

**ORANGE COUNTY  
OFFICE OF THE DISTRICT ATTORNEY**



**Investigative Report**

**From the 2007 Special Criminal Grand Jury  
Inquiry into the Death of John Derek Chamberlain**

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Orange County, California - April 2008**

# Executive Summary

This summarizes some of the notable points discussed in the following Investigative Report from the 2007 Special Criminal Grand Jury Inquiry into the Death of John Derek Chamberlain.

In the evening of September 14, 2006, Chamberlain was arrested on allegations of possession of child pornography and possession of an open container of alcohol. He was subsequently booked in the Orange County Men's Jail. According to jail records, he was advised not to discuss his charges. On October 3, 2006, Chamberlain was transferred to the Theo Lacy detention facility (Theo Lacy) to await disposition of the charges against him. He was assigned to "F" Barracks, West, a minimum security location.

Two days later at 6:50 p.m., Orange County District Attorney (OCSD) deputies were summoned to a location within the barracks where they observed Chamberlain lying on the floor. He was transported to a local hospital where he was pronounced dead. He had suffered numerous severe blunt force trauma injuries including multiple rib fractures that lead to respiratory failure and cardiac arrest. Chamberlain had been beaten to death.

"F" Barracks is divided into two equal halves, East and West. The maximum occupancy of each half is 146 inmates. On the day of Chamberlain's death, "F" Barracks, West was at maximum occupancy. A guard station for the on-duty deputies is located between the halves. "F" Barracks was originally designed as a minimum security facility to house less dangerous inmates. Jail overcrowding resulted in it being used to incarcerate inmates more dangerous than it had been designed to house. There are numerous "blind spots" or areas outside of open view.

"F" Barracks is regularly staffed by two OCSD deputies and one Sheriff's Special Officer (SSO) whose duties are to maintain the safety and security of the barracks, and its nearly 300 inmates. Each half of "F" Barracks has a central day room. At scheduled times of the day, the inmates from each half are allowed to mill in their day room. With so many people in a relatively small area the place often gets very loud.

In order to fulfill their duties, the OCSD Deputies are required to regularly patrol the interior of the facility on foot and observe the activities of the inmates. These floor checks are to be performed every 30 minutes, the purpose of which is to inspect "blind spots," discourage assaults, and verify that no inmates are injured or in need of help.

In practice, some deputies regularly failed to perform their duties of guarding the security of the jail and the safety of its inmates. They seldom performed floor checks. Instead the deputies largely remained in their guard station where they were regularly seen watching television, full length movies, playing video games, browsing the Internet,

chatting on-line or sleeping with lights out. When the lights were out, non-sworn OCSD Personnel had to enter the barracks to perform their daily maintenance duties, unguarded and in the dark so as not to wake the sworn deputies sleeping in their guard station.

Even when awake at their guard station, some OCSD deputies would go as long as 30 minutes without even looking out the windows to scrutinize the barracks under their supervision. In addition, deputies were permitted by OCSD Policy to leave their posts for up to one hour while on duty to exercise in the jail's gym facility.

When supervisors, such as sergeants or above walked through the facility, some deputies utilized a code called "10-12" to forewarn others of their approach. Some deputies made entries in the logs which could be interpreted that they had performed their regular patrols when in fact they had not.

The OCSD deputies at Theo Lacy substituted other methods than those prescribed by Policy to control the inmates under their supervision. They routinely used inmates called "shot callers" to enforce discipline or inflict punishment on other prisoners. They granted authority over the other inmates to these "shot callers." If deputies observed conduct on the part of an inmate which they considered a breach of the rules, they would summon the "shot callers" and instruct them to get these inmates "back in line." The deputies knew that if the inmate disregarded the "shot caller," the inmate would be assaulted or "taxed."

Some OCSD deputies at Theo Lacy would often conduct meetings with the "shot callers" instructing them what they wanted done. The "shot callers" would then return to the inmates under their authority with the deputies' instructions.

Some deputies developed methods, both positive and negative, to get the "shot callers" to do what they wanted. They gave "shot callers" extra privileges such as new uniforms, extra meals, extra hygiene products and greater toleration or leeway if they broke the rules themselves. Alternatively, the deputies would also threaten "shot callers" with negative consequences, such as having their barracks "tossed" or their personal belongings and bedding thrown asunder, if they failed to get the inmates under their authority "back in line."

The use of "shot callers" is against OCSD Policy which states, "Inmates will never be permitted to exercise control over other inmates," and "No inmate shall inflict punishment on another inmate." It is also against state law which prohibits investing inmates of penal institutions with the authority to exercise the right of punishment over other inmates.

Some OCSD deputies at Theo Lacy denied medical treatment to inmates in order to avoid having to write required reports or "cut paper." They induced "shot callers" to discourage injured or sick inmates from seeking or making further requests for medical

attention. The majority of inmates requesting medical attention displayed bruising which deputies believed were the result of assaults by other inmates.

There were unspecified reports, some from inmates and one from an OCSD deputy, that one Theo Lacy deputy inflicted unauthorized discipline and punishment on inmates using less than lethal force. This deputy reportedly failed to notify his supervisor or document the use of the force as required by OCSD Policy. On multiple occasions, for example, a "pepper ball" rifle was fired against inmates of "F" Barracks. These were for minor transgressions such as inmates not returning to their bunks "fast enough," leaving their bunks against orders or becoming too loud, none for which the use of such force is authorized. On these occasions, a "pepper ball" round had been fired into an occupied bathroom, an occupied dormitory "cube" and into the occupied barracks itself. In further violation of OCSD Policy, no means of decontamination was provided or allowed to inmates affected by the "pepper ball" rounds.

Within penal institutions, inmates facing charges related to the sexual assault or abuse of children are often targeted for violent assault by other inmates. Some inmates make concerted efforts to learn the nature of fellow inmates' pending charges, including using OCSD's public information resources. OCSD was repeatedly made aware that its public information resources were being exploited for the purpose of targeting for assault inmates with pending child assault or abuse charges.

In January 2000 and January 2004, OCSD was warned by internal memorandums and statements of OCSD personnel that unrestricted access to inmate charges posed a danger to some inmates. In January 2006, an OCSD Report specifically warned that unrestricted public access to inmate charge information jeopardized "the safety and security of the Theo Lacy Facility, the staff, and the inmates." In May 2006, OCSD reported that from March 2005-March 2006, nearly 20 percent of all inmates charged with sex related charges had been assaulted and/or relocated as a result of other inmates learning of the nature of their charges. OCSD personnel acknowledged that unrestricted access to inmates' charge information causes "assaults," "retaliation," and "endangers inmates in our custody. ..."

Public Internet access ended in July 2006 at the time of John Chamberlain's incarceration. Even today, information concerning an inmate's pending charges, location of incarceration and bail status remains available to anonymous phone callers requesting it. In the days preceding Chamberlain's murder, inmates had been inquiring as to the nature of his pending charges. OCSD had received and fulfilled five to 10 anonymous calls requesting information of Chamberlain's pending charges.

During the hour from 5:50 p.m. to 6:50 p.m. on October 5, 2006, Chamberlain was dragged by other inmates to a "blind spot" within the Theo Lacy "F" Barracks where he was out of view of OCSD deputies in the guard station. He was beaten to death at that location by successive waves of inmates. Some of the inmates participating in the assaults made repeated trips back and forth from the bathroom to the scene of the assault carrying water to wash the crime scene. None were confronted or interrupted by

OCSD deputies. The deputies remained in the guard station, one reportedly watching television.

No deputy had patrolled the floor of the "F" Barracks, West, where the murder had taken place for a period of at least five hours before Chamberlain's body was found. Nevertheless, the nearby work station log had the entries, "barracks secure," for 6:00 p.m. and "barracks secure, no problems," for 6:30 p.m. After Chamberlain's body was found, OCSD personnel entered into the log that at 2:30 p.m. Chamberlain had told deputies that he had not been in fear of his life.

Although OCSD was alerted to the fact that the presence of a television in the guard station may constitute a distraction to deputies on duty and may have contributed to the circumstances leading to the murder of Chamberlain, the television was not removed until six months after the murder. One OCSD administrator testified that the issue of removing the televisions had been discussed among the administration but corrective action may have been delayed out of concern that it would be interpreted by others as an admission of wrongdoing.

Subsequent to the discovery of Chamberlain's body, OCSD personnel prevented the OCDA from conducting an independent homicide investigation into the murder of Chamberlain. This was in violation of existing County protocol and historical precedent. When the sitting 2006-2007 Grand Jury requested information on this protocol, there was evidence that one OCSD official provided it with inaccurate information regarding the investigation of previous custodial deaths.

At the request of the District Attorney, the Orange County Superior Court convened a 2007 Special Criminal Grand Jury to investigate the murder of John Chamberlain and the circumstances surrounding the OCSD's investigation of that murder. Some OCSD witnesses gave testimony that mischaracterized the protocol and history of custodial death investigations.

In addition, after testifying before the 2007 Special Criminal Grand Jury, some OCSD personnel violated the secrecy rules governing Grand Jury investigations by disclosing to other OCSD personnel the substance of their testimony, the nature of the questions they had been asked, and the evidence shown to them. These same individuals then knowingly testified falsely before the 2007 Special Criminal Grand Jury concerning their violations of Grand Jury rules.

OCSD records subpoenaed by the Special Grand Jury were either not produced, produced redacted or produced by unqualified witnesses. This had the effect of substantially delaying the Grand Jury's progress.

This report establishes that the murder of John Chamberlain need not have happened. It may have been prevented if existing policies and procedures had been followed and enforced. Our system of justice requires that those accused of crime be afforded due

process and justice not only by the courts but by those charged with maintaining them in custody.

The Office of Internal Review (OIR) and an impartial civilian monitor will help monitor and oversee the investigation and evaluation of complaints involving the Orange County Sheriff's Department.

This Report is merely a beginning. One of the purposes of this Report is to open an informed dialogue over how the County may avoid another such death in the future. Over the next several months, I look forward to facilitating in this dialogue and working with concerned parties to develop additional reforms.

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## **Investigative Background and Methodology**

On the evening of September 14, 2006, 41-year-old John Derek Chamberlain (Chamberlain) was arrested in Rancho Santa Margarita and booked into the Orange County jail on allegations of possessing child pornography and an open container of alcohol.<sup>1</sup> Although initially housed at the Men's Central Jail, Chamberlain was subsequently transported to the Theo Lacy Detention Facility (Theo Lacy) on October 3, 2006, to be housed awaiting the disposition of his criminal case. Following his arrival at Theo Lacy, Chamberlain was assigned to "F" Barracks, West, a minimum security housing location. According to jail records, he had been instructed by Orange County Sheriff's Department (OCSD) personnel "not to discuss [his] charges."<sup>2</sup>

Theo Lacy's "F" Barracks is actually a large, open dormitory housing unit divided into two equal halves: east and west. Each barracks half is populated by approximately 146 inmates, assigned to one of sixteen open cubicles located along the perimeter of the first floor and a mezzanine. At scheduled times throughout the day, all 146 inmates on each barracks side are permitted to mill about and recreate with one another in a large, central dayroom for an allotted period of time. A single, elevated guard station stands at the center of the barracks in between the adjoined east and west sides, granting the three assigned Sheriff's personnel a panoramic view of the inmate population.<sup>3</sup>

On the evening of October 5, 2006, during the open dayroom hour of 5:50 p.m. to 6:50 p.m., the evidence demonstrates that John Chamberlain was forcibly dragged into an "F" Barracks' cubicle and beaten to death by a group of inmates in a series of assaultive waves. After guard station deputies were alerted to his lifeless body on the barracks floor at approximately 6:50 p.m., he was transported to the UCI Medical Center in the city of Orange where he was pronounced dead. A subsequent autopsy revealed that he had suffered multiple severe blunt trauma, including 43 displaced rib fractures, which ultimately lead to his respiratory and cardiac arrest.<sup>4</sup>

OCSD assumed investigative control over Chamberlain's murder, deviating from a written County protocol and decades-long historical practice of District Attorney led custodial death investigations. Despite allegations of deputy misconduct in the death of

Chamberlain, OCSD maintained continuous control over the homicide investigation through its conclusion.

On May 17, 2007, a Special Criminal Grand Jury was impaneled in Orange County Superior Court to investigate the murder of Chamberlain and the circumstances surrounding his homicide investigation. Over the following nine months, 19 Grand Jurors examined 79 witnesses, generating nearly 8,000 pages of transcribed testimony, and reviewed 335 exhibits consisting of thousands of pages of documents, photographs, charts, and audio and video recordings. On June 7, 2007, the Jury's ultimately exhaustive investigation also included an on-site inspection of the Theo Lacy, including "F" Barracks, West and the location of Chamberlain's murder.

The Special Criminal Grand Jury's investigation resulted in the indictment of three individuals for the murder of John Chamberlain, in addition to six other defendants already charged by information with this crime, and the discovery of evidence of OCSD operations which raise grave concerns. The Report which follows is an attempt to summarize and cite the evidence of both conduct and conditions which warrant scrutiny, dialogue and redress.

## **Guard Station Practices**

The lives of inmates and the security of a jail facility rest in large part upon the watchful eye of each jailer and the diligent performance of his duty. At Theo Lacy in “F” Barracks, where the murder of Chamberlain took place, there are nearly 300 freely moving inmates and multiple blind spots. The Special Criminal Grand Jury heard detailed evidence that Orange County Sheriff’s Department deputies regularly failed to perform their duty to adequately guard the security of this facility and the safety of its inmates. This section addresses that evidence.

### **Discussion**

Individuals in custody are often subjected to association with dangerous individuals. “F” Barracks is an open housing location where the entire inmate population may freely access one another. To a significant degree, the safety of inmates is dependant upon the vigilance of its deputies on guard.

Within “F” Barracks, three sworn OCSD personnel are stationed to maintain this constant vigil and to carry out the duties attendant to a housing location.<sup>5</sup> One OCSD special officer “(SSO)” staffs a fixed position inside the guard station, performing a variety of ministerial tasks, while two OCSD deputies, referred to as “prowlers,” are assigned to constantly monitor the safety and security of the inmates in their charge.<sup>6</sup>

Although principally responsible for supervising those in their care, the Grand Jury heard evidence that deputies assigned to “F” Barracks would regularly sleep on duty, watch television and full-length feature films, play video games, browse the Internet, chat on-line, leave their post to work-out in the Department’s exercise facility, and engage in other activities unrelated to their sworn duty. One OCSD employee testified that these “deputies would much rather be inside the guard station doing nothing”<sup>7</sup> while still another testified that it was the deputies’ aim to do as little as possible.<sup>8</sup> Although there were exceptions, the evidence consistently demonstrated that deputies regularly failed to perform necessary floor patrols in the barracks,<sup>9</sup> neglected to maintain accurate records,<sup>10</sup> engaged in unauthorized discipline<sup>11</sup> and use of force,<sup>12</sup>

used inmate authoritarians to enforce jail rules,<sup>13</sup> and denied medical treatment to ill and obviously injured inmates.<sup>14</sup>

One OCSD employee testified that “95% of the time” when he reported to the barracks to begin his shift, he would find the guard station deputies sound asleep at their post.<sup>15</sup> The guard station would be completely “blacked out” with blankets draped over the control panels to cut down on any light and the computer monitors were turned off.<sup>16</sup> Deputies would arrange themselves in chairs, sometimes breaking the backs of them so that they would fully recline,<sup>17</sup> or they would carry inmate mattresses or fold out cots into the guard station to sleep while on duty.<sup>18</sup> From their prone position on cots, standing only six to 10 inches off the guard station floor, deputies were incapable of seeing into the barracks to monitor the inmates even when awake.<sup>19</sup>

In the morning, non-sworn personnel would be required to enter the barracks without a sworn OCSD deputy present in order to perform their cleaning duties while unmonitored and in the dark with the inmate population. For up to one hour, unprotected non-sworn personnel would be on the barracks floor by the ambient light of dormitory cubes while deputies slept in the guard station unwilling to turn on the barrack’s lights.<sup>20</sup> At times, this same staff would have to alert sleeping deputies to incidents, such as fights, developing on the barracks floor.<sup>21</sup>

The testimony regarding deputies sleeping on duty was not restricted to a single witness or to a particular shift. One OCSD employee testified that his colleague, a guard station deputy, was napping on duty for periods as long as 20 minutes at a time.<sup>22</sup>

The Grand Jury heard testimony that deputies frequently ignored their duty in favor of other recreational distractions. Deputies assigned to the guard station regularly watched broadcast television for hours, including programs such as “Cops,” and full length feature films on DVD such as “Black Hawk Down,” “Spider Man 1 and 2” and “Star Wars” episodes.<sup>23</sup> Rather than monitoring what the inmates were watching, (the purported purpose of the television in the guard station),<sup>24</sup> deputies regularly chose their own programming<sup>25</sup> and focused on the television instead of the inmates and their duties.

The Grand Jury heard testimony that on occasion deputies connected home gaming systems, such as Playstation or X-Box, to the guard station television and

played them while posted to perform their sworn duty.<sup>26</sup> Deputies were known to regularly browse the Internet and chat on-line while manning their post.<sup>27</sup> Deputies were also permitted by department policy to leave their stations for one hour at a time to workout in the jail's exercise facility.<sup>28</sup> The cumulative evidence often demonstrated that vigilance was the exception as opposed to the rule.

### **Avoiding Supervision – “Code 10-12”**

The Grand Jury heard testimony of the “Code 10-12” warning system employed by some OCSO deputies at the Theo Lacy facility. “Code 10-12” is a code used by some OCSO deputies to warn each other of the approach of a supervisor. “Just like the inmates warn each other,” an OCSO supervisor testified, “the deputies warn each other when the sergeant is working.”<sup>29</sup> “There’s a radio “code word” they use, he explained, it’s “10-12” meaning there is a “V.I.P. in the area.”<sup>30</sup> “You’ll hear that echoing around when I’m walking around.”<sup>31</sup> “[T]hey get forewarned. ...”<sup>32</sup> “If someone said F Barracks 1012,” another witness explained, that would mean “that a sergeant or lieutenant or someone was coming to that location.”<sup>33</sup> The Code functions as a warning call.<sup>34</sup>

The purpose of deputies signaling one another “10-12” was made clear through the testimony of an OCSO witness.

Whenever a sergeant or supervisors walk in our facility grounds, we usually get a 1012 code letting us know that a sergeant or somebody important is walking the facility, and that usually gives us out in the barracks a heads-up that we could possibly get a visit. In turn, that wakes up the deputies. In turn, that gives them the opportunity to put away anything that they should not be doing... And if a sergeant should come in, we’re awake, or whatever type of material that would be inappropriate would be put away. So when the sergeant would make his presence, it is a nice, clean guard station, functional.<sup>35</sup>

When asked what he thought of this signaling practice, one high ranking OCSO official simply offered “that’s probably been going on since radios were invented. ...”<sup>36</sup>

### **Guard Station Activity During Evening Dayroom of October 5, 2006**

Evidence showed that Chamberlain was beaten to death during the open dayroom period of 5:30 p.m. to 6:50 p.m. on the evening of October 5, 2006, while three OCSO personnel were posted in the barracks guard station approximately 68 feet away

from the murder scene. Witnesses before the Grand Jury testified that Chamberlain was forcibly dragged into “D” Cube and then assaulted by a series of inmates entering and exiting the dormitory cube in waves lasting an estimated 20 to 50 minutes.<sup>37</sup> While some witnesses testified to hearing Chamberlain screaming in pain during this beating and pleading for the assault to stop, others testified that they had not.<sup>38</sup> Ultimately, at 6:50 p.m., an inmate stood at or on top of a table directly in front of the guard station, waving his arms at the windows in an effort to get the deputies’ attention and alert them to the fact that there was a “man down” in “D” Cube.<sup>39</sup>

Three OCSD personnel occupied different posts inside the guard station. According to the evidence, only one deputy was seated facing out into the west side of the barracks, while the remaining guard station staff sat facing out into the east side completing paperwork or in a position at the dividing wall between the east and west sides of the barracks.<sup>40</sup> The Grand Jury heard evidence that from 5:50 p.m. to 6:50 p.m., the time within which Chamberlain was murdered, the deputy seated at the west side windows was watching the television program “Cops.”<sup>41</sup> He sent and received a total of 22 personal text messages on his cellular telephone.<sup>42</sup>

In a recorded interview presented to the Grand Jury, this deputy stated that while seated in the west facing position he periodically stood up and looked into the barracks, specifically scanning for Chamberlain.<sup>43</sup> This was contrary to the testimony of other officers assigned to the guard station at the time who testified that they never witnessed him making any such effort.<sup>44</sup> In fact, one of them stated that “I didn’t see him do much besides sitting in the chair...with the TV on.”<sup>45</sup> “[I]t would have to be hard to see much of anything” from the way he had been sitting.<sup>46</sup> None of the guard station staff testified to witnessing anything out of the ordinary occurring in “F” Barracks, West at the time of the homicide.<sup>47</sup>

Although the west-facing deputy admitted he had been watching television during the murder, OCSD investigators did not to probe him for any meaningful detail. In two recorded interviews with the deputy, OCSD investigators did not ask the deputy logical, probative questions such as what he had been watching on television, how long he had been watching, or how intently he had been focused on the programming, which would have aided the investigation.<sup>48</sup> An OCSD administrator echoing these concerns over

the deputy's interview told Grand Jurors, "Well my questions were to what extent was he watching TV, was he monitoring what the inmates were watching ... Because all I got was that he said he was watching TV and I didn't know what that actually meant. [W]as he performing his duties the way he was supposed to or was he just watching TV."<sup>49</sup>

## **Administrative Response to Television Distraction**

On April 17, 2007, OCSD removed the televisions from the guard stations of Theo Lacy.<sup>50</sup> This action came more than six months after the death of Chamberlain. One OCSD administrator testified that the issue of removing the televisions had been discussed among the administration but corrective action may have been delayed out of a concern that it would be interpreted by others as an admission of wrongdoing by the Department.<sup>51</sup> Remedying a known distraction and a potentially dangerous condition was consequently delayed for several months.

## **OCSD Deputies Use Inmate "shot callers" to Enforce Discipline**

OCSD policies and state criminal law prohibit sheriff's deputies from delegating disciplinary authority to any inmate. Despite these proscriptions, the Grand Jury received evidence that OCSD deputies routinely enlist inmate authoritarians, known as "shot callers" to enforce jail rules. With the full knowledge that these individuals govern the inmate population through the threat of assault, numerous deputies have made a practice of employing "shot callers" to discipline other inmates. This section addresses the evidence of that practice as well as the rewards and threats used by OCSD personnel to exploit this illicit authority.

## **Discussion**

Within the custodial population of Theo Lacy, inmates tend to segregate themselves into racial factions referred to as "cars."<sup>52</sup> The inmates of "F" Barracks, West, separate into three such racial groups or "cars." The white inmates are known as the "Woods," American-born or gang affiliated Hispanic inmates are called the "South

Siders,” undocumented, immigrant inmates are known as the “Pisanos.”<sup>53</sup> Although they may differ in race and nationality, the inmates of these “cars” are each beholden to the same hierarchical power structure governing their ranks.

Each faction has one inmate who assumes authority for his racial group and who is referred to as the “shot caller,” “rep” or “key holder.”<sup>54</sup> Although there are no formal rules controlling who ascends to this position, the “shot caller” is typically an inmate with state prison experience, a lengthy criminal history, gang status, or an aggressive personality.<sup>55</sup> Under his direction, the “shot caller” controls the behavior of those within his “car” through a rank structure consisting of a “right-hand man” (his first lieutenant and successor),<sup>56</sup> a “mouse” (an inmate responsible for orienting newcomers to the rules of the car and the shot caller’s command)<sup>57</sup> and “torpedoes” (inmates who act as his instruments of discipline).<sup>†58</sup> If an inmate fails to obey the directives of his “shot caller” or the rules of his car, the torpedoes are then directed to “tax” the offending individual, forcing him to perform calisthenics or subjecting him to physical assault.<sup>‡59</sup> The evidence has uniformly demonstrated that the discipline most commonly carried out on behalf of a “shot caller” is physical exercise and assault. In fact, the punishment typically requires the targeted inmate to stand defenseless against a wall while two to three assailants pummel him from throat to waist for 13 to 23 seconds.<sup>60</sup> As an inmate you either obey your “shot caller” or get beaten.

According to the evidence before the Grand Jury, the command of the “shot caller” is often legitimized and even supported by some OCSD deputies assigned to the barracks. Rather than personally confronting the rule breaking inmates, OCSD deputies would summon “shot callers” and instruct them to get problem inmates “in line.” One deputy testified that he and his partner would convene “shot callers” on a regular basis and enlist them to enforce jail rules.<sup>63</sup> They would instruct the “shot callers” to “deal with” particular inmates who were misbehaving and to get them “back in line.”<sup>64</sup> The deputy professed that he never intended any harm, yet he conceded that he would take

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<sup>†</sup> There are other specialized inmate roles within each car and within the barracks itself. For example, there is typically a “radio man” (an inmate designated to communicate information or orders out to a group of inmates or the entire barracks), an “assistant mouse” (who aids the mouse in the performance of his role), and “cube reps” (who represent the inmates of individual dormitory cubes), along with other particularized roles.<sup>61</sup>

<sup>‡</sup> The process of “taxing” an inmate may consist of other punishments. For example, an offending inmate may be required to surrender commissary items as a fine for his behavior.<sup>62</sup>

this action knowing that the identified inmate would then be assaulted or otherwise taxed for his offending behavior.<sup>65</sup> In fact, the deputy admitted that he often witnessed both the act and aftermath of inmates punished on his behalf.<sup>66</sup> When asked if he would discipline a “shot caller” after discovering he had punished another inmate, the deputy responded with an unqualified “no.”<sup>67</sup> This deputy stated that using “shot callers” was necessary because “you have to use their own hierarchy to control them.”<sup>68</sup>

An OCSD training deputy, responsible for educating new deputies, similarly testified to his use of the same practice. According to the deputy, he would instruct “shot callers” to correct inmates who violated jail rules such as failing to line up for meals, entering dormitory cubes where they were not housed, talking while standing in line, taking their hands out of their pockets and failing to be dressed in full jail issue while in the barracks dayroom.<sup>69</sup> The training deputy testified that in every instance, he only expected the “shot caller” to disseminate his instructions to the other inmates. He admitted he knew, that if those same inmates then disobeyed their “shot caller” by continuing their rule violating behavior, they would be assaulted or otherwise taxed.<sup>70</sup>

The Grand Jury evidence was replete with testimony of deputies using “shot callers” to enforce jail rules. Another deputy recounted how deputies would summon “shot callers” on a regular basis, enlisting them to correct disobedient inmates<sup>71</sup> with instructions like “get it fixed.”<sup>72</sup> The deputy admitted to knowing that these “shot callers” would then direct assaults to penalize inmate behavior.<sup>73</sup> The deputy witnessed this practice on countless occasions, as well as hearing other deputies discussing this practice. Giving an example the witness stated, “I would hear [deputies] saying certain things like ‘I talked to the “shot caller”...and if the guy doesn’t get in line, the shot-caller says ‘I will take care of it,’ meaning taxation.”<sup>74</sup>

Former inmates of Theo Lacy who appeared before the Grand Jury uniformly testified to witnessing deputies and “shot callers” meeting regularly. These “car” leaders would be called down to conference with the deputies at a dayroom table or outside of the barracks while the remaining inmates were restricted to their dormitory cubes.<sup>75</sup> At the end of the meetings, the “shot callers” would either address their “car” with the deputies’ directives<sup>76</sup> or confront individual inmates about their rule violations.<sup>77</sup> One witness who was identified as a “shot caller”<sup>78</sup> testified that often “deputies would call

out the reps and say hey, you know, just put a hand on your people. Control your people. We don't want to come in here and mess up you know, you guys' house."<sup>79</sup>

Recognition of the "shot caller's" authority over other inmates was fostered by nominal rewards and minor threats to the "shot caller" himself and to those within his command. "Shot callers" were often compensated for their role in the barracks with both extra sack lunches and better jail clothing.<sup>80</sup> At the direction of a deputy, these "shot callers" along with members of their contingent were often issued newer uniforms and extra brown-bag meals. OCS D witnesses also stated that they were more tolerant of rule violations by these individuals as opposed to other inmates.<sup>81</sup> This practice, not only legitimized their authority but, at least in one instance, encouraged inmate dependence on their "shot caller." For example, "shot callers" would be issued extra hygiene products such as soap and toilet paper, a violation of jail rules, in order to make them the provider for inmates in their own "car."<sup>82</sup> When a new inmate entered the barracks, the "shot caller" furnished the new inmate with these basic necessities, a practice approved of by deputies assigned to the jail.<sup>83</sup> On other occasions, deputies would threaten the "shot callers" with negative consequences if they failed to get inmates in line. They were threatened that their barracks "would be tossed," meaning their beds and property thrown asunder unless they corrected the behavior of those within their "car."<sup>84</sup> One self-admitted "shot caller" explained how a deputy had instructed him to "make sure everything is going well or I'm going to have to go in there and fuck the pad up."<sup>85</sup>

The written policies and stated practices of OCS D bare little semblance to these examples of the actual practices revealed in the evidence. The OCS D Policy states, "[i]nmates will never be permitted to exercise control over other inmates"<sup>86</sup> and "[n]o inmate shall inflict punishment on another inmate."<sup>87</sup> Deputies are trained to discourage inmate leadership and state law criminalizes the delegation of disciplinary authority from deputy to inmate.<sup>88</sup> According to senior OCS D staff, individual inmates, such as "shot callers," should never be singled out as authority figures<sup>89</sup> nor should they ever be given extra privileges<sup>90</sup> since doing so would dangerously empower them.

## **Denial of Medical Treatment to Inmates**

The Grand Jury received evidence of OCSD personnel refusing requests for medical attention by ill and obviously injured inmates as well as using “shot-callers” to discourage inmates from requesting such aid. This section addresses the contrast of OCSD Policy regarding medical requests and treatment versus actual practices revealed in the testimony.

### **Discussion**

OCSD Policy states, “[a]ll [medical] requests will be forwarded to the Medical Staff immediately *regardless* of the nature of the illness”<sup>91</sup> and “[o]bviously ill or injured inmates in the housing areas will be brought to the attention of the medical staff *immediately*.”<sup>92</sup> “Any time staff comes in contact with an inmate that is...in need of medical attention, they are *required* to take *immediate* and positive action.”<sup>93</sup> “If at any time an inmate states the need for, or appears to require medical attention, the medical staff will be notified *immediately*.”<sup>94</sup> “Nothing...relieves a deputy, or other staff member of the responsibility to provide for the health and safety of an inmate.”<sup>95</sup> If an inmate is injured, the deputy is required to complete a medical aid report to document the incident.<sup>96</sup>

On many occasions, ill and obviously injured inmates who requested medical aid from OCSD deputies were denied treatment or evaluation. The majority of inmates requesting medical attention displayed injuries, mainly bruising, suffered as a result of inmate assaults.<sup>97</sup> The inmates also presented themselves to OCSD personnel requesting treatment for constant headaches, allergies, sores, and other ailments.<sup>98</sup> Testimony revealed that OCSD deputies regularly denied medical attention because they wanted to avoid having to “cut paper” or to fill out a medical aid report.<sup>99</sup> “So the reality of it is a deputy may want to avoid having to write a medical report for an inmate that has been injured,” an OCSD witness was asked. “Yes,” he replied, “that is being, lazy sir.”<sup>100</sup> According to the witness, deputies sought to avoid writing reports of any kind, including medical aid reports.<sup>101</sup> As a result, they simply denied inmates treatment.

OCSD personnel also enlisted “shot callers” to discourage ill or injured inmates from requesting medical attention. On several occasions, the barracks “shot-caller” would be tasked with discouraging inmates with medical complaints from further complaining about them or face assault at the “shot-caller’s” directive.<sup>102</sup> One OCSD witness was asked, “So to avoid cutting paper, what is the deputy telling the shot-caller?” He answered, “I understand - - it could be to influence the “shot-caller” by telling the individual who has a medical aid, ‘you are not hurt,’ or ‘you are fine.’”<sup>103</sup> When asked how many times he had seen this practice unfold in one barracks in particular, the witness replied, “I would say more than 10 times, sir.”<sup>104</sup> “Well, part of avoiding having an inmate ask for medical aid would involve a deputy... talking to the “shot caller” and say, ‘get this guy in line?’” he was asked. A simple “correct” was his reply.<sup>105</sup>

## **Unauthorized and Undocumented Use of Less-Lethal Force**

The Grand Jury received evidence that OCSD personnel employed what they termed “less-lethal force” against inmates without authorization, against procedure, and without report or documentation. In particular, there were multiple unauthorized and unrecorded instances of personnel firing a “pepper-ball” gun into housing locations occupied by inmates. This section addresses the OCSD policies regarding the use of such force as contrasted with the evidence of actual practices revealed in the testimony.

### **Discussion**

OCSD deputies working in the jail facility maintain “pepper-ball” guns at their disposal as a weapon of less-lethal force to be employed only when strictly warranted. A “pepper-ball” gun is “[a] compressed air semi-automatic rifle that shoots hard plastic frangible spheres filled with Oleoresin Capsicum (O.C.) powder. These plastic balls are designed to crush on impact and release the O.C. powder to incapacitate the inmate.”<sup>106</sup> The “pepper-ball” rounds have a powerful debilitating effect, delivering a forceful impact on their target while functioning as an extreme irritant, causing incapacitating

coughing, tearing and painful, burning sensations in the eyes, nose, and throat. As with any use of force, the circumstances which will justify firing this weapon and the policies which control its deployment are both narrowly drawn.

### **OCSD's Written Policy on Use of Less-Lethal Force Against Inmates**

A deputy's authority to fire a "pepper-ball" rifle is unequivocally restricted by OCSD Policy and criminal law. The mandates of OCSD Policy alone state that the deployment of a "pepper-ball" weapon is a "use of force"<sup>107</sup> and "[i]n all cases, the use of force must [be]...as a result of a major rule violation or a criminal act necessitating that force."<sup>108</sup> In accordance with Policy, the "pepper-ball" weapon is intended "for the purpose of compelling an individual to cease his or her *violent or potentially violent* actions..."<sup>109</sup> or "to de-escalate a potentially *dangerous/deadly* situation. ..." <sup>110</sup> The weapon may not be used punitively. "Force will never be used as a form of punishment for inmates."<sup>111</sup>

### **Evidence of Actual Uses of Less-Lethal Force Against Inmates**

The Grand Jury received evidence that the "pepper-ball" rifle has been fired against inmates of "F" Barracks for the purposes of punishment. On multiple occasions, "pepper-ball" rounds were randomly fired into occupied bathrooms, dormitory cubes and the barracks because inmates were not returning to their bunks "fast enough," were getting off of their bunks when ordered to stay, or were simply becoming too loud.<sup>112</sup>

One OCSD deputy who witnessed this use of force on two occasions admitted that it had been unjustified, unnecessary and excessive, yet had taken no action himself to either stop or report this abuse of authority.<sup>113</sup> This deputy stated that reporting such abuse would have made working with his colleagues more difficult.<sup>114</sup> Former inmates testified to similar accounts, describing that an OCSD deputy would enter the dayroom, armed with the rifle, and threaten the barracks population stating, "this is my house" and warning that if inmates did not listen, he was going to have to make a habit out of firing the "pepper-ball" gun.<sup>115</sup> The Grand Jury viewed a guard station video recording showing an OCSD deputy instructing another to go out into the barracks with the "pepper-ball" gun to shut the inmates up.<sup>116</sup>

In each of these instances, there was no dangerous situation, no fight, no potentially violent action, nor any aggressive behavior precipitating this use of force.<sup>117</sup> Instead, individual inmates were either not following orders or not reacting quickly enough to satisfy the deputy. As a consequence, in violation of Policy, “pepper-ball” rounds were fired upon the barracks punitively.

There was further evidence that this weapon had been deployed unsafely and that its unauthorized use was neither documented nor reported. In violation of protocol, the rifle was fired into the barracks on multiple occasions without having issued any warning.<sup>118</sup> There was no evidence that any care had ever been provided to those inmates who had been affected by the “pepper-ball” rounds. Contrary to OCSD Policy, inmates were not provided with even minimal means of decontamination including water, fresh air or medical attention.<sup>119</sup>

Documentation and supervisory review are basic protocol any time force is used against an inmate. According to OCSD, “[i]t is policy to require the highest level of supervisory review and approval feasible under the circumstances, prior to and during the deployment of less lethal systems into the facilities.”<sup>120</sup> To this end, “deputies are to notify a supervisor before deploying a PepperBall Weapon System.” And “[i]f circumstances prevent notification prior to deployment, a supervisor is to be notified as soon as practicable.”<sup>121</sup> “The area Sergeant will be notified immediately and respond whenever force [has]...been used.”<sup>122</sup> “The involved deputy(s) will [then] provide the responding Sergeant a complete verbal report of the incident and action taken.”<sup>123</sup> In every case, “[a]ll relevant information concerning the use of Pepperball shall be documented.”<sup>124</sup>

On those occasions when the “pepper-ball” gun was fired in violation of policy, no supervisor was ever informed and no documentation was ever made of the event.<sup>125</sup> No report was written, no verbal account provided, and no video recording made of this punitive use of force.

## **Unauthorized Discipline of Inmates**

The OCSD maintains established procedures for determining violations of jail rules by inmates and for administering acceptable forms of discipline. In addition to previously described use of inmate “shot callers” to enforce jail rules and the punitive use of the “pepper-ball” gun, the Grand Jury received evidence that deputies routinely disciplined inmates with additional forms of unauthorized punishment. This section contrasts the OCSD Policy regarding inmate discipline with the evidence of actual practices revealed in testimony.

### **Discussion**

OCSD has adopted protocol which governs the judging of rule violations by inmates and the administration of disciplinary penalties. Consistent with statewide minimum standards for corrections, the OCSD Policy strictly limits the acceptable forms of discipline which may be imposed upon an inmate in the absence of an independent hearing.<sup>126</sup> With regard to minor rule violations, OCSD Policy states that “[d]eputies may counsel the offender or *with the approval* of a Sergeant or Lieutenant, may assign up to four (4) hours extra duty and up to five (5) days loss of dayroom.”<sup>127</sup> If there is an allegation of major rule violation, however, “[t]he deputy will prepare a report and submit it to his superior who will hold a disciplinary hearing with the inmate.”<sup>128</sup> “A supervisor who was not involved or a witness to the incident will conduct the hearing.”<sup>129</sup> If the hearing officer determines that a major rule violation has in fact occurred, the matter is then referred to a disciplinary lieutenant who issues one of the following acceptable forms of punishment: 1) a loss of privileges, including loss of dayroom, visiting, commissary, or outdoor recreation; 2) a loss of good time/work time; 3) a loss of work status; or 4) disciplinary isolation.<sup>130</sup>

As OCSD Policy states, the acceptable penalties for rule violations are limited and the imposition of any sanction, at a minimum, requires supervisory approval. Contrary to this Policy, the Grand Jury received evidence that deputies regularly imposed their own forms of unauthorized discipline and routinely issued punishments without approval. For example, if in a deputy’s own estimation an inmate or inmates

were not following “the program,” OCSD personnel would enter the barracks and tear the dormitory cubes asunder.<sup>§ 131</sup> Inmates would be required to strip down to their boxer shorts and exit their dormitory space while deputies tossed their mattresses and blankets out on to the dayroom floor. Often the personal belongings of the inmates, such as their letters and pictures, would similarly be strewn about, stepped on and torn. Once a cube had been “tossed,” the inmates would then be directed to return to their bare metal bunks, while leaving their bedding and belongings on the floor. They were then ordered to lie face down on their metal bunks until instructed otherwise.<sup>132</sup>

This practice of “bunk tossing” was not the result of a sanctioned barracks search but the punitive exercise of unauthorized discipline.<sup>133</sup> An illegitimate punishment was meted out at the discretion of deputies for inmates who failed to follow what they termed “the program.” This critical “program,” an OCSD witness testified, meant to encourage not creating problems for the deputies. Meaning “basically leaving the deputies doing as least as possible....”<sup>134</sup>

In addition to “tossing bunks,” deputies regularly assigned extra duties to inmates as punishment without ever documenting any rule violations or securing the approval of their sergeant. Failures to “follow the program” were also addressed by tasking inmates with picking up grass clippings and weeds and placing them in plastic bags, cleaning the barracks toilets and showers, restricting them to their bunks, or limiting them to sack lunch meals.<sup>136</sup> Contrary to OCSD Policy and statewide minimal standards for corrections, deputies regularly neglected to make any record of this discipline.<sup>137</sup> The discipline itself consisted of unauthorized punishment<sup>138</sup> in violation of OCSD Policy.

### **Failure to Patrol Barracks in Violation of OCSD Policy**

In order to maintain the security of the barracks and the safety of inmates, OCSD deputies are responsible for patrolling their assigned housing location every 30 minutes. In violation of this policy, the Grand Jury learned that deputies rarely patrol their

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<sup>§</sup> This disciplinary practice is actually expressly prohibited by Department policy. Orange County Sheriff's Department, Theo Lacy Facility Policy and Procedure, Title 4, Chapter 3, Section 4.16.8: “Shakedowns are never a form of punishment.”<sup>135</sup>

assigned barracks, risking the safety and security of the barracks and inmates under their care. This section addresses the foot patrol duties of a barracks deputy, the routine violation of this Policy, and the role this dereliction may have played in the death of Chamberlain.

## **Discussion**

The security of the barracks and the safety of the inmates housed within them in large measure depend upon the dutiful vigilance of OCSD personnel. Within “F” Barracks, two OCSD deputies, also referred to as “prowlers,” as well as one OCSD SSO are assigned to fulfill this goal. One of the principal duties of the “prowlers” is to regularly patrol or “prowl” the barracks floor to maintain a constant surveillance over the inmates under their supervision.<sup>139</sup>

## **OCSD Policy**

According to OCSD Department Policy, the “proowler” is to “perform 30 minute barracks checks and log the checks in the Work Station Log.”<sup>140</sup> OCSD deputies and supervisory staff who appeared before the Grand Jury testified that pursuant to this Policy, deputies are obligated to physically patrol the barracks floor by foot every half hour.<sup>141</sup> This duty is particularly critical in a barracks which has multiple blind spots and scores of freely moving inmates. According to OCSD personnel, deputies fulfilling this duty are responsible for walking through the barracks, cubicle by cubicle, to check all of the blind spots and to specifically ensure that “no assaults” are occurring and that no inmates are injured.<sup>142</sup> Unless precluded from doing so, a deputy is required to walk the barracks floor to check on the safety of the inmates under his care and the security of the facility every 30 minutes.<sup>143</sup>

## **Actual Practice**

Although OCSD Policy requires floor checks every 30 minutes, such foot patrols are the exception as opposed to the rule. Deputies rarely patrol the barracks floor. Independent of the four scheduled body counts a day, the substantial weight of evidence showed that entire days would pass without deputies conducting a single floor check.<sup>144</sup> The evidence revealed that there was no regularity when such floor checks

occurred. OCSD personnel assigned to the barracks testified that one such floor check may have been conducted twice a week, at most.<sup>145</sup> Former inmates of the barracks testified that such floor checks occurred maybe once every other day, weeks apart, or simply not at all.<sup>146</sup>

According to OCSD personnel, it was entirely feasible to walk the barracks floor every 30 minutes as policy required, but it just simply was not done.<sup>147</sup> With regard to floor checks, an OCSD employee testified, “the deputies pretty much decide that they don’t want to do that.”<sup>148</sup> Instead the “deputies would rather be inside the guard station doing nothing.”<sup>149</sup>

While sitting in the guard station the evidence revealed that deputies would not even look out the windows into the barracks for up to 20 to 30 minutes at a time.<sup>150</sup> OCSD personnel assigned to the barracks testified that it was normal for deputies sitting in the guard station not to look out into the dayroom under their supervision for up to half an hour at a time.<sup>151</sup>

### **The Role this Failure to Patrol May Have Played in the Death of Chamberlain**

According to OCSD witnesses, the purpose of the floor check is to inspect the blind spots, ascertain that no assaults are occurring, and verify that no inmates are injured.<sup>152</sup> For a period of 20 to 50 minutes, Chamberlain was beaten to death in a purported “blind spot,” through a continuous assault by waves of inmates in and out of “D” cube. In violation of Policy,<sup>153</sup> an OCSD deputy had not been on the floor of F Barracks, West for nearly five hours before the discovery of Chamberlain’s body.<sup>154</sup> According to OCSD personnel, the last time a deputy had been on the floor of “F” Barracks, West before finding Chamberlain dead was during a scheduled inmate count at 2:00 p.m.<sup>155</sup> From the 2:00 p.m. count until deputies were alerted of a “man down” at 6:50 p.m., no deputy had patrolled the floor of “F” Barracks, West for five hours. When asked if Chamberlain would still be alive had the required floor checks been performed, a barracks deputy conceded, “it’s possible.”<sup>156</sup>

## **Inaccurate Records of Deputy Activity**

OCSD personnel within each barracks has the responsibility to maintain a record of periodic actions taken by deputies, such as the required 30-minute floor checks, as well as other notable events, in the barracks' "Work Station Log." The evidence received by this Grand Jury revealed that entries in this Log are often misleading or false and vulnerable to falsification. This section addresses these characteristics of the "Work Station Log," its records, and the Log entries of "F" Barracks West for October 5, 2006.

### **Discussion**

Within each barracks housing location, OCSD personnel are required to maintain a computerized record of activity known as the "Work Station Log". The "Work Station Log" functions as a 24-hour chronology of deputy work activity, scheduled events, and inmate movement, as well as a record for documenting notable incidents that occur within the barracks.<sup>157</sup> In "F" Barracks, it is principally the responsibility of the SSO to maintain the Log, but, the deputies are also capable of making entries and do at times.<sup>158</sup>

According to OCSD Policy, deputies are responsible for documenting the performance of their mandatory 30-minute floor checks in the "Work Station Log" and for ensuring "the completeness of the log."<sup>159</sup> In fact, the only Department record that such floor checks are actually being performed is the "Work Station Log" itself.<sup>160</sup> A floor check is documented in the Log with the notation "barracks secure," if a deputy has physically patrolled the barracks.<sup>161</sup> The evidence before the Grand Jury has been that OCSD personnel routinely document the Log "barracks secure" when no such action had been taken. The "Work Station Log" regularly contains half-hourly notations "barracks secure" when no floor check had been performed. This left the impression that timely and regular patrols have been performed, when in fact they had not.<sup>162</sup>

Although no floor check would be performed, OCSD personnel testified that a "barracks secure" entry may or may not be preceded by a visual scan of the barracks from inside the guard station. At times, no action whatsoever is taken to ensure either

the security of the barracks or the well-being of the inmates before personnel document the Log “barracks secure.”<sup>163</sup> One example of this misleading record keeping is the Log entries of October 5, 2006, the date of John Chamberlain’s murder. (Discussed below).

Testimony also disclosed that deputies would complete a Log in advance so that they might sleep while on duty. OCSD personnel testified before the Grand Jury to witnessing deputies “pre-log” daily activity in the “Work Station Log” in order to make it appear accurate while they slept on duty or otherwise occupied themselves.<sup>164</sup>

This evidence only underscored the vulnerability of the OCSD computerized Work Station Log to falsification. OCSD personnel testified that the logs can be manipulated in any way a user chooses, leaving no record of changes. Activity may be pre-logged, as indicated, or back-logged, as in the case of Chamberlain.<sup>165</sup>

### **The “F” Barracks “Work Station Log” Entries of October 5, 2006**

While Chamberlain was beaten to death by succeeding waves of inmates during the dayroom hour of October 5, 2006, OCSD personnel sat in the barracks guard station logging the record “barracks secure,” “no problems.”<sup>166</sup> According to the evidence, during the hour of approximately 5:50 p.m. to 6:50 p.m., Chamberlain was forcibly dragged into “D” Cube and assaulted by a series of inmates punching, kicking and stomping him. He was sodomized, spat and urinated upon, and stripped of his clothing. Inmates carried his clothes and cups of water back and forth between the bathroom, “D” Cube, and other barracks locations to wash blood and forensic evidence away from the crime scene and their own clothing and to distract attention from the actual assailants. As this gruesome scene unfolded, the “Work Station Log” was documented “barracks secure” at 6:00 p.m. and “barracks secure, no problems” at 6:30 p.m..<sup>167</sup> There was no evidence that any OCSD personnel specifically took any action preceding these entries to actually ensure the security of barracks.<sup>168</sup>

The October 5, 2006, “Work Station Log” also contained a 2:30 p.m. entry stating that Chamberlain was interviewed at that time for his own safety and that he had informed deputies that he was not in fear for his life. This critical log entry was written after Chamberlain’s death and inserted nearly four and a half hours after the stated time of interview.<sup>169</sup>

## **OCSD Prevented Independent Homicide Investigation in Violation of County Protocol & Historical Practice**

On the evening of October 5<sup>th</sup>, 2006, Chamberlain was murdered while in OCSD's custody at Theo Lacy. In the wake of his death, OCSD breached an established investigative protocol and decades-long practice by prohibiting the OCDA from leading an independent homicide investigation into the killing. This section addresses the County protocol and historical practice which govern custodial death investigations and the contrary action of OCSD in the investigation of Chamberlain's murder.

### **Discussion**

Under the terms of a written protocol adopted by Orange County in 1985, OCSD is required to immediately refer any in-custody death to the OCDA for independent investigation.<sup>170</sup> In accordance with this policy, the OCDA then assumes the primary investigative responsibility into the death of any individual in the custody of OCSD in order to eliminate any perceived conflict of interest.<sup>171</sup> Although memorialized in 1985, this investigative procedure had been in practice since the administration of Sheriff James A. Musick, who served Orange County from 1947 to 1975.<sup>172</sup> Furthermore, since its written adoption this protocol has been followed in every single custodial death investigation with only one notable exception, the murder of Chamberlain.

On October 5, 2006, OCSD violated this investigative protocol and historical practice by prohibiting the OCDA from leading an independent homicide investigation into Chamberlain's death. According to the 2007 Orange County Special Criminal Grand Jury, "the Sheriff's Department violated both the letter and spirit of the investigative protocol by denying the OCDA the opportunity to lead an independent criminal investigation into the death of John Chamberlain."<sup>173</sup> In the unanimous words of this Grand Jury, "[a]lthough the terms of the protocol unambiguously call for the OCDA to act as the primary investigative agency in all custodial deaths and the execution of this policy operated without exception for more than two decades, the Sheriff's Department inexplicably insisted on leading this particular investigation."<sup>174</sup> Through

either “conscious choice or negligent action,” the Grand Jury found that OCSD violated a codified and time-honored protocol in the Chamberlain murder investigation.<sup>175</sup>

## **Investigative Protocol for Custodial Deaths**

On May 14, 1985, the Orange County Board of Supervisors passed a resolution directing the OCDA and OCSD to develop a protocol and memorandum of understanding whereby the OCDA would “direct the investigation” of all deaths which occur in the custody of the OCSD.<sup>176</sup> The purpose of this mandate was to formalize a policy aimed at eliminating the conflict of interest that would otherwise result from OCSD investigating the death of an individual in its own custody.<sup>177</sup> On July 23, 1985, the Board of Supervisors adopted the written procedures of these two agencies requiring the referral of all custodial deaths to the OCDA for an independent criminal investigation.<sup>178</sup>

The custodial-death protocol adopted by the County in 1985 exists in two complimentary parts: 1) a Sheriff’s Department policy; and 2) the District Attorney’s investigative procedures.<sup>179</sup> OCSD’s contribution to the protocol was to mandate the referral of all custodial deaths within their jurisdiction to the OCDA for an independent investigation. In its own words, OCSD states, “[i]t is the policy of this office to immediately refer to the Orange County OCDA, *all* cases wherein...the deceased...was in the custody of this department at a time related to the death ...”<sup>180</sup> In return, OCDA’s procedures read that, “[t]he D.A. will assume primary investigative responsibility” and “conduct an independent investigation” into the “death of *any* inmate in *any* custodial facility.”<sup>181</sup> “This procedure,” the protocol reads, “is designed...to be followed in the investigation of...custodial incidents.” Its purpose is to “maximize the effectiveness of an independent investigation by the District Attorney and thereby eliminate any perceived conflict of interest that may otherwise result.”<sup>182</sup>

As the protocol makes clear that, it is the duty of OCSD to defer to the OCDA in the investigation of all custodial deaths.<sup>183</sup> The subsequent role of the OCSD in these investigations if any is relegated to simply assisting the OCDA.<sup>184</sup> The written procedures provide that OCSD “personnel *may* be requested to actively participate in all or select phases of the investigation” at the direction of the OCDA<sup>185</sup> while the OCSD

Policy states it will only “provide assistance...as requested by the District Attorney.”<sup>186</sup> “[S]ince the final responsibility for the investigation rests with the D.A., the D.A. shall direct the independent investigation.”<sup>187</sup>

OCSD has reaffirmed this protocol several times in writing since its formal adoption in 1985. In a joint letter to the Board of Supervisors on March 7, 1995, both the Sheriff and the District Attorney wrote that “[t]he protocol developed in 1985 indicates that the District Attorney will handle, ‘all cases wherein...the deceased was in the custody of the department [Sheriff’s Department] at a time related to the death...’”<sup>188</sup> Similarly in a response to The 2005 Orange County Grand Jury, OCSD wrote that the 1985 memorandum of understanding provides for the District Attorney to act as an “independent third party investigating the death” when an individual “dies while incarcerated in a Sheriff’s facility. ...”<sup>189</sup> In fact, even the OCSD’s Internet website currently states that “[t]he primary responsibility for the investigation of in-custody deaths falls to the OCDA.”<sup>190</sup>

The 2007 Special Criminal Grand Jury found that “the terms of the protocol unambiguously call for the OCDA to act as the primary investigative agency in all custodial deaths.”<sup>191</sup> In the face of this clear, written mandate, however, the OCSD denied the OCDA the opportunity to lead an independent investigation into the custodial homicide of Chamberlain.

## **Historical Practice of Custodial Death Investigations**

For more than three decades, OCDA has led an independent investigation into every custodial death in the OCSD’s jurisdiction. Although formerly adopted by the County in 1985, this investigative practice had actually been in effect since, at least, the administration of Sheriff James A. Musick who headed the Department from 1947 to 1975. According to the testimony of a 38-year veteran and former top-ranking OCSD official, OCDA had been the lead investigator in all custodial deaths since Sheriff Musick.<sup>192</sup> It was only in 1985, the witness explained, that the OCDA and the OCSD finally committed to writing what had been their agencies’ investigative practice for years.<sup>193</sup>

In the 20 years following the protocol's formalization, there have been a total of 130 deaths in the custody of the Sheriff's Department.<sup>194</sup> OCDA led the resulting investigation in 129 of those cases.<sup>195</sup> Chamberlain's murder stands as the resounding exception. In the words of the Special Criminal Grand Jury, the written "investigative protocol has been honored, without fail, in 129 out of 130 custodial death investigations, including four custodial homicides. The only deviation in the more than 20 year history of this protocol occurred...in the Sheriff's Department's handling of John Chamberlain's murder investigation."<sup>196</sup>

Some members of OCSD suggested to the Special Criminal Grand Jury that their agency had always led the investigation when the custodial death had been a homicide. While conceding that the OCDA was otherwise the lead investigative agency, these individuals maintained that this practice had not applied in prior investigations of custodial *homicides*. According to these witnesses, it was this precedence that justified OCSD's departure from an otherwise clearly written protocol in Chamberlain's case. An OCSD memorandum discovered by the Grand Jury makes it clear that their department has not led any of the prior homicide investigations.<sup>197</sup>

In the wake of Chamberlain's murder, OCSD tasked an experienced homicide detective with researching which agency had actually led the investigation into prior custodial homicides.<sup>198</sup> In an October 12, 2006, memorandum to his supervisor documenting his findings, an OCSD investigator concluded that the OCDA led every prior custodial homicide investigation.<sup>199</sup> In fact, the Department was even unaware of the most recent homicide which occurred in its own jail, a 1994 murder, which upon review OCSD officials conceded had been led by an OCDA investigation.<sup>200</sup> Nevertheless, certain members of OCSD continued to inform the Grand Jury facts which were contrary to their own findings.<sup>201</sup>

Since the impaneling of the Special Criminal Grand Jury, OCSD has experienced additional custodial deaths. In conformity with the protocol, each one of these cases was led by an independent OCDA investigation.<sup>202</sup> For reasons that the Grand Jury termed "inexplicable," OCSD departed from both written protocol and historical practice in their treatment of Chamberlain's murder "by taking the lead in a custodial death investigation for the first time in history."<sup>203</sup>

## **OCSD Refused Independent Homicide Investigation Led by OCDA**

Shortly after 6:50 p.m. on October 5, 2006, Chamberlain's lifeless body was found inside "D" Cube on the West side of Theo Lacy's "F" Barracks. Although at that moment the circumstances surrounding his death remained obscure, under existing protocol OCSD was required to "immediately refer" the investigation to the OCDA to "assume the primary investigative responsibility for the incident." What followed, however, was a refusal at the highest levels of OCSD to follow protocol and relinquish investigative control of the case.

### **Initial Level of OCSD's Investigative Decision**

At 7:32 p.m. that evening, investigators from OCSD's Homicide Unit began mobilizing their response to Theo Lacy.<sup>204</sup> Within half an hour, at least 15 OCSD detectives were en route to the jail to direct the ensuing investigation.<sup>205</sup> According to the OCSD supervisor coordinating the response, the size of the pending task was immediately apparent. At the time of the first notification, the supervisor testified, "I knew I needed pretty much everybody on the detail and possibly more people in order to interview 146 inmates and process the evidence."<sup>206</sup>

It was not until 8:03 p.m., more than an hour after Chamberlain's body had been found, that OCSD made its first telephone notification to the OCDA.<sup>207</sup> In that call, OCSD made its intent to lead the investigation clear. Although a large scale custodial death investigation was before them involving multiple suspects and more than 150 witnesses, OCSD asked the OCDA to send only "3 or 4 investigators" along to "monitor" or "shadow" the OCSD led investigation.<sup>208</sup>

The OCSD supervisor who made this request testified that her actual, albeit miscommunicated intention was for the two agencies to conduct a "joint investigation," and that her appeal for the OCDA to merely "shadow" or "monitor" the investigation was simply a poor choice of words.<sup>209</sup> Semantics aside, OCSD made it clear that the OCDA would not be leading the custodial death investigation. When asked if at the time of that initial phone call it had already been determined that the OCSD would be conducting the lead role in the investigation, the supervisor testified "that's correct."<sup>210</sup>

The investigative protocol makes no provision for “shadowing” or “monitoring” custodial death investigations performed by OCSD. Furthermore, the only joint investigations contemplated are those which may occur at the discretion of the OCDA. The protocol clearly specifies that OCSD personnel “*may* be requested to...participate in all or *select* phases of the investigation”<sup>211</sup> and that OCSD will only provide assistance “*as requested* by the District Attorney.”<sup>212</sup> According to the OCSD supervisor, the OCDA advised her as such during their initial conversation. Speaking of her OCDA counterpart the supervisor testified, “he said, well, we don’t shadow investigations,”<sup>213</sup> “our job is to be the lead investigative agency.”<sup>214</sup>

In their subsequent conversations that evening, the OCDA supervising investigator offered to respond to Theo Lacy and lead an independent investigation into Chamberlain’s death, if permitted.<sup>215</sup> However, complying with the protocol he told her, the OCDA would not respond in any other role.<sup>216</sup> At an impasse between the protocol’s mandate and OCSD’s stated intention, both individuals then agreed to contact their respective superiors regarding the handling of the investigation.<sup>217</sup>

### **Subsequent Levels of OCSD’s Investigative Decision**

At approximately 8:40 p.m. that evening, a nearly identical telephone conversation unfolded between the next level of each agency’s investigative command.<sup>218</sup> Once again, OCSD declared their intention to direct the investigation into Chamberlain’s murder and that the OCDA would be permitted to merely “monitor” or “shadow” their predetermined lead.<sup>219</sup> In like fashion, the OCDA commander explained that their function was to lead an independent investigation and that if permitted, they were prepared to do so. They would not, however respond in any other capacity but their mandated role.<sup>220</sup> According to the testimony of the OCSD supervisor, his OCDA counterpart even stressed the importance of independence, explaining that if they took anything other than a lead role in Chamberlain’s murder investigation, it would be difficult to prove that it was truly unbiased.<sup>221</sup> The very integrity of an impartial investigation would be at stake and for OCDA to relinquish its responsibility would be a violation of the protocol itself.<sup>222</sup>

The OCSD supervisor testified that the Department did not intend to permit an independent OCDA led investigation.<sup>223</sup> When asked if his Department “considered it unacceptable...for the D.A. to assume the primary investigative responsibility for the Chamberlain homicide, ...” his only reply was an unqualified “yes.”<sup>224</sup> According to the supervisor, he had passed that decision up to the highest levels of his agency and had been instructed to maintain OCSD’s investigative control over the case.<sup>225</sup> Unfortunately, the Grand Jury’s ability to determine who ultimately made that decision was compromised by contradictory testimony among certain OCSD officials and an invocation of the right to remain silent by others.<sup>226</sup> One Grand Juror’s question aptly summarized the frustrated tone of their inquiry. The juror wrote, “[f]or the past nine months the chain of command has pointed fingers up the chain with respect to decision making, blame, et cetera. Now we’ve seen the top management and it appears the fingers are all pointing back down the chain. Is this the way the Sheriff’s Department runs? ...”<sup>227</sup>

## **Basis of OCSD’s Investigative Decision**

The genesis of OCSD’s investigative decision appears to have been a combination of several factors. Initially, OCSD’s personnel allegedly believed that the protocol granted their department investigative jurisdiction over inmate-on-inmate custodial homicides.<sup>228</sup> Since early reports did not indicate deputy involvement in the murder, they contended that it was the OCSD’s right to control the investigation and to preclude the OCDA from taking an independent lead.<sup>229</sup> There was neither written basis nor historical precedence for this opinion.<sup>230</sup> The written protocol calls for the OCDA to conduct an “independent investigation” into “*all* cases” involving “[t]he death of *any* inmate in *any* custodial facility” and requires the Sheriff’s Department to “immediately refer...*all* [such] cases...” to the District Attorney.<sup>231</sup>

When confronted with this language and the entirety of the protocol, OCSD witnesses conceded that the terms govern all custodial deaths, including homicides, and that it makes neither distinction nor provision for murder investigations led by OCSD.<sup>232</sup> OCSD took the opposite position on the night of Chamberlain’s murder. In insisting on an investigative lead, one OCSD witness testified, he was following the

orders of the Sheriff.<sup>233</sup> When questioned whether his Department had asked the District Attorney not to follow protocol that night, the witness replied “yes, that’s what I was trying to get [the District Attorney] Commander to agree to that night, just in case.”<sup>234</sup>

OCSD’s position revealed itself to be contradictory upon closer examination. While admitting that the OCDA had been asked to simply “monitor” or “shadow” their investigation, an OCSD witness testified that her Department has not and would not ever do the same for another agency. “[H]ave the Sheriff’s ever monitored or shadowed someone’s investigation? ...” the witness was asked. “Not that I’m aware of,” was the reply. Well, “if another agency asked you to shadow or monitor their investigation would you?” Answer: “I would tell them no.” “I wouldn’t do it.”<sup>235</sup>

OCSD’s investigative decisions that night were partially informed by advice they later determined to be wrong. When OCDA questioned their refusal to permit an independently led investigation, OCSD searched for historical precedence to support their decision.<sup>236</sup> Rather than consulting the protocol<sup>237</sup> or asking a top administrator experienced in both homicides and jails,<sup>238</sup> OCSD telephoned a retired OCSD investigator who had not been involved in a custodial homicide in nearly 20 years.<sup>239</sup> According to OCSD witnesses, the retired investigator told them that it was OCSD who had led that prior jail death investigation.<sup>240</sup> He was in error. When OCSD later researched the January 17, 1987, homicide to which the retired investigator had been referring OCSD determined that the OCDA actually led the investigation.<sup>241</sup> This error was compounded by the fact that OCSD allegedly believed the 1987 case was its most recent custodial homicide.<sup>242</sup> In fact, there was a 1994 jail murder which had been investigated by the OCDA.<sup>243</sup>

Testimony regarding OCSD’s initial decision-making was also produced. An OCSD official had assured the Grand Jury that every member of his Department is held accountable to follow the policies and procedures of their agency.<sup>244</sup> The witness testified that it was believed that terms like “shadow” and “monitor” were not used by OCSD personnel,<sup>245</sup> and that it was never the OCSD’s attitude that they were better than the OCDA at solving Chamberlain’s death.<sup>246</sup> The Grand Jury was shown an e-mail authored by that same witness at 9:30 p.m. on the night of the murder, amid the flurry of

inter-agency debate. The OCDA is “refusing to shadow, ...” the witness wrote, and “we’re hands down the best to lead.”<sup>247</sup> When confronted with this memo, the witness stated that OCSD *is* better than OCDA at investigating these crimes<sup>248</sup> and that the protocol was violated that night because it is only “a guideline” which is “not legally binding” upon OCSD.<sup>249</sup>

## **Allegations of Deputy Involvement in Murder**

Certain members of OCSD testified that the OCDA was not permitted to lead the investigation into Chamberlain’s murder because initially, there were no allegations of deputy involvement in the crime. According to their testimony, the protocol’s reference to OCDA’s role as the “primary investigating agency” in “all” and “any” custodial death only meant a limited “administrative” role reviewing allegations of deputy misconduct. Since they were confident before their investigation that it was inmates who were responsible for the crime, OCSD informed the OCDA that they had no concerns there would be any allegations against their own personnel.<sup>250</sup> By 12:10 a.m. the following morning, the circumstances had changed.

Between 12:10 a.m. and 6:32 a.m. the following day, four inmates had made statements to OCSD investigators implying that deputies had revealed Chamberlain’s pending charges. One of those inmates, now charged with Chamberlain’s murder, claimed that he personally learned of Chamberlain’s alleged crimes from one of the deputies in the barracks. Although OCSD became aware of this accusation against their own personnel, including its command staff, no further effort to enlist an independent investigation was made.<sup>251</sup> When asked what his superior told him to do after he revealed that there had been an allegation against one of their own deputies, the OCSD witness replied “nothing specifically. We had no marching orders other than continue with the investigation.”<sup>252</sup>

“It may never be known what, if any, impact [the Sheriff’s Department’s] action may have had on the results of the homicide investigation,” the Special Criminal Grand Jury wrote. But “[t]hrough conscious choice or negligent action...[they] violated both the letter and spirit of the investigative protocol. ...” “As citizens of Orange County,” the

Jury affirmed “we expect the Sheriff’s Department to honor the existing policy, without Exception. ...”<sup>253</sup>

## **Evidence of OCSD Witnesses Providing Misleading Testimony Regarding the History of Custodial Homicide Investigations**

Evidence received by the Grand Jury indicated that select members of OCSD gave misleading testimony regarding the history of prior custodial homicide investigations. The following section addresses the evidence of this testimony.

### **Discussion**

The conduct of OCSD officials on the night of Chamberlain’s homicide was judged by the Grand Jury against the written word and historical practice of custodial death investigations. In the course of these proceedings, select OCSD officials asserted that their investigative control over Chamberlain’s murder had been justified by a history of their agency leading all custodial homicide investigations.<sup>254</sup> The Grand Jury found this assertion to be untrue. The Grand Jury determined that the OCDA had led every custodial death investigation in the history of the protocol, including every prior jail homicide, with the single exception of Chamberlain’s murder.<sup>255</sup>

The Grand Jury found these historical assertions to be untrue. Not only were the assertions contained in this testimony not true, but the witnesses who made them did so without either knowledge of their truth or after having been told by their own agency that they were false. One OCSD official testified that he was unaware of any prior instance in which the OCDA had led the investigation into a jail murder. In fact, his own staff had told him on multiple occasions that the District Attorney had led every single one.<sup>256</sup> Another OCSD official told the Grand Jury that his Department had always led the investigation of custodial homicides. He later conceded that he actually had no knowledge of who had led those prior investigations.<sup>257</sup>

## **OCSD's Findings Regarding Prior Custodial Homicide Investigations**

Within one week of Chamberlain's murder,<sup>258</sup> a top-ranking OCSD official (Official 1), commissioned his staff to research the investigative history of homicides which had occurred in their jails.<sup>259</sup> OCSD witnesses testified that the focus of this assignment was to determine whether it was the OCDA or the OCSD which had taken the lead role in the investigation of those murders.<sup>260</sup> By October 12, 2006, at 12:28 p.m., this task had been completed and its findings memorialized in an internal OCSD e-mail memorandum.<sup>261</sup> The conclusions were clear: the OCDA had in fact led every prior custodial homicide investigation in the history of the custodial death protocol.

The memorandum detailed the OCDA's lead investigative role in every custodial murder listed in OCSD's record.<sup>262</sup> The findings read: January 17, 1987, "the OCDA took the lead role in the investigation" of the jail murder.<sup>263</sup> January 31, 1987, "the OCDA had primary responsibility for the investigation" of the custodial homicide.<sup>264</sup> July 3, 1988, "the OCDA took the lead role in the investigation of the murder."<sup>265</sup> The only homicide omitted from this memorandum was a 1994 jail murder which apparently had been missing from OCSD's record.<sup>266</sup> When asked why it had not been summarized in OCSD's findings, one OCSD witness testified "because we weren't aware of it..." at the time of the research.<sup>267</sup> When made aware of it, OCSD's witnesses once again concluded that it was the OCDA who had led the murder investigation.<sup>268</sup> OCSD's own research and conclusions failed to reveal a single OCSD led investigation.

## **Investigative History of Jail Murders Explained to OCSD's Official 1**

The history of OCDA led homicide investigations was shared with OCSD Official 1 on multiple occasions in advance of his Grand Jury testimony. Initially, members of OCSD's investigative division convened in Official 1's office to provide him with a copy of the research memorandum and to explain to him its findings.<sup>269</sup> "We talked about those findings,"<sup>270</sup> one OCSD witness explained of the October 2006 meeting, and the "conclusions as written"<sup>271</sup> in the memo. Following this meeting, an OCSD homicide supervisor similarly advised Official 1 of OCDA's lead role in the 1994 custodial homicide investigation.<sup>272</sup> "Who else did you alert to the fact that it was the OCDA who,

in fact, investigated that [1994] homicide,”<sup>273</sup> the supervisor was asked. “[Sheriff’s Official 1]...,” the witness testified, “because I provided him with the summarization of the other cases as well as that case.”<sup>274</sup> Finally, on July 30, 2007, a copy of the research memorandum describing the District Attorney’s lead role was resubmitted to Official 1 at his request for yet another review.<sup>275</sup> According to the testimony of one OCSD administrator, the memorandum had once again been “recently presented to [Official 1]. ...”<sup>276</sup> “He wanted a copy of it...” again, the witness explained, “so we gave it to him.”<sup>277</sup>

The evidence demonstrates that OCSD Official 1 had been provided with following information in advance of his Grand Jury testimony:

1. A copy of the October 12, 2006, OCSD’s research memorandum detailing OCDA’s investigative lead in every prior custodial homicide;
2. A briefing by members of OCSD’s investigative unit explaining these findings and the conclusions of the District Attorney’s history of leading such investigations;
3. A separate briefing by another OCSD supervisor that the OCDA had similarly led the investigation into the 1994 custodial homicide; and
4. A second, more updated presentation of the October 12, 2006, research memorandum containing the history of OCDA led investigations.

### **The Grand Jury Testimony of OCSD Official 1**

On January 10, 2008, OCSD Official 1 testified before the Grand Jury and denied any knowledge that the OCDA had ever led a custodial homicide investigation. The examination proceeded as follows:

Q. Are you aware of any custodial death investigation where it was a criminal investigation led by the D.A.’s Office?

A. From the Sheriff’s Department’s perspective, no.

Q. What is from the Sheriff’s perspective, you’re speaking on behalf of the Department?

A. Yes, I am.

Q. And then now from your own personal perspective.

A. In viewing the files that I viewed, I believe still the answer is no.<sup>278</sup>

Although later admitting that he never personally reviewed any files,<sup>279</sup> OCSD Official 1 still maintained that he was unaware of “any circumstances or cases” where the OCDA had ever led a custodial homicide investigation.<sup>280</sup> In fact, when asked what files had been reviewed that support his claim, Official 1 cited the very same people who had told him just the opposite that it was the OCDA which had led every prior custodial homicide investigation. “I asked my homicide unit to go back to some of the case files that were homicides that occurred in the jail,” Official 1 told the Grand Jury. “Speak to the investigators that were responsible for that investigation, look at the files. And if you can render an opinion as to who handled what portion of it.”<sup>281</sup> That file review resulted in a memorandum and briefings that repeatedly informed Official 1 of the history of OCDA led investigations, in contradiction to his Grand Jury testimony.

OCSD Official 1 continuously referenced the case file review as a source for his conclusion that the OCDA had not been the lead investigative agency in prior custodial homicides. In Official 1’s words: “we’ve had several people view the files, ...”<sup>282</sup> “we’ve had so many reviews of those files,”<sup>283</sup> “I do recall having several people review those files,”<sup>284</sup> “we have done probably three or four different reviews since that incident,”<sup>285</sup> and the author of the memorandum “was one of several people that did the review. He is not the only person.”<sup>286</sup> Official 1 stated, that the author of the October 12, 2006, memorandum was the only individual in his Department that he was aware of who actually reviewed those prior custodial files and rendered an opinion regarding which agency had the investigative lead. Q: “Who else besides [the author of the memo] are you personally aware of did a review of these prior custodial homicides and came to a different opinion?” A: “I don’t know if the Sergeant of the detail made a thorough review of the files. I don’t know.” Q: “So the only person you do know of is [the author of the memo]?” A: “That is correct.”<sup>287</sup>

When asked who had briefed him on the investigative practices of prior custodial homicides, OCSD Official 1 omitted any mention of those staff members who had advised him of the Department’s October 2006 research findings until confronted with the memorandum itself.<sup>288</sup> These individuals were the only ones,<sup>289</sup> who were tasked with researching prior custodial homicides and the ones who had briefed Official 1 orally and in writing of OCDA’s lead role in every prior investigation.

OCSD Official 1 was then confronted with the research that had been done at his direction stating the contrary.

Q. So you would agree with me that this memo...states just the opposite of the position you just took with respect to custodial deaths and the primary investigators in prior custodial homicide investigations?

A. It does.<sup>290</sup>

When then asked to reconcile this memorandum with his own testimony, Official 1 told the Grand Jury that these research findings were simply the personal and lone opinion of one investigator in his Department.

Q. [Official 1], you testified just moments ago to this Grand Jury that from the Sheriff's Department perspective, you were not aware of any prior custodial death investigations where the District Attorney was the lead. Whose perspective does [this Sheriff's investigator's] memo represent, if not the Sheriff's Department?

A. His own.<sup>291</sup>

The investigator who researched and authored the October 2006 memorandum is a 21-year veteran of OCSD,<sup>293</sup> who had personally performed between 50-100 homicide investigations in his career<sup>294</sup> and over 200 death investigations.<sup>295</sup> His research involved a thorough review of OCSD's "case books" regarding every jail murder of OCSD record since the inception of the custodial death protocol. The research involved a review of all documents contained in each homicide case file, including investigative reports, interviews, transcripts, letters, medical reports, and other documents.<sup>296</sup>

Official 1's characterization of these findings as merely the views of one investigator also failed to explain the contrary testimony of several other OCSD witnesses who had similarly revealed OCDA's lead investigative role in prior jail murders.<sup>292</sup>

OCSD Official 1 maintained that the author of the memorandum was the only person who had told him that the OCDA had led a prior custodial homicide investigation. "This is the only one that has come to me in all our conversations with the investigators and management with this representation," he told the Grand Jury.<sup>297</sup> OCSD Official 1 was shown the testimony of a homicide supervisor who had also told the Grand Jury that she had advised Official 1 of OCDA's lead role in the 1994 custodial homicide

investigation.<sup>298</sup> While acknowledging that he had been informed of this prior investigation, OCSD Official 1 stated that this homicide supervisor had simply told him that “it could be that the D.A.’s Office was the lead.”<sup>299</sup>

OCSD Official 1 began his testimony by denying, either personally or from OCSD’s perspective, any knowledge of “any circumstances or cases” where OCDA had been the lead investigative agency in a custodial homicide. When confronted with contrary research, performed at his own direction, he characterized it as the personal opinions of an investigator, who is “not a policy-maker,”<sup>300</sup> and stated that they were the only such conclusions that had come to his attention. Then when confronted with the homicide supervisor’s testimony, also stating she had told Official 1 of the District Attorney’s role in a prior jail murder, he stated he had been given this information but qualified it by stating that it only “could” have been that the OCDA was the lead investigator.

### **The Statements of OCSD Official 1 to the District Attorney**

On October 13, 2006, the Orange County District Attorney and the Orange County Sheriff met to discuss OCSD’s failure to follow the existing protocol in the investigation of Chamberlain’s murder.<sup>301</sup> In this meeting, Official 1 informed the District Attorney that OCSD had been the lead investigator in all prior jail homicides. In the subsequent Grand Jury investigation Official 1 was asked, “[y]ou made the following statement in this meeting that the Sheriff’s Department has been the lead investigator in all prior jail homicides; do you remember that statement?” “I do,” Official 1 replied. “And is that a correct statement of what took place at that meeting?” “It is,” he testified, “from the Sheriff’s Department perspective it is.” The evidence indicates that at the time Official 1 made this statement of fact to the District Attorney on October 13, 2006, he had already been advised to the contrary by members of his own Department.

The purpose and timing of the research on past practices appeared to have been created for the October 13, 2006, meeting with the District Attorney. OCSD Official 1 requested a case file review of the prior custodial homicides on October 11 or 12,<sup>302</sup> for the purpose of determining who had been the lead agency on the prior custodial homicides.<sup>303</sup> Members of OCSD’s investigative division met with Official 1 and briefed

him on their findings that the OCDA had led every prior jail murder investigation of record. Although neither witness could remember specifically when they briefed Official 1, they both seemed to recall that it occurred prior to OCSD's meeting with the OCDA and that the upcoming meeting had even been referenced during their briefing.<sup>304</sup>

When confronted with this evidence, OCSD Official 1 denied that he had been provided with those research findings prior to the October 13, 2006, meeting at the District Attorney's Office.<sup>305</sup> If he had, he testified, he "would have had a conversation before that meeting with all parties involved with the Sheriff's Office."<sup>306</sup> Official 1, however, made the same statement to the Grand Jury, that he was not aware of the OCDA having a been the lead investigative agency in the past, despite having already been told just the opposite by members of his own Department.

In reference to the October 13, 2006, meeting between the OCDA and the OCSD, Official 1 also told the Grand Jury that "the District Attorney's stated...that they were the lead agency in some of those cases that were back in the 80's and *the review of the file is not – is not showing that. It's not clear.*"<sup>307</sup> Official 1's own testimony was that the only file review that he was personally aware of was the one which resulted in the October memorandum. He had not reviewed any of the files himself. The memorandum outlined that the OCDA was the lead agency on those cases in the 1980s and Official 1 had been told that those were the findings. Therefore, there appears to be no basis for Official 1 to assert that "the review of the file is not showing that" OCDA was the lead agency, when in fact he had been told that the review showed just that.

## **Assertions of Investigative History in the Absence of Knowledge**

A second OCSD official also told members of the Grand Jury that his agency has always led the investigation into jail murders. When asked if he believed OCSD would lead the investigation into an "inmate on inmate death" in their own jails, the official testified "that's correct...that's the way they've been handled and that's consistent with our current and past practice, yes."<sup>308</sup> This assertion of past practices was repeated in further examination:

Q. I believe your testimony was...your department was to take the lead in the investigation of custodial homicides...?

A. Correct.

Q. And I wrote a quote, correct me if I'm wrong, you said "as we always have"?

A. Correct.<sup>309</sup>

This OCSD official, later revealed that he actually had little or no knowledge of who had led the investigation of his Department's prior jail murders. "I believe there are only four or five [custodial homicides] in the last 20 years," the official testified, "and I'm not familiar with those four or five investigations as to who was the lead and the roles that others assumed."<sup>310</sup>

### **Evidence of OCSD Personnel Delivering Misleading Information on Jail Investigations to the 2006-2007 Grand Jury**

In the months following Chamberlain's murder, the sitting 2006-2007 Orange County Grand Jury questioned OCSD officials over their handling of Chamberlain's murder and the County's investigative protocol for custodial deaths. The 2007-2008 Special Criminal Grand Jury heard evidence that OCSD officials may have omitted pertinent information from their response to these Grand Jury inquiries, while including other misleading statements on both investigative protocol and historical practice. This section addresses the evidence of these events.

### **Discussion**

In California, the Grand Jury is empowered by law to serve as a sentinel to the community by investigating the conduct of public officials and the actions of their agencies.<sup>311</sup> In the wake of Chamberlain's murder, news articles addressing the OCSD led investigation drew the attention of the 2006-2007 Orange County Grand Jury.<sup>312</sup> In particular, the 2006-2007 Grand Jury was concerned with the manner in which the OCSD had handled this investigation in comparison to the written protocol and historical practice governing custodial deaths.<sup>313</sup> One OCSD official succinctly explained, "the Grand Jury had questions about our response to the Chamberlain homicide that evening, and those questions revolved around the protocol itself."<sup>314</sup> It had been the

“Grand Jury’s request to go over topics related to the M.O.U. between [the Sheriff’s] Department and the OCDA” in regard to Chamberlain’s homicide.<sup>315</sup>

The 2006-2007 Grand Jury requested documents and commentary from OCSD regarding the protocol and practice of custodial death investigations and their handling of Chamberlain’s murder.<sup>316</sup> In advance of their responsive meeting, OCSD had researched and prepared two crucial documents: 1) an October 12, 2006, history of custodial homicide investigations;<sup>317</sup> and 2) a December 5, 2006, memorandum for the Grand Jury explaining custodial death investigations.<sup>318</sup> The October document detailed a uniform history of OCDA led jail investigations.<sup>319</sup> The December writing explained the protocol’s mandate for OCDA to “assume the primary investigative responsibility for in-custody related deaths.”<sup>320</sup>

Prior to meeting with the 2006-2007 Grand Jury, a top-ranking OCSD official (Official 2), altered the December Grand Jury memorandum by deleting any reference to the OCDA’s investigative lead and by inserting language stating that OCSD has “always” investigated all jail murders.<sup>321</sup> Additionally, according to the evidence, the contrary October memorandum detailing the actual history of prior investigations was simply never presented.<sup>322</sup>

## **December 5, 2006, Grand Jury Memorandum**

In response to Grand Jury inquiries into Chamberlain’s murder and investigative protocol, OCSD Official 2 tasked a Department supervisor with preparing a memorandum on custodial death investigations “to be presented to the Grand Jury.”<sup>323</sup> “[Official 2] asked me to prepare some speaking points regarding the meeting with the Grand Jury,” the witness explained, “and it revolved around the protocol.”<sup>324</sup> It was “because the Orange County Grand Jury had requested a meeting...and [they] had questions about our response to the Chamberlain homicide...and...the protocol itself.”<sup>325</sup> “My job was to outline and provided bulleted information based on our M.O.U. and...in-custody death investigations.”<sup>326</sup>

Relying on the written protocol, the OCSD supervisor authored a document which included clear language taken from the policy itself.<sup>327</sup> At the first line of the Grand Jury memo the supervisor wrote: “MOU states DA will assume primary

investigative responsibility for in-custody related deaths.”<sup>328</sup> That information was “pretty much taken verbatim” out of the written protocol, he told the Special Criminal Grand Jury, and that is why it was included in the original memo.<sup>329</sup> Before this document could be presented to the Grand Jury however, OCSD Official 2 deleted any reference to the District Attorney’s primary investigative role in custodial deaths.<sup>330</sup> Although an accurate statement of protocol, taken from the pages of the “MOU” it had been stricken from the Grand Jury memorandum.

OCSD Official 2 also added language to an existing statement so that the resulting document would read that OCSD “has always” investigated “ALL” murders in their jurisdiction, including the jails.<sup>331</sup> According to the memorandum’s author, this passage was intended to be understood as a statement that OCSD is in charge of custodial homicide investigations, not the OCDA,<sup>32</sup> a statement which he conceded would cause the reader to believe that the OCSD are and have been the lead investigators in jailhouse murders.<sup>333</sup> This passage, however, contradicts both the actual protocol and OCSD’s own research findings. According to OCSD’s October 2006 memorandum, OCSD has not led a single custodial homicide investigation in the history of the protocol.

The altered December memorandum was presented to the 2006-2007 Grand Jury’s criminal justice committee in an informal meeting with the OCSD.<sup>334</sup> According to the evidence, information which undermined OCSD’s handling of the Chamberlain investigation had been deleted from the memo while misleading statements of protocol and history supportive of the Department had been included. In testimony before the Special Criminal Grand Jury, Official 2 conceded that the alterations completely changed the memorandum’s significance in regard to protocol and procedure, giving it an opposite meaning from how it had originally been written.<sup>335</sup> Official 2 who had made these changes, however, testified, “I don’t think it was my intention to mislead the Grand Jury.”<sup>336</sup> “Whatever changes I made in there, there was no intention to lie to them.”<sup>337</sup>

## **October 12, 2006 OCSD Department Memorandum**

According to the evidence, OCSD Official 2 also made representations to the Grand Jury about OCSD's prior custodial death investigations. "There was a historical view given to the Grand Jury about prior investigations," one OCSD witness testified, an explanation of how they had been handled in the past.<sup>338</sup> The witness, however, could not recall any mention in this overview of OCSD's actual historical findings of OCDA led investigations.<sup>339</sup> Although Official 2 testified that the 2006-2007 Grand Jury may have asked for "all documents related to the investigation of inmate deaths or custodial deaths,"<sup>340</sup> no witness could remember them ever being provided with the October 2006 research memorandum which detailed the history of OCDA led investigations.<sup>341</sup> One OCSD's official was examined about the absence of this memorandum from the Grand Jury presentation as follows:

Q. Would it be correct to say that in your opinion you had very specific information that the Grand Jury was seeking, the manner in which prior custodial death investigations had been performed?"

A. Yes.

Q. Can you think of any reason why this wasn't presented to the Grand Jury?

A. No.<sup>342</sup>

Two of the individuals most familiar with these research findings, the memorandum's author and his supervisor, attended the 2006-2007 Grand Jury meeting with Official 2. Neither individual spoke a word on the topic.<sup>343</sup>

## **OCSD Deputies Violate Grand Jury Secrecy and Testify Falsely**

In the Special Criminal Grand Jury investigation of Chamberlain's murder, some OCSD deputies violated their oath to testify truthfully and their obligation to maintain the secrecy of the Grand Jury's proceedings. These deputies collectively solicited and divulged secret evidence and then testified falsely about their actions and the actions of each other. This section addresses the evidence of this conduct.

## **Discussion**

Secrecy has often been characterized as the “lifeblood” of the Grand Jury. It ensures the very integrity of a criminal investigation and is firmly established by law. Individuals who are promised confidentiality are encouraged to speak candidly when testifying, while the suspects and prospective witnesses who may follow them remain uninfluenced by any evidence given. All witnesses who appear before the Grand Jury during a criminal investigation are admonished that they are prohibited from revealing any of their examination or testimony. At the conclusion of every appearance, the Grand Jury foreperson instructs each witness “not to discuss or repeat...the questions that have been asked...or your answers, with the understanding that such a disclosure...” may be punished as contempt.<sup>344</sup>

In the course of the investigation of Chamberlain’s murder, evidence was discovered that a deputy with the duty of monitoring the safety of the inmates in “F” Barracks had been watching television and text messaging at the time of the murder. Cellular telephone records subpoenaed by the Grand Jury revealed that the deputy had sent and received a total of 22 text messages from 5:50 p.m. to 6:50 p.m., on October 5, 2006, the time of the murder. Testimony and further mobile phone records revealed that the barracks deputy had been text messaging three individuals in particular: two female OCSD deputies (Deputy 1 and Deputy 2) and his girlfriend.<sup>345</sup> Each one of these three individuals was called before the Special Criminal Grand Jury and examined about the nature of their text messaging during this pivotal time of events. At the conclusion of their testimony, each witness was admonished of their obligation to maintain the secrecy of both their questions and the evidence.<sup>346</sup>

Following her testimony on December 4, 2007, Deputy 1 had a telephone conversation with an investigator in the OCSD’s internal affairs unit. After a brief discussion, the investigator instructed Deputy 1 to call him back on his personal cell phone because conversations on his work phone might be recorded.<sup>347</sup> In the 29-minute telephone conversation which followed that night, the internal affairs investigator repeatedly solicited Deputy 1 to violate her Grand Jury admonition by asking her to reveal details of her testimony. Although later conceding that he knew she was under an obligation to maintain the secrecy of the proceedings,<sup>348</sup> the investigator implored her to share specifics of her examination. “He kept pressing the issue,”<sup>349</sup> Deputy 1

later testified, saying things such as “do you really think that I would tell anybody or say anything about what’s being said here?”<sup>350</sup> She told him, “I had been admonished,” “and I can’t talk about it. I’m on probation. I can lose my job.”<sup>351</sup> What followed was a slow and eventual revelation of questions posed, answers given, and evidence shown during the Grand Jury examination of her text messaging at the time of the murder.<sup>352</sup> At the conclusion of their conversation Deputy 1 testified, the internal affairs investigator told her to keep their conversation just between the two of them and that he would not tell anyone so long as she did not.<sup>353</sup>

After discovering that a member of the OCSD’s internal affairs unit was soliciting secret information from a Grand Jury witness in a murder investigation, the investigator was called to testify. When questioned about his conduct, he was not truthful.<sup>354</sup> The investigator testified that he had only had a “1 or 2 minute” conversation with Deputy 1 following her Grand Jury appearance and that he had no knowledge of her testimony.<sup>355</sup> The investigator told the jurors “I don’t have any knowledge of what she talked about, what she said or didn’t say,”<sup>356</sup> and “I don’t know what she testified about or what she may or may not have said to the Grand Jury.”<sup>357</sup> When Deputy 1 mentioned to him that she was under an admonition, the investigator claimed, he honored her request not to discuss her testimony and left it at that.<sup>358</sup> He testified that there had been nothing more to their conversation, “other than the fact that she couldn’t talk about it.”<sup>359</sup>

Repeatedly during his initial testimony, the internal affairs investigator assured the Grand Jury that he was being truthful and that he should be trusted. “I’m sitting before you as a sworn witness...to provide you with accurate truthful information. And that’s what I’m giving you.”<sup>360</sup>

Upon his return to the Grand Jury two days later, the investigator admitted that he had testified falsely during his earlier appearance. When confronted with the fact that he had denied any knowledge of Deputy 1’s testimony, he admitted that he had been untruthful. He had extracted from her the specifics of her Grand Jury testimony.<sup>361</sup> When confronted with his denial that he had warned her that his phone might be recorded, he admitted that this had been false testimony. He admitted telling her to call him on his cell phone because his work phone would be recorded.<sup>362</sup> When questioned about his claim that he did not know she was prohibited from discussing her testimony,

the investigator admitted that this too had been untruthful. He had known in advance that as a witness before the Grand Jury she was not permitted to reveal her testimony.<sup>363</sup> “I was asking her to confide in me information that I knew was inappropriate for me to know, ...”<sup>364</sup> he told jurors, but “I was acting completely on my own,”<sup>365</sup> and “not acting on behalf of anyone at the department.”<sup>366</sup>

On December 4, 2007, Deputy 2 was called as a witness before the Grand Jury to be questioned about the nature of her October 5, 2006, text messaging with the barracks deputy. In the course of her testimony, she was shown telephone records constituting Grand Jury evidence and examined about the barracks deputy’s telephone activity during the murder.<sup>367</sup> At the conclusion of her appearance, she was admonished by the Grand Jury not to reveal any of the questions which had been posed to her or any of the answers that she had given during the proceedings. Within hours, she went to the home of the barracks deputy and violated that admonition.<sup>368</sup> Although later admitting that she had known he was a focus in the Grand Jury’s investigation and scheduled to testify later, Deputy 2 revealed details of both her examination and the evidence she was shown to the barracks deputy.<sup>369</sup>

On December 6, 2007, the barracks deputy appeared in front of the Grand Jury and testified briefly before invoking his Constitutional privilege against self-incrimination. During his examination, he denied on multiple occasions that Deputy 2 had ever revealed to him any of the questions which had been posed to her, any of the answers which she had given, or any of the evidence that had been shown to her in the Grand Jury proceedings.<sup>370</sup> Moments after the barracks deputy’s appearance, his girlfriend testified and told the Grand Jury the opposite to what he testified. “I was told you had records of phone records,”<sup>371</sup> she said. The barracks deputy “found out from [Deputy 2] who was here I guess the other day.”<sup>372</sup> “He told me they had talked.”<sup>373</sup> The girlfriend testified that the barracks deputy said “they had a display of the phone records”<sup>374</sup> in the Grand Jury and that there were “11 texts from our phones, his and mine”<sup>375</sup> “during some incident that happened at the jail.”<sup>376</sup>

According to the witness, Deputy 2 had shared an area of Grand Jury examination and items of evidence with the barracks deputy in advance of his testimony.<sup>377</sup> In response to that witness’s statements, Deputy 2 was recalled before

the Grand Jury on the afternoon of December 6, 2007 to answer for her conduct. Although admitting that she had met with the barracks deputy following her initial testimony, she told the Grand Jury that their conversation had only been about a bicycle.<sup>378</sup> Under repeated examination, she denied having ever spoken to the barracks deputy about any of the questions that had been posed to her, the answers she had given, or exhibits that had been shown during her testimony.<sup>379</sup>

Two months later, she returned to the Grand Jury for a third time and admitted she had testified falsely.<sup>380</sup> On February 14, 2008, Deputy 2 appeared before the Grand Jury for the last time and told members of the panel that she had been untruthful in her testimony. Deputy 2 admitted that when she met with the barracks deputy outside of his home on December 4, 2007, she revealed to him the details of her sealed testimony and information about the records in evidence she was shown.<sup>381</sup> She further admitted that she knew he was a focus of the investigation and that she was prohibited from discussing with him the secret proceedings. Deputy 2 acknowledged that she had violated this prohibition.<sup>382</sup> When then shown the barracks deputy's statements to the Grand Jury denying they shared such conversations about questions and evidence, Deputy 2 admitted to the jury that his testimony to them had been untrue and false.<sup>383</sup>

In the final days of the Grand Jury's investigation, multiple members of OCSD command staff were called to testify. One high-ranking OCSD official was asked "[w]hat do you personally... believe should happen to sworn deputies who violate that admonition and reveal secret proceedings."<sup>384</sup> The witness initially replied, "really, I don't have an opinion on that one way or the other."<sup>385</sup> The OCSD official was then asked well, "[d]o you want individuals such as that that violate the law and reveal secret proceedings working for you...[at the] Orange County Sheriff's Department?"<sup>386</sup> The witness responded "I think that's not something that would be my first choice, but I think I would need to know more about the allegations, is it misdemeanor, is it a felony, where does it fall. ..."<sup>387</sup> The witness was then asked, "well what about with respect to perjury,<sup>388</sup> we'll talk about felonies now. What if a sworn deputy came before this Grand Jury, lied under oath and then returned and admitted that, in fact, he or she lied to this Grand Jury, [and] there's no question... What do you think should happen to that individual? ..."<sup>389</sup> "[I]t depends," the witness replied, "on what the circumstances are

surrounding it, and if, in fact, it is so egregious it is next to impossible for us to be able to put him in certain capacity, and we would have to take a review of that and it would be very serious.”<sup>390</sup>

### **OCSD’s Department Records Sought by Grand Jury Missing, Redacted and/or Produced by Unqualified Witnesses**

Over the course of the Special Criminal Grand Jury’s investigation, several subpoenas were issued to OCSD for both the production of records and the testimony of a qualified custodian. Although OCSD supplied numerous documents and a qualified witness at times, certain key records were never produced. On other occasions, documentary evidence sought by the Jury was repeatedly requested before its production, often extensively redacted once delivered, or was presented by a witness unqualified to serve as its custodian. This section addresses the evidence of these experiences.

#### **Discussion**

The pace of the Grand Jury’s investigation was slowed and its objective, on occasion, hindered by delays and lapses in OCSD’s compliance with its orders. Throughout the 9-month investigation, the Grand Jury issued several subpoenas which called for the production of documentary evidence and the provision of competent custodian testimony. While there were instances of some OCSD personnel of the going to notable lengths to produce records and render qualified testimony,<sup>391</sup> their efforts were alternately marred by the failings of others. Material records sought during the Grand Jury’s inquest were never produced and remained inexplicably missing, while others necessitated multiple orders before their eventual delivery. A substantial bulk of documentary evidence was extensively redacted, obliterating relevant content, while other records were presented by witnesses unqualified to testify to their production.

## Deputy Background File

OCSD maintains background files on every sworn and non-sworn employee in their organization, applicants not hired, and other members of related county agencies.<sup>392</sup> With regard to sworn personnel, the OCSD file contains essential information about an applicant's "character, trust, and integrity" in order to enable administrators to determine whether that individual should be hired by OCSD or re-employed after a period of separation.<sup>393</sup> Generally speaking, the background file contains personal information about the applicant including his or her prior employment, criminal history, personal references and financial credit,<sup>394</sup> along with "an investigative summary which may highlight those areas that are negative."<sup>395</sup>

In the case of an individual seeking re-employment with OCSD, the file will also include any negative information about his previous history with the agency.<sup>396</sup> As a result, this record may encompass information from prior internal affairs investigations. In some instances, the background file may be the only record of prior internal affairs investigations involving a deputy which still exists.<sup>397</sup> While the internal affairs records are subject to cyclical destruction, the background files which may contain information from such investigations are maintained throughout a deputy's employment, plus two additional years.<sup>398</sup>

In August 2007, the Special Criminal Grand Jury issued a subpoena to the OCSD for the production of four OCSD employee's personnel files. Central to the Grand Jury's request was the background file of one deputy who was a strong focus in the Jury's investigation and who had been rehired by OCSD following a period of separation. Given OCSD's document retention policy, this background file in particular may have been the only remaining record of some previous investigations of this deputy. OCSD could not produce this original evidence. According OCSD, the file sought by the Grand Jury was missing.<sup>399</sup>

OCSD maintains approximately six to seven thousand background files in one controlled area of the agency. This deputy's background file was the only one that was ever known to be missing.<sup>400</sup> According to the testimony of one OCSD official, "this has been the singular incident that we haven't been able to find a background investigative file, there hasn't been prior instances..."<sup>401</sup> Aside from offering admittedly speculative

explanations, witnesses could never account for how OCSD lost the *only* background file of the *one deputy* subject to the greatest scrutiny amid an otherwise spotless history of safeguarding such records.

In February 2008, the Grand jury was informed that an investigator in the internal affairs division of OCSD was able to recreate portions of the deputy's background file for their review.<sup>402</sup> The investigator who had compiled these records was the same individual who had presented himself to the Jury two months earlier to admit that he had wrongly solicited information from their secret proceedings and then had testified falsely about his own actions.<sup>403</sup> After being informed of this investigator's involvement in the production of this evidence, the Grand Jury did not request to see his work.

### **Barracks "Shot Caller" Log**

Over the course of the investigation, Grand Jurors heard evidence of varied practices used by jail personnel to note the identity of the "shot callers" under their supervision. Certain individual inmate records would be marked with Post-it notes or handwritten comments indicating those with this jailhouse status,<sup>404</sup> while other deputies would post the inmates' booking photos inside the guard station for easy reference.<sup>405</sup> Within Theo Lacy's "F" Barracks, an OCSD witness testified to the additional use of a logbook containing a record of the names of each one of the "shot callers." The logbook, actually a three-ring binder containing records of maintenance activities, held a list which documented the identity of the "shot caller" for each inmate group on both sides of the barracks.<sup>406</sup>

On September 26, 2007, the Grand Jury issued a subpoena to OCSD for the production of the entire barracks logbook. On the scheduled date, OCSD delivered the evidence to the Grand Jury completely intact with one notable exception: the "shot caller" log was missing. An OCSD witness familiar with this evidence was asked to review what his Department had provided to the Grand Jury. In response he testified that the book contained "everything" he expected, including two or more years worth of documents, and that the "only thing" that was missing was the "shot caller" log.<sup>407</sup>

## **Memorandum of Prior Custodial Homicide Investigations**

As discussed at length in previous sections,<sup>408</sup> OCSD produced an e-mail memorandum written on October 12, 2006, describing that the investigation of every prior custodial homicide of record had been led by the OCDA. The memorandum was researched and authored, according to OCSD witnesses in response to the manner in which Chamberlain's death was investigated and to determine who had historically led such investigations.<sup>409</sup> On June 11, 2007, the Grand Jury issued a subpoena to the OCSD for "any and all communications" of named personnel regarding the manner in which the Chamberlain investigation was performed as well as any communications regarding policies or procedures for investigating custodial deaths.<sup>410</sup> Although OCSD delivered several documents in compliance with this subpoena, the October 12, 2006, communication was inexplicably missing.<sup>411</sup>

According to OCSD witnesses, the October 12, 2006, memorandum was, responsive to the Grand Jury's subpoena for such records.<sup>412</sup> OCSD officials could not offer any explanation for why it was missing from the document production. One OCSD witness testified that it "should have been" included.<sup>413</sup> "I wouldn't have purposely excluded it," he further stated, "[a]nd if it didn't show up I don't have an explanation for it."<sup>414</sup> Ultimately, the Grand Jury obtained a copy of this memorandum following a second subpoena specifically detailing its identity and thereby evincing the Jury's knowledge of its existence.

## **Unqualified Custodians**

Every order issued by the Grand Jury to OCSD calling for the production of documentary evidence also included a subpoena for the testimony of a custodian of records or other qualified witness. Each order stated that "[t]he personal attendance of the custodian or other qualified witness and the production of the original records..." were required by the subpoena.<sup>415</sup> The purpose of such a standard order is to gain the physical production of relevant documents along with the testimony required by law to introduce them into evidence. Although the presence of a qualified witness was mandated by each order, OCSD occasionally delivered documents to the Grand Jury by

individuals unqualified to testify to their production. This practice had the effect of markedly delaying the Grand Jury's work.

On June 11, 2007, the Grand Jury issued a subpoena to OCSD for the production of records critical to its investigation. In particular, the subpoena called for the delivery of "any and all documents relating to the...Department's policies and procedures for the investigation of custodial deaths..." along with the testimony of a custodian or other qualified witness.

On June 26, 2007, OCSD presented a witness who they had designated as the custodian of records for this evidence.<sup>416</sup> The witness testified that he has never seen the documents, was unfamiliar with what they were, could not tell the Jury if they had been prepared in the ordinary course of business, or even how they had been prepared at all.<sup>417</sup> When asked, "can you even testify as a custodian of records pursuant to this subpoena that those are Sheriff's documents?" The witness's only reply was "no, sir."<sup>418</sup> Prior to the delivery of those records the witness had signed a declaration under penalty of perjury at the direction of his Department stating that to his knowledge "the records were prepared in the ordinary course of business at or near the time of the act, condition, or event. ..." <sup>419</sup> He then testified that he had no knowledge of whether those facts were actually even true.<sup>420</sup>

An OCSD official testifying only two days later explained that the reason his Department had not sent a qualified custodian in the past was because of the Grand Jury's failure to ask for a "P.M.K.," apparently an abbreviation for "person most knowledgeable" along with their records request.<sup>421</sup> The term "P.M.K." appears nowhere in the California Evidence Code, relevant statutes, published decisions on criminal law, or the Grand Jury's subpoena, while the term "custodian of records" does.<sup>422</sup>

## **Records Redactions**

A substantial amount of documentary evidence subpoenaed to the Grand Jury was redacted before its production under the supervision of OCSD's Risk Management Bureau.<sup>423</sup> The Bureau, according to OCSD witnesses, is primarily responsible for managing civil claims against the Department with the goal of reducing liability.<sup>424</sup>

Following the impaneling of the Grand Jury, the Risk Management Bureau took a controlling role in OCSD's production of subpoenaed evidence. According to one OCSD's witness, the Bureau was responsible for directing who would respond to the Grand Jury's subpoenas, what documents would be produced, and what content would be redacted.<sup>425</sup> A member of the Bureau, who was not subpoenaed, waited outside the Grand Jury's hearing room for several days<sup>426</sup> while OCSD witnesses testified and discussed with them "how the testimony was going itself, how they were being treated, if they were given bathroom breaks...[and] if they had questions of production of documents...[or] redactions."<sup>427</sup>

These early efforts of the Bureau resulted in the production of pages of some subpoenaed documents completely obliterated by black-marker redactions. Evidence ranging from sections of OCSD's policies and procedures manuals to Chamberlain's inmate records and visitor's log were defaced with stricken information.<sup>428</sup> According to OCSD witnesses, these redactions were necessary to protect "official security information"<sup>429</sup> and to prevent "identity theft."<sup>430</sup> Through negotiation and litigation, OCSD ultimately provided the Jury with largely non-redacted documents. Several additional hearing days were spent producing redacted and non-redacted versions of the same evidence.

## **Structural and Operational Dangers in Open Barracks Housing**

At Theo Lacy jail facility, each inmate is housed in one of the institution's several minimum security barracks or maximum security modules. The structural characteristics of the barracks, including "F" Barracks, potentially pose a risk to inmate safety and facility security. These dangers may be compounded by certain features of jail operations and deputy activity. This section addresses these structural and operational risks to inmates and jail staff.

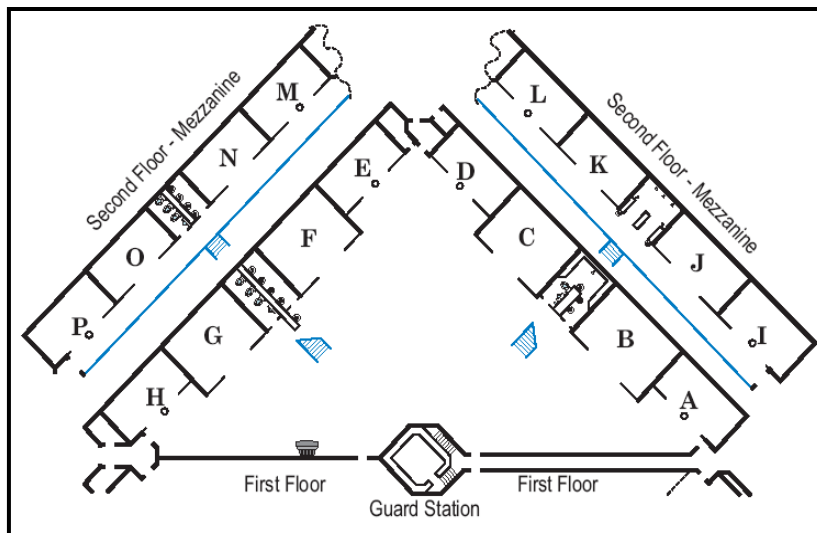
### **Discussion**

The Theo Lacy includes four minimum security housing units referred to as barracks, each with its own identifying letter designation: "A-E," "F," "G," and "H." With

the exception of “A-E,” the other barracks share a similar physical structure. “F” Barracks, for example, is a large free-standing building with a solid, interior wall dividing the structure into two equal halves: east and west. Each barracks half itself constitutes one large, open dormitory unit housing approximately 146 inmates. (See Figure 1, below). Although the population may fluctuate, the entire “F” Barracks generally houses a total of 292 inmates.

On each side of the barracks, inmates are assigned to one of 16 dormitory cubicles or cubes, which run along the interior perimeter, eight on the first floor and eight on the mezzanine. There are no doors or bars controlling inmate movement into and out of each cube and every cube opens up to a large, common area known as the dayroom. At scheduled times throughout the day, all 146 inmates on each side of the barracks are free to mill about their dayroom to watch television, exercise, play games and interact with one another.

Each barracks also features a single guard station located at the center of the building between the two adjoined sides. The guard station, a glass-walled octagonal post, stands six feet above the floor of the barracks and hosts a panoramic view of both sides of the barracks. The interior of the guard station consists of two stories, a lower



level staff restroom and storage area, and an upper level observation post. The upper level in particular functions as the barracks nerve center, housing OCSD staff, security and building controls, and assorted material.

Figure 1 – F Barracks West

### **Barracks Quarter a Class of Inmates They Were Never Designed to House**

The physical structure and daily operation of the barracks present risks to both inmate safety and facility security. Structural blind spots, a sound-deadened guard

post, ill-suited video equipment, and the sheer number of free moving, under-supervised inmates, all combine to create a high risk environment. These hazardous conditions are aggravated by the fact that the barracks house a class of inmates they were never designed to accommodate. According to one OCSD witness, “[the barracks] were all designed...when Theo Lacy housed the most minimum of minimum level offenders.”<sup>431</sup> “[T]hey were not designed for the level of inmates we are housing there now.”<sup>432</sup> Another OCSD official similarly commented, “the barracks were built for inmates other than the classification that we’re now housing. ...”<sup>433</sup> “[T]hey were designed for...what we called trustees or a very low class security type inmate.”<sup>434</sup> “[T]he type of inmates that we’re forced to house in there are not the appropriate type of inmates that should really be in there for what they were designed for.”<sup>435</sup> Jail overcrowding, now forces the Department to house what once would have been considered “hard-core type inmates” in a facility built for the most minimum class of offender.<sup>436</sup>

## **Failure to Monitor and Control Inmate Movement**

The physical structure of the open barracks affords little control over inmate activity. Approximately 146 inmates on each side of the building are free to move about their entire dormitory with unrestricted access to one another. One OCSD deputy explained, “the barracks system itself is problematic because it’s so hard to control.”<sup>437</sup> The physical layout is simply a bad design. “I don’t like personally the open barracks,” commented still another deputy. “[T]here’s just not enough control. That’s where we’ve had our biggest riots.”<sup>438</sup> “[T]here’s just too much movement for these guys.”<sup>439</sup> And although each barracks is staffed with three officers, there are often occasions where only one is left inside the guard station to monitor all 292 free moving inmates alone.<sup>440</sup>

There are institutional rules designed to restrict inmate movement within the barracks. Deputies are often unable and at times unwilling to enforce them. For example, inmates are prohibited at all times from entering a cubicle not their own.<sup>441</sup> By jail rules, the inmates are permitted to be in their own dormitory cube, lavatories, and the dayroom when it is open.<sup>442</sup> Contrary to the rule, the evidence showed that this rule is rarely, if ever, enforced. Instead, inmates freely move into and out of cubicles that are not assigned to them and often congregate within them.

OCSD personnel testified to the sheer difficulty in enforcing such a rule against an entire barracks population. “As a reality it’s almost impossible to tell if it’s happening,” one deputy testified of inmates violating this rule, “because they’re kind of far away and you can’t memorize everybody’s bunk assignment.”<sup>443</sup> Similarly, when an OCSD supervisor was asked if this rule could truly be enforced against the 146 inmates on each barracks side he answered, “not really.”<sup>444</sup> The evidence also revealed a simple unwillingness by some deputies to attempt to enforce this rule even when it was possible.<sup>445</sup> This failure to control movement poses its greatest risk when inmates enter and congregate within those barracks areas that cannot be seen from the guard station.

### **Structural Blind Spots**

There can be no vigilance in the absence of visibility. Due to the barracks’ construction, there are numerous and sizeable locations that cannot be seen from inside the guard station. These varied blind spots afford inmates an opportunity to enter into unmonitored areas to carry out assaults or other rule violative behavior. “There are certain areas in different housing locations that have blind spots,” one OCSD witness testified, “and that is where...most inmates prefer to do their assaults.”<sup>446</sup> Another witness explained that “when the inmates tax another inmate they’ll take them into...a place you can’t really see from the [guard station], they call it a blind-spot, where we can’t see, and they will assault him.”<sup>447</sup> Describing a particular blind area in “F” Barracks one OCSD official explained, “inmates could assault another inmate and not be seen even if the deputies [*sic*] standing in the guard station and he’s looking directly at “F” Barracks.”<sup>448</sup> “If he’s looking directly at it he’s not going to see what’s happening.”<sup>449</sup>

Collectively, OCSD witnesses who appeared before the Grand Jury identified at least five separate blind spots within “F” Barracks in particular where most inmate assaults occur.<sup>450</sup> Even the visibility around the blind spots is reduced by an additional visual obstruction unique to “F” Barracks. On either side of the entry into each barracks cubicle, there is also a three foot tall, solid “privacy” wall further diminishing visibility. “I don’t know why it’s there,” one deputy stated, “I don’t know if it’s structurally anything. It just hides.”<sup>451</sup> “It doesn’t afford constant viewing into those areas,” another witness

explained.<sup>452</sup> “If anything is happening down low behind those walls you can’t see it from the guard station. You at times can’t see it from the floor. You have got to be right in the cube to see things happening behind those partitions.”<sup>453</sup> Indeed, in some areas these structural blind spots and privacy walls only combine to create “a big blank spot in that barrack.”<sup>454</sup>

Since at least the 1990s, removing the security risk posed by the partition walls alone has been discussed among OCSD deputies and supervisors.<sup>455</sup> According to one official, their removal had even been included in the jail’s budget.<sup>456</sup> Despite this, they remain a functionless obstruction to this date.<sup>457</sup>

## **Sound Deadening Conditions**

The barracks guard station is often informally referred to as “the bubble” by both deputies and inmates. This characterization may be more literal than figurative. The construction of the guard station and the noise generated by a population of nearly 300 inmates prevent deputies at their post from hearing more than an undecipherable din during open dayroom.<sup>458</sup> As one OCSD witness explained, “[w]hen dayrooms are open, we can’t hear much. All we hear is TV noise and clutter noise. ...”<sup>459</sup> “It’s just really loud,” another deputy testified. “It’s tough to differentiate individual sound.”<sup>460</sup> Still another OCSD official explained, “[w]hen you have dayroom going, it’s loud... It’s going to be very hard to hear anything that’s going on out there.”<sup>461</sup>

When asked if they would be able to hear an inmate yelling or screaming in distress from their guard station post, OCSD witnesses uniformly testified that they likely would not. “Can you hear people yelling and screaming or a person yelling and screaming from the barracks,” one OCSD deputy was asked. “Over the noise of normal dayroom,” he answered, “probably not.”<sup>462</sup> Another OCSD witness similarly replied, “[i]f dayrooms are open and a lot of things are going on, no, we couldn’t hear that, sir.”<sup>463</sup> If in distress, the only way for an inmate to get a deputy’s attention appears to be by standing in view of the guard station and waving him down. “The only way in F barracks to really do it is to get their attention by either coming - - by pretty much waving at the guard station.”<sup>464</sup>

## **The Role These Dangers May Have Played in the Death of Chamberlain**

The operational and structural dangers present in “F” Barracks may have partly granted Chamberlain’s assailants the liberty necessary to murder him. According to the evidence, he was forcibly dragged into a barracks’ blind spot and assaulted by a series of inmates entering and exiting a dormitory cube to which most were not assigned. Over a prolonged period of time, several witnesses testified to hearing Chamberlain screaming in pain, screaming “bloody murder,” and pleading for the assault to stop.<sup>465</sup> It was not until an inmate stood directly in front of the guard station waving his arms at the windows when the deputies were alerted to respond.

## **Unrestricted Access to Inmate Charges**

OCSD grants anonymous callers unrestricted access to information regarding an inmate’s charges, housing location, and bail status. The ready accessibility of such sensitive information, without any safeguard, places the lives of inmates in danger and may have played a role in the death of Chamberlain. This section addresses the unrestricted access to inmate charge information provided by OCSD, the Department’s knowledge of the risk this creates, and its possible connection to the murder of Chamberlain.

## **Discussion**

Within the custodial setting, inmates with sex and abuse related criminal charges, particularly those involving minor victims, are specifically targeted for the most violent assault by their fellow inmates.<sup>466</sup> In an attempt to identify these targets of assault, inmates routinely make concerted efforts to discover the criminal charges of those within their own housing location.<sup>467</sup> Such efforts have ranged from simply asking an inmate to reveal his charges, to demanding he show his court paperwork documenting his allegations, to having a designated inmate, elected by the “shot caller,” go from person to person, once a week, to record each inmate’s booking number so it could be queried for charge information through the OCSD’s public resources.<sup>468</sup>

Prior to July 12, 2006, inmate charge information was freely available to the general public on the OCSD's Internet site and by telephone, through OCSD's inmate records division. On July 12, 2006, OCSD discontinued Internet access to inmate charge information out of concern for the safety of inmates and staff.<sup>469</sup> However, that same sensitive information has remained freely available without limitation to any anonymous telephone callers.<sup>470</sup>

As early as January 2000, OCSD identified the accessibility of inmate charge information by "unknown" callers as a safety concern for those inmates with child sex and abuse related crimes. These concerns, as well as a proposal to eliminate such access, were documented in a memorandum to the OCSD administration on January 12, 2000.<sup>471</sup>

Similarly in a January 5, 2004, memorandum regarding public access to charge information, OCSD personnel warned that "[i]nmates who have sex/child abuse charges and are 'found out' by other inmates face immediate assault. These assaults are meant to seriously injure or even kill the victim. There is no amount of reasoning that will prevent these attacks once the information is found out."<sup>472</sup>

In a January 4, 2006, OCSD's report entitled "Public Access to Criminal Charges," identifies the same safety concerns articulated six years earlier. According to the department's report:

"Current policy in effect within the Orange County Sheriff's Department allows Records Personnel to provide information regarding an inmate to the general public. This information can be obtained...by calling the Records Division of Corrections..." "The information being made available includes criminal charges... The procedures in place allow an 'unknown' individual to obtain this information, *usually for the purpose of assaulting another inmate resulting in serious injury or death.* These procedures jeopardize the safety and security of the Theo Lacy Facility, the staff, and the inmates."<sup>473</sup>

Again, the report included a proposal to discontinue offering inmate charge information over the telephone, citing the superseding need to provide for the safety and security of employees, the incarcerated, and "the facility itself."

In May 2006, OCSD concluded that over the previous year nearly 20 percent of all inmates with sensitive sex-related charges had been assaulted and/or rehoused as a result of other inmates learning of their crimes.<sup>474</sup> In multiple communications between

OCSD's jail administrators regarding the accessibility of inmate information on the Internet, OCSD personnel acknowledged that access to other inmates' charges has caused "assaults," leads to "retaliation," and "endangers inmates in our custody. ..."<sup>475</sup>

OCSD has continued this policy of permitting unfettered telephone access to inmate charge information to the present day. Anonymous callers can telephone the inmate records division, 24 hours a day, and query an entire list of names to obtain charge information. The callers are not required to identify themselves or their purpose, no recording or documentation of the telephone call is made, no criminal charges available against revelation, and no limitation is placed on the number of inmates whose information will be provided to one caller.<sup>476</sup> Callers have telephoned with entire lists of names, querying the charges of each individual, limited only by how busy the records division was at the time of the call.<sup>477</sup>

### **The Role this Practice May Have Played in the Death of Chamberlain**

This policy of unchecked access to inmate information was in effect at the time of Chamberlain's incarceration and may have played a role in his murder. In the days preceding his death, OCSD inmate records division received approximately five to 10 telephone calls from unknown individuals requesting Chamberlain's charges.<sup>478</sup> In each instance, the unidentified caller was informed that Chamberlain was in custody for "possession of child pornography for sale," the allegation listed in OCSD's record system.<sup>479</sup>

There appears to be no way of ever knowing who these callers were, what their purpose was in seeking Chamberlain's charge information, or ultimately what they did with the information provided to them. What has been evident, however, is the fact that Chamberlain's fellow inmates had been inquiring into his charges in the days before his murder and seeking documentation from him to substantiate his claim that he was only in custody for a restraining order violation.

# Afterword

This report establishes that the murder of John Chamberlain need not have happened. It may have been prevented if existing policies and procedures had been followed and enforced. Our system of justice requires that those accused of crime, no matter the nature of the charges against them, be afforded due process and justice not only by the courts but by those charged with maintaining them in custody. The need for reform is therefore manifest.

Recently, the Board of Supervisors with the support and assistance of the Orange County District Attorney enacted an ordinance authorizing the creation of an Office of Internal Review (OIR). This Office will oversee the investigation and evaluation of complaints involving the Orange County Sheriff's Department to ensure a fair, impartial and fact-based resolution.

Additionally, I have proposed the creation of an impartial civilian monitor to conduct both announced and unannounced inspections of County jail facilities, to review their operations, inspect documents and policies, and compare them with actual practices and report his or her findings and recommendations to the Sheriff and the Board of Supervisors.

This Report is merely a beginning. One of the purposes of this Report is to open an informed dialogue over how the County may avoid another such death in the future. Over the next several months, I look forward to facilitating in this dialogue and working with concerned parties to develop additional reforms.

Tony Rackauckas

District Attorney  
County of Orange

## Appendix 1



### ORANGE COUNTY GRAND JURY

700 CIVIC CENTER DRIVE WEST • SANTA ANA, CALIFORNIA 92701 • 714/834-3320

FAX 714/834-5555

February 28, 2008

John M.W. Moorlach, Chairman  
Orange County Board of Supervisors  
333 W. Santa Ana Blvd., 5<sup>th</sup> Floor  
Santa Ana, CA 92701

Dear Chairman Moorlach:

In honor of our responsibility to the citizens of Orange County, the 2007 Special Criminal Grand Jury collectively authors this letter detailing a portion of this panel's findings of significant public concern. On May 17, 2007, the Special Criminal Grand Jury was impaneled to investigate the custodial homicide of John Derek Chamberlain. On the evening of October 5, 2006, Mr. Chamberlain was slain by multiple inmates while in the custody of the Orange County Sheriff's Department at the Theo Lacy jail. Following his murder, the Sheriff's Department deviated from the established County protocol and historical practice by taking the lead in a custodial death investigation for the first time in history.

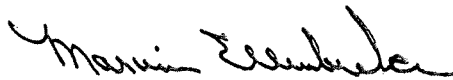
~~On May 14, 1985, the Orange County Board of Supervisors passed a resolution directing the District Attorney's Office and the Sheriff's Department to develop a protocol and memorandum of understanding to govern the investigation of all deaths which occur in the custody of the Sheriff's Department. In July of that same year, these two agencies memorialized an investigative procedure which had long been in practice, requiring the referral of all custodial deaths to the District Attorney's Office for an independent criminal investigation. Since its written adoption in 1985, this investigative protocol has been honored, without fail, in 129 out of 130 custodial death investigations, including four custodial homicides. The only deviation in the more than 20 year history of this protocol occurred on the night of October 5, 2006, in the Sheriff's Department's handling of John Chamberlain's murder investigation.~~

Through conscious choice or negligent action the Sheriff's Department violated both the letter and spirit of the investigative protocol by denying the District Attorney's Office the opportunity to lead an independent criminal investigation into the death of John Chamberlain. Although the terms of the protocol unambiguously call for the District Attorney's Office to act as the primary investigative agency in all custodial deaths and the execution of this policy operated without exception for more than two decades, the Sheriff's Department inexplicably insisted on leading this particular investigation.

It may never be known what, if any, impact this action may have had on the results of the homicide investigation. Clearly, however, it was this conduct by the Sheriff's Department which necessitated the impaneling of the Special Criminal Grand Jury and its ensuing nine month long investigation. As citizens of Orange County, we expect the Sheriff's Department to honor the existing policy, without exception, as it has already been approved of by the Board of Supervisors.

It has been our privilege to serve the citizens of Orange County. In recognition of that esteemed opportunity, it is our civic duty and strong desire to urge this Board, the Sheriff's Department, and the public at large to review all of the evidence received during the course of our investigation. The future course of the Sheriff's Department and the County depend upon it.

Sincerely,



Marvin Ellenbecker, Foreman  
2007 Special Criminal Grand Jury

c: Patricia Bates, Vice Chair, Supervisor, District 5  
Bill Campbell, Supervisor, District 3  
Janet Nguyen, Supervisor, District 1  
Chris Norby, Supervisor, District 4

## Appendix 2

### Investigations of Deaths in Sheriff's Department Custody 1-1-86 to 1-1-07†

YEAR	NATURAL	ACCIDENTAL	SUICIDE	HOMICIDE	UNDETERMINED	OTHER	TOTAL
1986	2	3	1	0	0	0	6
1987	2	0	3	2	0	0	7
1988	8	2	1	1	2	0	14
1989	3	2	0	0	0	0	5
1990	3	1	3	0	0	0	7
1991	4	0	0	0	0	0	4
1992	1	0	0	0	0	0	1
1993	3	1	1	0	0	0	5
1994	6	4	1	1	0	0	12
1995	2	1	0	0	0	0	3
1996	3	1	1	0	0	0	5
1997	4	1	0	0	0	1	6
1998	0	1	1	0	0	1	3
1999	3	1	2	0	0	0	6
2000	2	0	1	0	0	0	3
2001	2	0	0	0	0	0	2
2002	3	1	0	0	0	0	4
2003	4	6	1	0	0	0	11
2004	4	1	1	0	0	0	6
2005	7	0	0	0	0	0	7
2006	8	2	2	1	0	0	13
<b>TOTAL</b>	74	28	19	5	2	2	130

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† All of the aforementioned custodial deaths were investigated by the Orange County District Attorney's Office as the primary investigative agency with the single exception of John Derek Chamberlain's custodial death investigation on October 5, 2006.

## End Notes

### 1-25

1. RT: May 24, 2007, P. 16, Ln. 18 through P. 17, Ln. 10.<sup>†</sup>
2. Grand Jury Exhibit No. 57.
3. See, *infra*, “Structural and Operational Dangers in Open Barracks Housing.”
4. RT: May 24, 2007, P. 59-63.
5. RT: June 5, 2007, P. 67, Ln. 22 through P. 68, Ln. 3.
6. RT: June 5, 2007, P. 166, Ln. 14 through P. 167, Ln. 13.  
RT: June 5, 2007, P. 68, Ln. 4-7.  
RT: June 5, 2007, P. 163, Ln. 19 through P. 164, Ln. 5.
7. RT: October 11, 2007, P. 63, Ln. 2-4.
8. RT: August 30, 2007, P. 174, Ln. 19-24.
9. See, *infra*, “Deputies Fail to Patrol Barracks in Violation of Sheriff’s Policy.”
10. See, *infra*, “Misleading and False Records of Deputy Activity Maintained by Sheriff’s Personnel” and “Deputies Engage in Unauthorized Discipline of Inmates.”
11. See, *infra*, “Deputies Engage in Unauthorized Discipline of Inmates.”
12. See, *infra*, “Unjustified and Undocumented Use of Less-Lethal Force.”
13. See, *infra*, “Sheriff’s Deputies Use Inmate “shot callers” to Enforce Discipline.”
14. See generally above listed sections and, *infra*, “Sheriff’s Deputies Deny Medical Treatment to Inmates.”
15. RT: October 11, 2007, P. 48, Ln. 3 through P. 50, Ln. 11.  
RT: October 11, 2007, P. 50, Ln. 19 through P. 51, Ln. 12 & 23-25.
16. RT: October 11, 2007, P. 51, Ln. 26 through P. 52, Ln. 17.  
RT: October 11, 2007, P. 55, Ln. 20 through P. 56, Ln. 24.
17. RT: October 11, 2007, P. 52, Ln. 18-24.
18. RT: October 11, 2007, P. 53, Ln. 20 through P. 55, Ln. 19.
19. RT: October 11, 2007, P. 53, Ln. 20 through P. 54, Ln. 3.
20. RT: October 11, 2007, P. 56, Ln. 25 through P. 58, Ln. 7.  
RT: October 11, 2007, P. 59, Ln. 15-21.
21. RT: October 11, 2007, P. 69, Ln. 25 through P. 71, Ln. 9.
22. RT: August 30, 2007, P. 153, Ln. 13-15 & P. 156, Ln. 5-9.
23. RT: August 7, 2007, P. 148, Ln. 16 through P. 150, Ln. 17.  
RT: August 30, 2007, P. 144, Ln. 19-21.  
RT: August 30, 2007, P. 145, Ln. 16 through P. 146, Ln. 1.  
RT: August 30, 2007, P. 149, Ln. 6-14.  
RT: August 28, 2007, P. 163, Ln. 25 through P. 164, Ln. 15.  
RT: October 11, 2007, P. 67, Ln. 3 through P. 68, Ln. 7.

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<sup>†</sup> “RT” denotes Reporter’s Transcript for the Special Criminal Grand Jury’s Proceedings “People v. Villafana, Guillen & Culmann, Case No. 08ZF0021” by date of testimony, transcript page and line number.

24. Grand Jury Exhibit No. 64, Page 1.  
RT: June 5, 2007, P. 116, Ln. 24 through P. 117, Ln. 10.

Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 1, Chapter 10, Section 4.3: "Employees are expected to use electronic communications and network systems in a professional manner at all times. The use of any departmental desktop computer resource and television located in the housing guard stations are restricted to those activities related to departmental and educational purposes only. While on-duty, staff members' watching television should be limited to professional use only, such as monitoring channels that inmates are watching." (emphasis added).

25. RT: August 14, 2007, P. 69, Ln. 12 through P. 70, Ln. 3 and Ln. 14-18.

## **26-50**

26. RT: October 11, 2007, P. 65, Ln. 12-26 & P. 66, Ln. 7 through P. 67, Ln. 2.  
*See also*, RT: December 6, 2007, P. 116, Ln. 2-7.

27. RT: October 11, 2007, P. 65, Ln. 2-5 & P.65, Ln. 25 through P.66, Ln. 4.

28. RT: July 26, 2007, P. 31, Ln. 8-20.  
RT: September 6, 2007, P. 98, Ln. 20 through P. 99, Ln. 2.  
RT: December 6, 2007, P. 116, Ln. 2-7.

29. RT: June 12, 2007, P. 56, Ln. 10-12.

30. RT: June 12, 2007, P. 56, Ln. 14-16.

31. *Id.*

32. RT: June 12, 2007, P. 56, Ln. 5.

33. RT: December 4, 2007, P. 141, Ln. 15-19.

34. RT: December 4, 2007, P. 141, Ln. 20-23.

35. RT: October 11, 2007, P. 74, Ln. 6-18.

36. RT: January 15, 2008, P. 84, Ln. 22-24.

37. *Passim.*

38. *Passim.*

39. *Passim.*  
*See also*, Grand Jury Exhibit No. 130.

40. RT: August 14, 2007, P. 88-91.  
RT: August 30, 2007, P. 136, Ln. 14 through P. 139, Ln. 2 and P. 151, Ln. 8 through P. 152, Ln. 10.  
*See also*, Grand Jury Exhibit No. 132.

41. Grand Jury Exhibit 187A and 187B, P. 26 (deputy admits watching television).

Specifically "Cops," *see*: RT: February 14, 2008, P. 32, Ln. 23 through P. 34, Ln. 14; and  
RT: December 6, 2007, P. 63, Ln. 15-19.

Grand Jury Exhibits No. 172A.  
RT: October 30, 2007, P. 124-160.  
RT: August 30, 2007, P. 154-156.

42. Grand Jury Exhibits No. 172A through 173; 195A through 195C; and 200.

RT: October 30, 2007, P. 124-160.  
RT: December 4, 2007, P. 2-123.  
RT: December 6, 2007, P. 2-95.

*See, infra*, "Sheriff's Deputies Violate Grand Jury Secrecy and Testify Falsely" for further discussion of text messaging.

- 43. Grand Jury Exhibit 187A and 187B, P. 30.
- 44. RT: August 30, 2007, P. 155-156 and P. 168, Ln. 6-8.  
RT: August 9, 2007, P. 112-114.
- 45. RT: August 30, 2007, P. 156, Ln. 23-24.
- 46. RT: August 30, 2007, P. 157, Ln. 17-19.
- 47. RT: August 14, 2007, P. 100-101.  
RT: August 30, 2007, P. 165 and 171-175.  
See *also*, Grand Jury Exhibit 187B, P. 31.
- 48. See, Grand Jury Exhibits No. 187A through 188B.
- 49. RT: January 15, 2008, P. 67-68.
- 50. RT: June 5, 2007, P. 101, Ln. 7-16.  
RT: June 12, 2007, P. 58, Ln. 15-26.

## **51-75**

- 51. RT: September 20, 2007, P. 100-102.
- 52. RT: June 5, 2007, P. 55, Ln. 25 through P. 56, Ln. 9.  
RT: June 12, 2007, P. 160, Ln. 2-15.  
RT: June 14, 2007, P. 40, Ln. 2-9.  
RT: July 5, 2007, P. 41, Ln. 9-11.  
RT: August 7, 2007, P. 46, Ln. 17 through P. 47, Ln. 3.  
RT: September 25, 2007, P. 18, Ln. 9-19.  
RT: September 6, 2007, P. 126, Ln. 16-19.  
RT: August 30, 2007, P. 27, Ln. 26 through P. 28, Ln. 6.
- 53. RT: June 5, 2007, P. 52, Ln. 2 through P. 53, Ln. 15.  
RT: June 14, 2007, P. 40, Ln. 2-9.  
RT: September 6, 2007, P. 85, Ln 2-8 and Ln. 17 through P. 86, Ln. 5.  
RT: September 6, 2007, P. 126, Ln 26 through P. 127, Ln. 9.  
RT: June 12, 2007, P. 158, Ln. 4-17 and P. 159, Ln. 18 through P. 160, Ln. 1.  
RT: July 5, 2007, P. 202, Ln. 4-14.  
RT: July 26, 2007, P. 32, Ln. 4-8.  
RT: September 25, 2007, P. 19, Ln. 8-24:  
RT: August 28, 2007, P. 178, Ln. 5-7 & P. 194, Ln. 23 through P. 195, Ln. 9.  
RT: September 25, 2007, P. 214, Ln. 7-19.

In other housing locations with greater racial diversity, inmates similarly segregate into additional groups such as the "Chino" car, consisting of Asian inmates, and the "Brother" car consisting of black inmates. See, *generally*:

- RT: June 5, 2007, P. 52, Ln. 24-25.
- RT: September 25, 2007, P. 214, Ln. 18-19.
- RT: August 28, 2007, P. 195, Ln. 10-15 & 22-25.
- 54. RT: June 5, 2007, P. 56, Ln. 14-18.  
RT: June 12, 2007, P. 34, Ln. 9-15.  
RT: September 6, 2007, P. 127, Ln. 22 through P. 128, Ln. 8.  
RT: June 12, 2007, P. 157, Ln. 16-22 & P. 158, Ln. 1-3.  
RT: June 14, 2007, P. 41, Ln 13-15 & P. 43, Ln 12-13.  
RT: July 5, 2007, P. 202, Ln. 20-23.  
RT: July 5, 2007, P. 43, Ln. 4-19.  
RT: July 10, 2007, P. 72, Ln. 21-22.  
RT: July 26, 2007, P. 39, Ln. 22-24.  
RT: August 28, 2007, P. 178, Ln. 8-11 & P. 184, Ln. 24 through P. 185, Ln. 1 & P. 194, Ln. 3-22.

- RT: August 7, 2007, P. 69, Ln. 13-16.
55. RT: June 5, 2007, P. 56, Ln. 24 through P. 57, Ln. 7 & P. 144, Ln. 20-23.  
RT: August 30, 2007, P. 27, Ln. 5-10.  
RT: September 6, 2007, P. 87, Ln 21-25.
56. RT: September 6, 2007, P. 128, Ln 8-13.  
RT: June 14, 2007, P. 43, Ln. 21 through P. 44, Ln. 3 & 23 through P. 45, Ln. 1.  
RT: July 10, 2007, P. 72, Ln. 18-24.  
RT: August 28, 2007, P. 201, Ln. 18-25.  
RT: August 7, 2007, P. 69, Ln. 17 through P. 70, Ln. 11.
57. RT: June 14, 2007, P. 36, Ln. 24 through P. 37, Ln. 4 & P. 43, Ln. 3-11 & 14-20.  
RT: September 6, 2007, P. 128, Ln. 14-26.  
RT: September 25, 2007, P. 35, Ln. 24 through P. 36, Ln. 6 & P. 74, Ln. 1-4 & P. 156, Ln. 10-15.
58. RT: August 28, 2007, P. 203, Ln. 4-7 & P. 202, Ln. 13-16.  
RT: July 26, 2007, P. 40, Ln. 4-11.  
RT: August 7, 2007, P. 78, Ln. 14-22.  
RT: June 5, 2007, P. 58, Ln. 25 through P. 59, Ln. 8.  
RT: June 14, 2007, P. 129, Ln. 2-7.  
RT: July 10, 2007, P. 95, Ln. 15-21  
RT: September 25, 2007, P. 36, Ln. 18-24.
59. RT: June 5, 2007, P. 140, Ln. 4-9 & P. 112, Ln. 4 through P. 113, Ln. 3.  
RT: August 28, 2007, P. 203, Ln. 4-7 & P. 202, Ln. 6-16.  
RT: July 26, 2007, P. 40, Ln. 4-11.  
RT: August 7, 2007, P. 78, Ln. 14-22 & P. 79, Ln. 23 through P. 80, Ln. 4.  
RT: September 6, 2007, P. 150, Ln. 24 through P. 151, Ln. 2.
60. RT: June 14, 2007, P. 70, Ln. 12 through P. 72, Ln. 26 & P. 97, Ln. 9 through P. 98, Ln. 4.  
RT: September 25, 2007, P. 36, Ln. 18 through P. 37, Ln. 3 & P. 168, Ln. 5-14.  
RT: August 28, 2007, P. 203, Ln. 11-22.  
RT: June 5, 2007, P. 133, Ln. 15-21 & P. 134, Ln. 9 through P. 135, Ln. 10.
61. RT: June 14, 2007, P. 130, Ln. 7-19 & P. 131, Ln. 20-26.  
RT: September 25, 2007, P. 156, Ln. 6-14.  
RT: August 28, 2007, P. 200, Ln. 22 through P. 201, Ln. 5.  
RT: September 25, 2007, P. 18, Ln. 23 through P. 19, Ln. 7.
62. RT: June 12, 2007, P. 16, Ln. 15-22.
63. RT: August 28, 2007, P. 190, Ln. 26 through P. 191, Ln. 10 and P. 192, Ln. 1-16.  
RT: August 28, 2007, P. 197, Ln. 20 through P. 198, Ln 1 & P. 198, Ln. 25 through P. 200, Ln. 5.  
RT: August 28, 2007, P. 195, Ln. 26 through P. 196, Ln. 5.  
RT: August 28, 2007, P. 198, Ln. 14-22.  
RT: August 28, 2007, P. 207, Ln. 14-22 & P. 208, Ln. 20-24.  
RT: August 30, 2007, P. 38, Ln. 9-18 & P. 48, Ln. 11-26.
64. RT: August 28, 2007, P. 209, Ln. 4-9 & P. 213, Ln. 5-8.
65. RT: August 28, 2007, P. 205, Ln. 20 through 206, Ln. 15.  
RT: August 28, 2007, P. 208, Ln. 6-19.  
RT: August 28, 2007, P. 213, Ln. 14 through P. 214, Ln. 11.  
RT: August 30, 2007, P. 50, Ln. 18-22 & P. 51, Ln. 5-21.
66. RT: August 28, 2007, P. 209, Ln. 22-26 & P. 212, Ln. 11-24 & P. 214, Ln. 4-11.  
RT: August 30, 2007, P. 63, Ln. 1-8.
67. RT: August 30, 2007, P. 63, Ln. 1-8.
68. RT: August 30, 2007, P. 219, Ln. 22 through P. 220, Ln. 6.

69. RT: July 26, 2007, P. 44, Ln. 14 through P. 45, Ln. 7.
70. RT: July 26, 2007, P. 46, Ln. 13 through P. 48, Ln. 25.  
 RT: July 26, 2007, P. 49, Ln. 22 through P. 50, Ln. 6.  
 RT: July 26, 2007, P. 40, Ln. 4-15: (Regarding Knowledge of Shot Caller Discipline).
71. RT: August 7, 2007, P. 182, Ln. 15-20 & P. 189, Ln. 9-15.  
 RT: August 7, 2007, P. 156, Ln. 6-18 & P. 156, Ln. 25 through P. 157, Ln. 13.  
 RT: August 7, 2007, P. 173, Ln. 2-10 & P. 174, Ln. 19-24.  
 RT: August 7, 2007, P. 175, Ln. 24 through P. 176, Ln. 21 & P. 177, Ln. 15-18.  
 RT: August 7, 2007, P. 213, Ln. 11-16.  
 RT: August 9, 2007, P. 41, Ln. 18 through P. 42, Ln. 2 & 6-11.  
 RT: August 9, 2007, P. 190, Ln. 17 through P. 191, Ln. 6 & P. 27, Ln. 4-25.
72. RT: August 7, 2007, P. 79, Ln. 23 through P. 80, Ln. 22.
73. RT: August 7, 2007, P. 189, Ln. 9-15 & P. 181, Ln. 19 through P. 182, Ln. 9.  
 RT: August 7, 2007, P. 78, Ln. 14 through P. 79, Ln. 4 & P. 175, Ln. 24 through P. 176, Ln. 8.  
 RT: August 14, 2007, P. 190, Ln. 17 through P. 191, Ln. 6.
74. RT: August 7, 2007, P. 197, Ln. 3-13.
75. RT: September 6, 2007, P. 141, Ln. 11-24 & P. 143, Ln. 11-20.  
 RT: June 14, 2007, P. 41, Ln. 13 through P. 42, Ln. 15.  
 RT: July 5, 2007, P. 254, Ln. 10 through P. 255, Ln. 14.  
 RT: July 10, 2007, P. 67, Ln. 26 through P. 68, Ln. 17.  
 RT: July 5, 2007, P. 59, Ln. 1-3 & Ln. 17-19.  
 RT: July 5, 2007, P. 61, Ln. 6-12.  
 RT: July 5, 2007, P. 62, Ln. 6-9 & P. 62, Ln. 24 through P. 63, Ln. 2.  
 RT: July 5, 2007, P. 73, Ln. 17-25.

## **76-100**

76. RT: September 25, 2007, P. 95, Ln. 17-21 & P. 96, Ln. 10-24.  
 RT: June 14, 2007, P. 47, Ln. 5 through P. 48, Ln. 2.  
 RT: July 10, 2007, P. 67, Ln. 26 through P. 68, Ln. 17.
77. RT: September 25, 2007, P. 67, Ln. 16 through P. 68, Ln. 26.
78. RT: June 14, 2007, P. 47, Ln. 5-7.
79. RT: September 25, 2007, P. 43, Ln. 24 through P. 44, Ln. 6.
80. RT: August 7, 2007, P. 193, Ln. 25 through P. 194, Ln. 10.  
 RT: August 7, 2007, P. 198, Ln. 6-15.  
 RT: August 7, 2007, P. 106, Ln. 3-15 & 15 and P. 107, Ln. 14 through P. 108, Ln. 15.  
 RT: August 7, 2007, P. 110, Ln. 13-18.  
 RT: July 26, 2007, P. 52, Ln. 15 through P. 53, Ln. 1.  
 RT: August 30, 2007, P. 58, Ln. 23 through P. 59, Ln. 12.
81. RT: August 30, 2007, P. 65, Ln. 6 through P. 66, Ln. 4.  
 RT: July 5, 2007, P. 120, Ln. 13 through P. 121, Ln. 23.  
 RT: August 7, 2007, P. 193, Ln. 20-23.  
 RT: August 30, 2007, P. 63, Ln. 1-8.  
 RT: September 25, 2007, P. 78, Ln. 12 through P. 79, Ln. 12.
82. RT: August 30, 2007, P. 65, Ln. 14 through P. 66, Ln. 4 & P. 67, Ln. 6-12.
83. *Id.*
84. RT: September 25, 2007, P. 96, Ln. 10-24.  
 RT: July 5, 2007, P. 258, Ln. 19 through P. 259, Ln. 8.

See, *infra*, “Deputies Engage in Unauthorized Discipline of Inmates,” for further discussion of this practice.

85. RT: November 8, 2007, P. 162, Ln. 24-25.
86. Grand Jury Exhibit No. 89A, P. 8, Section 1.  
Orange County Sheriff’s Department, Theo Lacy Facility, Policy and Procedure Manual, Title 9, Chapter 6, Section 1.
87. Grand Jury Exhibit No. 33A, P. 9 at Paragraph 24, Item a., 2.  
Orange County Sheriff’s Department, Theo Lacy Facility, Policy and Procedure Manual, Title 3, Chapter 1, Section 4.2, Item 24., a., 2.
88. RT: June 12, 2007, P. 60, Ln. 10 through P. 61, Ln. 10.  
RT: January 15, 2008, P. 91, Ln. 14 through P. 92, Ln. 5.  
California Penal Code §4019.5(c) provides “[i]t is unlawful for any sheriff, deputy sheriff, police officer, warden or keeper of a jail to delegate to any prisoner or group of prisoners, authority to exercise the right of punishment over any other prisoner or group of prisoners in any county or city prison, jail, jail camp, or other place of detention at which any person charged with or convicted of crime is detained.”
89. RT: September 6, 2007, P. 98, Ln. 7-13.
90. RT: September 6, 2007, P. 102, Ln. 17-22.
91. Orange County Sheriff’s Department “Theo Lacy Facility Policy and Procedure,” Title 4, Chapter 3, Section 4.12.1 (emphasis added).  
Grand Jury Exhibit No. 56C, P. 11, section 4.12.1.
92. *Id.* at section 4.12.4 (emphasis added)
93. *Id.* at section 4.12.6 (emphasis added)  
*See also*, RT: June 5, 2007, P. 135, Ln. 11-15.
94. *Id.* (emphasis added)
95. *Id.*
96. RT: August 7, 2007, P. 178, Ln. 21 through P.179, Ln. 1.
97. RT: August 7, 2007, P. 201, Ln. 23 through P. 202, Ln. 3.  
RT: August 30, 2007, P. 79, Ln. 16-20.
98. RT: August 30, 2007, P. 77, Ln. 12 through P. 79, Ln. 3.
99. RT: August 7, 2007, P. 177, Ln. 15 through P. 203, Ln. 18.
100. *Id.*

## **101-125**

101. *Id.*
102. RT: August 7, 2007, P. 178, Ln 15-23.  
RT: August 7, 2007, P. 200, Ln 15-26.  
RT: August 7, 2007, P. 181, Ln. 5-13 & 19-22.  
RT: August 7, 2007, P. 188, Ln. 15-20.  
RT: August 7, 2007, P. 182, Ln. 21-P. 183, Ln. 5.
103. RT: August 7, 2007, P. 181, Ln. 5-13.
104. RT: August 7, 2007, P. 182, Ln. 21 through P. 183, Ln. 5.
105. RT: August 7, 2007, P. 178, Ln. 15-23.

106. Grand Jury Exhibit 89A, Page 2, Section 3.1.4  
Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 16, Chapter 1, Section 3.1.4.
107. Grand Jury Exhibit 89B, Page 1, 19-26, recognizing Jaycor Pepperball Gun as a Use of Force subject to "Use of Force" Guidelines.  
Grand Jury Exhibit 89A, Theo Lacy Policy and Procedure, Page 11, at section 4.2.5 stating that the use of O.C. spray is a "use of force" and treating contamination by O.C. through either pepper-ball gun or pepper spray the same.
108. Grand Jury Exhibit 89A, Page 13 at section 4.3.6.  
Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 9, Chapter 6, Section 4.3.6.
109. Grand Jury Exhibit 89B, Page 19 at section II, A, 1, a.  
Orange County Sheriff's Department, Use of Force Policy, Section 68 "Jaycor Pepperball..." Section II, A, 1., a. (emphasis added)
110. Grand Jury Exhibit 89B, Page 24 at section X., J.  
Orange County Sheriff's Department, Use of Force Policy, Section 68 "Jaycor Pepperball..." Section X, J. (emphasis added).
111. Grand Jury Exhibit 89A, Page 9 at section 4.1.1.  
Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 9, Chapter 6, Section 4.4.1.
112. RT: June 14, 2007, P. 54, Ln. 10-22.  
RT: June 14, 2007, P. 57, Ln. 11 through P. 58, Ln. 9.  
RT: June 14, 2007, P. 67, Ln. 2 through P. 68, Ln. 2.  
RT: June 14, 2007, P. 137, Ln. 12 through P. 135, Ln. 5.  
RT: June 14, 2007, P. 156, Ln. 7-18.  
RT: August 30, 2007, P. 202, Ln. 9-16.  
RT: August 30, 2007, P. 202, Ln. 26 through P. 203, Ln. 2.  
RT: August 30, 2007, P. 204, Ln. 24-26.  
RT: September 4, 2007, P. 64, Ln. 9-12.  
RT: September 4, 2007, P. 66, Ln. 20-26.  
RT: September 4, 2007, P. 67, Ln. 24-26.  
RT: September 4, 2007, P. 70, Ln. 19-26.  
RT: September 4, 2007, P. 72, Ln. 20-24.  
RT: September 4, 2007, P. 73, Ln. 5-7 & 17-18.  
RT: September 25, 2007, P. 53, Ln. 25 through P. 55, Ln. 16.  
RT: September 25, 2007, P. 56, Ln. 4-9.  
RT: September 25, 2007, P. 57, Ln. 12 through P. 58, Ln. 6.  
RT: September 6, 2007, Page 94, Ln. 9-14 & P. 95, Ln. 16-21.
113. RT: September 4, 2007, P. 64, Ln. 9 through P. 65, Ln. 11.  
RT: September 4, 2007, P. 74, Ln. 13-16.
114. RT: September 4, 2007, P. 65, Ln. 10-11.
115. RT: September 25, 2007, P. 56, Ln. 19 through P. 57, Ln. 11.
116. Grand Jury Exhibit 124A (video) and Exhibit 124B (transcript) at P. 54, Ln 24-25: "Go out there with the pepper ball, man, and shut them all up."  
RT: September 4, 2007, P. 77, Ln 4-16.
117. RT: September 25, 2007, P. 54, Ln. 7 through P. 55, Ln. 8.
118. RT: September 6, 2007, P. 91, Ln. 14-25 (Policy Regarding Warning).

RT: August 30, 2007, P. 203, Ln. 18-26 and P. 204, Ln. 4-6 (Policy Regarding Warning and Practice).

RT: September 4, 2007, P. 70, Ln. 4-5 and 19-26.

RT: September 25, 2007, P. 56, Ln. 19 through P. 57, Ln. 11.

119. Grand Jury Exhibit No. 89A, P. 11, Section 4.2.5, B. & Grand Jury Exhibit No. 89B, P. 25, Section XII, D.

RT: September 25, 2007, P. 58, Ln. 4-13.

RT: June 14, 2007, P. 54, Ln. 15-22.

Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 9, Chapter 6, Section 4.2.5: "B. Decontamination and first aid policy: Any inmate directly contaminated with O.C., via Pepperball gun...must be examined by medical. Any inmate indirectly exposed to O.C. that requests medical attention must be seen by medical. If an inmate requires more than fresh air for decontamination, such as water, it must be done in the medical area."

Orange County Sheriff's Department, Use of Force Policy, Section 68 "Jaycor Pepperball...", Section XII, D.: "Decontamination of OC should be with clear, cool water and/or fresh air."

120. Grand Jury Exhibit No. 89B, P. 82, Section 4.1.

Orange County Sheriff's Department, Jail Operations Policy and Procedure, Title 9, Section 4.1.

121. Grand Jury Exhibit No. 89A, P. 1, Section 1.0.

See *also*, Grand Jury Exhibit No. 89B, P. 25, Section XIII., A.

RT: June 26, 2007, P. 165, Ln. 2-9.

Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 16, Chapter 1, Section 1.0.

See *also*, Orange County Sheriff's Department, Use of Force Policy, Section 68 "Jaycor Pepperball...", Section XIII, A.

122. Grand Jury Exhibit No. 89A, P. 11, Section 4.3.2.

Orange County Sheriff's Department, Jail Operations Policy and Procedure, Title 9, Section 4.3.2.

123. *Id.* at P. 12, Section 4.3.4.

Orange County Sheriff's Department, Jail Operations Policy and Procedure, Title 9, Section 4.3.4.

124. Grand Jury Exhibit No. 89B, P. 25, Section XIII., B.

RT: September 6, 2007, P. 92, Ln. 4-18.

Orange County Sheriff's Department, Use of Force Policy, Section 68 "Jaycor Pepperball...", Section XIII, B.

125. RT: August 30, 2007, P. 204, Ln. 19 through P. 205, Ln. 3.

RT: September 4, 2007, P. 63, Ln. 23 through P. 64, Ln. 5.

RT: September 4, 2007, P. 67, Ln. 1-5.

RT: September 4, 2007, P. 74, Ln. 10-16.

## **126-150**

126. California Penal Code §6030; California Corrections Standards Authority, "Minimum Standards for Local Detention Facilities," (2005) Title 15, Division 1, Chapter 1, Subchapter 4, Article 7, §§1080-1084.

127. Grand Jury Exhibit No. 33A, P. 9, section 24. c. (emphasis added).

Orange County Sheriff's Department, Theo Lacy Facility, Policy and Procedure- Title 3, Chapter 1, Section 4.2, 24. c. (emphasis added).

128. *Id.*

129. *Id.*
130. *Id.*  
 See also generally, RT: June 12, 2007, P. 40, Ln. 5-21.  
 RT: June 5, 2007, P. 129, Ln. 9 through P. 130, Ln. 1-6.
131. RT: August 30, 2007, P. 136, Ln. 23 through P. 137, Ln. 10.  
 RT: August 30, 2007, P. 138, Ln. 18-25.  
 RT: August 28, 2007, P. 214, Ln. 22 through P. 216, Ln. 17.  
 RT: August 30, 2007, P. 69, Ln. 22 through P. 70, Ln. 1.  
 RT: June 14, 2007, P. 134, Ln. 5-15.
132. RT: August 30, 2007, P. 138, Ln. 26 through P. 139, Ln. 16.  
 RT: September 25, 2007, P. 44, Ln. 13 through P. 45, Ln. 1.  
 RT: September 25, 2007, P. 46, Ln. 12 through P. 48, Ln. 8.  
 RT: September 25, 2007, P. 51, Ln. 3 through P. 53, Ln. 1.  
 RT: September 25, 2007, P. 58, Ln. 17 through P. 59, Ln. 2
133. RT: August 30, 2007, P. 74, Ln. 2-10.
134. RT: August 30, 2007, P. 174, Ln. 19-24.
135. Grand Jury Exhibit No. 56C, P. 15.
136. RT: August 30, 2007, P. 140, Ln. 8 through P. 141, Ln. 23 & P. 142, Ln. 1-21.  
 RT: August 30, 2007, P. 70, Ln. 2-23 & P. 77, Ln. 1-4 & P. 84, Ln. 22 through P. 85, Ln. 3.
137. RT: August 30, 2007, P. 74, Ln. 11 through P. 75, Ln. 7 & P. 109, Ln. 4-10.  
 California Penal Code §6030; California Corrections Standards Authority, "Minimum Standards for Local Detention Facilities," (2005) Title 15, Division 1, Chapter 1, Subchapter 4, Article 7, §1084:  
 "Penal Code section 4019.5 requires the keeping of a record of all disciplinary infractions and punishment administered therefore. This requirement may be satisfied by retaining copies of rule violation reports and report of the disposition of each.
138. RT: August 30, 2007, P. 86, Ln. 19 through P. 87, Ln. 9.
139. RT: June 12, 2007, P. 26, Ln. 2-11.
140. Orange County Sheriff's Department, Theo Lacy Facility Policy and Procedure, Title 4, Chapter 3, Section 4.1.2
141. RT: June 12, 2007, P. 95, Ln. 2-9.  
 RT: June 5, 2007, P. 68, Ln. 15-26 & P. 122, Ln. 20 through P. 123, Ln. 5.  
 RT: August 30, 2007, P. 103, Ln. 26 through P. 104, Ln. 5.  
 RT: September 6, 2007, P. 88, Ln. 15 through P. 89, Ln. 7.  
 RT: July, 26, 2007, P. 50, Ln. 7-19.
142. RT: June 12, 2007, P. 78, Ln. 4-11.  
 RT: September 6, 2007, P. 88, Ln. 19-24.  
 RT: June 5, 2007, P. 69, Ln. 1-16.
143. RT: June 12, 2007, P. 78, Ln. 4-11.  
 Sheriff's deputies are also obligated to perform four scheduled "body counts" over the course of each twenty-four hour period. This duty is separate and distinct from the obligation to conduct barracks checks every thirty minutes.
144. RT: August 7, 2007, P. 124, Ln. 1-11 & P. 127, Ln. 5-12.  
 RT: August 14, 2007, P. 52, Ln. 25 through P. 53, Ln. 3 & P. 59, Ln. 26 through P. 60, Ln. 4.  
 RT: August 30, 2007, P. 104, Ln. 6-8 & P. 105, Ln. 9-15.  
 RT: October 11, 2007, P. 63, Ln. 6-14.  
 RT: June 14, 2007, P. 124, Ln. 23 through P. 126, Ln. 5.  
 RT: July 5, 2007, P. 127, Ln. 12-23.

- RT: July 5, 2007, P. 230 Ln. 7-10.  
 RT: July 10, 2007, P. 170, Ln. 21 through P. 171, Ln. 12.  
 RT: September 25, 2007, P. 174, Ln. 21 through P. 175, Ln. 10.
145. RT: August 7, 2007, P. 127, Ln. 5-12.  
 RT: August 14, 2007, P. 52, Ln. 25 through P. 53, Ln 3.
146. Once Every Other Day:  
 RT: July 5, 2007, P. 127, Ln. 12-23.
- Weeks Apart:  
 RT: June 14, 2007, P. 124, Ln. 23 through P. 126, Ln. 5.
- Not at All:  
 RT: July 5, 2007, P. 230 Ln. 7-10.  
 RT: July 10, 2007, P. 170, Ln. 21 through P. 171, Ln. 12.  
 RT: September 25, 2007, P. 174, Ln. 21 through P. 175, Ln. 10.
147. RT: August 30, 2007, P. 105, Ln. 9-15.
148. RT: October 11, 2007, P. 63, Ln. 6-19.
149. RT: October 11, 2007, P. 62, Ln. 8-16 & P. 63, Ln. 2-4.
150. RT: August 14, 2007, P. 178, Ln. 22-25.
- 151-175**
151. *Id.*
152. *See, supra*, note 141.
153. *See, supra*, note 140.  
 RT: June 5, 2007, P. 144, Ln. 7-19.
154. RT: September 4, 2007, P. 3, Ln. 12 through P. 4, Ln. 1.  
 RT: July 5, 2007, P. 184, Ln. 11-20.  
 RT: June 14, 2007, P. 39, Ln. 5-23.  
 RT: June 14, 2007, P. 126, Ln. 6-13.
155. *Id.*
156. RT: August 30, 2007, P. 116, Ln. 15-19.
157. Grand Jury Exhibit No. 36 and 130.  
*See, generally*, RT: August 14, 2007, P. 53-56 & 59-62.  
 RT: October 11, 2007, P. 55, Ln. 24 through P. 56, Ln. 14.
158. RT: August 30, 2007, P.167 Ln. 18.  
 RT: September 4, 2007, P.56 Ln. 22 through P. 57, Ln. 7.  
 RT: August 7, 2007, P. 59, Ln. 21 through P. 60, Ln. 5.  
 RT: August 9, 2007, P. 47, Ln. 18-23.  
 RT: August 14, 2007, P. 20, Ln. 15-23.
159. Orange County Sheriff's Department, Theo Lacy Facility Policy and Procedure, Title 4, Chapter 3, Section 4.1.2
160. RT: June 12, 2007, P. 79, Ln. 14-17.
161. RT: August 14, 2007, P.60 Ln. 5-11 & 19-24.  
*See also*, RT: September 6, 2007, P. 107, Ln. 18 through P. 108, Ln. 1.
162. RT: August 14, 2007, P.53 Ln. 1-11 & 22-26.  
 RT: August 14, 2007, P. 61, Ln. 24 through P.62, Ln. 12
163. RT: August 14, 2007, P. 54, Ln. 1 through P. 55, Ln. 1.

164. RT: October 11, 2007, P. 80, Ln. 4-14 & 19-22.
165. Manipulability of Work Station Log:  
 RT: August 14, 2007, P. 188, Ln. 8-23.  
 RT: June 5, 2007, P. 152, Ln. 6-15.
166. Grand Jury Exhibit No. 130.
167. *Id.* at p. 2.
168. RT: August 30, 2007, P.166 Ln. 11-16 and P. 168, Ln. 6-8.  
 RT: August 14, 2007, P. 55, Ln. 7 through P. 56, Ln. 3.  
 RT: August 14, 2007, P. 62, Ln. 18-21.
169. RT: August 14, 2007, P. 41, Ln. 15-19.
170. Grand Jury Exhibit No. 106, P. 2.
171. Grand Jury Exhibit No. 105.
172. RT: December 20, 2007, P. 13, Ln. 14-26.  
 RT: December 20, 2007, P. 15, Ln. 7 through P. 16, Ln. 14.  
 RT: December 20, 2007, P. 21, Ln. 19 through P. 22, Ln. 5.  
 RT: December 20, 2007, P. 25, Ln. 21-25.
173. Orange County Special Criminal Grand Jury letter to the Orange County Board of Supervisors  
 Chairman John M.W. Moorlach, February 28, 2008 (Appendix 1).
174. *Id.*
175. *Id.*

## **176-200**

176. Grand Jury Exhibit No. 104, P. 1-3.  
 RT: December 20, 2007, P. 19, Ln. 2-14.  
 RT: June 28, 2007, P. 36, Ln. 1 through P.37, Ln. 26.
- Minutes of the Board of Supervisors of Orange County, California, May 14, 1985. P. 1, Item 3 “Direct the Sheriff-Coroner and the District Attorney to develop a Protocol and Memorandum of Understanding, whereby the District Attorney...direct[s] the investigation into any potential wrongdoing following all in-custody deaths under the jurisdiction of the Sheriff-Coroner *and* Deputy Sheriff involved deaths.” (emphasis added).
177. Grand Jury Exhibit No. 105, P. 1.  
 Grand Jury Exhibit No. 104, P. 1-3.  
 Grand Jury Exhibit No. 107, P. 1.  
 RT: June 28, 2007, P. 28, Ln. 11-18.  
 RT: June 28, 2007, P. 159, Ln. 2-16.
178. Grand Jury Exhibit No. 107, P. 1.  
 RT: December 20, 2007, P. 23, Ln. 16-26.  
 RT: November 6, 2007, P. 101, Ln. 12 through P. 102, Ln. 7.  
 RT: June 28, 2007, P. 170, Ln. 19 through P. 171, Ln. 2.  
 RT: June 28, 2007, P. 54, Ln. 3-26.
- Minutes of the Board of Supervisors of Orange County, California, July 23, 1985.
179. Grand Jury Exhibits No. 105 and 106.  
 RT: July 3, 2007, P. 112, Ln. 25 through P. 113, Ln. 11.
180. Grand Jury Exhibit No. 106.  
 RT: June 28, 2007, P. 49, Ln. 26 through P. 50, Ln. 7 & P. 52, Ln. 11-18.
- “Sheriff-Coroner Policy” adopted by Orange County Board of Supervisors July 23, 1985. (emphasis

added) and Letter of Sheriff Brad Gates, July 2, 1985 to District Attorney Cecil Hicks.

181. Grand Jury Exhibit No. 105, P. 1-2.

RT: June 28, 2007, P. 40, Ln. 3-11 and P. 41, Ln. 6-17 & P. 49, Ln. 21-25.

Grand Jury Exhibit No. 106.

RT: December 20, 2007, P. 23, Ln. 8-15.

“Orange County District Attorney Investigation Procedures for Officer Involved Incidents” adopted by Orange County Board of Supervisors July 23, 1985. (emphasis added).

The OCDA role as an independent investigator operates at the discretion of the OCDA. According to the procedures the District Attorney may, upon request, agree to conduct an independent investigation. As the Sheriff’s policy makes clear, however, the Sheriff’s Department shall always request the OCDA to conduct an independent investigation by immediately referring “all cases” of custodial death.

182. Grand Jury Exhibit No. 105, P. 1.

183. Grand Jury Exhibits No. 104-107.

RT: December 20, 2007, P. 20, Ln. 23 through P. 21, Ln. 14 & P. 21, Ln. 19 through P. 22, Ln. 5.

RT: January 15, 2008, P. 100, Ln. 19 through P. 101, Ln. 14.

RT: November 6, 2007, P. 104, Ln. 17-26.

RT: July 3, 2007, P. 95, Ln. 25 through P. 96, Ln. 2 & P. 110, Ln. 7-12 & P. 150, Ln. 5-10.

RT: December 20, 2007, P. 34, Ln. 8-16.

RT: June 28, 2007, P. 33, Ln. 24 through P. 34, Ln. 16.

RT: June 28, 2007, P. 92, Ln. 14-20 and P. 93, Ln. 2-8.

RT: August 16, 2007, P. 72, Ln. 18-26; P. 73, Ln. 11-13; and P. 74, Ln. 12-14.

RT: January 8, 2008, P. 215, Ln. 20-24.

RT: July 3, 2007, P. 237, Ln. 1-7 & P. 238, Ln. 10 through P. 239, Ln. 21 & P. 250, Ln. 5-8.

RT: July 3, 2007, P. 202, Ln. 12-24.

See, *supra*, note 180, Letter of Sheriff Brad Gates, July 2, 1985 to District Attorney Cecil Hicks. “We believe our policy and your procedures are in concert and will allow your office [District Attorney] to fulfill the responsibility for investigation of these incidents...”

184. Grand Jury Exhibits No. 105 & 106

RT: July 3, 2007, P. 113, Ln. 12-26 and P. 114, Ln. 14-18.

RT: July 3, 2007, P. 114, Ln. 21 through P. 115, Ln. 7 and P. 116, Ln. 1-9.

RT: July 3, 2007, P. 202, Ln. 12 through P. 204, Ln. 4.

185. Grand Jury Exhibit No. 105.

See, *supra*, note 181, (emphasis added).

186. Grand Jury Exhibit No. 106, P. 2.

See, *supra*, note 180, (emphasis added).

187. Grand Jury Exhibit No. 105.

RT: June 28, 2007, P. 47, Ln. 19 through P. 48, Ln. 1.

See, *supra*, note 181.

188. Grand Jury Exhibit No. 108, P. 1-2.

RT: December 20, 2007, P. 25, Ln. 7-10 (regarding Exhibit 108, Letter to Chairman Gaddi Vasquez).

RT: June 28, 2007, P. 55, Ln. 26 through P. 56, Ln. 12 & P. 56, Ln. 20 through P. 57, Ln. 10.

Letter of Sheriff Brad Gates and District Attorney Michael R. Capizzi, March 7, 1995, to Orange County Board of Supervisors Chairman Gaddi H. Vasquez (emphasis original).

189. Grand Jury Exhibit No. 109, P. 4.

RT: January 8, 2008, P. 105, Ln. 10-11 and Ln. 22 through P. 106, Ln. 25.

RT: June 28, 2007, P. 59, Ln. 18 through P. 60, Ln. 16.

RT: June 28, 2007, P. 177, Ln. 17-21 and P. 179, Ln. 8-22.

Orange County Sheriff's Department "Response to the Grand Jury," July 2005 and Letter of Sheriff Michael S. Carona, August 9, 2005, to Orange County Superior Court Presiding Judge Frederick Horn.

190. [www.ocsd.org/Investigations/HomicideDefault.asp](http://www.ocsd.org/Investigations/HomicideDefault.asp) (April 1, 2008).
191. See, *supra*, note 173.
192. See, *supra*, note 172.
193. RT: December 20, 2007, P. 13, Ln. 23-26 and P. 14, Ln. 6-10.  
See also, RT: January 15, 2008, P. 100, Ln. 23 through P. 101, Ln. 14.
194. Orange County OCDA Custodial Death Statistics for the Orange County Sheriff's Department, January 1, 1986 to January 1, 2007. (Appendix 2).
- Grand Jury Exhibit No. 110.  
RT: June 28, 2007, P. 60, Ln. 23 through P. 61, Ln. 4; P. 61, Ln. 8-17.  
RT: June 28, 2007, P. 63, Ln. 20 through P. 64, Ln. 1.
195. RT: June 28, 2007, P. 64, Ln. 18-21; P. 65, Ln. 4-15 and P. 65, Ln. 21 through P. 66, Ln. 11.  
RT: June 28, 2007, P. 87, Ln. 21-25.  
RT: July 3, 2007, P. 246, Ln. 20 through P. 247, Ln. 7.  
RT: November 6, 2007, P. 88, Ln. 7-10 & P. 141, Ln. 5-12 & P. 58, Ln. 3-12.  
RT: January 8, 2008, P. 53, Ln. 26 through P. 54, Ln. 14.  
RT: January 8, 2008, P. 34, Ln. 20-24.  
RT: November 8, 2007, P. 35, Ln. 25 through P. 36, Ln. 23.  
RT: July 3, 2007, P. 198, Ln. 11-17 and P. 206, Ln. 12-18.  
RT: August 16, 2007, P. 56, Ln. 22 through P. 57, Ln. 9.  
RT: October 11, 2007, P. 6, Ln. 18 through P. 7, Ln. 5 & P. 9, Ln. 12-19.  
RT: October 9, 2007, P. 76, Ln. 8-19.  
RT: December 20, 2007, P. 29, Ln. 26 through P. 30, Ln. 17.
196. See, *supra*, note 173.
197. Grand Jury Exhibit No. 164.
198. RT: November 6, 2007, P. 73, Ln. 1 through P. 74, Ln. 23; P. 75, Ln. 5-8; P. 76, Ln. 3 through P. 78, Ln. 6; and P. 110, Ln. 10 through P. 111, Ln. 8.
199. Grand Jury Exhibit No. 164  
RT: November 6, 2007, P. 102, Ln. 18-22.
200. RT: July 3, 2007, P. 199, Ln. 14 through P. 200, Ln. 13 and P. 202, Ln. 3-4.  
RT: July 3, 2007, P. 205, Ln. 23 through P. 206, Ln. 8.  
RT: July 3, 2007, P. 124, Ln. 12 through P. 125, Ln. 3.  
RT: July 3, 2007, P. 126, Ln. 7-26 & P. 130, Ln. 21 through P. 131, Ln. 10:  
RT: July 3, 2007, P. 144, Ln. 18-22.  
RT: July 3, 2007, P. 146, Ln. 8-19 and P. 148, Ln. 4-19.  
RT: July 3, 2007, P. 165, Ln. 21-26 (regarding the research findings).  
RT: July 3, 2007, P. 177, Ln. 21 through P. 178, Ln. 3.  
RT: July 3, 2007, P. 242, Ln. 2-17.  
RT: October 9, 2007, P. 223, Ln. 12-14 and P. 224, Ln. 26 through P. 225, Ln. 9.  
RT: November 6, 2007, P. 104, Ln. 14-16 (regarding 1994 custodial homicide).

## **201-225**

201. See, *infra*, "Evidence of Sheriff's Witnesses Providing Misleading Testimony Regarding the History of Custodial Homicide Investigations."
202. RT: October 11, 2007, P. 19, Ln. 26 to P. 20, Ln. 12.  
RT: November 6, 2007, P. 129, Ln. 18-23.

- RT: June 28, 2007, P. 76, Ln. 15 through P. 77, Ln. 1.  
RT: January 10, 2007, P. 96, Ln. 1-6.
203. *See, supra*, note 173.
204. Grand Jury Exhibits No. 111 and 112.  
RT: July 3, 2007, P. 84, Ln. 6-9 & 17-25.
205. RT: July 3, 2007, P. 92, Ln. 3-9 (regarding 8:03PM telephone call to DA Investigator).
206. RT: July 3, 2007, P. 83, Ln. 5-11.
207. Grand Jury Exhibits No. 111 and 112.  
RT: July 3, 2007, P. 86, Ln. 24 through P. 87, Ln. 6.
208. RT: July 3, 2007, P. 86, Ln. 24 through P. 87, Ln. 6-20.  
RT: July 3, 2007, P. 88, Ln. 14 through P. 89, Ln. 18.  
RT: July 3, 2007, P. 89, Ln. 22-26.  
RT: July 3, 2007, P. 90, Ln. 1-15.  
RT: July 3, 2007, P. 92, Ln. 3-9.  
RT: July 3, 2007, P. 94, Ln. 5-7.  
RT: July 3, 2007, P. 105, Ln. 2-7.  
RT: July 3, 2007, P. 132, Ln. 7-26.
209. *Id.*
210. RT: July 3, 2007, P. 91, Ln. 14-19.  
*See also*, RT: July 3, 2007, P. 108, Ln. 26 through P. 109, Ln. 9 & 20-23; and P. 124, Ln. 4-7.
211. *See, supra*, note 181.
212. *See, supra*, note 180.
213. RT: July 3, 2007, P. 87, Ln. 19-21.
214. RT: July 3, 2007, P. 94, Ln. 18-21.  
*See also*, RT: July 3, 2007, P. 92, Ln. 15-18.
215. RT: July 3, 2007, P. 93, Ln. 4-12 & 18-23.  
RT: June 28, 2007, P. 70, Ln. 7-23.
216. RT: July 3, 2007, P. 107, Ln. 18 through P. 108, Ln. 1.  
RT: July 3, 2007, P. 96, Ln. 25 through P. 97, Ln. 1.  
RT: July 3, 2007, P. 95, Ln. 5-6.  
RT: July 3, 2007, P. 224, Ln. 2-8.
217. RT: July 3, 2007, P. 94, Ln. 18-21 & P. 95, Ln. 5-9.
218. Grand Jury Exhibit No. 111.
219. RT: June 28, 2007, P. 71, Ln. 4-12; P. 72, Ln. 10-26; and P. 74, Ln. 1-3 & 9-12.  
RT: July 3, 2007, P. 224, Ln. 9-18.  
RT: July 3, 2007, P. 227, Ln. 14-17.  
RT: July 3, 2007, P. 228, Ln. 10-14 and P. 229, Ln. 16-21.
220. RT: July 3, 2007, P. 226, Ln. 2-7; P. 227, Ln. 14-17; P. 228, Ln. 10-14; and P. 229, Ln. 22-25.  
RT: June 28, 2007, P. 72, Ln. 10-26 & P. 76, Ln. 12-14.
221. RT: July 3, 2007, P. 226, Ln. 2-19 & P. 227, Ln. 8-17.  
*See also*, RT: June 28, 2007, P. 73, Ln. 16-26.  
RT: July 3, 2007, P. 35, Ln. 9-15 & P. 37, Ln. 1-8.
222. RT: June 28, 2007, P. 73, Ln. 16-26.  
RT: June 28, 2007, P. 74, Ln. 9-25.  
RT: June 28, 2007, P. 78, Ln. 4-8 & P. 78, Ln. 17 through P. 79, Ln. 3.  
RT: June 28, 2007, P. 83, Ln. 6-8.

RT: June 28, 2007, P. 94, Ln. 17 through P. 95, Ln. 6.  
RT: June 28, 2007, P. 101, Ln. 1-14.  
RT: June 28, 2007, P. 104, Ln. 15 through P. 105, Ln. 8.

223. RT: July 3, 2007, P. 229, Ln. 16-21.

224. RT: July 3, 2007, P. 238, Ln. 3-9.

225. RT: July 3, 2007, P. 225, Ln.24 through P. 226, Ln. 1.  
RT: July 3, 2007, P. 230, Ln.23 through P. 232, Ln. 8.  
RT: July 3, 2007, P. 240, Ln. 21-23.  
RT: July 3, 2007, P. 242, Ln. 24 through P. 243, Ln. 13.  
RT: July 3, 2007, January 10, 2008, P. 49, Ln. 18-22.

Regarding an absence of evidence, see *also*: RT: July 3, 2007, P. 38, Ln. 4-21.

See *also*: RT: July 3, 2007, P. 183, Ln. 16 through P. 184, Ln. 1.

## **226-250**

226. RT: July 3, 2007, P. 238, Ln. 3-9.  
RT: July 3, 2007, P. 230, Ln.23 through P. 232, Ln. 8.  
RT: July 3, 2007, P. 242, Ln. 24 through P. 243, Ln. 13.  
RT: January 10, 2008, P. 45, Ln. 11-17; P. 46, Ln. 8-11 & 15-21.  
RT: January 10, 2008, P. 48, Ln. 5 through P. 49, Ln. 6.  
RT: January 8, 2008, P. 43, Ln. 12 through P. 44, Ln. 3.  
RT: January 8, 2008, P. 54, Ln. 15 through P. 55, Ln. 1.  
RT: January 8, 2008, P. 72, Ln. 26 through P. 73, Ln. 8 & 20-23.  
RT: January 8, 2008, P. 232, Ln. 20-26.  
RT: January 10, 2008, P. 8, Ln. 23 through P. 9, Ln. 12.  
RT: January 15, 2008, P. 4, Ln. 17 through P. 8, Ln. 8.

227. RT: January 10, 2008, P. 170, Ln. 16-21.

228. RT: July 3, 2007, P. 87, Ln. 11 through P. 88, Ln. 13.  
RT: July 3, 2007, P. 94, Ln. 20 through P. 95, Ln. 4.  
RT: July 3, 2007, P. 110, Ln. 17 through P. 111, Ln. 4.  
RT: July 3, 2007, P. 239, Ln.26 through P. 241, Ln. 4 & P. 242, Ln. 2-17.  
RT: January 10, 2008, P. 42, Ln. 10 through P. 43, Ln. 10.

229. *Id.*

230. See, *infra*, "Investigative Protocol for Custodial Deaths" and "Historical Practice of Custodial Death Investigations." The misunderstanding of protocol by certain members of the Sheriff's Department appeared to stem from their confusion between "custodial deaths" and "officer-involved incidents" which are also addressed by the policy.

231. See, *supra*, notes 180 and 181 (emphasis added).

232. RT: July 3, 2007, P. 250, Ln. 5-8 & P. 251, Ln. 6-10.  
RT: July 3, 2007, P. 225, Ln. 2-6.  
RT: July 3, 2007, P. 110, Ln. 7-16 & P. 116, Ln. 10 through P.117, Ln. 14.  
RT: November 6, 2007, P. 131, Ln. 11-25.

233. RT: July 3, 2007, P. 242, Ln. 24 through P. 243, Ln. 13.  
RT: P. 230, Ln.23 through P. 231, Ln. 8:  
See *also*, RT: June 28, 2007, P. 79, Ln. 15-24; and P. 91, Ln. 10-16.

234. RT: July 3, 2007, P. 251, Ln. 16-21.

235. RT: July 3, 2007, P. 133, Ln. 17-19 and P. 134, Ln. 4-7 and 14-17.

236. RT: July 3, 2007, P. 123, Ln. 17 through P. 124, Ln. 1.

- RT: July 3, 2007, P. 247, Ln. 8-21.
237. RT: July 3, 2007, P. 171, Ln. 9 through P. 172, Ln. 9.  
RT: January 8, 2008, P. 47, Ln. 2-10.
238. RT: January 15, 2008, P. 98, Ln. 1 through P. 99, Ln. 3 and P. 102, Ln. 26 through P. 103, Ln. 7.
239. RT: July 3, 2007, P. 105, Ln. 13-22.  
RT: July 3, 2007, P. 152, Ln. 15 through P. 153, Ln. 12.  
RT: July 3, 2007, P. 155, Ln. 24 through P. 156, Ln. 3.  
RT: July 3, 2007, P. 171, Ln. 9 through P. 172, Ln. 9.
240. *Id.*  
RT: January 10, 2008, P. 94, Ln. 26 through P. 95, Ln. 2.
241. *See, supra*, notes 199 & 200.
242. *See, supra*, note 200.  
RT: July 3, 2007, P.124, Ln. 16 through P. 125, Ln. 5; and P.131, Ln. 7-10.  
RT: July 3, 2007, P. 240, Ln. 15-23.
243. *See, supra*, note 200.
244. RT: January 8, 2008, P. 15, Ln. 8-10 & 20-23.
245. RT: January 8, 2008, P. 49, Ln. 1-23; and P. 57, Ln. 8-26.
246. RT: January 8, 2008, P. 46, Ln. 17-21 and P. 58, Ln. 6-9.
247. Grand Jury Exhibit No. 123D, P. 13.  
RT: January 8, 2008, P. 58, Ln. 10 through P. 59, Ln. 22.
248. RT: January 8, 2008, P. 62, Ln. 8 through P. 63, Ln. 8.  
RT: January 8, 2008, P. 234, Ln. 17 through P. 235, Ln. 10.  
RT: January 8, 2008, P. 120, Ln. 22 through P. 121, Ln. 12.
249. RT: January 8, 2008, P. 104, Ln. 12-19; and P. 104, Ln. 22 through P. 105, Ln. 3.
250. RT: June 28, 2007, P. 75, Ln. 8-25.

## **251-275**

251. RT: June 28, 2007, P. 77, Ln. 20-24; and P. 102, Ln. 1-10.  
RT: July 3, 2007, P. 143, Ln. 14-18.  
RT: January 8, 2008, P. 96, Ln. 7 through P. 97, Ln. 4.
252. RT: November 6, 2007, P. 92, Ln. 16 through P. 93, Ln. 11.
253. *See, supra*, note 173.
254. *See generally*, RT: January 10, 2008, P.40 through 172; RT: June 28, 2007, P. 109 through 264;  
RT: July 3, 2007, P. 3 through P. 76; and RT: January 8, 2008, P. 4 through P. 273. (Testimony discussed with particularity herein).
255. Orange County Special Criminal Grand Jury letter to the Orange County Board of Supervisors  
Chairman John M.W. Moorlach, February 28, 2008 (Appendix 1).
256. *Compare*: RT: January 10, 2008, P. 70-71 with RT: July 3, 2007, P. 146, Ln. 8-19; RT: October 9,  
2007, P. 238, Ln. 9-13 and P. 240, LN. 1-4; RT: November 6, 2007, P. 120, Ln. 1-17; and Grand Jury  
Exhibit No. 164.
257. *Compare*: RT: June 28, 2007, P. 155, Ln. 18 through P. 156, Ln. 6 and July 3, 2007, P. 65, Ln.  
14-22 with RT: July 3, 2007, P. 72, Ln. 4-16.
258. RT: October 9, 2007, P. 249, Ln. 11-17 & Grand Jury Exhibit No. 164.
259. RT: November 6, 2007, P. 74, Ln. 16-21 & P. 110, Ln. 10 through P. 111, Ln. 8.

- RT: January 10, 2008, P. 101, Ln. 1 through P. 102, Ln. 1.  
RT: October 9, 2007, P. 215, Ln. 20 through P. 216, Ln. 13.
260. RT: November 6, 2007, P. 74, Ln. 16-21 and P. 121, Ln. 14-20.  
RT: January 10, 2008, P. 101, Ln. 15 through P. 102, Ln. 1.  
RT: October 9, 2007, P. 215, Ln. 20 through P. 216, Ln. 13.
261. Grand Jury Exhibit No. 164.
262. *Id.*  
RT: October 9, 2007, P. 230-234.
263. *Id.*
264. *Id.*
265. *Id.*
266. RT: July 3, 2007, P. 165 & 177-179.  
RT: October 9, 2007, P. 222, Ln. 13 through P. 225, Ln. 12.
267. RT: July 3, 2007, P. 165, Ln. 21-26.  
*See also*, RT: July 3, 2007, P. 177, Ln. 21 through P. 178, Ln. 3.
268. RT: July 3, 2007, P. 126, Ln. 7-26.  
RT: July 3, 2007, P. 242, Ln. 2-17.
269. RT: November 6, 2007, P. 120 through P. 125.  
RT: October 11, 2007, P. 236 through 259.
270. RT: October 9, 2007, P. 239, Ln. 23.
271. RT: October 9, 2007, P. 240, Ln. 14.
272. RT: July 3, 2007, P. 146, Ln. 8-19.
273. RT: July 3, 2007, P. 146, Ln. 14-16.
274. RT: July 3, 2007, P. 146, Ln. 17-19.
275. RT: November 6, 2007, P. 144, Ln. 26 through P. 145, Ln. 25.  
*See also*, Grand Jury Exhibit No. 164.

## **276-300**

276. RT: November 6, 2007, P. 145, Ln. 2-9.
277. RT: November 6, 2007, P. 145, Ln. 19-22.
278. RT: January 10, 2008, P. 70, Ln. 20 through P. 71, Ln. 3.
279. RT: January 10, 2008, P. 72, Ln. 24-26.  
RT: January 10, 2008, P. 124, Ln. 26 through P. 125, Ln. 9.
280. RT: January 10, 2008, P. 69, Ln. 25 through P. 70, Ln. 7.  
*See, supra*, note 278.
281. RT: January 10, 2008, P. 71, Ln. 6-11.
282. RT: January 10, 2008, P. 129, Ln. 22.
283. RT: January 10, 2008, P. 129, Ln. 23-24.
284. RT: January 10, 2008, P. 131, Ln. 13-14.
285. RT: January 10, 2008, P. 85, Ln. 23-24.
286. RT: January 10, 2008, P. 125, Ln. 25-26.

287. RT: January 10, 2008, P. 126, Ln. 16-23.
288. RT: January 10, 2008, P. 72, Ln. 25 through P. 73, Ln. 16.
289. RT: January 10, 2008, P. 76, Ln. 10-15.  
RT: October 9, 2007, P. 220, Ln. 2-4.
290. RT: January 10, 2008, P. 76, Ln. 10-15.
291. RT: January 10, 2008, P. 80, Ln. 11-17.
292. RT: November 8, 2007, P. 42, Ln. 20-23 & P. 43, Ln. 6-11.  
RT: July 3, 2007, P. 126.  
RT: July 3, 2007, P. 242.
293. RT: October 9, 2007, P. 209, Ln. 1-4.
294. RT: October 9, 2007, P. 218, Ln. 2-7.
295. RT: October 9, 2007, P. 218, Ln. 8-11.
296. RT: October 9, 2007, P. 217-218 & P. 229.
297. RT: January 10, 2008, P. 81, Ln. 3-5.
298. RT: January 10, 2008, P. 81, Ln. 16-25.
299. RT: January 10, 2008, P. 81, Ln. 26 through P. 82.
300. RT: January 10, 2008, P. 80, Ln. 21-22.

### **301-325**

301. RT: January 8, 2008, P. 49, Ln. 25 through P. 50, Ln. 1.
302. *Compare* Grand Jury Exhibit 164 (memorandum written on October 12, 2006) with RT: October 9, 2007, P. 249, Ln. 11-17 (witness stating it had only taken him a day at the most to produce his findings from the time the research was assigned to him).
303. RT: November 6, 2007, P. 121, Ln. 14-20.
304. RT: October 9, 2007, P. 252-253.  
RT: November 6, 2007, P. 120-122.
305. RT: January 10, 2008, P. 75, Ln. 22 through P. 76, Ln. 3; and P. 76, Ln. 16-17; and P. 78, Ln. 16-17.
306. RT: January 10, 2008, P. 79, Ln. 15-19.
307. RT: January 10, 2008, P. 138, Ln. 11-15.
308. RT: June 28, 2007, P. 155, Ln. 18 through P. 156, Ln. 6.
309. RT: July 3, 2007, P. 65, Ln. 14-22.
310. RT: July 3, 2007, P. 72, Ln. 13-16.
311. *See, generally*, Cal. Penal Code §§919, 922, 925 et seq.  
*McClatchy Newspapers v. Superior Court*, (1988) 44 Cal. 3d 1162, 1170.
312. RT: January 8, 2008, P. 83, Ln. 2-17; P. 87, Ln. 8-16; P. 140, Ln. 5-8.
313. RT: January 8, 2008, P. 82-161.  
RT: November 6, 2007, P. 64-71 & P. 106-109.  
RT: November 29, 2007, 11-22.
314. RT: November 6, 2007, P. 66, Ln. 11-13.
315. RT: November 29, 2007, P. 11, Ln. 20-25.  
*See also*, RT: January 8, 2008, P. 82, Ln. 18-25.

316. RT: January 8, 2008, P. 83-91 and P. 130-143.
317. Grand Jury Exhibit No. 164.
318. Grand Jury Exhibits 123C, P. 50 & 191.
319. Grand Jury Exhibit No. 164.  
*See also, infra*, "Sheriff's Department Prevented Independent Homicide Investigation in Violation of County Protocol & Historical Practice;" and "Evidence of Sheriff's Witnesses Providing Misleading Testimony Regarding the History of Custodial Homicide Investigations."
320. Grand Jury Exhibit No. 191.
321. Grand Jury Exhibit No. 191.  
RT: January 8, 2008, P. 144-152.  
RT: November 29, 2007, P. 6-11.
322. RT: November 29, 2007, P. 21, Ln. 5-8; and P. 21, Ln. 15 through P. 22, Ln. 20.  
RT: November 6, 2007, P. 107-108.  
RT: January 8, 2008, P. 157-161.
323. RT: November 29, 2007, P. 11, Ln. 17-25.  
RT: November 6, 2007, P. 52, Ln. 8-18 & P. 64, Ln. 8 through P. 66, Ln. 25.
324. RT: November 6, 2007, P. 52, Ln. 16-18.
325. RT: November 6, 2007, P. 66, Ln. 11-13.

### **326-350**

326. RT: November 29, 2007, P. 17, Ln. 19-21.
327. RT: November 6, 2007, P. 65, Ln. 3-26.
328. Grand Jury Exhibit No. 191.
329. RT: November 29, 2007, P. 17, Ln. 12-16.  
*See also*, RT: November 6, 2007, P. 80, Ln. 11-12.
330. Compare Grand Jury Exhibit No. 191 and 123C, P. 50.  
RT: January 8, 2008, P. 144-152.  
RT: November 29, 2007, P. 6-11.
331. Grand Jury Exhibits No. 191 & 123C, P. 50 (The memorandum reads, in pertinent part, as follows: "The Orange County Sheriff's Department has always investigated ALL murders/homicides in our jurisdiction, including the jails unless they are deputy related.")
332. RT: November 6, 2007, P. 68 Ln. 9-15 and P. 70 Ln. 14 through P.71, Ln. 5.
333. RT: November 6, 2007, P. 80 Ln. 17-23.
334. RT: January 8, 2008, P. 82-161.  
RT: November 29, 2007, 11-22.  
RT: November 6, 2007, P. 52-109.
335. RT: January 8, 2008, P. 149, Ln. 19-22.
336. RT: January 8, 2008, P. 160, Ln. 24 through P. 161, Ln. 3.
337. *Id.*
338. RT: November 29, 2008, P. 21, Ln. 15 through P. 22, Ln. 9.
339. RT: November 29, 2008, P. 21-22.
340. RT: January 8, 2008, P. 91, Ln. 6-9.
341. RT: November 29, 2007, P. 21, Ln. 5-8.

- RT: January 8, 2008, P. 157-161.
342. RT: November 6, 2007, P. 108, Ln. 10-17.
343. RT: November 29, 2008, P. 21, Ln. 25-26.  
RT: November 29, 2008, P. 14, Ln. 24 through P. 15, Ln. 1-2.
344. The complete Grand Jury witness admonition is as follows: "You are admonished not to discuss or repeat at any time outside of this jury room the questions the questions that have been asked you in regard to this matter, or your answers, with the understanding that such disclosure on your part may be the basis of a charge against you of contempt of court. Of course, you are free to consult with your attorney for the purpose of seeking legal advice or the District Attorney and his/her investigators. Do you understand?"
345. *See, generally*, Ex. No. 172A-173; 195A-195C & 200.  
RT: December 4, 2007, P. 2-123.  
RT: December 6, 2007, P. 2-95.
346. RT: December 4, 2007, P. 76, Ln. 6-16.  
RT: December 4, 2007, P. 122, Ln. 17 through P. 123, Ln. 1.  
RT: December 6, 2007, P. 95, Ln. 8-18.
347. RT: December 20, 2007, P. 84, Ln.21 through P. 85, Ln. 7.  
*See also*, RT: December 18, 2007, P. 19, Ln. 10-22.
348. RT: December 20, 2007, P. 85, Ln. 13-25.
349. RT: December 18, 2007, P. 20, Ln. 26 & P. 21, Ln. 20-21.
350. RT: December 18, 2007, P. 21, Ln. 19-21.  
*See also*, RT: December 18, 2007, P. 27, Ln. 11-14.

### **351-375**

351. RT: December 18, 2007, P. 23, Ln. 20-22.  
*See also*, RT: December 18, 2007, P. 21, Ln. 13-15 & P. 23, Ln. 23 through P. 24, Ln. 4.
352. RT: December 18, 2007, P. 17-28.
353. RT: December 18, 2007, P. 27, Ln. 19 through P. 28, Ln. 2.
354. RT: December 20, 2007, P. 84-92 (wherein the witness admitted he had lied in his testimony before the Grand Jury).
355. RT: December 18, 2007, P. 54, Ln. 14-17.
356. RT: December 18, 2007, P. 64, Ln. 25 through P. 65, Ln. 1.
357. RT: December 18, 2007, P. 54, Ln. 11-13.  
*See also generally*, RT: December 18, 2007, P. 49-94.
358. RT: December 18, 2007, P. 67, Ln. 3-6 & P. 55, Ln. 10-13.
359. RT: December 18, 2007, P. 66, Ln. 24-25.
360. RT: December 18, 2007, P. 63, Ln. 12-14.
361. RT: December 20, 2007, P. 84-92.
362. *Id.*
363. *Id.*
364. RT: December 20, 2007, P. 90, Ln. 12-13.
365. RT: December 20, 2007, P. 92, Ln. 6-7.
366. RT: December 20, 2007, P. 92, Ln. 3-4.

367. See, generally, RT: December 4, 2007, P. 2-76 .

368. RT: February 14, 2008, P. 5-32.

369. *Id.*

370. RT: December 6, 2007, P. 8, Ln. 24 through P. 9, Ln. 22.

371. RT: December 6, 2007, P. 43, Ln. 9.

372. RT: December 6, 2007, P. 43, Ln. 20-21.

373. RT: December 6, 2007, P. 45, Ln. 4.

374. RT: December 6, 2007, P. 46, Ln. 11.

375. RT: December 6, 2007, P. 47, Ln. 7-8.

### **376-400**

376. RT: December 6, 2007, P. 47, Ln. 25-26.

377. RT: December 6, 2007, P. 43-49.

378. RT: December 6, 2007, P. 132-133.

379. RT: December 6, 2007, P. 131-144.

380. RT: February 14, 2008, P. 5-32.

381. *Id.*

382. RT: February 14, 2008, P. 7, Ln. 17-22 & P. 19, Ln. 16-23.

383. RT: February 14, 2008, P. 20, Ln. 21 through P. 22, Ln. 3.

384. RT: January 8, 2008, P. 203, Ln. 20-23.

385. RT: January 8, 2008, P. 203, Ln. 24-25.

386. RT: January 8, 2008, P. 204, Ln. 21-23.

387. RT: January 8, 2008, P. 204, Ln. 24 through P. 205, Ln. 1.

388. Note on the Crime of Perjury: Although inexcusable, not every false statement under oath is actionable as a crime. In order for false testimony to qualify as perjury under Penal Code section 118, for example, the statement must be considered "material" to the proceedings. "The test for whether a statement is material has been stated as 'whether the statement or testimony 'might have been used to affect [the proceeding in or for which it was made]' 'or "whether the statement could probably have influenced the outcome of the proceedings.'" *People v. Feinberg* (1997) 51 Cal.App.4<sup>th</sup> 1566. Otherwise, a false statement, however willful cannot constitute the crime of perjury. In the context of the Special Criminal Grand Jury's investigation, a statement which could have influenced the outcome of the proceedings is one which could affect the jury's determination as to whether or not there was probable cause to believe an individual was culpable of homicide. False statements regarding an individual's violation of his or her Grand jury admonition is not likely to influence the outcome of such proceedings and accordingly, cannot qualify as perjury.

389. RT: January 8, 2008, P. 205, Ln. 6-13.

390. RT: January 8, 2008, P. 205, Ln. 16-20.

391. See generally, RT: July 5, 2007, P. 5-26; July 24, 2007 P. 2-34; August 28, 2007, P. 10-31; and October 9, 2007, P. 163-207.

392. RT: September 18, 2007, P. 22, Ln. 15 through P. 23, Ln. 10.

393. RT: September 18, 2007, P. 8, Ln. 10-26.

394. RT: September 18, 2007, P. 6-8.

See also, RT: September 20, 2007, P. 82-84.

395. RT: September 18, 2007, P. 77, Ln. 24-26.

396. RT: September 18, 2007, P. 78, Ln. 18-24.

397. The background and internal affairs files of the Sheriff's Department are maintained on separate "purge" cycles for scheduled destruction. The background file is maintained for the entire period of an individual's employment with the department plus two additional years following his or his separation. (See RT: September 18, 2007, P. 31). Internal affairs files, however, may be destroyed during the period of a deputy's employment. "Complaints or investigations involving allegations of misconduct or generated by a citizen [are maintained] for five years," while internal investigations generated administratively are kept for two years, at which time these files are destroyed whether the individual is still an employee or not. (See RT: September 18, 2007, P. 32-33). If a deputy is rehired by the department following a period of separation, his background file may reference prior internal affairs investigations which occurred during his previous period of employment. During his period of re-employment however, those prior internal affairs files may be destroyed on the ordinary purge cycle leaving the references in the background file as the only record of the prior internal affairs investigations. In the case of the grand jury's investigation, one of the deputies under in question had been rehired by the Sheriff's Department following a period of separation and had a long enough history with the agency such that prior internal affairs files regarding his conduct may have been destroyed leaving references in his background file as the only remaining record of such investigations.

398. *Id.*

399. RT: September 18, 2007, P. 11-79.

RT: August 28, 2007, P. 13-15.

RT: January 15, 2008, P. 103-107.

400. RT: September 18, 2007, P. 23, Ln. 11-25.

RT: September 20, 2007, P. 64, Ln. 15-17.

## **401-425**

401. RT: September 18, 2007, P. 28, Ln. 17-19.

402. RT: February 14, 2008, P. 2, Ln. 4-15.

403. See, *infra*, "Sheriff's Deputies Violate Grand Jury Secrecy and Testify Falsely."

404. RT: August 7, 2007, P. 162, Ln. 25 through P. 167, Ln. 17.

RT: August 28, 2007, P. 177, Ln. 23-26.

RT: October 11, 2007, P. 29-32.

405. RT: October 11, 2007, P. 30, Ln. 26 through P. 31, Ln. 15.

RT: September 25, 2007, P. 231, Ln. 25 through P. 232, Ln. 3.

406. Grand Jury Exhibits No. 166-168.

RT: October 11, 2007, P. 29, Ln. 1 through P. 30, Ln. 22.

407. RT: October 11, 2007, P. 34, Ln. 9 through P. 36, Ln. 21.

408. See, *infra*, "Sheriff's Department Prevented Independent Homicide Investigation in Violation of County Protocol and Historical Practice;" "Evidence of Sheriff's Witnesses Providing Misleading Testimony Regarding the History of Custodial Homicide Investigations;" and "Evidence of Sheriff's Personnel Delivering Misleading Information on Jail Investigations to the 2006-2007 Grand Jury."

Grand Jury Exhibit No. 164.

409. RT: October 9, 2007, P. 212, Ln. 25 through P. 213, Ln. 20.

RT: November 6, 2007, P. 74, Ln. 16-21 & P. 110, Ln. 21 through P. 111, Ln. 8.

410. See, Grand Jury Exhibit No. 123A.

411. RT: October 9, 2007, P. 182-184.  
Compare Grand Jury Exhibits No. 123B-123D and 164.
412. RT: October 9, 2007, P. 187, Ln. 25 through P. 188, Ln. 7.  
RT: November 6, 2007, P. 116, Ln. 12-18.
413. RT: November 6, 2007, P. 115, Ln. 2-9.
414. RT: November 6, 2007, P. 119, Ln. 13-15.
415. *See, for example*, Grand Jury Exhibit No. 123A, P.1.
416. RT: June 26, 2007, P. 63, Ln. 23 through P. 64, Ln. 10.
417. RT: June 26, 2007, P. 67, Ln. 13 through P. 70, Ln. 14.  
*See also*, RT: June 26, 2007, P. 147, Ln. 14-17.
418. RT: June 26, 2007, P. 70, Ln. 20-23.
419. *See*, Grand Jury Exhibit No. 95.
420. RT: June 26, 2007, P. 67, Ln. 13 through P. 70, Ln. 14.
421. *See, for example*, RT: June 28, 2007, P. 122, Ln. 24 through P. 123, Ln. 1; P. 127, Ln. 4-5; P. 134, Ln. 1-4; and P. 135, Ln. 4-7.
422. *See, for example*, Grand Jury Exhibit No. 123A.  
Conclusions regarding term "P.M.K." based upon a March 10, 2007, Lexis-Nexis search for the term "P.M.K" and "PMK" in the following databases: "CA State Cases, Combined" and "CA- Deering's California Code's Annotated).
423. *See, for example*, Grand Jury Exhibits No. 25-29C, 32, 34 & 35A-B; RT: June 26, 2007, P. 54, Ln. 25 through P. 55, Ln. 12; RT: May 29, 2007, P. 145, Ln. 13-21; RT: May 31, 2007, P. 19; RT: June 12, 2007, P. 117-118; RT: June 26, 2007, P. 142, Ln. 8-14.
424. RT: September 18, 2007, P. 49, Ln. 17-20.  
*See also*, RT: June 26, 2007, P. 14-26.
425. RT: June 26, 2007, P. 54, Ln. 25 through P. 55, Ln. 12.  
*See also*, RT: May 29, 2007, P. 145, Ln. 13-21; RT: May 31, 2007, P. 19; RT: June 12, 2007, P. 117-118; RT: June 26, 2007, P. 142, Ln. 8-14.

## **426-450**

426. RT: June 26, 2007, P. 77, Ln. 24 through P. 78, Ln. 1.
427. RT: June 26, 2007, P. 101, Ln. 18-24.
428. *See, for example*, Grand Jury Exhibits No. 25-29C, 32, 34 & 35A-B.
429. RT: May 29, 2007, P. 143-144, 167, 184, 195, 198 & 211.
430. RT: May 29, 2007, P. 47, Ln. 15-19.
431. RT: June 5, 2007, P. 138, Ln. 10-12.
432. RT: June 5, 2007, P. 138, Ln. 16-17.
433. RT: January 15, 2008, P. 55, Ln. 19-20.
434. RT: January 15, 2008, P. 55, Ln. 23-25.
435. RT: January 15, 2008, P. 56, Ln. 5-8.
436. RT: January 15, 2008, P. 55, Ln. 26 through P. 56, Ln. 5.
437. RT: August 30, 2007, P. 102, Ln. 2-3.
438. RT: September 6, 2007, P. 101, Ln. 19-21.

439. RT: September 6, 2007, P. 101, Ln. 23-24.
440. RT: August 9, 2007, P. 122, Ln. 21 through P. 123, Ln. 6.
441. RT: June 5, P. 119, Ln. 19-25.  
RT: June 5, P. 146, Ln. 19 through P. 147, Ln. 9.  
RT: June 12, 2007, P. 30, Ln. 12-18.  
RT: July 26, 2007, P. 45, Ln. 8 through P. 46, Ln. 2.  
RT: August 30, 2007, P. 54, Ln. 6-13.
442. RT: June 5, P. 147, Ln. 4-9.
443. RT: August 30, 2007, P. 54, Ln. 15-18.
444. RT: June 5, 2007, P. 138, Ln. 3-10.
445. RT: August 7, 2007, P. 207-208.  
RT: August 30, 2007, P. 52-54.
446. RT: August 14, 2007, P. 113, Ln. 24 through P. 114, Ln. 1.
447. RT: August 28, 2007, P. 203, Ln. 14-18.
448. RT: January 15, 2008, P. 56, Ln. 16-19.
449. RT: January 15, 2008, P. 56, Ln. 20-21.
450. RT: June 12, 2007, P. 18-19. (Describing four areas).  
RT: August 30, 2007, P. 119, Ln. 3-26. (Describing a fifth area)  
See *also*, RT: August 14, 2007, P. 114, Ln. 2-13.

## **451-475**

451. RT: September 6, 2007, P. 103, Ln. 9-14.
452. RT: June 12, 2007, P. 39, Ln. 15-16.
453. RT: June 12, 2007, P. 39, Ln. 16-19.
454. RT: June 5, 2007, P. 159, Ln. 7-8.
455. RT: June 12, 2007, P. 7-8 and P. 59-60.  
RT: September 6, 2007, P. 110-111.  
RT: August 30, 2007, P. 141, Ln. 23 through P. 142, Ln. 2.
456. RT: January 15, 2008, P. 57, Ln. 10-11.
457. RT: June 12, 2007, P. 7, Ln. 1-3.
458. RT: August 30, 2007, P. 192.  
RT: January 15, 2008, P. 57-58.  
RT: June 5, 2007, P. 158.
459. RT: August 14, 2007, P. 72, Ln. 21-23.
460. RT: August 30, 2007, P. 192, Ln. 25-26.
461. RT: January 15, 2008, P. 58, Ln. 9-12.
462. RT: August 30, 2007, P. 159, Ln. 25 through P. 160, Ln. 2.
463. RT: August 14, 2007, P. 73, Ln. 6-8.  
See *also*, RT: June 12, 2007, P. 52, Ln. 7-14.
464. RT: August 30, 2007, P. 160, Ln. 16-18.
465. RT: August 16, 2007, P. 101, Ln. 21.  
RT: June, 14, 2007, P. 84-89 & 119.

RT: July 5, 2007, P. 207-225.  
RT: July 5, 2007, P. 137 & 146.  
RT: July 10, 2007, P. 214-217.

466. Grand Jury Exhibit No. 74, P. 16.  
RT: June 5, 2007, P. 156 & 160-165.  
RT: June 12, 2007, P. 14 & 45-47.  
RT: June 14, 2007, P. 70-71 & 156-157.  
RT: August 7, 2007, P. 72.  
RT: August 9, 2007, P. 64-67 & 90-91.  
RT: August 28, 2007, P. 111-112.  
RT: September 6, 2007, P. 150.  
RT: September 25, 2007, P. 226-228.  
RT: November 11, 2007, P. 93.  
RT: September 18, 2007, P.197-198; 227 & 245.

467. *Passim*.

468. RT: June 14, 2007, P. 116, Ln. 21 through P. 117, Ln. 2.

469. Grand Jury Exhibit No. 114, P. 1 & 5.  
RT: July 5, 2007, P. 11, Ln. 17-26.

Inmate charge information had been available to the general public over the Sheriff's Department website from 2001 to July 12, 2006.

Grand Jury Exhibit No. 74, P. 2 for start date of 2001.

*See, supra*, note no. 468 for end date.

470. RT: December 20, 2007, P. 56-60.  
RT: January 10, 2008, P. 173-180.  
Grand Jury Exhibits No. 204A & 204B.

471. Grand Jury Exhibit No. 74, P. 18.

472. Grand Jury Exhibit No. 74, P. 16.

473. Orange County Sheriff's Department "Public Access to Criminal Charges: Overview Report" January 4, 2006. (emphasis added)

474. Grand Jury Exhibit No. 74, P. 15.  
The exact calculation of the Sheriff's Department was 19.96% of inmates over the period of March 21, 2005 to March 31, 2006.

475. Grand Jury Exhibit No. 74, P. 2-4.

### **476-479**

476. RT: December 20, 2007, P. 56-60.

477. RT: December 20, 2007, P. 66, Ln. 14 through P. 67, Ln. 3.

478. RT: December 20, 2007, P. 62.

479. RT: December 20, 2007, P. 62, Ln. 23 through P. 64.