

Yolo County Sheriff: Leadership Practices from the Wild, Wild West

SUMMARY

The 2013-14 Grand Jury received a complaint against the Yolo County Sheriff. The scope of the complaint and the fact that the subject of the complaint was an elected official were significant. The Grand Jury formed an ad hoc committee to complete a thorough and detailed investigation into the complaint. To ensure an unbiased and independent counsel, the Grand Jury sought legal advice from the State Attorney General through each step of the investigation. That advice was sought specifically with regard to allegations that included a call for the Sheriff's removal from office.

The complaint presented a broad range of issues including:

- Mismanagement, bad behavior and poor leadership;
- Non-compliance with County policies and procedures.

The Grand Jury learned that the County had been concerned with these same issues and had conducted multiple interviews and investigations into complaints regarding the Sheriff. However, the County's internal investigations were conducted in such a manner that the employees participating did not believe the interviews were confidential thus preventing them from speaking openly and freely in response to inquiries. In this Grand Jury investigation, most interviewees testified under subpoena and were assured of the confidentiality of the Grand Jury process.

In addition to issues raised by the original complaint, the Grand Jury also found acts of nepotism, favoritism, and management by intimidation, ineffective training and a Sheriff's Department burdened by poor morale. However, the Grand Jury did not find acts of willful or corrupt misconduct that rose to the level that warranted an accusation.

During this investigation, the Sheriff acknowledged an element of the complaint by issuing a memo to department leadership staff pertaining to nepotism. The Grand Jury has further recommendations regarding the updating and compliance with County policies, procedures, and training; the evaluation standards in the Sheriff's Department; supervisory authority of the command staff; and performance evaluations for elected department heads.

GLOSSARY

Nepotism: Favoritism shown to relatives or close friends by those with power or influence.

Accusation: A written statement presented by the Grand Jury, charging an elected or appointed county public official with willful or corrupt misconduct in office.

Malfeasance: The doing of an act that is positively unlawful or wrong; or the performance of a wrongful act that the person has no legal right to do.

Misfeasance: The improper doing of an act that a person might lawfully do; or the performance of a duty or act that one ought or has a right to do, but in a manner so as to infringe upon the rights of others.

Nonfeasance: The failure to act where duty requires an act; or neglect or refusal, without sufficient cause or excuse, to do that which is the officer's legal duty to do, whether willfully or through malice; or willful neglect of duty.

Provisional Employee: An employee fills a position where no eligible list exists. Position will be for no more than 6 months. Employee hired as a provisional appointment must meet the employment standards for the classification.

360 degree evaluation: An evaluation process where employees receive confidential, anonymous feedback from the people who work around them. Typically includes feedback from managers, peers and direct reports.

REASON FOR INVESTIGATION

The Grand Jury received a complaint regarding the Yolo County Sheriff asking the Grand Jury to investigate:

- Whether the Sheriff has shown undue favoritism towards those with whom he has friendships or with whom he is related;
- Whether the Sheriff has intimidated or attempted to influence witnesses in Grand Jury or litigation proceedings, or in County investigations regarding alleged harassment;
- Whether the Sheriff hired a personal friend as a temporary employee;
- Whether the Sheriff has inappropriately retaliated with adverse employment actions against employees who made complaints against him, disagreed with him, or otherwise displeased him;
- Whether the actions of the Sheriff warrant an accusation by the Grand Jury pursuant to Government Code § 3060 to remove the Sheriff from office.

California Government Code § 3060 provides, that in order to present an accusation to remove an appointed or elected official from office, the Grand Jury must find willful or corrupt misconduct in office; more specifically, acts of malfeasance, misfeasance, or nonfeasance. The misconduct justifying an accusation for removal from office does not have to be criminal; it need only be willful.

Examples of such acts would include: neglect of duty due to intoxication, embezzlement, receiving bribes or kickbacks, failure to keep required records, failure to perform duties of the office, or exercise of official power in a corrupt, malicious, arbitrary, or oppressive manner.

The Grand Jury did not find such acts of willful or corrupt misconduct that rose to the level that warranted an accusation. However, in addition to findings regarding the remaining elements of the complaint, the Grand Jury found other problematic issues including nepotism, management by intimidation and poor morale within the Sheriff's Department.

California Penal Code Section 925 provides: “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex-officio capacity as officers and districts.”

METHODOLOGY

During the investigation, the Grand Jury interviewed a member of the Yolo County Board of Supervisors (BOS), current and retired staff and managers from the Sheriff’s Department, representatives from Human Resources (HR) Department, County Counsel’s Office, Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) and an independent contractor.

In addition to the 25 interviews of 21 witnesses, the Grand Jury reviewed the following documents:

- County of Yolo Administrative Policies and Procedures Manual: Equal Employment Opportunity, September 14, 2010; Workplace Security and Safety Policy, March 3, 1998; Code of Ethics – Standards of Ethical Conduct, June 2013; Workplace Civility, August 4, 2009;
- Yolo County Code, Chapter 6, Personnel Merit System;
- Yolo County Code Section 2-6.44, Nepotism Policy April 24, 2003, Amending Ordinance No. 1928;
- Yolo County Board of Supervisors Ordinance No. 1248, July 24, 2000. An Ordinance Amending Yolo County Code Section 2-6.44 pertaining to nepotism;
- Government Code Section 53235 Ethics Training under Assembly Bill 1234;
- Sheriff’s Office General Orders Manual, Revised April 2003;
- Yolo County Board of Supervisors’ Minutes & supporting materials: March 4, 2003; March 18, 2003; March 25, 2003; April 22, 2003;
- Yolo County Code Section 2-6.07. Competitive examinations: Eligible list;
- Yolo County Code Section 2-6.26. Appointments: Procedure;
- Personnel Files; April 7, 2002 to November 17, 2013;
- Deputy Sheriffs’ Association Memorandum of Understanding (MOU) July 1, 2012 - June 30, 2014;

The last interview was conducted on April 21, 2014.

All Grand Jury members are sworn to secrecy to assure that all complaints will be handled in a confidential manner, and they are admonished to never reveal confidential information outside the jury. For this investigation, most witnesses were subpoenaed, thereby not giving them the choice to testify.

In this year’s Grand Jury investigations, all witnesses signed an admonishment not to reveal to any person, except as directed by the court, any matters regarding the nature and subject of the Grand Jury’s investigation which they learned, during their appearance before the Grand Jury,

until a final report is made public. A violation of this admonition is punishable as contempt of court.

This report is issued by the 2013-14 Yolo County Grand Jury, with the recusal of two jurors. They did not participate in any part of the investigation, which included interviews, deliberations, and the making and acceptance of this report.

In consideration of conflicts of interest between the County Counsel's Office and the Sheriff, as well as the District Attorney's Office and the Sheriff, the Grand Jury obtained the legal advisory services of the State of California, Office of the Attorney General.

DISCUSSION

During the investigation, the Grand Jury identified several areas of concern with the Sheriff's management practices. The effects of these practices and the areas of concern are described below:

Favoritism, Nepotism and Preferential Treatment

On December 10, 2001 the Sheriff hired an immediate family member for the Civil Section as a provisional employee. A provisional employee appointment may be made when no certified list of qualified candidates exists. A person employed under a provisional appointment shall serve at the pleasure of the appointing authority. The appointing authority in this case was the Sheriff.

Four months later, in April 2002, the Sheriff was notified by the County Administrative Officer (CAO) that the family member's employment within his Department was in violation of the County Nepotism Policy Section 2-6.44, dated July 24, 2000, and that he was required to terminate his relative. On April 7, 2002, the relative resigned from the Sheriff's Department. On that same day, the CAO reassigned that same relative to the Probation Department, again as a provisional employee.

The Sheriff contacted several members of the Board of Supervisors, County Counsel and CAO to protest the Nepotism Policy. On March 25, 2003, the Board of Supervisors (BOS) approved an amended Nepotism Policy. The amended policy, Ordinance No. 1928, now allowed relatives to work in the same department as long as there are at least two levels of supervision between the two related parties.

On April 28, 2003, four days after the BOS amended action became effective, the immediate family member was rehired to the original position in the Sheriff's Department and the Sheriff authorized a ten percent salary increase.

The Grand Jury also learned that in July 2004, the Sheriff's Department had a certified eligibility list for a clerical position. A departmental supervisor was directed by the Sheriff to close the list without offering interviews to any of the qualified candidates. Once that

recruitment's certified list was exhausted and closed, another immediate family member was then hired as a provisional employee in a clerical position.

Since the revision of the Nepotism Policy in 2003, the Grand Jury learned of instances where there were not at least two levels of separation between the Sheriff and immediate family members. The instances include:

- Personnel Action Form (PAF) determining the family member's salary was authorized by the Sheriff;
- Performance Evaluations and disciplinary actions for the family members were reviewed and approved by the Sheriff;
- December 2005, a family member received a Notice of Intent to Discipline, for insubordination and unauthorized use of department property, proposing a suspension of 16 hours; the Sheriff reduced this discipline to 8 hours. Three weeks later, in January 2006, the family member was promoted; and,
- From 2006 through 2013, the same family member received desirable assignments.

The current County nepotism policy, updated in 2003, permits employment of family members so long as neither family member is responsible for or influences any employment action. Typical actions not permitted would include: hiring, promoting, reclassifying, evaluating, making salary recommendation, assigning work resources, approving leave requests, disciplining or terminating employment.

The Grand Jury discovered multiple examples where the Sheriff's family members – known within the Department as “SD” – received preferential treatment for either themselves or their division, the “SD” had the Sheriff's ear and some employees believed they could influence his decisions to benefit areas which included early time off during the holidays, or other organizational and administrative matters. This preferential treatment was described that some co-workers would voice their wish to a “SD” in their division so they could get some desired equipment, staffing or technology.

The Grand Jury learned that in addition to family members, several friends and acquaintances of the Sheriff were hired into the Department as extra help or temporary employees. The Sheriff's practice of hiring friends and acquaintances as provisional, extra help or temporary employees avoids a competitive recruitment process and circumvents fair hiring policies and procedures of HR. It was reported that these special recruitment and hiring practices gave friends and acquaintances an inside advantage by providing knowledge and familiarity with the position, increasing the likelihood they could be eventually hired into full-time employment.

While these recruitment and hiring processes are not illegal, they clearly draw attention to the lack of 1) policies and procedures and 2) oversight to recognize and avoid conflicts of interest, and issues of fairness and ethics of the hiring process in the Sheriff's Department and Yolo County. Employees reported these acts of favoritism and nepotism as discriminatory, prejudicial and biased and that such preferential treatment has affected morale throughout the Department.

During a Grand Jury interview with the Sheriff, he learned that being in the same chain of command with his family members presents an inherent conflict of interest and he immediately issued a memo to the Undersheriff and captains, dated March 7, 2014, directing any future personnel actions regarding either of his immediate family members to the Undersheriff. This action was acknowledged by the Grand Jury as a start to Grand Jury recommendations.

The Grand Jury also found that through 2010 the Yolo County job application did not ask for family relationships for disclosure of nepotism. The current online Yolo County job application has corrected this issue.

Management by Intimidation

The Yolo County Workplace Civility Policy defines the expectations for civil behavior in the workplace. The policy states, “The Board of Supervisors encourages county employees to disclose any incidents of workplace incivility and assures employees reporting such activities shall be protected from threats, harassment, retaliation or any adverse employment action as a result of their reporting.”

The Grand Jury learned that on multiple occasions employees were threatened, intimidated and had experienced adverse employment actions as a result of challenging the Sheriff’s agenda. Examples of the workplace incivility are:

- During manager and supervisory meetings the Sheriff openly discussed employees who had made alleged claims of sexual harassment against him. He would ridicule, accuse the employees of lying and berate them in large group meetings. Those attending would then be threatened with “whatever is said in this meeting stays in the meeting.”
- Employees reported, to the Grand Jury, acts of retribution for following County policy that the Sheriff opposed. Those employees challenging the Sheriff’s command led to re-assignment within the Department, Internal Affairs investigations, informal corrective actions and minor disciplinary actions.
- The Sheriff, upon hearing of this Grand Jury investigation, made contact with other employees and associates to obtain information regarding activities of this Grand Jury. These actions left employees intimidated that their confidentiality as Grand Jury witnesses was compromised, putting them and other employees at risk of retaliation. Witnesses indicated that the Grand Jury’s assurances of confidentiality could not assure them that other witnesses would have the same integrity.
- There were attempts by the Sheriff to influence the selection of representatives of the Deputy Sheriffs’ Association (DSA) and of acts of retribution against elected DSA representatives who disagreed with the Sheriff’s agenda. The effect of these acts on the morale of the DSA discouraged deputy participation in representation and left DSA members less than confident in the role of the DSA to act effectively for its membership.
- Employees reported that although one’s classification may include management or supervisory duties, the Sheriff always has the final say. Proposed actions, including assignments, scheduling, evaluations, discipline and awards have been micromanaged by the Sheriff and often changed or revised from staff recommendations.

Poor Morale

Over the last two years, in an attempt to address issues of poor morale, HR conducted three separate investigations¹ regarding alleged intimidation, harassment, favoritism and other acts unbecoming an officer. Two of these investigations were not conducted in an impartial manner. Interviews were conducted onsite at the Sheriff's Offices and/or interviewees were selected by department leadership. Because of the manner in which these interviews were conducted, employees reported they felt their confidentiality was not protected and feared intimidation and retribution by the Sheriff. Employees explained that they chose loyalty to the Department by remaining silent rather than confront the concerns and issues of those investigations by the County Administration and HR. This lack of confidentiality continues to affect employee morale.

The Grand Jury also learned that deputies within the Department are held to "unwritten work standards" affecting employees' monthly and annual performance evaluations. The standards include items such as the number of monthly reports written, patrol miles driven, and types of arrests, with a higher degree of arrests earning more value and prestige. It was also learned that these standards are applied differently among supervisors, allowing employees to be treated inconsistently in evaluations, making it impossible to confront or address the evaluation criteria.

The Sheriff's Department Field Operations Division uses baseball metaphors for internal performance evaluations; a felony arrest is a "homerun" while a misdemeanor is a "double" and a citation is only a "single." Described as "playing a sports game," deputies would be expected to reach an above average score in order to avoid a negative performance evaluation. This statistical ranking competition, or "the game," while potentially motivational, is considered by deputies and supervisors as punitive and demoralizing. Employees reported that along with negatively affecting morale, this also has the potential of placing the public at risk of unfair targeting for the chase of the "homerun."

The Grand Jury learned that some employees were less inclined to distinguish themselves for promotion, and have less incentive to improve skills and education, when they do not believe they have a fair chance at earning a promotion. Employees who joined the Department intending to protect, serve and help the community reported that they question the Department's current values and belief system.

HR Practices

Yolo County Human Resources Department functions to recruit, develop and retain a high quality workforce. Its responsibilities include: labor and employee relations; recruitment, classification and compensation; risk management; and training and development.

The Sheriff's Department operates, with a staff of more than 250 employees assigned to one of three areas: Field Operations (78), Detention Center (159), and Administrative Services (16). Law enforcement staff described the department as a paramilitary organization having a clearly

¹ Written investigative reports were not completed or were not available to the Grand Jury.

organized chain of command, and operating with minimal external administrative support or oversight from the County Human Resources Department.

While the mission of the Yolo County HR Department is, “To provide collaborative human resource services and to preserve the integrity of the personnel system consistent with county values...” the Grand Jury found this mission to be inconsistent with the current HR practices with the Sheriff’s Department.

The Grand Jury discovered that HR does not provide proactive oversight of County policies and procedures for personnel actions for the Sheriff’s Department; acting instead primarily in an advisory role or on an “as requested” basis. Often, HR does not get involved with hiring, promotions, evaluations or disciplinary actions until after being notified by the Sheriff’s Department of its decision and action. These employment actions are often decided unilaterally by the Sheriff’s leadership.

In addition to personnel practices, HR is responsible for countywide organizational and staff training programs. The Grand Jury learned that all harassment and ethics training related to State law and compliance are online courses. These courses have not been revised or updated in over 10 years and do not allow for employee input or feedback. As such, these old and repetitious online trainings, mandated bi-annually, are timed to be completed within two hours; and witnesses stated that these courses do not demonstrate skill or knowledge attainment and require only minimum effort or reflection.

The Grand Jury further learned that Assembly Bill 1234 (AB 1234) requires local officials to periodically receive training on public service ethics laws and principles. This training was mandated in January 2006 by the State of California, Office of the Attorney General, directed by the Fair Political Practice Commission and is required for all appointed and elected officials every two years. The law requires that upon completing the training, a Proof of Participation Certificate be signed and maintained on file. The Grand Jury found only one certificate, for October 2011, signed by the Sheriff stating that he understood that the: “Laws relating to fair processes including but not limited to... disqualification from participating in decisions affecting family members.” The extent of training received by the Sheriff from 2006 to 2011 could not be determined from the existing HR records.

Accountable Only to the Voters

The Grand Jury learned that every Yolo County employee is evaluated for performance with the exception of elected officials. Currently, there are 11 elected officials within the County who are not evaluated. The Sheriff, as department head, performs his duties as an elected official.

Within the last two years, the County Administrative Officer (CAO) initiated a 360 degree evaluation for all appointed Department Heads, which excludes elected officials. Such an evaluation would encourage input and feedback from peers, constituents and members of the Board of Supervisors which would formally establish a mechanism to assist in setting goals, and would provide a useful means for improving quality of work and self-correction.

The Grand Jury learned that an elected official is only held accountable by registered voters residing within the elected official's jurisdiction.

FINDINGS

- F1. Favoritism, nepotism and preferential treatment of employees have adversely affected employee morale of the Sheriff's Department. These practices by the Sheriff involve hiring, promotion, assignments and discipline.
- F2. The Sheriff uses or creates provisional or extra help positions to employ personal friends and relatives.
- F3. The Sheriff has engaged in hiring immediate family, authorizing their assignments, determining their promotions and salary, and using final authority to determine disciplinary actions.
- F4. The HR Department conducted three ineffective investigations related to allegations of harassment and poor morale at the Sheriff's Department.
- F5. The Sheriff's Department, a military-like structure, with a clear and rigid chain of command operates with minimal external administrative resources, particularly the County HR Department and labor organizations.
- F6. The Sheriff's micromanagement reduces Department supervisors' and managers' authority to lead and evaluate staff.
- F7. The Sheriff's Department operates with unwritten work standards for deputies who are evaluated by these standards on a monthly and annual basis. These standards are inconsistently applied by supervising staff.
- F8. The Sheriff failed to observe County Code Section 2-6.44 Nepotism Policy by hiring immediate family members and determining their salaries, promotions, assignments, performance evaluations and discipline.
- F9. The Sheriff was unaware of the contents and intent of the State of California Public Service Ethics AB 1234.
- F10. The Grand Jury was unable to determine the County's compliance with the State of California Public Service Ethics AB 1234 mandated training for 2006-2011 for the Sheriff.
- F11. HR manages harassment and ethics online training courses for all employees to comply with state and federal laws. These outdated and repetitious trainings are found to be inadequate and ineffective.
- F12. The HR Department serves in an advisory role and lacks appropriate oversight and accountability of personnel matters at the Sheriff's Department.

- F13. The CAO and HR have insufficiently monitored and audited the Sheriff's Department compliance with County Codes and Policies and Procedures.
- F14. The CAO conducts a 360 degree evaluation for all appointed Department Heads. This evaluation process currently excludes elected officials.

RECOMMENDATIONS

- R1. By September 30, 2014, the HR Department shall review and revise the County nepotism policies and existing practices including prevention, monitoring and reporting of conflicts of interest.
- R2. The HR department will annually review nepotism practices in the Sheriff's Department. Such a review shall ensure ethical standards are established and a procedural firewall exists between related employees. This annual review will be presented to the Board of Supervisors with findings and recommendations by December 1, 2014 and each following year.
- R3. By September 30, 2014, the CAO shall review and revise the County's mandated training requirements and compliance with the State of California Public Service Ethics as directed by AB 1234.
- R4. By November 30, 2014, the Sheriff's Department in collaboration with HR shall review and revise the evaluation standards (written and unwritten) used for all department job classifications to establish a fair and objective set of written guidelines.
- R5. By September 30, 2014, the Sheriff's Department in collaboration with HR shall develop a plan to reinforce the authority of the command staff. This plan shall define the level of authority of supervisors and managers for supervising, evaluating and effectively recommending personnel actions for the staff they oversee.
- R6. By June 30, 2015, the leadership of the Sheriff's Department, in collaboration with HR, shall develop and implement an internal training program to promote and encourage upward mobility within the department up to and including the elected official's position. Such a training program will serve as a blueprint for department succession planning.
- R7. By December 1, 2014, HR shall review and update Harassment and Ethics online training programs and implement a training program that includes classroom (in-person) training.
- R8. By November 1, 2014, the CAO shall revise and extend the current 360 degree evaluation process to include an opportunity for all elected department heads to participate.
- R9. The Grand Jury recommends that elected public officials submit themselves to the 360 degree evaluation process used by all other department heads in the County.

REQUEST FOR RESPONSES

Pursuant to Penal Code § 933.05, the Grand Jury requests responses as follows:

From the following individuals:

- Yolo County Deputy CAO/HR Director: Recommendation R1, R2, R4, R5, R6 and R7
- Yolo County CAO: Recommendation R3 and R8

INVITED RESPONSES

- Yolo County Sheriff: Recommendation R4, R5, R6 and R9
- Yolo County District Attorney: Recommendation R9
- Yolo County Assessor: Recommendation R9
- Yolo County Clerk-Recorder: Recommendation R9
- Yolo County Public Guardian: Recommendation R9

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

DISCLAIMER

This report is issued by the 2013-14 Yolo County Grand Jury with the exception of two jurors who were recused. These grand jurors did not participate in any part of the investigation, which included interviews, deliberations, and the making and acceptance of this report.