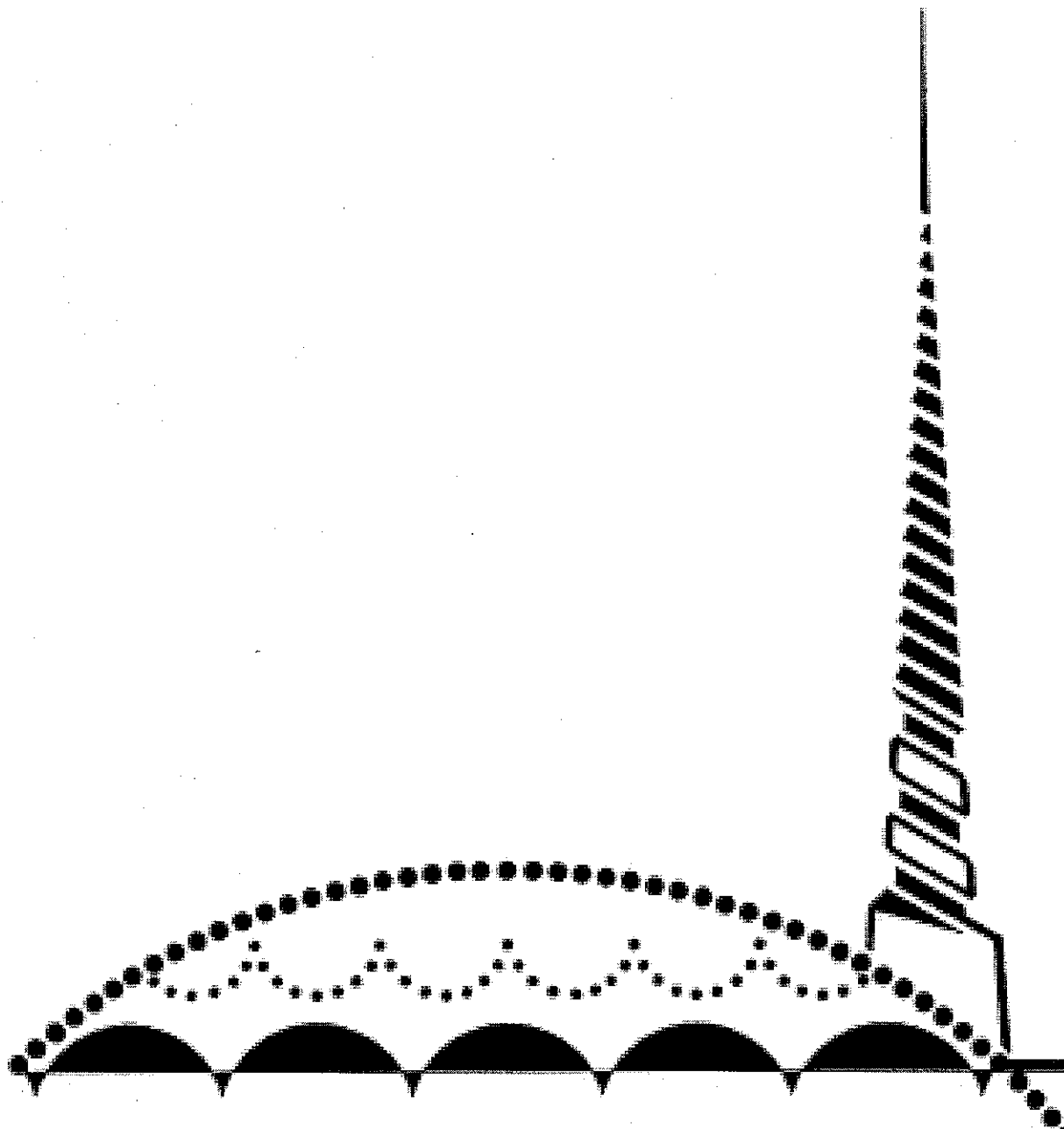


2008-2009 MARIN COUNTY CIVIL GRAND JURY

Marin's Probation Department: Too many lawsuits, too little training

June 1, 2009





SUMMARY

Six years ago, the Grand Jury warned that the Marin County Probation Department was experiencing serious morale problems that were resulting in a disproportionate number of grievances, complaints and lawsuits. Since then, a new Chief Probation Officer took over the department, but he retired in March 2009. This year, the Grand Jury revisited the question of morale in this department that serves the courts but is operated under the control of the Marin Board of Supervisors. We found that the situation has not improved. In fact, the problem seems to be worse. There is a litigious culture in the department that dates back more than a decade. Many employees said the morale problem was exacerbated by what they viewed as an abusive management style.

In recent years, steps have been taken to deal with the problem. An outside consultant has been hired to assess the culture and workload of the department. Representatives of the Human Resources Department and County Counsel have been meeting monthly with Probation Department managers to deal with employees believed to be contributing to the morale problem and to try to discourage future lawsuits.

The Grand Jury believes more can be done, though, if the Board of Supervisors evaluates the performance of Probation Department management more closely.

This Grand Jury also became aware of serious questions regarding the training of those employees who must supervise the behavior of probationers whose crimes have brought them under the control of the Marin County courts. We found some steps had been taken to improve training, but more needs to be done.

Specifically, the Grand Jury received a report from the District Attorney about two probation officers who seized drugs found during an unannounced home visit, returned to their office and flushed them down the toilet. We agree with the District Attorney that this incident indicates, at minimum, that the county's probation officers need better basic law enforcement training.

METHODOLOGY

As part of its investigation, the Grand Jury interviewed more than 20 individuals, including current and former staffers from all levels of the Marin County Probation Department. It reviewed the department's policies and procedures, as well as its training manuals. It read documents related to litigation against the department and investigative reports regarding the behavior of Probation Department employees. It reviewed documents reflecting on oversight of the department by the Marin County Board of Supervisors.

DISCUSSION

A costly morale problem

Since 2003, when the Grand Jury found a disproportionate number of grievances, complaints and lawsuits by employees of the Marin County Probation Department, there have been 10 more suits filed by 18 employees of the department against their employers. In all, there were 27 employee lawsuits brought against all county departments in this period. The Probation Department was hit hardest, by far. The District Attorney's office was a distant second, with three.

Some of this can be traced to a litigious culture within the Probation Department dating to the mid-1990s, when more than a half dozen probation employees filed lawsuits against the department. Most of those suits were settled without trial. One civil rights suit went to trial in U.S. District Court in San Francisco and in 2002 resulted in a \$1.6 million judgment against the county and its Chief Probation Officer.

The residual effects of such successful suits can be seen on a regular basis in the offices of the Adult Probation Division on the second floor of the Marin Civic Center. The employee who won the 2002 jury verdict stayed on as a probation officer and became, in effect, an unofficial ombudsman for Probation Department employees with grievances against their bosses. Officials believe litigation is encouraged by the employee's success and the fact that the suits of so many other department employees led to monetary settlements.

In its 2003 report, the Grand Jury recommended that the Probation Department, the Human Resources Department and the County Counsel's Office work together to develop a plan that would end the litigious climate within the Probation Department. Commendably, representatives of the three departments now meet monthly to discuss individual employees and problems associated with them. Department policies have been regularly updated and explained. Managers have been trained to make certain their workers understand what is expected of them, that good work and positive attitudes are rewarded, and that mistakes and improper behavior are confronted.

One result: In recent months, some Probation Department personnel have separated from employment. Care was taken in documenting the reasons for their departure. In two of these cases, lawsuits are expected. However, department officials expect the county to prevail. If this proves to be the case, other unhappy employees might in the future be discouraged from resorting to litigation. Instead, they might work with supervisors to resolve their grievances.

Additional steps taken to deal with the department's morale problems include bringing in a consultant to work with the Probation Department's executive team in analyzing the culture of the department and the workloads of its employees. There has been an effort to make the process of promoting employees fairer and more transparent. Additionally, rank

and file employees have been involved in committee work dealing with some of the department's problems. All of this is commendable.

Unfortunately, employee morale is also vulnerable to management styles. The Grand Jury heard considerable testimony from employees whose grievances seemed rooted in their reaction to a leader's management style, which they characterized as abusive, demeaning and dismissive of department employees who have served the county for many years. "We felt belittled," said one long-time and loyal manager. Staffers were made to feel "like we were idiots," this person said.

By contrast, some employees said the department had been supervised well in recent years and they had no problems with management. They pointed to fairer time-keeping procedures, modern probation practices and interview techniques and funding from government grants that the department never before sought to obtain.

The Grand Jury believes that, when it comes to staff morale, any positive steps toward improving work conditions and attitudes can be quickly undone if a boss is perceived by some employees as treating them with contempt. We recommend that superior people skills be made one of the major criteria as the Board of Supervisors considers candidates to replace the recently retired Chief Probation Officer.

Unequal performance evaluations

The Grand Jury believes that the Board of Supervisors itself shares blame for the problems of the Probation Department. Though the department works for the courts, the County of Marin does the hiring and firing, and the Board of Supervisors oversees the department's operation.

The Board of Supervisors formally reviews the performance of each Marin County department head annually. The Grand Jury looked at records of the evaluations of the Chief Probation Officer and two other department heads for the last three years and concluded that these evaluations are far less strenuous than the annual performance evaluations most county employees receive from their bosses.

The standard employee evaluations are written by their managers and list positives and negatives in the employee's performance of duties, as well as expectations for their performance in the coming year.

By contrast, the department heads write their own evaluations after consulting with the County Administrator. Each department head then meets in closed session with the Board of Supervisors for an oral evaluation. The County Administrator sits in on the oral evaluations, unless the department head asks that he be excluded from the meeting.

The Grand Jury found that the supervisors kept no notes reflecting their evaluations of the work of the Chief Probation Officer or the other two department heads.

The department head is supposed to file an addendum to his or her evaluation, noting any improvements or behavior changes requested by the Board of Supervisors. The County Administrator, who takes notes on the evaluation sessions he attends, assists the department head in preparing this addendum. In three years of department head evaluations reviewed by the Grand Jury, employee morale was alluded to only once in these addenda as a concern of the board.

Every employee of the Probation Department has in his or her personnel file a record of his or her manager's annual evaluations reflecting the employee's progress toward achieving a desired job performance. There is no such record kept for department heads.

The Grand Jury believes the Board of Supervisors should change its evaluation procedures so that it has a better record of the performance of its department heads. The top manager's self-evaluation should only be part of the record. The Grand Jury believes the County Administrator, acting with the guidance of the board, should formally evaluate the department head.

A question of training

In April 2008, an incident involving a home visit by two Juvenile Services officers raised serious questions about the training of Marin's probation officers and their supervisors. The officers were in San Rafael when they decided to drop in unannounced on a 17-year-old boy who, as a ward of the court, was supposed to have been in class at Marin Community School that day. He was absent without permission.

At the apartment where the boy lived, they found him and his 8-year-old brother. No adult was present. As they stood in the living room talking with the older boy, the officers noticed a scale, a knife and a few small, plastic bags containing suspected methamphetamine and cocaine on a computer desk. The boys told them the drugs and paraphernalia belonged to a dealer who would be returning soon.

The officers were unarmed, ill-equipped and nervous about the possibility that the owner of the drugs might soon appear. They had no radios, but one had a cell phone. They called the San Rafael Police Department for assistance. There was a conversation about who should seize the evidence, arrest the older boy and write a report on the incident. The probation officers told police they had no evidence locker in which to keep the drugs. The police officer offered to come and collect the evidence but said that they would have to write the report. The probation officers said they had to check with their supervisor and would call back. The police officer never heard from them again.

Instead, the probation officers seized the drugs and paraphernalia. They left the boys alone in the apartment and returned to the Juvenile Services Office with the drugs. Once there, they reported to their supervisor. He told them the drugs were worthless as evidence because they had not been properly seized and catalogued. He told them to flush the drugs down the toilet, and they did as they were told.

Within about a month, word of this incident leaked out of the Probation Office and the District Attorney asked the Sheriff's Department to investigate to see if this destruction of potential evidence constituted criminal behavior. The conclusion of the sheriff's investigators and the District Attorney was that no crime had been committed because the probation workers had not flushed the drugs with the intent of keeping them from being used as evidence in court. Instead, the sheriff's report said, "The case appears to come down to a clear lack of common sense and good judgment."

In a letter to the Chief Probation Officer, the District Attorney noted the probation officers' statements that they took the drugs and left the apartment without waiting for help from the police because they feared for their personal safety should the dealer who owned the drugs return. Probation officers supervising clients in the field must be equipped "to handle law violations and evidence properly," he said.

"Additional training in criminal investigation procedures, crime scene processing and evidence handling is strongly recommended," the District Attorney concluded.

This incident highlighted several problems involving the behavior, equipping and training of Probation Department personnel.

Equipment deficiencies

Probation officers are increasingly being encouraged to leave their desks and go into the field in order to properly supervise clients whose crimes have brought them under the jurisdiction of Marin's courts. Officers tell the Grand Jury that these clients are increasingly dangerous.

The officers who found themselves in an apparent drug house in April 2008 were poorly equipped for the circumstance. They were traveling in a personal automobile. A county car had not been provided. They had no radios that would have connected them to other law enforcement agencies in Marin. They had only a cell phone. While body armor, batons and pepper spray, as well as handguns, might have protected police officers in such situations, these probation officers had none of those items.

Commendably, the Probation Department has taken steps since this situation to better equip its officers. They now are issued county cars with caged back seats appropriate for transporting prisoners, and they receive radios for use in the field. They are being provided body armor and pepper spray and are being trained in their use.

Department policies

What Probation Department policies should have guided those two officers who found evidence of a serious drug crime during their home visit last year?

First, department policies and procedures show that they should never have made the visit without first consulting with their supervisor and calling the apartment to say they were

coming by to talk to the 17-year-old ward of the court. If they wanted to make an unannounced visit, they should have coordinated it with law enforcement.

Second, when they stepped into the living room and found two juveniles in the presence of suspected methamphetamine, cocaine and drug-dealing paraphernalia, department policy says they should have immediately departed, leaving the children and drugs in the house while they called the police department. They should have waited at a distance from the apartment for law enforcement officers to arrive, seize the drugs if they were still there, and take custody of the children if they were still there.

Under state law, probation officers are peace officers. However, Marin Probation Department managers say their employees should not be assuming the role of police officers. Their job is to work with their clients more as social workers, trying to steer them onto the straight and narrow, away from the behavior that led to their criminal convictions. Their primary job is not to catch their clients in new crimes and gather evidence for further convictions, department managers say. That is the job of police. With this in mind, the incident shows two problems.

First, the two probation officers assumed it was part of their job to pay an unannounced visit on a truant teenager. It seems they were unaware of or had forgotten department policy that required them to get permission from their supervisor for the visit, announce their intention to visit with a phone call and to coordinate with police. The Grand Jury was told by several probation officers that department policies and procedures may be written down somewhere, but are often not communicated effectively to line staff. The Grand Jury believes it is not sufficient to post a manual of policy and procedure and not follow up with regular training sessions to make certain that employees know the rules by which they must work.

Second, it is naive to believe that supervising probation officers will not find themselves in situations similar to the one the two officers faced in the truant's apartment that day: confronted with a crime requiring evidence seizure and arrests without delay. The Grand Jury agrees with the District Attorney's report, which stated: "It is imperative that this type of situation not repeat itself...These probation officers should be able to seize contraband in these situations and maintain the chain of custody. Additional training and policies regarding the processing of evidence is recommended."

It is commendable that Probation Department managers are offering new training sessions on the use of equipment intended to make them safe in dangerous situations and the proper actions to be taken. The Grand Jury believes those managers make a mistake, though, when they fail to train supervising probation officers in the proper way to seize and preserve evidence and arrest people who commit crimes in their presence.

FINDINGS

The Grand Jury finds that:

F1. Serious morale problems continue to afflict the Marin County Probation Department.

F2. Department employees have filed a disproportionate number of lawsuits against the Probation Department when compared with employees of other county departments.

F3. There is a litigious culture among department employees that dates back to the 1990s, and the success of some of those earlier lawsuits contributes to current employees' beliefs that they can be awarded money by filing lawsuits.

F4. The county has taken some steps to address the litigious culture in the department by assigning a consultant to work with top management in the department and by conducting monthly meetings between representatives of the County Counsel's Office, the Human Resources Department and Probation Department to deal with employees who have sued or are likely to sue the department.

F5. Some employees blame continuing morale problems in recent years on what they perceive as an abusive management style.

F6. County department heads receive much less thorough evaluations than do other employees in the county workforce.

F7. A 2008 incident in which county probation officers seized drugs and then flushed the potential evidence down the toilet raises serious questions about the training and equipping of Probation Department officers who must supervise clients in the field.

F8. Since the drug-flushing incident, the department has made progress toward providing its officers the equipment that will make them safer and more effective field officers, but training still needs improvement.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. The Board of Supervisors, when considering candidates to be the next Chief Probation Officer of Marin County, hire a candidate with superior people skills who will carry forward the progressive programs now in place.

R2. The Board of Supervisors institute a more rigorous program for the evaluation of department heads.

R3. Probation officers receive regular refresher courses regarding the department's policies and procedures.

R4. County probation officers receive regular training in the proper law enforcement techniques for arresting individuals and in seizing and securing evidence of crimes.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing body:

- The Board of Supervisors to all **Findings and Recommendations.**

The governing body indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

California Penal Code Section 933 (c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

The Grand Jury invites responses from:

- the County Administrator.
- the Chief Probation Officer.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.