



**ROD PACHECO
DISTRICT ATTORNEY
COUNTY OF RIVERSIDE**

May 29, 2009

Honorable Thomas Cahraman
Presiding Judge
Superior Court of Riverside County
4050 Main Street
Riverside, CA 92501

RE: Response to the Grand Jury's Report 2008-2009

Dear Judge Cahraman:

Enclosed please find our eight (8) page response addressed to Foreperson Nikki Harris, dated May 22, 2009. This letter was served upon the Secretary to the Grand Jury on Friday, May 22, 2009. To date, it has not been posted on the Court's website.

We ask that it be posted expeditiously

Very truly yours,

ROD PACHECO
District Attorney

RP:wsc
cncls

*Post this letter and
its attachment of 5/22/09.
T. Cahraman
Presiding Judge
June 1, 2009*



ROD PACHECO
DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE

May 22, 2009

Nikki L. Harris, Foreperson
2008-2009 Riverside County Grand Jury
P.O. Box 829
Riverside, CA 92502

RE: RESPONSE TO THE GRAND JURY'S REPORT 2008-2009

Dear Ms. Harris,

The grand jury's report dated May 20, 2009 reflects findings and recommendations that have been made without the benefit of significant discussion regarding their merits with District Attorney Rod Pacheco. Had the members of the grand jury taken the time and opportunity to discuss their concerns directly with the District Attorney, their purported findings, at the least, might have sustained a higher level of credibility.

At the very least, the report could have contained the true fact that the District Attorney, at his request, met with all the members of the grand jury in February, 2009, as he does each year. During that meeting he encouraged any and all questions be posed to him on any issue of concern to anyone of the members. While discussion was had, it was informal at best and done at the District Attorney's request and not the grand jury.

Under the leadership of this District Attorney, Riverside County has become one of the safest counties in this state, according to the Attorney General's 2008 statistics for mid to large counties. The Riverside County District Attorney's office has the second highest conviction rate, the second most responsive filing rate, and the second highest state prison commitment rate for felons. It is now considered the third safest county regarding violent crime in our state. Our community has never been so safe in modern history.

FINDING #1 is false.

The recitation contained in finding #1 clearly demonstrates a limited understanding of the inner workings of a successful district attorney's office. The discretion to settle felony cases has never, in the history of my thirty-three (33) years of employment with this office rested with the Deputy District Attorney.

At all times the value of a case for settlement purposes has been the final decision of a manager. This practice of limiting the authority to a smaller number of experienced attorneys promotes consistency in case disposition as between cases, as between offices and as between courthouses within this county.

Secondly, this practice insures that all prosecutors remain attentive to office policy regarding case settlement. Thirdly, this practice promotes training opportunities regarding the fine points of case management and case evaluation. It is instructive to less experienced deputies to know the manager's positions, to question the manager's position, to learn from the manager the policies of this office as it may relate to case settlement, to put forth counter points based in fact, law and defense attorney's input and come to rest on a thoughtful, consistent case resolution. As both prosecutors and managers mature, so does their confidence to evaluate a case and make a decision regarding a case. Finally Deputy District Attorneys who handle misdemeanor cases do have discretion during case settlement discussions after instruction by their manager.

This office greatly grew in numbers of staff during the final years of the previous district attorney's term of office. With this significant growth, the basic rules needed to be re-enforced. That process came with the transition during Mr. Pacheco's first years as District Attorney. With transition came disgruntlement among a few.

Just results in criminal cases are better achieved through consistent sentences. This is best for the community as a whole. The responsibility for the management of case dispositions is placed on fewer staff in order to ensure that all follow policy, cases are valued similarly and negotiations urged fairly, justly and consistently throughout the county.

Complaints by the Public Defender, criminal defense and other attorneys whose sole obligation is to the criminals they represent, and not victims, society or justice, or a few disgruntled former employees will not make us reluctant or timid in our dedication to justice and the community we serve. The principle of justice has great meaning and value to the men and women of the Riverside County District Attorney's office and we are willing to defend it against those who would reduce it to gain an advantage for the criminals they represent and who prey upon our community.

These suggestions that expedience and convenience should be paramount to justice for victims and our society have been made before. We will continue to resist any dilution of justice and we will uphold our duty as spelled out in our State and United States Constitutions that form the foundation of our society. We do this because fairness compels us and the plight of victims cannot be ignored. Justice must be dispensed evenly and in the darker moments of our distant past when the color of one's skin sometimes determined one's sentence public confidence in our criminal justice system crumbled. Ensuring that the most senior of prosecutors, and a smaller number ensure that justice is done in each case helps us achieve the goal of evenhandedness.

It is a long tradition and practice of our office to place in the hands of senior prosecutors the duty to ensure that justice is dispensed fairly and evenly. To do otherwise as suggested is to return to less enlightened times when justice was less defended. We are not the only prosecutorial office that recognizes these truths and is willing to extend aspirations into practice.

Ventura County District Attorney's office is only one such example. Straying from our principles and core values in exchange for convenience is a recipe for societal erosion and is a loss of liberty for all.

Lastly, this report makes a statement that "one reason for case dismissals was delays in the decision making process." Frankly, this does not make sense and it is categorically false. The Public Defender continues to promote court congestion. The Public Defender recognizes that the court is continually forced to make the horrible decision to dismiss a criminal case because the court lacks judicial resources to try the case. This situation has created a new defense tactic which is sanctioned by the Public Defender: "do not seek to settle cases, instead demand a jury trial, congest the calendar and win a chance at a case dismissal". I personally heard a Deputy Public Defender tell his client at arraignment that his case should not be settled because there was a good possibility it would be dismissed if a not guilty plea was entered and the case was sent to the trial calendar for jockeying with other cases for a few available courtrooms. This practice is sanctioned throughout the county, with Deputy Public Defenders failing to convey reasonable offers to their clients to settle a case at an early stage, advising the court that they do not need the discovery on the case, and making statements "just set it for trial so it will be dismissed."

RESPONSE TO GRAND JURY RECOMMENDATION: This has been, is and remains the current practice.

FINDING #2 is true in part and false in pertinent part.

It is the policy of the office to promote case settlement where justice will be served after a review of the facts and the law. The number of cases filed in 2008 topped 60,000 in number. The vast majority of those cases settled in court short of a jury trial. It is also true that attorneys who wish to work as prosecutors and advance in this work must know how to try a case to a jury. Going to trial is encouraged at all levels of assignments because experience builds competency and effectiveness.

Given the fact that our conviction rate in 2008 was second highest in the State of California and over 90% this long established practice appears to work and better ensures a safer community. Significantly more serious cases require competent and experienced trial attorneys. Prosecutors are promoted based on a variety of skill sets and competencies including their ability to try cases.

Where the grand jury's finding loses its veracity is with the failure to note that the California Penal Code also governs the ability to settle certain cases, though this has been explained to them yet is not noted by them in their report. The law requires that no court, no prosecutor, no defense attorney and no defendant shall engage in plea bargaining of a serious and violent crime after the preliminary hearing stage of that case (Penal Code Sec. 1192.7). The confines of this law have gained a renewed emphasis under the leadership of District Attorney Pacheco, much to the chagrin of the defense. Therefore it is not surprising the accused, the defense attorney and the court might agree on a resolution that the prosecutor opposes. Of course, the defense wants a better deal. We will continue to resist the "better deal" if it is not in the best interest of the safety of our community. We will follow the law and protect the interests of our victims even if it is not considered expedient by the defense or a few members of the court.

It is false that the responsibility for court congestion rests with the current District Attorney's practices. Court congestion has been an issue for at least a decade. Court congestion has been the subject of a collaborative team discussion as we all sort through the issues impacting our dysfunctional and staggering court system. District Attorney Pacheco and his staff have worked hard with the other members of the court system under the leadership of Justice Huffman and at the direction of the Chief Justice of the California Supreme Court (The "strike force" effort). In fact District Attorney Pacheco strongly encouraged the Chief Justice's intervention from the beginning. This effort did result in a restructuring of our system to the extent that the current court resources will allow.

All agree that the court has failed to grow with the growth of population in Riverside County and remains, as compared to other counties, far deficient in judicial resources. Absent courtrooms, defense attorneys and some bench officers prefer to compromise. The studies that all participated in began with a report to the Superior Court of Riverside County by their consultant, John Greacen who noted that the District Attorney's office was efficient in case dispositions. The problem he identified in our local court system rested with the court's sanctioning of a "culture of continuances".

This culture was recently exposed poignantly in the words of a father of a homicide victim whose killers were arrested seven years ago and only within the last few days received a trial date in our courts. Mr. Benton, who lost his 18 year old daughter, read a statement to the court demanding that a firm trial date be set. The media report of May 19, 2009 attributes to Mr. Benton that he advised the Judge that there had been 81 hearings and 17 trial dates set in 7 years. When the court, to its credit, held fast and set a firm trial date, Mr. Benton is quoted as saying this was the first time "a judge said no to a defense attorney."

In the context of this "strike force" effort certain guiding principles were established as between court and counsel including, "continuances will be limited at all stages of the process." All believe and agree that the lack of sufficient bench officers and the "culture of continuances" were key factors that contribute to court congestion. Though an aspiration, dramatically reducing continuances is far from a reality with continuance rates over 50%. It is important to note 95% of all continuances are at the defense requests.

The grand jury quotes briefly from Justice Huffman's report to the Chief Justice. This report was provided as the collaborative working group was within six months of the conclusion of its work. Justice Huffman's report is twenty-nine (29) pages long. The District Attorney has been criticized for not creating more convenient practices even if they conflict with just decisions. The District Attorney will continue to hold defendants accountable for their criminal behavior where justice requires such. What the court and defense counsel would prefer is that the District Attorney request law enforcement to refrain from making arrests. This would certainly reduce caseload. The defense and the court urge the District Attorney to stop filing against criminals who violate the law by victimizing others in our community. Such suggestion is neither just, fair, nor appropriate. The District Attorney declines to bow to the defense and some court pressure to downsize the caseload on the backs of our county's victims.

Again, by failing to take advantage of an opportunity to learn more about the unique dynamics of the criminal justice system, this grand jury's report lacks credibility. Of particular note is the complete failure of the grand jury to note even once that there is a notable lack of judges in Riverside County or that a "culture of continuances" exists and causes congestion. Their failure to note these well established and well known facts is curious especially in light of the fact the grand jury had the independent analyses of the court system identifying these very dynamics.

RESPONSE TO GRAND JURY'S RECOMMENDATION: Not necessary as at the root of court congestion is lack of judicial resources, and a "culture of continuances."

FINDING #3 is false.

There is no pervasive climate of fear and intimidation within the Office of the District Attorney among current prosecutors. The Riverside County Deputy District Attorneys Association (union) recently voted overwhelmingly to support Rod Pacheco in his re-election in 2010. Additionally, the District Attorney's Investigators union has endorsed his re-election. Both of these groups also endorsed him in his first campaign in 2006. Such actions would not have occurred if the grand jury was correct.

When the court built the Southwest Justice Center, the prior District Attorney established a practice that attorneys hired into the office were notified that they may rotate between the Riverside and Southwest Justice Center offices during their career. They were told that we will do the best we can to assign them as close to their home as possible. District Attorney Pacheco has modified that practice. Now Deputy District Attorneys assigned to Southwest Justice Center felony cases will not be transferred unless the Deputy District Attorney makes that request. This limited disruption of felony prosecutors tasked with handling cases and was an extremely positive morale point.

Managers have rotated between the three main offices in Indio, Riverside and Southwest in prior administrations. District Attorney Pacheco served as Assistant District Attorney for both the Southwest and Riverside divisions prior to his election and had four different assignments within the first two years upon his return in 2002. During the prior administration managers rotated with some frequency. Three of our four Assistant District Attorneys have rotated between Indio, Riverside and Murrieta as well as Chief Deputy District Attorneys have rotated between the three offices. Only a handful of Supervising Deputy District Attorneys have worked other offices. This is not new with Mr. Pacheco's administration.

A goal is to bring all of the offices into parity in resources, training and management of cases and people. This is best done with managers working in the various divisions, learning how each division is different and working to bring each division together with our best practices. This is part of making sure there is justice and that cases are resolved consistently throughout the county. In the past this was an acute problem that needed resolution. The rotation of managers, including the formerly Assistant District Attorney Rod Pacheco himself, was and continues to be based on justice and the best interests of the office.

RESPONSE TO GRAND JURY'S RECOMMENDATION: Not necessary as discipline has not included transfers or reassignment.

FINDING #4 reflects a misunderstanding of the role of the Executive Division.

The Executive Division was created for several purposes but most importantly to connect a distant county department bureaucracy back to the victims and public our office serves. Its connections include an extensive recognition of National Crime Victim's Week that literally has brought thousands of victims, peace officers and citizens together to recognize and understand the plight of victims in our community.

The small division has also created, and operates, college and citizen academics not only to inform and educate many about our functions but also to serve the aspirations of our youth, and therefore the future of our community. These programs have been created at no cost.

While there are countless other programs these dedicated servants have created, they have also assumed other traditional duties handled haphazardly in the past by others, in which costs were extensive. The Executive Division has been able to reform these events so that they are supported by the generosity of local philanthropists, not taxpayers.

This division is not new to agencies or prosecutors offices. Every position came from established county positions. Other county departments employ individuals in the same positions. In addition, the San Diego and Maricopa County's District Attorney's offices have long had comparable executive divisions. The structure of the Executive Division mirrors that which is accepted in other Offices of the District Attorney in other counties in this state and in other counties in other states.

The Executive Division of our office has 3 Press Information Officers who have handled well over 2000 press inquiries in just the past 8 months. In comparison the Sheriff has 3 PIOs, The Department of Community Action has 1; Fire has 2; Flood control has 1; Animal Control has 1; Economic Development Agency has 2; the Regional Medical facility has 1; and the Executive office of this County has 2.

The Executive Division has decreased or cut entirely the cost of several programs that were in existence in prior years. For example our 25th annual employee awards ceremony was held at next to no cost. Before the formation of the Executive Division, the majority of our publications were produced outside of the office, resulting in considerable costs for art, graphics, layout and printing. Most if not all publications are now produced entirely in-house at zero cost in all stages of development. These publications are available electronically, eliminating printing costs entirely.

Our Executive Division has staff with the skills to facilitate new legislation on behalf of the victims of our community. An example of that is Senate Bill 1343 passed July 1, 2008. A Deputy District Attorney noted that elder victims did not have the same support given to them in court that child victims did. Our Executive Division's staff member worked with the members of the legislature through the process of this piece of new legislation and now all elder and dependent adults when having to testify to abuse, have the support of two people with them in

court. Each year numerous pieces of legislation are drafted and sponsored by the executive team to assist victims and improve public safety.

Lastly, the encouragement that specifically named and dedicated county employees should be terminated is needlessly harmful to those employees' financial concerns about their future. At difficult times sensitivity to others should increase not decrease.

The grand jury said little in this finding other than to conclude the division was not necessary. The grand jury was unfortunately misled by failing to do due diligence in getting to the heart of the issue. Most pointedly they failed to speak to even one member of the Executive Division to gain insight into their numerous contributions.

RESPONSE TO GRAND JURY'S RECOMMENDATION: Unfounded.

Finally, the grand jury elected to report that some see Rod Pacheco's management style as authoritarian. In his recent return to the prosecutor's office, first as a manager being tutored by the prior district attorney and then as the elected official for this county, Mr. Pacheco has demonstrated significant success in collaborative efforts with many agencies. The ability to collaborate successfully would be inconsistent with an authoritarian style.

Examples of those collaborations include the countywide regional gang task forces, the SAFE/SPIDER team efforts, the cross-designation of prosecutors with the United States Attorney's office for the Central District and the most recent "Operation Falling Sun". The latter was conceived and begun by District Attorney Pacheco working collaboratively with the Desert Hot Springs Chief and City Manager. After a 9 month undercover investigation, 35 federal, state and local agencies contributed resources to the final day, providing 682 law enforcement officers. These teams arrested 128 people, served civil anti-gang injunction orders and returned a sense of safety to the community of Desert Hot Springs. All without a shot fired and not a single injury to anyone. Again, the ability to work with so many talented confident leaders from almost countless other agencies to achieve a common goal is inconsistent with the described style.

Further, District Attorney Pacheco has significantly improved communication between the position of District Attorney and staff. A few examples are opening all previously closed Executive staff meetings to any non-management staff and seeking their input; engaging in regularly scheduled meetings between the District Attorney and staff directly; and spending one week a month in Indio working with distant staff every month since January 2007.

In conclusion, District Attorney Rod Pacheco has been strong enough to stand up to gangs and other criminals though his life, and that of his family, has been threatened. He has also demonstrated deep resolve and passion to defend the rights of victims and remains steadfast in rejecting any attempts to compromise justice in our community.

The limited, skewed, and naïve report of your body is profoundly disappointing. In that it is unjustly critical of the men and women of our office and fails to recognize, or even note a level of effectiveness that has before never been attained only adds to the unfortunate tenor of your

report. Their extraordinary sacrifices and exemplary efforts to ensure the safety of their community should not be ignored or forgotten.

We are proud to serve alongside them in the finest prosecutor's office in the State of California, if not the nation.

Sincerely,



SUE F. STEDING
Chief Assistant District Attorney

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