

# **A TEMPEST IN A TEAPOT OR A VIOLATION OF PUBLIC TRUST?**

**2003-2004 Orange County Grand Jury**

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## **SUMMARY**

The 2003-2004 Orange County Grand Jury participated in a grand jury investigation conducted by the District Attorney's Office over a seven-month period. This investigation explored the actions of personnel within the Orange County Sheriff-Coroner Department (hereafter Orange County Sheriff's Department) stemming from an incident in October 2003. A deputy approached three young men, one a juvenile, in San Clemente and found marijuana in their possession. One of the youths, the son of a high-ranking official in the Orange County Sheriff's Department, was free on bail in an unrelated matter.

Amid a great deal of media attention, the Grand Jury heard the sworn testimony of witnesses and reviewed audiotapes and videotapes. The Office of the District Attorney determined that there was insufficient evidence to prove a violation of criminal law by any Orange County Sheriff's Department personnel beyond a reasonable doubt. However, the Grand Jury concluded that interference at the higher levels of the Sheriff's Department gave the appearance of unethical behavior and a "cover up."

The Grand Jury anticipates that the investigation by the Sheriff's Department Internal Affairs Division will resume.

## **INTRODUCTION**

While the Grand Jury recognizes the professionalism and dedication of the overwhelming majority of the Orange County Sheriff's Department personnel, an incident occurred that reflected poorly on the Department. On Oct. 26, 2003, a field deputy with the Orange County Sheriff's Department observed three young men who appeared to be videotaping a skateboarding session in a private parking lot in a San Clemente industrial area. The hour was late and the activity appeared to be in violation of "No Skateboarding" signage posted on the property. When the deputy approached the skateboarders to investigate, he unwittingly unleashed a storm of controversy, which raised questions about the integrity of his agency.

Because one of the young skateboarders (who happens to be the son of a high-ranking Sheriff's Department official) was free on bail awaiting trial in a high-profile case, an incident that might otherwise have gone unreported and unnoticed has generated considerable media coverage, prompted months of investigation and inquiry and may have contributed to significant personnel changes in the Department. As the event unfolded, video recordings of the incident and audiotapes of conversations between various command levels of the Department memorialized a series of errors, poor decisions and suspicious actions.

## **PURPOSE OF STUDY**

Within weeks of the incident, the 2003-2004 Orange County Grand Jury was asked by the District Attorney's Office to participate in a series of investigative hearings to determine if there was probable cause to issue criminal indictments against any of the individuals involved. Although the Orange County District Attorney's Office has filed no criminal charges against anyone involved in the initial incident or the activities that followed, a resumption of the inquiry by the Sheriff's Internal Affairs Division is anticipated.

Numerous news accounts have reported that the Orange County Grand Jury has been conducting an investigation of the Sheriff's Department's handling of the incident. Public interest in the Grand Jury's inquiries and fairness to personnel in the Sheriff's Department who have been the subject of the inquiries dictate that a report be issued before June 30, 2004, when the current Grand Jury Panel's term expires. However, because the Grand Jury recognizes that information collected for this investigation could jeopardize other legal actions that are underway, the date of public release of the document will be left to the decision of the Supervising Judge of the Orange County Grand Jury.

## **METHOD**

This inquiry took place over a period of seven months. More than 10 witnesses, including Sheriff's Department personnel of various ranks who were involved in this matter, testified under oath before the Grand Jury. The Grand Jury reviewed audiotapes and videotapes of the contact and telephone conversations related to the incident. Documents including Sheriff's Department logs and reports, a press release and correspondence with an outside agency were reviewed. Also, the Grand Jury consulted the *Orange County Sheriff-Coroner Department Manual of Rules and Regulations*, a division's *Operations and Procedures Manual* and *Sergeants Operations and Procedures Manual*.

## **CHRONOLOGY OF EVENTS**

Prior to documenting the events that occurred on the evening hours of Oct. 26, 2003, and the days following, it is important to consider the incident in the context of the overall morale and culture of the Sheriff's Department that existed prior to the night in question. Many of the activities that occurred are likely a direct consequence of a pervasive sense of intimidation and fear of retaliation at all levels of the Department that became apparent from the testimony and actions of several witnesses.

Numerous individuals reported that a high-ranking official in the Department exercised strict control over subordinates and employed coercive and dictatorial methods of personnel management. Because this management style naturally cascaded down through the chain of command, failure to comply with dictates from supervisors was reportedly tantamount to "handing in your badge," whether such threats were verbalized or not. While it is understood that subordinates in any agency are expected to follow directives from management, the degree to which Sheriff's Department staff exhibited obedience was noteworthy.

A contradictory pattern of behavior that may have developed as a consequence of the dictatorial policies of the high-ranking official resulted in "leaks" to the press and other outside agencies — an apparent attempt to undermine or sabotage the leadership of the Department. "Leaks" of privileged information (audio recordings of telephone calls, for example) revealed the full extent of the incident and prompted calls for criminal investigation.

### **Initial Contact with the Subjects**

The field deputy saw the subjects, recognized one from a prior possession-of-marijuana incident, asked for identification and learned that one was the son of a Sheriff's Department official. The deputy looked into the interior of the vehicle with his flashlight and observed marijuana among the keys, cigarettes, beverage container and wallet belonging to the son of the Department official. During a formal search of the vehicle, a small amount of marijuana also was located in the glove compartment. At first, all three denied ownership of the drugs. The deputy seated the young men side-by-side on a curb adjacent to the vehicle and questioned each of them individually. One of the youths, a 16-year-old, later claimed that the marijuana was his. When a supervising sergeant arrived at the scene, the focus of attention shifted from possession of marijuana to concern about involvement by the son of the Sheriff's Department official. The other two participants were ignored. The sergeant called a lieutenant

(referred to here as lieutenant #1) to alert him about the incident. The sergeant then contacted another lieutenant (lieutenant #2) because he felt it was important to notify the Sheriff's official about the incident involving his son.

Lieutenant #2 called another high-ranking official, who said "the press would be all over this." They agreed that the incident would not be put on the Log and that the matter would remain "our little secret." Lieutenant #1 told the field sergeant that the young men should be released with no report filed. The field deputy was instructed to drive the official's son home, which he did. The other young man drove himself and the juvenile home. The sergeant took the marijuana back to the office and locked it in his file cabinet.

### **Subsequent Actions**

While the field deputy was off for a few days, word about the incident spread like wildfire, and questions were asked. Some mid-level managers in the Department felt that damage control was needed, so, five days after the incident, the field deputy was called in to write a report. His report was written in a question- and-answer format detailing his conversation with the three males. It documented that the marijuana in the back of the vehicle was grouped with the belongings of the official's son and that the deputy didn't believe the son was telling the truth when he denied possession of the marijuana. A sergeant made editorial changes, and lieutenant #1 directed the deputy to write a "generic marijuana report" and remove the question and answer portion, which the lieutenant felt was personal opinion. The original report had contained statements that would lead to the conclusion that the son's personal belongings were with the marijuana. The deputy retrieved the marijuana from the sergeant and logged it into evidence.

Also, the deputy's report requested that the juvenile be referred to a drug-diversion program.

On Nov. 3 – eight days after the contact and three days after the report was written – the Sheriff's Department issued a four-sentence statement to the press regarding the incident in question. This press release excluded facts previously discovered, thereby misleading the public. A confidential memo dated Nov. 4, from a Sheriff's Department lieutenant to the City Manager of San Clemente detailing the Oct. 26 incident, was also misleading because of its omissions.

In November, the Sheriff's Department did initiate an internal investigation, which, at the request of the District Attorney's Office, was suspended pending completion of the grand jury investigation.

### **Criminal Intent or Loyalty to the Department?**

There has been considerable discussion about whether the actions were intended as a cover-up for the official's son or simply an attempt at damage control to minimize bad press for the Department.

The District Attorney's Office has concluded that there is insufficient evidence to support criminal charges. Poor judgment by certain officers of the Sheriff's Department is obvious, but explanations seem consistent with loyalty to the Department, not criminal liability.

The Grand Jury heard ample testimony that field officers have discretion on whether or not to charge individuals for possessing small amounts of marijuana. Often, small amounts are confiscated and destroyed by the deputies. Reports are not mandatory if charges aren't filed. Contraband need not be booked if no charges are anticipated. When the deputy began questioning the young men, he was alone in the field. By not being able to separate them, the deputy inadvertently gave the youths time to agree on whose marijuana it was.

The desire by the high-ranking Sheriff's official to keep the incident off the record may have been based on his friendship with the colleague whose son was involved. It is also likely that the Sheriff's official just didn't want the Department exposed to bad press. The actions of the senior and middle-management officers and the resulting public outcry exacerbated the continuing morale problem within the Department and gave the appearance of a cover-up.

A grand jury investigation was conducted by the Office of the District Attorney to determine if any law violations were committed by Orange County Sheriff's Department personnel. From the sworn testimony of witnesses, the Office of the District Attorney determined there was insufficient evidence of criminal conduct relating to the actions of the Sheriff's Department personnel. However, the Grand Jury believes that even though there was no criminal culpability, there was evidence of interference by the higher levels of the Sheriff's Department that gave the appearance of a cover-up. This behavior continued to snowball, resulting in several misleading reports and public pronouncements.

The Grand Jury found that some supervisors in the chain of command exerted pressure on a subordinate field deputy to modify the initial incident report made by the field deputy that he considered to be factual. The Department's Procedures Manual states that, in collecting evidence, the location where it is found should be reported. In this case, information indicating that the son's belongings were grouped with the

marijuana was deleted in the edited report. Sheriff's Department reports are usually reviewed by sergeants, yet, in this case, a lieutenant intervened to remove potentially incriminating evidence. According to the *Sergeants Operations and Procedures Manual*, sergeants review reports. Rejected reports are corrected by the field officer under the direction of the sergeant. Officers testified that it is highly unusual for lieutenants to intervene and change a deputy's report. However, given that one of the subjects was a "high profile" relative of a high-ranking Sheriff's Department official, it is not surprising that a lieutenant would be involved in reviewing and editing the report.

A recorded telephone conversation between a middle- and a senior-ranking officer indicated that there was a concerted effort to suppress information and keep the matter from the press and the public. Also, the concerted effort by senior and middle-management officers to keep the incident off the Daily Activity Report (Log) furthered the impression of a cover-up.

The parents of the juvenile were never contacted by the Sheriff's Department. The juvenile received a letter in the mail seven days after the encounter directing him to a drug diversion program. Since the juvenile was being directed to this program, a written report was required. As noted previously, the report was written five days after the incident.

## **CONCLUSION**

During the Grand Jury's term, most members participated in ride-alongs with patrol officers that were helpful in understanding the environment in which law-enforcement personnel operate. After hearing and viewing the audio and video recordings of the deputy's encounter with the three young men on Oct. 26, the Grand Jury determined that the field deputy's original actions were appropriate.

Field officers are granted reasonable latitude in dealing with individuals involved in misdemeanor or infraction violations. The three young men (one a juvenile) described in this report were handled in an appropriate manner. It is not unusual for field officers to confiscate and destroy small amounts of marijuana and send the "offenders" on their way with a warning. Many Orange County citizens can appreciate receiving a discretionary warning rather than a citation when stopped for a traffic violation. It is also not an uncommon courtesy for field officers to notify police officers when their children may have been involved in a misdemeanor or infraction stop. Furthermore, field officers are authorized, at their option, to provide transportation home to individuals.

Had one of the youths not been the son of a Sheriff's Department official, these usual and customary practices would not have attracted media and public attention.

Regardless of the official explanation of the incident by the Sheriff's Department, dramatic interpretations by news media heightened public suspicions. In an effort to put the best light on the matter by strictly "following the rules," the Sheriff's Department created further difficulties by submitting a delayed report edited by higher-ranking officers when common practice required the attention of only a supervising sergeant.

In their eagerness to keep adverse publicity about the official's son out of the media spotlight, certain Department managers hastily, and perhaps injudiciously, accepted a statement of culpability by the juvenile for possession of all the marijuana discovered during the encounter. Sworn statements during the Grand Jury's hearings indicated that the major portion of the marijuana did not belong to the juvenile.

A review of public and confidential declarations in the light of sworn testimony indicated that official statements from the Sheriff's Department were incomplete and misleading. Preparation and dissemination of these statements were directed and encouraged by some higher-ranking officers who used poor judgment in not being forthright about the circumstances from the outset.

Although not a subject of this investigation, a high-ranking official in the Sheriff's Department had a public record of questionable command-management skills. This officer was eventually relieved of his duties.

## **FINDINGS**

Under *California Penal Code* §933 and §933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury has arrived at the following findings:

1. The District Attorney concluded that, as to the crime of filing a false police report [*Penal Code* §118.1], there was no violation of the law, since a prosecution under that statute requires proof of a false statement and not simply an omission on the part of the peace officer.
2. As to the crime of conspiracy to obstruct justice [*Penal Code* §182 (5)], the District Attorney concluded that there was insufficient evidence to prove a violation of the statute beyond a reasonable doubt.



3. Some Orange County Sheriff's Department managers were not forthright in explaining the true facts of the incident to the public and to other governmental agencies.

Responses to Findings 1 and 2 are required from the District Attorney.

Responses to Findings 1, 2 and 3 are required from the Orange County Sheriff-Coroner.

### **RECOMMENDATIONS**

In accordance with *California Penal Code* §933 and §933.05, each recommendation must be responded to by the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2003-2004 Orange County Grand Jury recommends that:

1. To avoid public perceptions of conflict of interest, the Orange County Sheriff-Coroner Department use an outside law-enforcement agency to conduct an independent investigation of this incident, either separate from or parallel to the Sheriff's Department internal-affairs investigation. (Findings 1, 2 and 3)

A response to Recommendation 1 is required from the Orange County Sheriff-Coroner.