for Economic and Clinical Health Act (HITECH), which strengthens HIPAA rules concerning the electronic transmission of health information.

Effective Cybersecurity Staffing

Staffing for cybersecurity in the county is a challenge shared across all public agencies. Approximately 43% of the county's current IT staff will be age-eligible for retirement within the next four years (Orange County Information Technology, 2017). The OCGJ were repeatedly told by those we interviewed that it is a challenge to staff cybersecurity positions. Demand for the cybersecurity skillset is high at all levels, outpacing the ability to train enough otherwise qualified IT employees. In addition, the job is often a high pressure position, dealing with crisis situations (Straight, 2017). Due to these factors, the hiring process in the county can take from 8 weeks to 8 months, depending on the background check and other requirements of the position. The county budget cycle can complicate and lengthen the hiring process considerably, if a hiring

freeze is put in place or a selected candidate does not accept the position and the process must be restarted. In some cases, though, cybersecurity positions have been filled using other departments' candidate lists to advance the process, though this tactic may result in less qualified and/or inexperienced hires.

The process of staffing cybersecurity positions can also be complicated by the rapid pace of change in the cybersecurity arena, leading to outdated county IT job classifications, resulting in descriptions and salary levels that do not keep pace with the private sector cybersecurity job market. Also, the state of current county compensation is not favorable compared with those available in the private sector. The fact that changes to job classifications and benefits must be negotiated with all stakeholders increases the time required to respond to market changes. All of the above make it particularly difficult for the smaller departments to effectively staff cybersecurity.

OCIT has a well-qualified and experienced chief information security officer (CISO) in place and a staff of six, with anticipated growth to eight. OCIT has recently added audit expertise that will assist in department cybersecurity self-assessments with the addition of a cyber resilience manager in its Enterprise Security Group, with the goal of reducing incident recovery times across the county. Staffing this audit position will require a certified cybersecurity auditor. OCIT also has a county privacy officer (CPO) in the cybersecurity group whose primary goal is to reduce breaches. The CISO has held the position for slightly over a year. The CPO has been part of OCIT for slightly over a year, having transferred from HCA.

IT staff at the agency and departmental level varies from one to over 100 IT employees and ranges from no cybersecurity support to four dedicated staff. The majority of the departments surveyed by the OCGJ use IT analysts supporting cybersecurity as part of their overall job assignment. It was suggested that it would be productive for each department to have a certified departmental information security officer (DISO) and that this could be a shared services position, making it possible for smaller departments to use only the amount of DISO resources that they need.

Risk Mitigation

Risk Assessment

Per best practices, after assessing cyber vulnerabilities, county agencies and departments must identify and decide what level of business risk each will accept. Risk assessment includes both identifying what information is sensitive and what level of protection is required. An organization must also know what sensitive information vendor partners store and have access to, who is responsible for it, as well as where it is kept. NIST provides a methodology for inventorying information, determining the likelihood of an incident and prioritizing necessary action (NIST, 2016).

A 2014 audit by a national auditing firm noted that the county did not have any formal enterprise risk management program in place (Plante Moran, 2014) and the OCGJ did not find any formal countywide risk assessment and management programs in place. Several county departments

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indicated their cybersecurity goal was risk mitigation, not risk avoidance, but a majority indicated that their goal is to have no cyber incidents or breaches.

On April 11, 2017, a consulting firm was approved by the BOS to conduct baseline security assessments for all county departments, including those with elected heads, and departments are directed to complete these assessments by June of 2018. It is anticipated that this project will include assessments in all critical areas of cybersecurity, including the host (computer and server), network devices, network mapping and traffic analysis, and a review of cybersecurity policies, processes and procedures, including physical security. The BOS directed OCIT to provide a written report on the state of county cybersecurity on a bi-annual basis, starting November 14, 2017. Publicizing the trending information on the most common and dangerous vulnerabilities to county data and information systems, plus the completion status of departmental assessments, are expected to motivate departments to use cybersecurity product and service RCAs to strengthen their cybersecurity. The county is also evaluating the possibility of renegotiating or rebidding existing cybersecurity contracts for other products and services to set up additional RCAs.

The county agencies with digital data of highest risk were identified as being:

- HCA, due to the large amount of personal health information;
- SSA, due to the type of information, number of records kept and length of time retained;
- Assessor, due to building permit and property ownership plus payment information;
- Any department that keeps digital personally identifiable information; and
- All departments in the case of mobile device loss.

Insurance Protection

Having a cybersecurity insurance policy is a key part of an organization's risk management arsenal. Insurance can mitigate many of the costs of a cybersecurity breach, such as:

- The cost of forensic investigation to determine the cause of the breach and how to prevent a reoccurrence.
- Notification of affected individuals.
- Identity monitoring by an outside organization, typically with periodic reporting to individuals whose information has been compromised.
- Legal costs.

The county currently has a cyber insurance policy with \$25 million in coverage for each claim as well as in the aggregate, and a \$250,000 deductible. The amount of coverage is driven in large part by the available budget. This policy covers network security, media, privacy and regulatory liability, data breaches, business interruption, data recovery and cyber extortion. While this amount was deemed sufficient by the county to cover a single agency breach, it may not be sufficient for a massive breach across multiple agencies where costs are driven by the amount of sensitive information compromised. The OCGJ was told the average cost per breach, at least in one government entity, could be \$200 per identity compromised. Using HCA as an example, 100,000 patient records could be exposed in a breach, resulting in a cost of \$20 million. The

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OCGJ was informed that in the very unlikely case of a massive breach involving 100% of the county's records, the cost could reach \$1 billion.

CONCLUSION

Maintaining cybersecurity in Orange County's multifaceted government is a complex challenge. Information that defines citizens' identity, health, finances, communications, and personal and commercial transactions is all saved on computers connected to the internet or stored in the cloud and is subject to cyber attack. The resources allocated to cybersecurity are determined by the degree of risk the county is willing to assume.

To further its cybersecurity initiatives, the county has a number of oversight bodies, an Enterprise Security Group with an experienced CISO, CPO and staff; a firewall-protected centralized network with email monitoring and intrusion protection. Anti-virus endpoint protection and data backup programs are in place in most county departments and agencies as well. There are also a number of county cybersecurity initiatives in development.

The county can draw from many national and state government cybersecurity bodies and programs to leverage its efforts. One of five California multiagency fusion centers devoted to identifying and issuing cybersecurity threat alerts is located in Orange County.

Although much has been done, the OCGJ has identified areas for further work to sufficiently protect county information. This requires sustained support by the BOS, as well as elected and appointed agency heads. Areas of need include countywide risk assessment and mitigation, trained cybersecurity staff, digital security management, increased collaboration countywide, third-party vendor management, and documented centralized procedures.

FINDINGS

In accordance with *California Penal Code Sections* §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "*Orange County's Digital Data: Is It Protected from Cyber Attack?*" the 2016-2017 Orange County Grand Jury has arrived at eight principal findings, as follows:

F.1. Orange County government entities are prime cyber targets, under constant cyber attack, and both public and private information held by these entities are not adequately protected.

F.2. The county is subject to many types of cyber attacks but phishing currently represents the highest risk to the county's sensitive information.

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F.3. Some county cyber attacks come through third-party vendors, who may not always be sufficiently protected.

F.4. The county has taken a number of steps to safeguard its digital data and systems against cyber attack, but there are a number of actions generally recognized as cybersecurity best practices that still need to be implemented.

F.5. County financial records do not separate out cybersecurity as a line item, making it hard to determine what resources are being allocated in the area and therefore what additional funds are needed.

F.6. Cooperation among county agencies is currently limited due to organizational and cultural issues including the visibility of available centralized OCIT cybersecurity support, the inward focus of county agencies and the fact that the influence of the BOS to compel collaboration is largely limited to county agencies with appointed heads that report to the county CEO and, to a lesser degree, the county agencies with elected heads.

F.7. OCIT has an effective team in place for addressing cybersecurity deficiencies, but is only in the formative stages of implementing centralized standards and best practices for cybersecurity. Outside OCIT's control, county government agencies are taking advantage of the county's cybersecurity initiatives to different degrees.

F.8. IT employees across county government are largely untrained and uncertified in cybersecurity, especially at the agency level. Staffing for cybersecurity is challenging due to outdated county cybersecurity job classifications and salary levels, as well as lengthy county hiring processes, particularly for those agencies requiring extensive background checks.

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation "*Orange County's Digital Data: Is It Protected from Cyber Attack?*" the 2016-2017 Orange County Grand Jury makes the following 18 recommendations:

R.1. The county should establish a periodic cybersecurity audit schedule for all third-party vendors that connect to county networks and systems by 12/31/2017.

R.2. OCIT should select, acquire and direct the implementation of computer-based data loss prevention capability by 12/31/2017.

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- R.3. The county should review, update and standardize all employee and contractor exit procedures to ensure the security of countywide sensitive information by 12/31/2017.
- R.4. OCIT should establish a countywide cybersecurity working group by 12/31/2017. Participation should be mandatory for County of Orange agencies that report to the CEO and highly recommended for other county government entities.
- R.5. OCIT should develop a formal five-year cybersecurity strategic plan as a separate part of the IT Strategic Plan in the next county strategic plan.
- R.6. OCIT should finalize a mandatory county incident response plan with procedures for individual agency exceptions and present it to the appropriate oversight bodies and BOS for approval by 7/1/2018.
- R.7. The county should include in its 2018-19 IT Strategic Plan the identification, documentation and categorization by risk of county digital sensitive information.
- R. 8. The county should annually review and update the amount and types of county cyber insurance based on the annual county risk analysis.
- R.9. OCIT should implement cybersecurity training and professional certification of all county IT analysts having cybersecurity as a part of their job responsibilities by 7/1/2018.
- R.10. OCIT should establish audit and test procedures to periodically, but no less than every two years, gauge the effectiveness of training and other cybersecurity measures by 7/1/2018.
- R.11. The county should establish separate budget line items for cybersecurity expenses and capital investments for the 2018-2019 budget.
- R.12. The county should implement the use of regional cooperative agreements for the acquisition of all cybersecurity related products and services by 7/1/2018.
- R.13. The county should review and update IT job classifications and salary levels to reflect the current job market by 6/30/18.
- R. 14. The county should develop a succession plan covering cybersecurity-critical positions by 6/30/18 to provide for continuity of these positions.
- R. 15. Procedures for updating and patching all county software and systems that have been established by OCIT for the shared services program should be made mandatory for all county departments and agencies that report to the CEO, and recommended for all other county government entities by 6/30/18.
- R 16. OCIT should draft and implement standardized procedures for mandatory use of full disk encryption and remote find/wipe capabilities for countywide mobile devices by 7/1/2018.

R. 17. OCIT should establish standardized procedures for IT's examination and removal of all sensitive information on county digital devices, prior to their removal from county premises through transfer, sale, scrap or reuse by 12/31/17.

R. 18. OCIT should establish standardized procedures for conducting periodic cybersecurity vulnerability and penetration testing by 12/31/19.

REQUIRED RESPONSES

The California Penal Code §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. DA, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency

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or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Orange County Board of Supervisors (Findings F.1. – F.8.; Recommendations R.1 - 18.).

Responses Requested:

County Executive Office (Findings F.1. – F.8.; Recommendations R.1., R.3., R.7., R.8., R.11., R.12., R.13., R.14., R.15.).

Orange County Information Technology (Findings F.1. – F.8.; Recommendations R.2., R.4., R.5., R.6., R.9., R.10., R.15., R.16., R.17., R.18.).

REFERENCES

- Akamai. (2016). *State of the Internet Security Q3 2016 Report*. Akamai.
- Chuang, E. (2017). It's Not You, It's Your Vendor: The Hidden Doorway to Phishing Attacks. *Legaltech news*, p. 2. Retrieved 5 1, 2017, from <http://www.legaltechnews.com/id=1202784938919/Its-Not-You-Its-Your-Vendor-The-Hidden-Doorway-to-Phishing-Attacks?kw=It%27s%20Not%20You%2C%20It%27s%20Your%20Vendor:%20The%20Hidden%20Doorway%20to%20Phishing%20Attacks&et=editorial&bu=Law%20Technology%20News&>
- Grimes, R. A. (2017). 9 new hacks coming to get you. *CSO Online*, p. 9. Retrieved 2 21, 2017, from http://www.csoonline.com/article/3171741/security/9-new-hacks-coming-to-get-you.html?idg_eid=c35b9224fe3bb5b632c1e442a73c4ba4&email_SHA1_lc=fa902d91c1aebeb660bfe968f17cf604cb88c00b&utm_source=Sailthru&utm_medium=email&utm_campaign=CSO%20Update%202017-02-2
- ISO - ANSI. (2010). *The Financial Management of Cyber Risk*. New York: Internet Security Alliance (ISA)/American National Standards Institute (ANSI). Retrieved 2 21, 2017, from <https://share.ansi.org/khdoc/Financial+Management+of+Cyber+Risk.pdf>
- Kaspersky. (2015). *The Threats From Within: How educating your employees on cybersecurity can protect your company*. Kaspersky Lab. Retrieved 2 17, 2017, from usa.kaspersky.com
- Masunga, S. (2017). Target settles with states over breach. *Los Angeles Times*. Retrieved May 24, 2017
- Microsoft. (2016). *Intelligent Security: Using Machine Learning to Help Detect Advanced Cyber Attacks*. Microsoft Corporation. Retrieved 2 2, 2017, from https://www.microsoft.com/en-us/security/intelligence?&WT.srch=1&WT.mc_id=AID__SEM_Ta9wKfnh
- National Association of Corporate Directors. (2017). *Cyber-Risk Oversight*. Washington, D.C., USA: National Association of corporate Directors. Retrieved 2 23, 2017, from <https://www.nacdonline.org/cyber>
- NIST. (2012). *Computer Security Incident Handling Guide - Special Publication 800-61*. National Institute of Standards and Technology, Computer Security, Information Technology Laboratory. Gaithersburg: National Institute of Standards and Technology. Retrieved 1 30, 2017, from <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-61r2.pdf>

Orange County's Digital Data: Is It Protected from Cyber Attack?

- NIST. (2013). *Glossary of Key Information Security Terms*. (R. Kisswel, Ed.) Retrieved 1 19, 2017, from National Institute of Standards and Technology: <http://dx.doi.org/10.6028/NIST.IR.7298r2>
- NIST. (2016). *Small Business Information Security: The Fundamentals*. Gaithersburg: National Institute of Standards and Technology Applied Cybersecurity Division, Information Technology Laboratory. Retrieved 1 30, 2017, from <https://doi.org/10.6028/NIST.IR.7621rl>
- Orange County Information Technology. (2017). *Implementing a Shared Services Strategy for Information Technology*. Santa Ana: OCIT. Retrieved 5 13, 2017, from http://cams.ocgov.com/Web_Publisher/Agenda01_24_2017_files/images/O00316-001666A.PDF
- Phishlabs. (2017). *2017 Phishing Trends & Intelligence Report: Hacking the Human*. Charleston: ECrime Management Strategies, Inc. Retrieved 2 27, 2017, from https://pages.phishlabs.com/rs/130-BFB-942/images/2017%20PhishLabs%20Phishing%20and%20Threat%20Intelligence%20Report.pdf?mkt_tok=eyJpIjoiWkdVeFpESTRNek0xTm1GaCIsInQiOiJNdFhhR1pvcUVmbXdxXaDhrMWE5KzVvV25qRDRodzFKdnlsK3NyeGVZWWNkYTNO0SDER2pWVG81YTJlTzdvc05zOH
- Plante Moran. (2014). *Enterprise Resource System Security Audit Report (Phase 3.0, 4.0 and 5.0 Combined)*. Cerritos: Plante Moran.
- Ponemon Institute. (2016). *2016 Cost of Data Breach Study*. Ponemon Institute.
- Privacy Rights Clearinghouse. (2017). *Chronology of Data Breaches*. Retrieved from Privacy Rights Clearinghouse: <https://www.privacyrights.org/data-breaches>
- PwC. (2016). *Key findings from the Global State of Information Security 2017*. PwC. Retrieved 2 17, 2017, from <http://www.pwc.com/gx/en/issues/cyber-security/information-security-survey/assets/gsis-report-cybersecurity-privacy-possibilities.pdf>
- SANS Institute. (2017). *Cyber Security Trends: Aiming Ahead of the Target to Increase Security in 2017*. Bethesda: SANS Institute. Retrieved May 12, 2017, from <https://www.sans.org/reading-room/whitepapers/analyst/cyber-security-trends-aiming-target-increase-security-2017-37702>
- Straight, J. (2017). *5 Key Cyber Trends Dominating the Early 2017 Discourse*. Retrieved 3 6, 2017, from Legaltech News: <http://www.legaltechnews.com/id=1202780585472/5-Key-Cyber-Trends-Dominating-the-Early-2017-Discourse?kw=5%20Key%20Cyber%20Trends%20Dominating%20the%20Early%2020>

Orange County's Digital Data: Is It Protected from Cyber Attack?

17%20Discourse&et=editorial&bu=Law%20Technology%20News&cn=20170306&src=EMC-Email&pt=Daily%20Ale

Symantec. (2016). *Internet Security Threat Report*. Symantec. Retrieved 1 20, 2017

U.S. Department of Justice. (2015). *Best Practices for Victim Response and Reporting of Cyber Incidents*. Cybersecurity Unit, Computer Crime and Intellectual Property Section, Criminal Division. U.S. Department of Justice. Retrieved 1 30, 2017, from <https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/04/30/04272015reporting-cyber-incidents-final.pdf>

Verizon. (2016). *2016 Data Breach Investigations Report*. Verizon.

APPENDICES

Appendix A: Sources of Cybersecurity Standards and Best Practices

AICPA (American Institute of CPAs) Cybersecurity Resource Center - <http://www.aicpa.org/InterestAreas/FRC/AssuranceAdvisoryServices/Pages/cybersecurity-resource-center.aspx>

BugTraq by SecurityFocus (Symantec) - <http://www.securityfocus.com/>

Cal OES (The California Cybersecurity Task Force) - <http://www.caloes.ca.gov/for-individuals-families/cybersecurity-task-force>

CIS (Center for Internet Security) - <https://www.cisecurity.org/>

CSIS (Center for Strategic & International Studies, Cyber Task Force) - <https://www.csis.org/programs/strategic-technologies-program/cybersecurity/csis-cyberpolicy-task-force>

Department of Justice, Cybersecurity Unit – <http://www.justice.gov>

FCC (Federal Communication Commission, Planning Guide) - <https://transition.fcc.gov/cyber/cyberplanner.pdf>

The Federal Risk and Authorization Management Program (FedRamp) - <https://www.gsa.gov/portal/category/102371>

FINRA (Financial Industry Regulatory Authority) - www.finra.org/

FTC (Federal Trade Commission) - <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/data-security>

FBI (Federal Bureau of Investigation) - <https://www.fbi.gov/investigate/cyber>

GSA Cybersecurity Site - <https://www.gsa.gov/portal/category/101078>

HIPAA (Health Insurance Portability and Accountability Act) - <https://www.hhs.gov/hipaa/>

HITECH (The Health Information Technology for Economic and Clinical Health Act) - <https://www.hhs.gov/hipaa/for-professionals/special-topics/HITECH-act-enforcement-interim-final-rule/index.html>

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ISACA (Information Systems Audit and Control Association) -

<https://www.isaca.org/pages/default.aspx>

ISO/IEC 27032 Cybersecurity Standards -

<http://www.iso27001security.com/html/27032.html>

ISO/IEC 27001 Information security management -

<http://www.iso27001security.com/html/27001.html>

MS-ISAC (Multi-State Information Sharing Analysis Center) - <https://msisac.cisecurity.org/>

NASCIO (National Association of State Chief Information Officers) -

<https://www.nascio.org/>

National Council of ISAC's - <http://www.isaccouncil.org/>

The National Cyber Security Alliance (NCSA) - <https://staysafeonline.org>

NCCIC (Homeland Security National Cybersecurity & Communications Integration Center)

- <https://www.us-cert.gov/nccic>

NHTSA (National Highway Traffic Safety Administration) - <https://www.nhtsa.gov/>

National Institute of Standards and Technology (NIST)

Standards - <https://www.nist.gov/cyberframework>

US National Vulnerability Database – <https://nvd.nist.gov>

NSTIC (National Strategy for Trusted Identities in Cyberspace -

https://www.whitehouse.gov/sites/default/files/rss_viewer/NSTICstrategy_041511.pdf

OCIAC (Orange County Intelligence Assessment Center) - <https://ociac.ca.gov/>

Orange County Cybersecurity Program -

<http://www.ocgov.com/gov/ceo/cio/initiatives/security>

OCRCFL (Orange County Regional Computer Forensics Lab) - <https://www.refl.gov/orange-county>

PRC (Privacy Rights Clearinghouse) - <https://www.privacyrights.org/data-breaches>

Presidential Executive Order 13636 (Improving Critical

Infrastructure Cybersecurity (EO 13636); <https://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf>

SCHTTF (Southern California High Tech Task Force - <https://oag.ca.gov/ecrime/httap>)

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Security Intelligence Web Site - <https://securityintelligence.com/>

UL Labs Cybersecurity Site (<http://www.ul.com/cybersecurity/>)

US-CERT (United States Computer Emergency Readiness Team) - <https://www.us-cert.gov/>
U.S. Department of Homeland Security Cyber Security Resources –
<http://www.dhs.gov/cyber>

U.S. Department of Homeland Security (National Cybersecurity (FFDRC) Common Vulnerabilities Exposures System Lists) - <https://www.mitre.org/centers/national-cybersecurity-ffrdc/who-we-are>

Appendix B: Types of Cyber Attacks

Denial of service (DoS). This type of attack involves overwhelming the web site or device with so many incoming requests that it results in prevention of authorized access to resources or delay of time-critical operations. (Time-critical may be milliseconds or it may be hours, depending upon the service provided (NIST, 2013)). This can result in the unavailability of needed services or devices for a period of time, with a resulting negative impact on productivity and responsiveness. Denial of Service attacks increased 71% increase from 2015 to 2016 (Akamai, 2016).

Compromise of the Internet of Things (IoT). The IoT is the worldwide grouping of smart devices all connected via the internet and capable of sending and receiving data. These devices include PCs, servers, routers, switches, smart phones, tablets, Internet phones, smart light bulbs, web cameras, cloud-connected data storage devices, DVD's, home routers, smart TVs and connected home/home security equipment as well as printer/copiers, cars, industrial control systems such as utility providers, HVAC and building management systems, medical devices such as pacemakers, heart monitors, IV drip devices, diagnostic machinery and even web connected toys (Grimes, 2017). Manufacturers are increasingly connecting their devices to the internet with the ability to stream (send) data out but many lack the ability to be patched or managed (Akamai, 2016, p. 29).

Social Engineering. A general term for human error, device loss, theft, or unintended disclosure. Generally this involves attackers trying to trick people into revealing sensitive information or performing certain actions, such as downloading and executing files that appear to be benign but are actually malicious (NIST, 2013). Human beings are generally recognized as the weakest link in the cybersecurity chain in any organization and, according to a 2015 survey by Kaspersky Labs, 42% of confidential data loss is due to organization employees (Kaspersky, 2015). The end result is that no matter how much is spent on state of the art cybersecurity software, your data is just one gullible click away from compromise.

Phishing, a type of social engineering, is an email or electronic communications scam targeted towards a specific individual, organization or business. The email may offer a prize, access to a fortune in another country or appear to be from a company executive directing a transfer of funds. Phishing is the top vector identified in 2016 for cyber attacks (Phishlabs, 2017). According to a recent survey, in 2016, 38% of respondents reported phishing incidents (PwC, 2016). The volume of phishing attacks on government entities increased by 80% in 2016, primarily due to attacks on tax entities, particularly the IRS (Phishlabs, 2017). There are several variations of Phishing:

Spear-phishing, focused on a specific individual or group;

Whale phishing, focused on a senior executive;

Business email compromise occurs when executive email accounts are used to direct a company employee to transfer money to a fictitious supplier. In January of 2015, the FBI indicated that thieves had stolen nearly \$215 million in the previous 14 months using this type of scam.

Ransomware, the most common type of phishing (Phishlabs, 2017), targets end users and the networks they have access to, uses malware to encrypt the user's files (and files

of other computers on any network connected to that user's computer), allowing the cybercriminals to demand a ransom in exchange for the key to unlock the encrypted files. Ransomware incidents increased 35% in 2015 (Symantec, 2016) and, in addition to PCs, smart phones, communication systems, smart watches and even televisions have been found to be vulnerable (Symantec, 2016). Indicators of a phishing email include:

- Spelling or grammatical mistakes.
- An unfamiliar sender, sent-from address, or URL.
- The sent-from name does not match the sender.
- A request to transfer money.
- The sender asks for personal information.
- What is offered seems too good to be true or unreasonable.
- The language in the email is urgent or threatening.

Vendor as a vector. Most organizations have business relationships with a number of outside partners and vendors, many of whom are now digitally connected to the organization's IT systems and data. These relationships need to be assessed and managed in the area of cybersecurity. This is when the intruding malicious actor penetrates a vendor that has legitimate access to another organization's data (point of sale system vendors, database services, etc.) and uses the vendor-partner's legitimate credentials to gain access to the organizations data. Organizations should consider the impact of potential key vendors cyber breaches and ensure that vendor contracts contain clauses mandating vendor cybersecurity, include service level guarantees for cybersecurity and provisions for audit of the vendor's cybersecurity systems and status.

Penetration Hacking/Intrusion is the unauthorized bypassing of a system's security mechanisms. This is generally accomplished through the use of malware, which are computer programs written especially to penetrate network and operating system defenses. One example of this is a zero-day vulnerability (see below). This highlights the necessity of updating and patching the software being used by an enterprise on a timely and complete basis to avoid these attacks.

Website Compromise, also known as **water holing**, is the use of hidden or deceptive programming on a website to capture data about the user visiting the website or insert malicious programming onto the user's computer and/or network. A user clicking on "allow" or "confirm" in a drop down menu can execute the malicious code and can infect the users system (Kaspersky, 2015). There were over one million web attacks against users daily in 2015. Over 75% of legitimate websites have unpatched vulnerabilities and 15% of those are deemed critical (Symantec, 2016), meaning that it takes little effort for hackers to gain access and use these websites for their own purposes.

Zero-Day Infections/Attacks are unknown or undisclosed security vulnerabilities in computer software or applications for which either the patch has not been released or the application developers were unaware of or did not have sufficient time to address, leaving the software's author with zero days in which to create patches or advise workarounds to mitigate its actions. In 2015, the number of new zero day vulnerabilities more than doubled, from 54 in 2014 to 154, up from 23 in 2013. (Symantec, 2016). One disturbing trend is the commercialization of exploit

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kits on the black market, making it easier for hackers to quickly take advantage of vulnerability. (Symantec, 2016)

Appendix C: Orange County Information Technology Oversight Bodies

The IT Executive Council consists of the county chief information officer, chief financial officer, chief human resources officer, one elected department head, two IT customer department heads from the shared services pilot program; it is chaired by the county CEO. This group meets quarterly and is responsible for reviewing and approving IT policy, IT strategic plans, annual IT project funding recommendations and IT operating and performance metrics.

The Technology Council meets bimonthly and provides technical guidance and recommendations to the IT Executive Council regarding IT initiatives, policies and investments.

The IT Shared Services Steering Committee provides executive leadership for the implementation of an IT service strategy enabling county agencies and departments to access central contracts.

The IT Investment Review Committee evaluates, prioritizes and makes recommendations to the IT Executive Council regarding IT project proposals and associated funding requests.

The Cyber Security Joint Task Force pursues several important cybersecurity initiatives expected to be implemented in 2017. Consisting of representatives from county counsel, risk management, department administrative services and information technology, and chaired by the county CISO, the group is developing cybersecurity policies and procedures with common standards for all county departments.

The Audit Oversight Committee, which oversees all county audit functions and consists of representatives from the offices of the Auditor-Controller, Treasurer, CEO, all appointed and elected agency heads, County Counsel and the CISO.



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