

THE CULTURE OF HARASSMENT: CHANGE ON THE HORIZON

SUMMARY

During the last few years a number of sexual harassment complaints from Orange County employees have come to light. Two complaints garnered wide media attention with one of them resulting in criminal charges against a senior county employee. The other complaints have remained cloistered in the offices of various County agencies where the alleged harassment occurred.

While hearing the testimony of 21 witnesses, the Grand Jury identified a disturbing pattern of sexual harassment claims being overlooked, ignored, poorly investigated, and even suppressed. The Grand Jury participated in a number of investigative hearings surrounding the events concerning the sexual harassment complaint that led to the criminal charges against an elected City official who was also an executive manager for the County. The witnesses who testified were from all levels of County government – the rank and file as well as elected officials and executive management. The Grand Jury found a severe lack of understanding of what constitutes sexual harassment. Also distressing was a strong tolerance for inappropriate behavior, especially when it concerned high-ranking elected officials and executives. As the Grand Jury listened to the testimonies, it became apparent that this tolerance of inappropriate behavior was “culturally inspired.”

REASON FOR STUDY

This study focuses on the culture, conduct, and action that allowed the tolerance of sexual harassment to rise to the level of alleged criminal conduct. Culture is the essence of how a society, business, or government operates. Such entities normally publish a policy statement regarding what is, or is not, acceptable behavior for those working in each of these venues. Problems arise when leadership fails to enforce these policies, provides inadequate guidance on how to follow the policies, or the leaders display behavior that is contradictory to their published policies.

The Grand Jury would like to point out that the County of Orange is currently undergoing the re-centralization of its Human Resources Department. This report does not address or discuss all of the changes brought about by the re-centralization. The department has been renamed Human Resource Services. Because this report deals with many events which took place before the very recent re-centralization, this study will use the prior name of Human Resources Department (HRD) in this report. The Grand Jury acknowledges that some of the deficiencies that have been identified in this report are being addressed and corrected. However, it is highly probable that these and other deficiencies will continue regardless of any one change in policies and procedures, or change in reporting structure. This is because the *change will not happen with just a well written directive; rather, the change will come by creating a culture that shows by conduct and action by all a commitment to a safe and equitable working environment for all.*

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It is the goal of the Grand Jury that, by reviewing and bringing to light many of the events of the last few years, the County will recognize the need for, and embrace, strong leadership and training in areas of acceptable behavior, and the need for a robust Human Resources Service Department, ***free from political influence***, to monitor and enforce County policies.

METHOD OF INVESTIGATION

The 2012-2013 Grand Jury heard testimony concerning the events before and after the filing of criminal charges for sexual harassment from 21 witnesses over a seven month period. All testimony was under oath and documented by a court reporter. Additionally, members of the Grand Jury conducted seven other interviews with County employees and elected officials. The Grand Jury reviewed 210 documents that comprised thousands of pages. Members of the Grand Jury examined the laws regarding the Equal Employment Opportunity Commission's (EEOC) definition of harassment and discrimination, and the Federal and California guidance on model policies comparing them to the County's harassment and discrimination policies. The Grand Jury examined a variety of documents issued by the County Human Resource Service Department, formally Human Resources Department (HRD), and the Memorandums of Understanding (MOUs) currently in effect between the County and Labor.

The Grand Jury heard many different opinions from the witnesses who gave testimony during the investigative hearings about the actions surrounding events that led to the filing of criminal charges. The Grand Jury did not rely on any single statement from a particular witness, or one isolated document, to establish the conclusions of this report. The conclusions in this study were supported by numerous witnesses and documents.

BACKGROUND AND FACTS

Lack of Written Policies, Procedures, and Training:

The County of Orange has a long-standing published policy regarding the laws concerning Equal Employment Opportunity (EEO) and work place discrimination. This policy was refreshed by Board Resolution on October 30, 2012 and meets the legal requirements of Federal and State laws governing EEO. It is distributed to all employees annually by the incoming Chairman of the Board of Supervisors. The policy also includes a procedure that states when a complaint is received the County will take all necessary steps to insure a prompt investigation and that appropriate remedial action is taken. Unfortunately, this was just about the extent of the written policies and procedures existing to guide any County employee assigned to investigate a complaint of harassment or discrimination.

The County of Orange decentralized its human resources agency after declaring bankruptcy in 1994. Most agencies and departments (with very few exceptions) set up their own separate human resource departments. The County of Orange maintained a

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Central HRD which was mandated by policy makers to coordinate and help ensure that the human resource policies of the County were followed. The efforts to coordinate were minimal, especially in the area of EEO. Training of HRD staff was limited to shadowing a peer, meaning a person followed another person to observe how the job was done. Formal instruction from outside firms specializing in human resource matters was most often left to the discretion of the employee, meaning there was no requirement for any manager to attend any training except the on-line biannual training as mandated by law. Except for a one page document referencing the preferred steps to be taken during an investigation, there were no written policies or procedures for how to conduct an investigation of a complaint of harassment or discrimination. The Grand Jury has been advised that the last time training was offered on how to conduct an investigation was five or six years ago and there was no requirement for attendance.

What the Grand Jury found particularly alarming was the lack of knowledge in identifying a violation of EEO laws. The Grand Jury heard testimony from personnel in Central HRD and the departments providing human resource assistance of various County agencies, as well as County executives and elected officials, and each had a different interpretation of sexual harassment as it relates to EEO. The majority of these interpretations were wrong in multiple areas. When presented with the original complaint of sexual harassment against the County employee who was criminally charged, persons from Central HRD said they thought it was from a whiner and would not have forwarded it to the EEO Access Office as prescribed by the County of Orange in their policies and procedures. Similar sentiments were expressed multiple times during other testimonies.

Another problem in each of the various agency human resource departments was the internal recruitment process for senior and mid-level managers. Employees were allowed to transfer from other areas (IT, Social Services, etc.) with no experience in human resource matters. The only requirement was meeting the job classification (i.e. Admin I, Admin II, etc.) for the posted position with no prerequisite for proficiency (or even familiarity) with the department's responsibilities and duties. This system resulted in supervisors and managers with no expertise who were overseeing not only the functions of the HR Departments, but the training of the staff (i.e., "the blind leading the blind").

The lack of written policies and procedures coupled with inadequate EEO knowledge and training resulted in the bungled internal investigation of the original complaint against the County employee who was charged at a later time with felony crimes arising out of his alleged misconduct. Upon review of the internal investigation, the Grand Jury found it lacking in the most fundamental basics of an investigation into behaviors of misconduct by employees, either in the private or public sector. This botched probe allowed this individual to continue his behavior for another six months before he was removed from the workplace. It also resulted in the termination of the senior department executive to whom the individual reported. It has been suggested in the media, and in testimony heard by the Grand Jury, that this termination was due to not following policies and procedures, and for not informing Central HRD and the EEO

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Access Office about the complaint. The Grand Jury has heard convincing testimony that many highly placed County executives and elected officials had a copy of the complaint or knew of its existence, but did nothing. Those that received a copy of the complaint, or otherwise knew of its existence and content, had a duty and responsibility to ensure that a proper and objective investigation took place as outlined in The County of Orange Equal Employment Opportunity Policy and Procedure document. This document applies to every employee and elected official and every employee receives a copy of this document every year. Testimony given to the Grand Jury also confirmed that it was well known by highly placed officials that the original internal investigation was being conducted by a direct subordinate of the accused. Multiple persons gave testimony that they were at a meeting where the original complaint letter was discussed. In regards to this complaint, the County executive who was terminated was told by his superior you can look around, but don't put too much stock in it.

The Grand Jury is aware that some will argue that the events described above were an anomaly and "best practices" are generally followed on all investigations. This is simply not the case. The Grand Jury reviewed a variety of other past investigations of complaints and found a lack of consistency and openness in the reports. During testimony, employees of the County explained to the Grand Jury that it was an unwritten HRD policy that the person writing the report would respond only to specific allegations contained in a complaint. An example given to the Grand Jury of this practice was: if a person is asked to investigate a death caused by a gunshot, they may come back and say the death was unsubstantiated because the death was caused by a knife wound. Also, if additional information or wrongdoing that was not specifically referenced in the complaint was discovered, there was no obligation to include this information in the report. Hence, many violations of County policies in areas other than sexual harassment were buried, or ignored, because these violations had not been "specifically" stated in the original complaint. Such obfuscation reflects a "letter of the law" rather than a "spirit of the law" approach. This lack of written policies and procedures was one reason for the development of a culture that supported silence rather than dealing with events as they unfolded, and taking appropriate action.

This practice of silence rather than reporting was evident to the Grand Jury when it reviewed multiple memos between the Central HRD and the Internal Audit Department (IAD) concerning a second complaint of possible sexual harassment, recruitment violations, and retaliation.

IAD is a stand-alone department reporting to the Board of Supervisors. One of IAD's duties is to operate a "fraud hotline" where employees may report their concerns, and can do so with anonymity. When IAD receives a complaint via its fraud hotline, it passes the complaint to the appropriate department for investigation. IAD will then monitor the progress of the investigation until suitable action is taken and the matter is closed.

A second complaint letter was received by IAD and various County officials and it contained additional allegations of sexual harassment by the same individual named in

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the first complaint. IAD sent this complaint to Central HRD and this prompted the County to hire an outside independent law firm to investigate. The firm produced a report verifying the sexual harassment and indicating the possibility of criminal conduct. IAD was tracking the investigation and repeatedly asked Central HRD, via memos and meetings over a six month period, for all documents and information related to all allegations in the complaint. The outside firm's report was withheld from IAD for four months while put under "lock and key" by a highly placed County executive. The responses by Central HRD to IAD's inquiries were intentionally directed to the specific language in the complaint thus perpetuating the silence about extremely relevant information. The additional wrongdoing that was discovered was buried. If not for the dogged efforts of IAD it is highly unlikely the report would have ever surfaced. The withholding of the independent report and its contents appeared to have been a conscious choice - a very wrong choice. This event epitomizes the culture of silence surrounding suppression of negative events, and this culture continues to be nurtured by many.

The Grand Jury heard testimony again and again that Central HRD had no written policy, or procedure that required anyone to detail to the IAD what the independent report contained. *Well written policies, procedures, and guidelines are essential parts of optimizing the efficiencies, practices, and conduct of any department within any organization.* Training employees to execute these policies is a critical part of achieving the goals, mission statements, and ideals of a culture of any organization. The lack of written policy, guidance, and training was very much like piloting a boat without a rudder. The boat floundered because it had no way to steer.

Protectionism and Cronyism:

"The practice of favoritism based on relationships and connections – rather than someone who demonstrates top credentials and well-suited experience – ultimately results in vastly inferior government service to the public."¹

Cronyism, the practice of giving jobs and perks to friends, has been around for a very long time and will probably always be with us. There is nothing wrong with someone wanting to surround themselves with intelligent and supportive people. This makes a job easier and the work results are usually of higher quality. The problem with cronyism arises when people are placed in positions because of political agendas, relationships, and associations, and not because they are qualified for the position. This practice is exacerbated when protectionism is brought in and used to mask skill deficiencies. Even worse is when protectionism is used to cover up unacceptable behavior, and insulate and shield the individual responsible for the incorrect behavior or performance.

The Grand Jury heard testimony from many individuals that there is a belief by County employees that elected officials and County executives are immune from

¹Daniel Garza "Government Cronyism is back" 03/12/2012

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discipline for inappropriate behavior and are untouchable due to their connections with other County, State and/or local officials. The Grand Jury was surprised when this was first asserted. However, after hearing testimony from so many on how the events of the recent years unfolded, the Grand Jury found this to be plausible.

The Grand Jury heard testimony from multiple witnesses that complaints of inappropriate behavior and sexual harassment had been known, discussed among peers, and reported for many years. This behavior was not confined to one department, or agency, and involved elected officials, executive management, and rank and file staff. In many instances the repercussions for the individual exhibiting sexual harassment was simply a transfer to another department. The Grand Jury heard testimony that many persons from executive management knew about the inappropriate conduct, but trivialized it to an act of flirting. This trivialization led to a perception by County employees of executives condoning inappropriate behavior. Persons subjected to sexual harassment believed they could not report this behavior to anyone because everyone already knew about the problem and nothing was ever done to correct it. They also feared reporting any incident because of possible retaliation, career curtailment, or job loss. It was believed that friendships and connections could be used to successfully repress the reporting of inappropriate conduct.

The Grand Jury heard testimony regarding other events that supported this perception of protection for the criminally charged individual. Both of the complaint letters discussed in a previous section of this study were given directly to the individual in question before a proper investigation could even begin. These actions destroyed any possible confidentiality for the persons subjected to the sexual harassment. The accused was forewarned and free to confront the persons being harassed. A valid investigation must be conducted in a way that offers the maximum amount of confidentiality for both the victim and the accused.

The perception of protectionism will be also marked by the actions taken following the completion of an investigation. When wrongdoing was confirmed there was an expectation that the behavior in question will be stopped. The greater the frequency and extent of wrongdoing usually leads to a higher degree of discipline. The findings of the independent investigation regarding the sexual harassment of multiple persons by the same individual aggressor occurring over a number of years resulted only in the voluntary resignation with a severance package for the alleged offender. Documents confirming the sexual harassment and possible criminal behavior were suppressed. There was no outreach to the victims; no counseling; and no effort to assess whether retaliation had occurred. The victim's fears were confirmed. They had bravely come forward and it did not matter. Protectionism was working – for the benefit of the accused.

Personal Protectionism:

During testimony the Grand Jury found that various County executives and elected officials utilized “personal” protectionism. It is a common reaction that a person will try to distance themselves from unpleasant circumstances. This is particularly true

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in the political arena where associations with questionable people risk the loss of one's own political capital. It is also true with persons working in the halls of executive County management and those aspiring to executive management. Common methods of handling such situations are: downplaying the knowledge of an event; downplaying one's relationship with the person under scrutiny; and sequestering as much information as possible surrounding a questionable event.

During testimony the Grand Jury was quite surprised by how many highly placed County executives, elected officials, and peers of the accused professed to not really know the accused and described their relationship as professional only, and with no social interaction. This was expressed many times even though many of those testifying had long supported this individual's political and County career. Each witness that testified on their distant relationship with the accused was contradicted by another witness, and that witness was contradicted by the next. If the Grand Jury believed each of the witnesses individually, the accused was friendless and had no interaction beyond a "hello" in the hallway. The Grand Jury questions how these witnesses, who supported his political aspirations and rapid rise to executive management, can now profess that any contact with him throughout the years was perfunctory. The Grand Jury views this conduct as a form of distancing, protectionism, and downplaying the relationships.

This study has already addressed the trivialization of the conduct by the accused and its effects. However, the downplaying of this conduct was evident in many areas of County management. Central HRD, having read the outside investigative report, originally relayed to IAD that the allegations contained in the complaint letters were unsubstantiated. After additional queries by IAD, HRD responded that the investigation only substantiated inappropriate language and engaging in inappropriate touching of female employees, such as hugging at inappropriate times. No mention was made of the much more egregious behavior described in the independent report.

When HRD first received the independent report, it did forward it to a member of the Office of County Counsel, the agency that provides legal advice on all County related matters. The report was discussed with at least one other associate, yet this agency, composed of experts in law, only reported on the possible violations of County policy on EEO and whether or not it would serve as the basis of a termination. The experts' perceived role was to recommend the most immediate and cost effective solution for the County. This agency ignored, did not address, and took no action on the vividly described potential criminal activity by the accused. An agency, most likely schooled in aspects of criminal behavior, chose to ignore the obvious and downplay its responsibility, and to only advise on the cost of termination verses resignation. The Grand Jury has been advised that there are no written policies, procedures, or guidelines for a referral of possible criminal conduct to law enforcement agencies. This department relied on what was described as essentially common sense.

The cover-up of information was highly evident in how the outside independent report was handled. The Grand Jury heard testimony that County management hired an outside investigator because one person in the complaint was controversial,

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important, an executive with the County, and an elected official. Hiring an outside agency seemed to the Grand Jury to be a prudent step which would ensure objectivity, freedom from influence from any area in County government, and make certain the truth concerning all allegations would be discovered. It would also suggest that County government wanted to know the truth. Regrettably, the concept of how much truth should be known carried a very different interpretation by many. The independent firm delivered their report to a select few in the County which the Grand Jury finds as a judicious step. The executives who received the report relayed only enough information to motivate the voluntary resignation of the person that was investigated. After reviewing the exhibits provided by the District Attorney and listening to various testimonies, the Grand Jury found that word-smithing and semantic ruses were frequently used to deflect conversations about the content of the report and deter others from reading it.

Each member of the Board of Supervisors received a copy of the complaint that prompted the hiring of the outside investigative firm. When the outside report addressing all of the issues contained in the complaint was complete and available, each member of the Board of Supervisors was briefed individually. However, the information contained in the report was downplayed to a personnel issue and they were informed that appropriate action was being taken. Each member made their own independent decision to not read the report. What the Grand Jury finds perplexing is that the complaint which impelled hiring the outside firm contained a variety of allegations of policy violations by many people and the majority of the allegations were discussed in the outside report. How all allegations were funneled into a single "personnel issue" should have prompted more questions and curiosity as to the report contents.

Protection of the County:

During the investigative hearings, witnesses from various County departments told the Grand Jury their primary job was to protect the County from lawsuits. Protecting the County from lawsuits is an excellent goal and one that serves the taxpayer well, but not at the expense telling the truth and doing the right thing. The practice of using the County checkbook for the purpose of paying a severance package in exchange for a resignation and a promise not to file a lawsuit is a short term solution and could have even more expensive and far reaching consequences. This really amounts to paying people off. The thinking behind this type of solution is that it solves the problem by exiting a person who has violated County policies and work practices. It also gives the illusion that those in charge took corrective action. This practice circumvents the process of issuing a reprimand and/or termination for cause. It takes away accountability and any need for a pro-active assessment of why events of wrongdoing happened. To this point, a County elected official suggested that this report be suppressed because it may affect the costs of anticipated litigation.

During testimony it was explained to the Grand Jury that obtaining a voluntary resignation and a written statement promising not to sue the County from the individual named in the independent report was a "win" for the County. Using a narrowly focused strategy that applies to only one individual for an incident that encompasses many

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others shows a lack of risk assessment for an entire event. This strategy also reinforced the perception that the conduct of the accused did not warrant a discipline, such as a termination, and served to impugn the credibility of the victims. The Grand Jury is fairly certain that none of the victims think this strategy is a win.

The Grand Jury also believes that protection of the County was one of the reasons the outside independent report was kept out of sight and its existence mentioned only rarely. Many of the findings in the outside report could be viewed as an embarrassment to the County. Reading the outside report confirmed the inefficiencies and lack of effectiveness of various County departments. It also confirmed that fear was a leading reason why victims of sexual harassment were reluctant to come forward. Most people have experienced an incident of fear in the workplace, but the incident was normally short-lived. What the Grand Jury finds alarming is the length of time this prevailing aura of fear was present in County departments. This atmosphere of fear seemed to come from the very top of County government. Many witnesses who testified and persons interviewed by the Grand Jury expressed an aversion to presenting the progress or results of their work product to County elected officials and executive management because they had experienced severe criticism on a personal basis. This type of posturing is demoralizing and fosters insecurity about one's job longevity. It also shows a lack of respect for the employee and takes away opportunities for necessary and spirited discussions on County projects, overall government, and problems as they naturally arise.

Have Corrections Been Made, Have Lessons Been Learned?:

As previously mentioned in this study, the County is currently re-centralizing its Human Resources Department. This is a very large and challenging endeavor and will take time. More importantly, it is a critical piece that is necessary to advance significant cultural change. Since approximately 1995 until 2013, each County agency had its own human resource department which operated independently and each was free to implement and train to their own interpretations regarding Federal, State, and County policies on EEO. With this re-centralization, the majority of County human resource personnel will report within one department – a good first step. However, the differences in interpretation and training will remain unless proactive measures are taken. Re-training to achieve consistent compliance in matters related to discrimination and harassment should be a priority in this new structure. There are many outside resources available to aid in attaining more in-depth knowledge relating to human resource matters. Local colleges and universities offer classes and certificates in human resource management which follow the guidelines set forth by the Society for Human Resource Management, a nationally recognized association devoted to promoting professionalism in the human resource field. In addition, the County provides tuition assistance, so obtaining a certificate, or attending classes, should not be a financial burden for an employee. The Grand Jury also learned that there is reluctance in requiring a new hire for a supervisory or management position in any human resources department to have certifications in human resource management or equivalent experience. Instead, the job posting will list these skills as “preferred” and the only mandated requirement will be based on job classification as it relates to a pay scale. It

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was conveyed to the Grand Jury that restrictions on posting job requirements are state mandated. The County interpretation of these restrictions needs to be reviewed for accuracy and possible revision. Without a review, this policy continues the problems that grew from having a decentralized HR Department staffed by many managers who had little or no training and little or no experience in human resource matters. This policy reinforces the lack of recognition of human resource management as a specialized discipline and career. Delaying the training of County HR personnel, and the lack of requirements for job experience for managers and supervisors, will delay the successful implementation of the new department and will delay the cultural change necessary to overcome the reluctance and fear of all County employees to come forward and report inappropriate behavior.

As of April 2013, the County has not provided any additional resources for County employees to report discrimination or sexual harassment. If someone wants to report an incident of sexual harassment, and they wish to do so with anonymity, the only currently advertised option is a fax or phone call to the “fraud” hotline operated by IAD. The Grand Jury does not understand how a claim of sexual harassment is related to “fraud”, and the Grand Jury is sure this is a source of confusion for many County employees. Within the Human Resource Services Department there is an EEO Access Office charged with investigating complaints on all harassment and discrimination issues. However, how to access this office and the duties prescribed to this office are still confusing to employees. This office has been chronically understaffed for ten years and there is no way to access this office with anonymity. Contacting this office should be a natural first step for employees to report the possibility of discrimination, harassment, or discomfort. One of the main reasons this office has not been viewed as a safe haven by employees is because they do not know its function. This is largely driven by the fact that employees have not been trained on what constitutes harassment and discrimination, and programs designed to heighten employee awareness of this office have been sporadic and minimal. As of April 2013, the EEO Access Office is staffed by one person. The Grand Jury has been advised that a new Manager for the EEO Access Office has been hired and the person has a strong and credentialed background in EEO law, interpretation, and implementation. Rather than waiting for the new director to settle in, the Grand Jury is in hopes that the County will initiate a program to educate and inform all County employees that the EEO Access Office is a safe haven and its mission is to protect confidentiality to every extent possible and the County will approve additional staffing to accommodate almost 17,000 employees.

As stated at the beginning of this study, the Grand Jury participated in a number of investigative hearings on complaints of sexual harassment. All witnesses that testified expressed sympathy and support for the victims who had experienced sexual harassment. It appears that kind and caring words behind closed doors were the only actions taken in support of the victims. There has been no coordinated effort to offer counseling and no assessment of retaliation during their ordeals, or after. The Grand Jury recognizes that the victims will want their names to remain confidential, however, that should not preclude the County from setting up an independent and confidential program to support an outreach for those harmed. The Grand Jury questioned many

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County elected officials and County executives about why no outreach program was available. The response was usually that they didn't know or that some other agency was taking care of it. Management, especially executive and elected management, must take responsibility for initiating curative action when a wrong has been identified. Taking no action sends a message that the events of the last few years are insignificant and not worthy of the time and resources of the County. It also further solidifies the perception that a safe and equitable working environment is, at times, not a priority or a reality.

The Grand Jury has been advised that a new training program on discrimination and sexual harassment will be provided to all employees in the future. Previously, this type of training was only offered to supervisors and management as mandated by EEOC law. The Grand Jury applauds this step and sees it as a sincere commitment to foster a safe workplace. But, training alone will not change the perception of tolerance of inappropriate behavior. That will come only with a change in culture and that change starts at the top. The County's elected officials and executive management must lead by example. There are many, many opportunities every day to communicate their pledge to stop inappropriate behavior in the workplace. This message should be delivered as often as possible when the rank and file are present. If an employee thinks something is important to their boss, it will become important to the employee.

The Grand Jury has heard many presentations by executive management and elected officials during its current tenure. The subject of culture and the atmosphere that allowed some of the egregious behavior to occur was usually a topic of discussion in these presentations. The Grand Jury has heard that many think the culture in the County has changed and inappropriate behavior will never be tolerated, or ignored, as it was in the past. However, the Grand Jury does not find this to be true after hearing testimony and reviewing a series of fairly recent emails that shows the County may not have learned its lesson. The event presented to the Grand Jury is as follows:

An elected official from an Orange County city was being considered for a management position in one of the County agencies. This person had worked for this County agency in years prior and had sexually harassed multiple female employees in the department. When this person's name surfaced as a candidate, one of the females brought this to the attention of executive management. The harassment was confirmed by many others in this department. The hiring process for this person did not stop and continued for another two months. The female who had been harassed and frustrated by the continuation of the hiring process within the agency where she worked, contacted the new Human Resource Services Department. Within one day, the hiring process for this person was stopped.

The full exchange in the emails that the Grand Jury read showed fear from many in the department that the political alliances of this candidate would outweigh the fact that he had previously sexually harassed County employees. The disregard, by an agency executive, of confirmed sexual harassment clearly showed an ongoing tolerance

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for inappropriate behavior for elected officials and potential County managers at the expense of safe and equitable working environment.

This recent event shows two approaches in dealing with sexual harassment in the workplace. One was ignoring and dismissing that there was a problem, and one was enforcing the County written policy on sexual harassment that was done without regard to political repercussions. The Grand Jury believes this event shows the continuation of a culture in their agencies that officials and executive managers have loudly denied was still in existence.

However, the Grand Jury finds that there is a light at the end of a dark tunnel. A change in culture often starts with one step and that step has been taken. It is now up to the leadership in all areas of County government to follow example and take step two. Only speaking to a change in culture will result in no change. The culture will be changed by actions and examples and no elected official or County executive, manager, or supervisor should feel they are exempt from leading by example.

“Example is not the main thing in influencing others, it is the only thing.”²

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of The County of Orange Human Resource Services Department, The County of Orange Chief Executive Officer, County Counsel for the County of Orange and The County of Orange Board of Supervisors, the 2012 - 2013 Orange County Grand Jury has arrived at eight principal findings as follows:

- F1. There is a lack of written policies, procedures, and guidelines relating to EEO laws and employee complaints in the County Human Resource Services Department. The County Human Resource Services Department is currently personnel constrained due to its efforts in its re-centralization and should look to other ways to produce their policies.
- F2. The training of County employees on matters of discrimination and harassment is inadequate.
- F3. The training of Human Resource Services personnel is not consistent.

²Albert Schweitzer

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- F4. Mandated qualifications for the position of Supervisor or Manager in the Human Resource Services Department lack the job specific requirement for human resource schooling, certifications, or equivalent experience.
- F.5 Written policies, procedures, and guidelines for the referral of possible criminal conduct to law enforcement agencies do not exist.
- F6. Currently there is no way for an employee to contact the EEO Access Office with anonymity. If an employee wants to make a complaint and not reveal their name the only County mechanism to do so is the “fraud hotline” which may be confusing to employees who wish to report discrimination or harassment.
- F7. The County did not initiate an outreach to the victims who had experienced sexual harassment over the last few years.
- F8. Other than re-issuing a yearly statement on the County policy regarding discrimination and harassment, County elected officials and executive management have undertaken no pro-active measures to address and change the County culture that allowed the tolerance of inappropriate behavior that was present for years. This culture continues and needs leadership to change.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of The County of Orange Human Resource Services Department and The County of Orange Chief Executive Officer, County Counsel for the County of Orange and The County of Orange Board of Supervisors the 2012 - 2013 Orange County Grand Jury makes the following eight recommendations.

- R1. The County Human Resource Services Department shall prepare and publish policies, procedures, and guidelines related to all employee complaints and how they are investigated. Special attention, or separate policies, should be published for complaints related to discrimination and harassment to ensure they meet the Employer Responsibilities outlined in state and federal statute. If necessary, the County Human Resource Services Department should utilize the services of outside companies specializing in human resource matters. The Human Resource Services Department should develop, approve, and publish the policies and procedures within six months. The Board of Supervisors should support this effort with adequate funding. **(F1)**
- R2. All County employees and elected County officials shall undergo training on discrimination and harassment. At a minimum, all employees classified as supervisors and above should receive in-person training every two years, as well

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as have access to on-line training. The Board of Supervisors, and any other elected County officials, should participate in the in-person training at a minimum of once every two years. The Board of Supervisors should support this effort with adequate funding. **(F2)**

- R3. The County Human Resource Services Department should develop specific training schedules for all of its personnel to ensure consistency in addressing County employee issues. The training should be ongoing and include both internal and external sources. Additional and specific training should be given to those in charge of investigating complaints. **(F3)**
- R4. The County Human Resource Services Department shall re-write the job qualifications for any position of supervisor and above in the Human Resource Services Department to include mandatory certification, schooling, or equivalent experience in the human resource field. **(F4)**
- R5. The Human Resource Services Department, with input from County Counsel shall draft policies, procedures, and guidelines for all agencies and departments on handling the reporting of potential criminal conduct by County employees. **(F5)**
- R6. The Human Resource Services Department should install a confidential communication source for employees who want to file complaints relating to discrimination or harassment with anonymity. The system should include multiple access paths such as mail, phone, fax, or email. Notification of this new County service should be accompanied by a vigorous email campaign and announcements by senior County management in meetings and their communications to their staff. Posters identifying how an employee can file a confidential complaint should be permanently posted in appropriate locations. The Board of Supervisors should support this effort with adequate funding. **(F6)**
- R7. The Board of Supervisors, in conjunction with the office of the CEO, the Human Resource Services Department, and with input on legal perspectives from County Counsel, shall initiate a formal outreach program for persons who have experienced discrimination or sexual harassment. The outreach should include counseling, if wanted, and an assessment of possible retaliation against any of the victims. **(F7)**
- R8. The Board of Supervisors and the Office of the CEO will define and implement a series of steps to affirm their leadership in achieving a harassment free workplace: **(F8)**
- a. Refresh the current board resolution so that it contains clear complaint handling protocols.
 - b. Evaluate whether a policy on office relationships is appropriate for the County especially when it concerns managers and subordinates.

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- c. Display a more pro-active voice, more than once a year, on delivering the message that having a harassment free environment is important.
- d. Evaluate hiring/training discrimination and harassment contact officers.
- e. Discontinue negative comments on anonymous complaints.
- f. Personally attend different County department meetings that provide opportunities to express the County commitment to a harassment free workplace.

REQUIRED RESPONSES

California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.) such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05 (a), (b), and (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which

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it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

Responses to **Findings F1, F2, F3, F4, F 5, F6, and F7** are requested from the Orange County Human Resource Services Department.

Responses to **Findings F6, F7, and F8** are requested from the Orange County, County Executive Office.

Responses **Findings F5 and F7** are requested from the Office of County Counsel.

Responses to **Findings F6, F7, and F8** are required from the Orange County Board of Supervisors.

Responses to **Recommendations R1, R2, R3, R4, R5, R6, and R7** are requested from the Orange County Human Resource Services Department.

Responses to **Recommendations R6, R7, and R8** are requested from the Orange County, County Executive Office.

Responses to **Recommendations R5 and R7** are requested from the Office of County Counsel.

Responses to **Recommendations R1, R2, R6, R7, and R8** are required from the Orange County Board of Supervisors.