

OFFICE OF THE DISTRICT ATTORNEY

AN IN-DEPTH INVESTIGATION

Prepared by
2001–2002 Orange County Grand Jury

June, 2002

COMMENDATIONS

There are many men and women: managers, deputy district attorneys, and investigators in the Office of the District Attorney who have demonstrated great professionalism and integrity. They have worked in their offices, entered the courts, and gone into the streets to insure that the criminal justice system in Orange County is held to the highest standards. The 2001-2002 Orange County Grand Jury extends its highest commendation to these dedicated public servants and asks that the electorate of the county join us in this commendation.

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OFFICE OF THE DISTRICT ATTORNEY AN IN-DEPTH INVESTIGATION

EXECUTIVE SUMMARY

The Orange County 2001–2002 Grand Jury received a number of complaints and letters sent to the outgoing 2000–2001 Grand Jury concerning alleged improprieties in the operation of the Orange County District Attorney’s Office. California Penal Code Section 925 empowers the grand jury to investigate such allegations in a civil “watchdog” capacity.

Pursuing these allegations presented a problem that few grand juries have faced – the allegations were brought against the District Attorney’s Office; the District Attorney cannot assist the Grand Jury to investigate his own office. Therefore, the Grand Jury, pursuant to California Penal Code Section 934, requested the assistance of the California Attorney General’s Office in performing the investigation. Since early November 2001, the Grand Jury has heard sworn testimony from 68 witnesses, which has produced in excess of 5,500 transcript pages, and has considered approximately 400 exhibits. From the material evaluated by the Grand Jury, instances of poor operational judgement and violations of County and District Attorney policies were found. The **Findings** and **Recommendations** in this report address these instances. However, the criticism of the District Attorney’s Office must be placed in perspective with the many accomplishments of the office and the Rackauckas administration (see Introduction section), and the fact that the vast majority of line deputy district attorneys, investigators, and supervisors continue to do outstanding work in what the Grand Jury found to be a politically divisive, low morale working environment (see Commendations section).

The foundation for many of the problems in the office was set in the early days of District Attorney Anthony Rackauckas’s first administration when he requested the prior administration’s upper management, in both the prosecution and investigation sides, to take advantage of his planned early retirement incentive program, and resign. Two of the former senior legal managers, who did not resign at the time, were placed on paid administrative leave. These actions set the wrong tone, which continues to the present, that loyalty to the District Attorney, personally, is of prime importance, as compared to loyalty and dedication of prosecutors to the District Attorney’s Office and its mission. Mr. Rackauckas failed to realize, and continues to fail to realize that career prosecutors’ loyalty is to the office, with a view to serve the interests of justice, and that career prosecutors are willing and able to work competently within a new administration.

On the Bureau of Investigation side, political associations and personal support for Tony Rackauckas held sway in the appointments of the Bureau’s top management, without proper consideration of more objective criteria, such as command supervisory experience.

As set forth in the California District Attorney Association's (CDAA) Ethics Committee Source Book, entitled *Professionalism*,

“The prosecutor must be impeccably professional because he or she is ‘required to meet standards of candor and impartiality not demanded of [other attorneys].’ (*People v. Kelly* (1977) 75 Cal.App.3d 672, 688-89).”

The CDAA Ethics Source Book also references the United States Supreme Court decision, *Berger v. United States* (1931) 295 U.S. 78, 88, in noting that a prosecutor's interest in a criminal prosecution is that justice should be done, and in that sense is a “servant of the law.”

There has not been sufficient recognition by certain members of upper management in the Rackauckas administration of the necessity to conduct themselves at the highest level of professionalism and of the need to avoid the appearance of impropriety. There does not seem to be a sufficient awareness of the level of scrutiny of Mr. Rackauckas' and upper management's actions, especially within the District Attorney's Office. The ill-conceived and implemented Tony Rackauckas Foundation, Mr. Rackauckas' direct involvement in negotiations in the Arnel consumer fraud case and the handling of the Patrick DiCarlo related investigation are examples of falling short of required levels of professionalism. These, and other instances, have caused members of the public, the justice system, and many employees of the District Attorney's Office itself, to question the administration's professionalism. All of this has the effect of detracting from the mission of the office to ensure justice is done.

Further, there have been widespread violations of County and District Attorney's Office policies in the area of using employee time and office equipment for non/County business purposes, including political activities. Additionally, the inappropriate participation in decision/making, primarily in the area of personnel matters, by Mr. Rackauckas' spouse, a non-management deputy district attorney, contributed to a belief that policies were not being adhered to, and that the chain of command was being circumvented.

The use of investigative resources to pursue inquiries or investigations, which would not have otherwise been pursued except for close personal relationships, suggested that the higher levels of the District Attorney's Office act as they deem fit, without sufficient regard to the public trust or public interest. Bureau of Investigation Chief Donald Blankenship's often casual and unwarranted use of the District Attorney's Special Fund can be characterized in a similar manner.

This report serves to address the operational conduct of the District Attorney's Office and to make recommendations to assist the District Attorney's Office in the manner in which it operates in the future.

INTRODUCTION

The 2001-2002 Orange County Grand Jury, as part of its statutory mandate (Penal Code, Section 925) to review the operations of public agencies, selected the Office of the District Attorney for investigation because of a number of complaints, letters, and newspaper accounts concerning difficulties in the office.

The District Attorney's Office is comprised of the District Attorney, 23 executive managers, and 245 attorneys. The budget for 2001-2002 is \$127.3 million. The number of budgeted employees is 1,376. The office serves the 2.8 million residents in Orange County.

There were approximately 60,675 adult felony and misdemeanor cases filed by the District Attorney's office in 2001. In July 2002, the Family Support Division of the District Attorney's office is scheduled to become a new county agency. It is estimated that there will be 15,000 Family Support cases opened in 2002.

There are six court locations served by the District Attorney's Office. The Orange County Superior Court is the third largest trial court of general jurisdiction in California with a total of 109 judges and 33 commissioners.

The Mission Statement of the District Attorney's Office is: "To enhance public safety and welfare and create a sense of security in the community through vigorous enforcement of criminal and civil laws in a just, honest, effective, and ethical manner."

MAJOR ACCOMPLISHMENTS OF THE DISTRICT ATTORNEY'S OFFICE UNDER THE CURRENT ADMINISTRATION

At the time that Mr. Rackauckas became District Attorney, the office space, especially at the Santa Ana courthouse was inadequate with attorneys sharing offices. Through the efforts of the Rackauckas administration, a ten-story office building was acquired at 401 Civic Center Drive, with approximately 110,000 square feet of office space. This significantly improved working conditions for employees.

The Family Support Division of the District Attorney's Office was also laboring under poor working conditions. The Family Support Division moved into new office space (approximately 130,000 square feet) at 1055 N. Main Street, which also was an improvement.

In the nineties, the Family Support Division was not in compliance with many of the State of California performance objectives. During Mr. Rackauckas' term of office, the Family Support Division was able to come into compliance with these objectives. Further, public service was improved by the modernization of an antiquated telephone system and a significant increase in the staff who answer telephone calls.

The Rackauckas administration has given deputy district attorneys (DDAs) more discretion to negotiate plea bargains in felony cases, including “3 strike” cases. DDAs no longer need to obtain approval for disposition of significant cases from many layers of supervision.

The Grand Jury cannot make any factual findings as to the relative merits of the felony case disposition policies between the Rackauckas administration and previous administrations. This subject matter has not been a focus of the Grand Jury’s investigation. However, several witnesses, including prosecutor(s), judge(s), and criminal defense attorney(s), have given the Grand Jury positive feedback regarding the policy of affording DDAs more discretion in the disposition of felony cases.

A Felony Charging Unit was created in 1999. This unit improved the uniformity in felony crime charging and has been more responsive to law enforcement officers who are seeking criminal complaints. Experienced DDAs who have recently prosecuted felony jury trials primarily staff the unit.

The Rackauckas administration has placed a high priority on gang prosecutions. Additional resources have been allocated to the Target/Gang Unit. Additionally, the Regional Gang Enforcement Team (RGET) is successful, and a recent multi-million dollar federal grant was awarded to continue this work.

The Rackauckas administration is acting in a proactive manner in regard to the juvenile justice system in anticipation of an expected increase in the number of children entering the “at risk” age (14 and older) for juvenile crime. The District Attorney’s Office is working with schools and the Juvenile Court in a program called Juvenile Education Training Team (JETT). Children from schools come to the Juvenile Justice Center to tour Juvenile Hall, meet a judge, and see the juvenile court in action.

The District Attorney’s Office is now playing an active role in the prevention of school truancy. In the truancy program deputies are assigned to work with Student Attendance Review Boards (SARB). SARB reviews the attendance record of students who have attendance problems, and a contract is made with parents and students. Where truancy problems persist, the student and parents are brought to court for appropriate enforcement orders and/or penalties.

Lastly, the District Attorney’s Office has devoted additional resources to their Environmental Protection Unit, primarily with increased staffing to litigate the issue of purported harmful chemicals leaking from underground gas storage tanks.

INITIATION OF THE INVESTIGATION & METHOD OF STUDY

When the 2001-2002 Orange County Grand Jury was sworn in, the outgoing Grand Jury had received a number of complaints and letters regarding the operations of the Orange County District Attorney's Office which were passed on to the current Grand Jury. The members of the 2001-2002 Orange County Grand Jury were also aware of a number of news accounts concerning difficulties in the District Attorney's Office. Based on these materials and others that were presented, the Grand Jury believed that it was appropriate and voted to conduct a civil "watchdog" investigation of the Orange County District Attorney and the operations of the District Attorney's office pursuant to Penal Code, Section 925. The Grand Jury requested the assistance of the Attorney General in the conduct of this investigation, pursuant to Penal Code, Section 934. The California Attorney General assigned a Supervising Deputy Attorney General and a Special Investigator of the Department of Justice to the 2001-2002 Orange County Grand Jury to assist in this study. Contrary to some press accounts, this was not a "routine audit."

The Grand Jury heard sworn testimony from 68 witnesses, some on multiple occasions. This has produced in excess of 5,500 pages of written transcripts. The Grand Jury's fact-finding mission was hampered and delayed by various assertions of privileges. The mission was further hampered by an inability to locate and perfect service with respect to two DDAs, which the Grand Jury sought as witnesses. The Grand Jury requested the assistance of the District Attorney's Office to locate the two witnesses, both of whom are extremely close to the District Attorney, and were informed by the District Attorney's Office that they were unable to contact them. One or more witnesses asserted privileges under the Fifth and the First Amendment of the Constitution, marital privilege, attorney client privilege, and work product privilege. As to a Deputy District Attorney's assertion of Fifth and First Amendment privileges, the matter was resolved by a grant of immunity. One non district attorney employee witness asserted Fifth Amendment privilege and refused to accept a proffer of immunity. This matter was taken to the California Court of Appeals for resolution of the issue of whether a Superior Court Judge has the authority to grant immunity to a witness in a Penal Code, Section 925 civil "watchdog" grand jury proceeding. The Grand Jury does not intend to suggest that it was in any manner improper for witnesses to assert these various privileges. A witness has every right to assert, in good faith, applicable privileges. However, the matters described in this paragraph have resulted in the Grand Jury's inability to obtain certain information relevant to the proceedings and delayed the Grand Jury's work by several weeks.

It seems appropriate to comment on the witnesses and their testimony as it might shed light on morale conditions in the office of the District Attorney. Many of the witnesses were clearly candid and forthcoming. There were those who were not so forthcoming. Indeed, there was some testimony that was contradictory. Lastly, and of great concern to the Grand Jury were those Deputy District Attorneys and even members of the management team that expressed fear of retaliation should the confidentiality of their testimony be violated. The issue of morale is so subjective that it cannot be a part of the findings or recommendations of this report, but it certainly raised concerns with the Grand Jury.

In addition to the witnesses, the Grand Jury issued 18 subpoenas *duces tecum*¹ requesting a variety of documents. These subpoenas and other sources of material resulted in approximately 400 Grand Jury exhibits. These exhibits and other subpoenaed or provided material consist of thousands of pages of evidence, including, among other things, correspondence, deposition transcripts, taped interview transcripts, law enforcement reports and memoranda, documents as to hiring practices, cellular phone billing statements, e-mails and faxes, expense account statements, computer hard drive records, county and District Attorney policies and procedures and District Attorney case files. Further, there was a great deal of documentary evidence and sworn testimony addressing the reorganization of the Office of the District Attorney that took place when Mr. Rackauckas assumed office.

At the end of each witness testimony before the Grand Jury, the witness was admonished not to discuss or repeat at any time outside the jury room, the questions that have been asked of them or the subject matter or their answers with the understanding that such disclosure on their part may be the basis for a charge against them of Contempt of Court. The witnesses were also asked if they understood that admonishment. On at least one occasion a senior management witness came before the Grand Jury so well prepared with documents that there was a great deal of suspicion that he had been briefed by one or more of his superiors that had testified before him. This apparent breach of the admonishment greatly distressed the Grand Jury. However, the Grand Jury agrees that confidentiality of testimony was honored by the vast majority of witnesses. This confidentiality held despite bitter and divisive actions and feelings expressed by those involved with and in the District Attorney's Office and the fact that an entire election campaign for the District Attorney's position was waged during the preponderance of the Grand Jury's investigation.

¹ A subpoena *duces tecum* is personally served upon a person who has in his possession a book, instrument, or tangible item, the production of which in evidence is desired, commanding him to bring it with him, and produce it at the trial or deposition.

ORGANIZATIONAL RESTRUCTURE – ATTORNEY POSITIONS

This section references both the organizational structure of the District Attorney's Office and positions within the office. As a reference for the reader, the May 2001 Organization chart is presented as Figure 1.

FACTUAL BACKGROUND – POST 1998 CAMPAIGN

After being elected in the June 1998 primary, District Attorney Elect Anthony Rackauckas, Jr. explored a restructuring plan to be implemented when he took office in January 1999. The plan involved eliminating existing middle managers who were Deputy District Attorneys V (DDA V), and creating a new position, Assistant District Attorney (ADA). This plan was intended to facilitate the appointment of persons supportive of Mr. Rackauckas' program and to entice retirement of those presumed to be in opposition. Modifications in five areas of employment were sought and are as follows:

- Elimination of the DDA V position.
- Creation of the new ADA position.
- Reassignment of the displaced DDA V attorneys and their demotion to Senior Deputy District Attorney (Sr. DDA) status.
- Addition of a two-year time in service credit as an early retirement incentive for middle and upper management under the prior Capizzi administration.
- Elimination of the good cause requirement to demote middle management (old DDA V and new ADA) to a Sr. DDA position and to be "at will" (fallback rights).

On December 10, 1998, Mr. Rackauckas presented the "Management Reorganization Proposal" to Jan Mittermeier, Orange County CEO, proposing the following organizational changes:

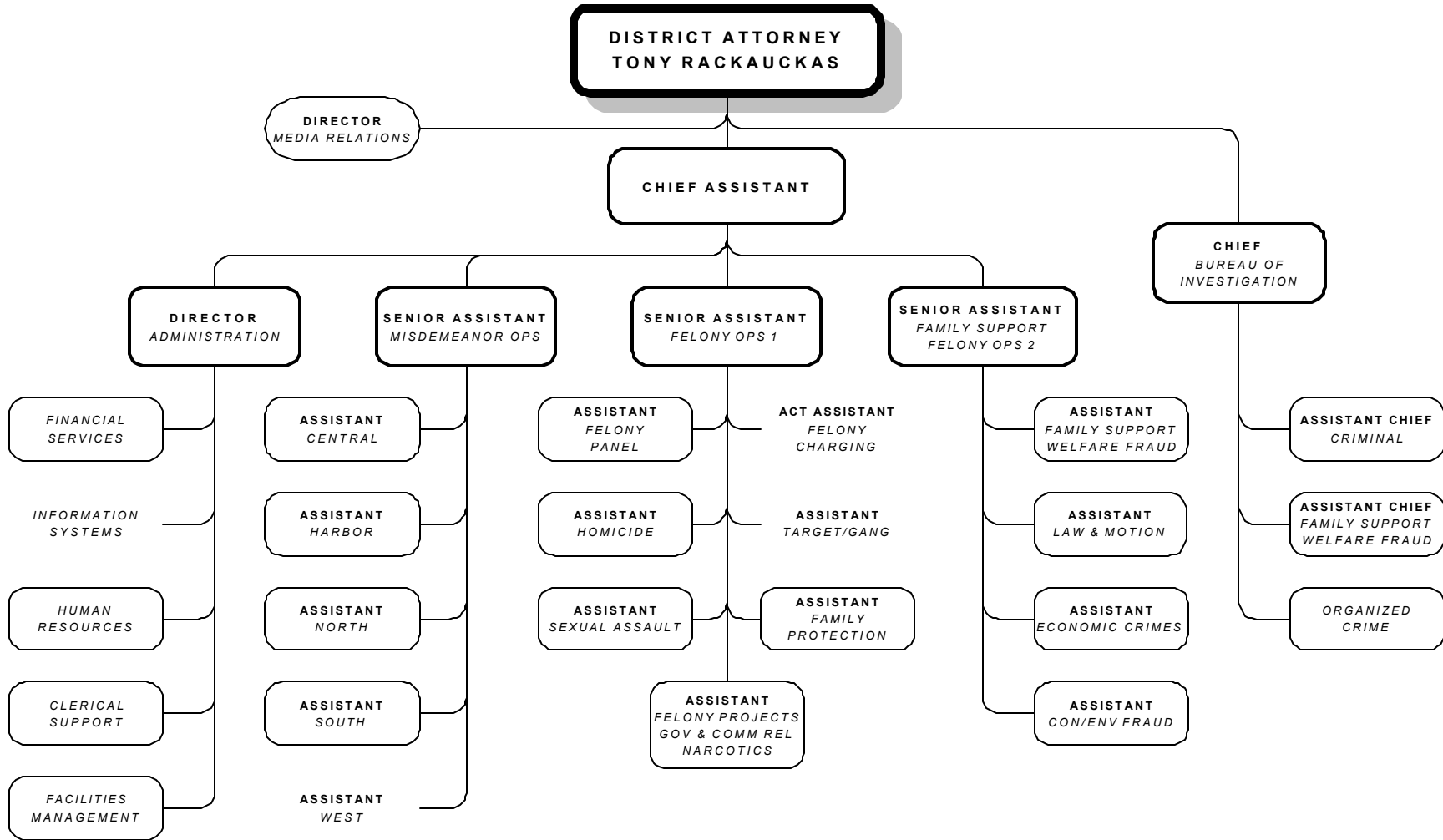
- Eliminate the 21 administrative management DDA V positions.
- Replace the DDA V positions with 15 executive level ADA positions.
- Reduce and "Y-rate"² the displaced DDA V employees to non-management Sr. DDA positions.

In the December 10, 1998 proposal, Mr. Rackauckas wrote, in part: "The elimination of administrative management positions [DDA Vs] would permit the addition of six or more deputies to 'line' trial duties. Most importantly, the reorganization would permit the elected District Attorney to hire, discharge, and reduce managers 'at will' to effectuate departmental management goals and policies."

CEO Jan Mittermeier approved the above proposal in a December 11, 1998 memo to Mr. Rackauckas. The Board of Supervisors approved the proposal on March 23, 1999.

² In this context, "Y-rate" means that employees retain the salaries and benefits of their eliminated job classification, which are held constant until they are in concert with the benefit structure of the position they are assuming.

Figure 1



Comparison of the Former DDA V and New ADA Positions

The 21 DDA V positions that were eliminated had been defined as administrative management. This job category was compensated according to the ML–J4 salary schedule and benefits package. Also, employment was protected against discharge except for “reasonable cause.”

These positions were replaced with 15 ADA executive level (ML–E) positions. This job category was intended to differ from that of the DDA V with an expanded span of control, managerial discretion, and responsibility. Accordingly, this category also differed in its higher salary schedule and a significantly enhanced benefits package. This benefits package included an increased annual options plan to \$3,500, a county contribution to the 401 (k) plan of three percent of biweekly salary up to an authorized amount, a car allowance of \$465 per month, and fallback rights. As executive level employees, persons holding this position would serve “at the will” of the District Attorney and may be removed from their position at any time without notice, cause, or the rights of appeal. Upon removal, employees would have the right to return to their most recently held, non-executive management position.

The DDA V position had a two-page job description that specifically dealt with the duties of a manager in the District Attorney’s Office. The executive manager ADA position has a generic job description that pertains to nine countywide job classifications. Nothing in the job description deals specifically with the District Attorney’s Office.

Displaced DDA V Attorneys

The elimination of the DDA V position caused the displacement of many of the prior 21 administrative management-level attorneys to non-management positions. These employees were reduced to the grade of Sr. DDA and reassigned to trial duties. They were also “Y-rated” for salary purposes.

ADA Selective Recruitment

The 15 newly created positions were filled from within the organization. In early December 1998, Mr. Rackauckas and Chief Assistant District Attorney Devallis Rutledge held a meeting with approximately 60 selected DDAs V and IV^{1/2} to announce the elimination of the ADA position and to describe the new Sr. ADA classification. Three of the four Capizzi ADAs were not invited to this meeting, and two were told not to apply. One of these former ADAs ran against Mr. Rackauckas in the 1998 campaign. The second former ADA also ran and, subsequent to his withdrawal, supported the Rackauckas opponent. He was also a defendant in the civil lawsuit of Victoria Chen, wife of incoming Chief Assistant Rutledge. The third former ADA, though remaining neutral in the 1998 campaign, was associated with the Capizzi administration.

One-page applications were distributed, though no interviews were to be conducted. Among the candidates was a prominent former DDA V and a visible key supporter of a

Rackauckas opponent during the 1998 campaign. He applied but was rejected because, according to a member of upper management, he was “not popular enough.” This individual was also rejected during a subsequent September 2000 recruitment, though his performance reviews had been consistently “superior.”

Early Retirement Incentive for DDA V Attorneys

On February 26, 1999, Lisa Bohan-Johnston, Director, Administrative Services Division, issued a memo to DDA V staff announcing the above reclassification of DDA V attorneys and its effective date of April 9, 1999. This memo also introduced an early retirement incentive, approved by the Board of Supervisors on February 9, 1999. This retirement option, which added two years service credit to the DDA V attorneys and former executive managers, was intended to entice an early retirement by the demoted employees.

Early Retirement Coercion of Former Capizzi Executive Managers

Of significant note, however, prior to the Board of Supervisors approval on December 28 and 29, 1998, DA Elect Rackauckas, in his judicial chambers in the presence of a labor law attorney who was a Rackauckas campaign supporter, presented the early retirement option to the three former Capizzi ADAs discussed above, along with his request for their resignations effective January 4, 1999. Mr. Rackauckas refused to discuss what would happen if one of the former ADAs did not resign. The second former ADA was told that leaving the office now would mean going out as one of Capizzi’s top attorneys; it would also avoid lawsuits. The third former ADA was told that not accepting the offer might lead to less than desirable assignments next year. All three of these individuals consistently received performance reviews of “superior” or “outstanding.” Furthermore, Mr. Rackauckas took no steps to welcome, or otherwise integrate these prominent career prosecutors into his administration and retain the benefit of their combined 70 years of experience. At the same time, in late December 1998, organization charts of the new administration were distributed. They showed no positions for these employees.

The first former ADA, unsure of a positive future in the Rackauckas administration, though not prepared to retire, accepted the offer effective March 31, 1999 with the two years service credit and an added 90-day paid leave of absence.

The second former ADA was offered an additional 60-day paid leave of absence. On January 5, 1999, after informing Mr. Rackauckas and Chief Assistant Rutledge of his decision to continue employment, he was immediately placed on an involuntary paid leave of absence and was asked to clear his office. The individual was told that there might be no place for him in the organization and that the leave of absence was not disciplinary “yet.” During this meeting, the employee’s desk computer was removed from his office to conduct a search for abuses of county resources though there had been no prior indications of abuse. No abuses were found and, after 2 ~~½~~ weeks, he returned to work in a demoted line prosecutor position.

The third former ADA was also offered a 60-day paid leave of absence. On Friday, December 31, 1999, he met with Mr. Rackauckas to explain that necessary surgery preempted an immediate retirement. Mr. Rackauckas responded, "I do not want you here." During the weekend, his office desk computer was removed. On January 6, 1999, Mr. Rackauckas and Chief Assistant Rutledge placed the individual on an immediate, involuntary leave of absence. He was subsequently called back to work three weeks later into a demoted line prosecutor position.

There were no internal affairs investigations pending against the two former ADAs at the time they were placed on paid administrative leave.

Elimination of Civil Service Protection

On November 9, 1999, the Board of Supervisors approved the elimination of fallback rights from future "at will" agreements with the goal of effectuating "improved department effectiveness and efficiency." The CEO's Office initiated this policy change; it apparently applied to executive manager positions on a countywide basis. The result was that all attorneys promoted or hired to executive management positions after November 9, 1999 may be terminated from the District Attorney's Office at any time without rights of appeal. Executive managers, promoted after November 9, 1999, are required to sign a waiver of rights form that acknowledges that they serve at the pleasure of the District Attorney and can be terminated from the office without notice or right of appeal.

As a recruitment aid, as well as a counter to the possible reluctance of prospective management candidates to seek such positions without civil service protection, a severance package for executive managers was included in the benefits package. The package provides pay and health benefits for a period of 90 days. As a further incentive, Mr. Rackauckas made verbal assurances to newly promoted executive managers that, notwithstanding the "at will to the street"³ provisions, they would only be demoted back to a Sr. DDA position if they did not work out as a manager. Mr. Rackauckas placed notes to that effect in their personnel files. Mr. Rackauckas did not obtain approval from the Board of Supervisors or the CEO's Office for this practice.

FINDINGS

1. The DDA V position, in effect, was not eliminated. It was renamed ADA, while the job remained functionally the same as that of the DDA V position. This left an impression throughout the organization that the intention was to selectively eliminate former District Attorney Mike Capizzi administration managers rather than a job category.

³ The employment provision "at will to the street" indicates that the employee serves at the will of the district attorney and can be terminated from the District Attorney's Office at any time without notice, cause or rights of appeal or the right to reduce to a lower level position.

2. The “at will” status that was associated with the newly created ADA position has had no positive impact on the organization. Conversely, it introduced a pervasive hesitance to engage in open and honest communication.
3. Good policy indicates that extensive interviews are necessary for hiring into positions such as ADA. Although cursory applications were processed, no interviews were conducted. The process, which gave the appearance of “appointing” persons to these positions, resulted in a widespread perception of a lack of fairness and intentional retribution on the part of the District Attorney.
4. The existing job description for the ADA position is inadequate; it does not specifically apply to the District Attorney’s Office.
5. The significantly increased salary and benefits package for the ADA position, as compared to the eliminated DDA V position, makes ADAs more “economically beholden” to upper management than their former DDA V counterparts.
6. The elimination of fallback rights from the At Will Agreements has had a negative effect on department effectiveness and efficiency. It discourages qualified candidates from seeking management positions and has led to the need for adjunct verbal and notational agreements of questionable legality and enforceability that promise “no risk of termination” to handpicked candidates. Furthermore, this “at will to the street” status inhibits open and honest communication, resulting in an environment of mistrust and insecurity, and impedes meaningful on-the-job training.
7. Prosecutors are rightfully bound by very stringent ethical laws and guidelines. They occupy positions that mandate a high level of fiduciary responsibility. Open and honest communication up the chain of command, as to handling cases and the appropriateness of District Attorney policies and practices, is a necessary part of a prosecutor’s job. A District Attorney’s office, because of its ethical responsibilities, is not analogous to a private corporation.
8. At the time Mr. Rackauckas assumed the position of district attorney, he treated three of the former District Attorney Mike Capizzi ADAs (upper management in the DA’s office) in an intimidating and unjustifiable manner, to the detriment of the office.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. Ensure that all job categories within the organization are defined according to specific activities that can be evaluated during performance evaluation, within formal job descriptions. (Findings 1 and 4)

2. A formal and specific job description should accompany proposals for new or reclassified job categories. (Findings 1 and 4)
3. Reclassify the ADA position to eliminate its “at will” status, thereby establishing civil service protection for this job classification and eliminating the need for adjunct verbal agreements. The good cause for demotion/termination or “at will” attributes of District Attorney management positions should reflect the need for honest, open communication without fear of retribution. Promotion, demotion, and transfer should be based solely on merit. (Findings 1, 2, 3, 5, 6, and 7)
4. Require an open recruitment process for senior ADA and ADA employees that includes formal interviews with standardized criteria and evaluation techniques. (Findings 3 and 7)
5. Where there is a change in district attorney administrations, former management of the prior administration should be made to feel welcome and should be given the opportunity to contribute to the District Attorney’s Office in a manner befitting their capabilities. (Finding 8)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

BUREAU OF INVESTIGATION: CHANGE IN UPPER MANAGEMENT PERSONNEL

FACTUAL BACKGROUND

The Bureau of Investigation of the District Attorney's Office primary task is to provide investigative support for case prosecutions. Investigators often work in tandem with Deputy District Attorneys in preparing cases for trial. There are 185 investigators in the Orange County District Attorney's Bureau of Investigation. Many work in specialized units that correspond to prosecution units, e.g. Homicide, Welfare Fraud, Sexual Assault, etc (see Figures 2A and 2B).

The current structure of the Bureau is:

- 1 – Chief
- 2 – Assistant Chiefs (initially held acting deputy chief positions)
- 4 – Commanders
- 26 – Supervising Investigators
- 152 – Investigators

In January of 1999, when Mr. Rackauckas took office, then Chief Assistant District Attorney Devallis Rutledge introduced the new command staff: Donald Blankenship as Chief, Bureau of Investigation, and Michael Carre and Michael Clesceri as Acting Deputy Chief Investigators. The position of Acting Deputy Chief was newly created. The new team outranked all of the former administration's investigative management.

The three top persons in management did not have law enforcement supervisory experience commensurate with their new positions. Mr. Blankenship supervised a six-person team as a corporal for a few years at the Santa Ana Police Department. Later, at the same department, for a few years until 1986, he supervised a team of officers as a sergeant/watch commander. From 1986 until January 1, 1999, Mr. Blankenship worked full time as President of the Santa Ana Police Officers Association. He had little experience as a detective, and no command experience, i.e. lieutenant or higher.

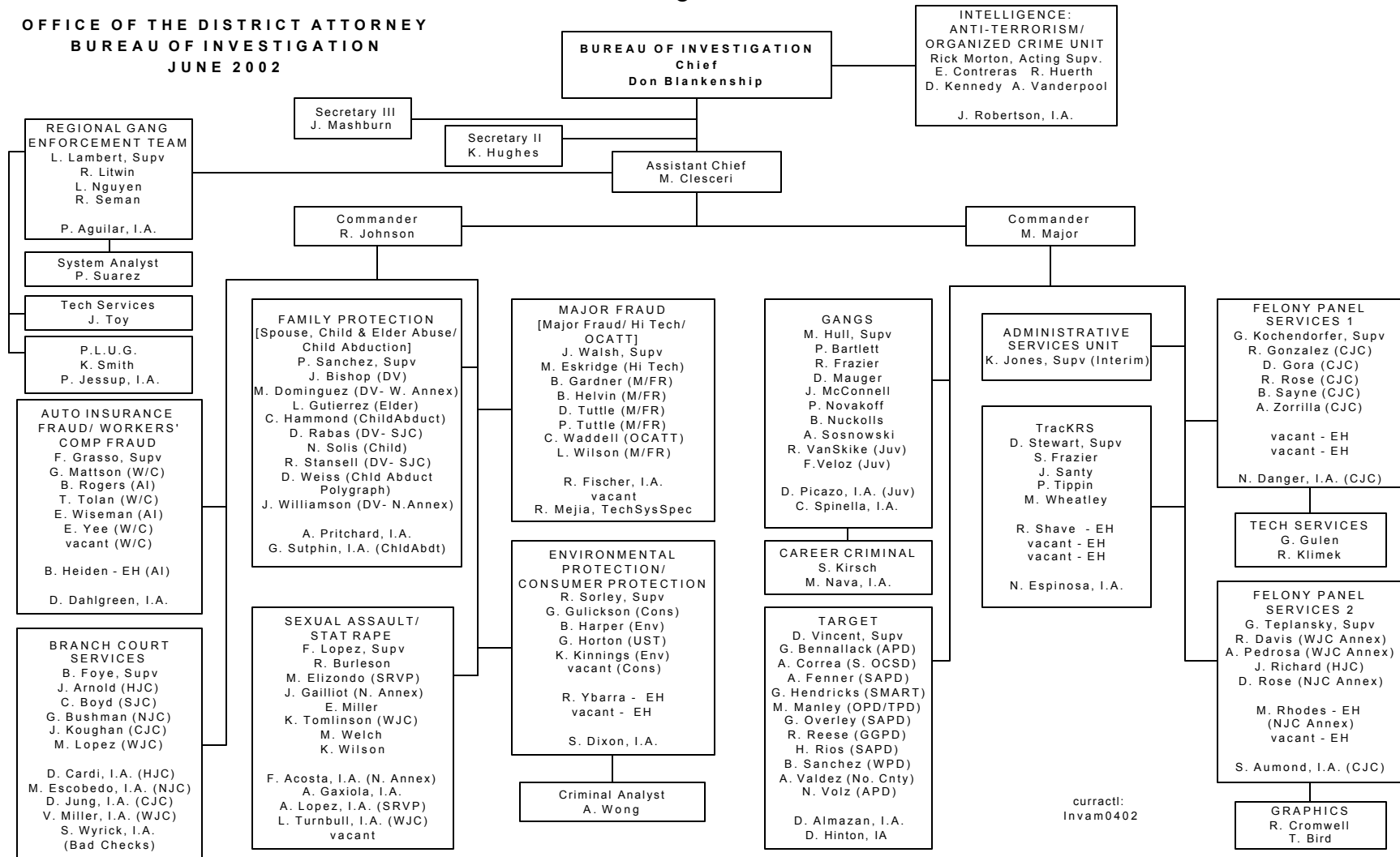
Mr. Carre had worked in the District Attorney's Office for twenty-two years but had not held a supervisory position with the office until he was appointed acting deputy chief.

Mr. Clesceri's prior supervisory experience was as a sergeant/watch commander with the Tustin Police Department for approximately one and one-half years. The minimum job experience qualifications for assistant chief were altered to accommodate Mr. Clesceri's selection as Assistant Chief in mid 1999.

The hiring process for Chief Blankenship consisted of Mr. Rackauckas' three-hour conversation with Mr. Blankenship in December 1998 and a few follow-up conversations. There was no open application process or formal interview for the chief and acting deputy chief positions.

Figure 2A

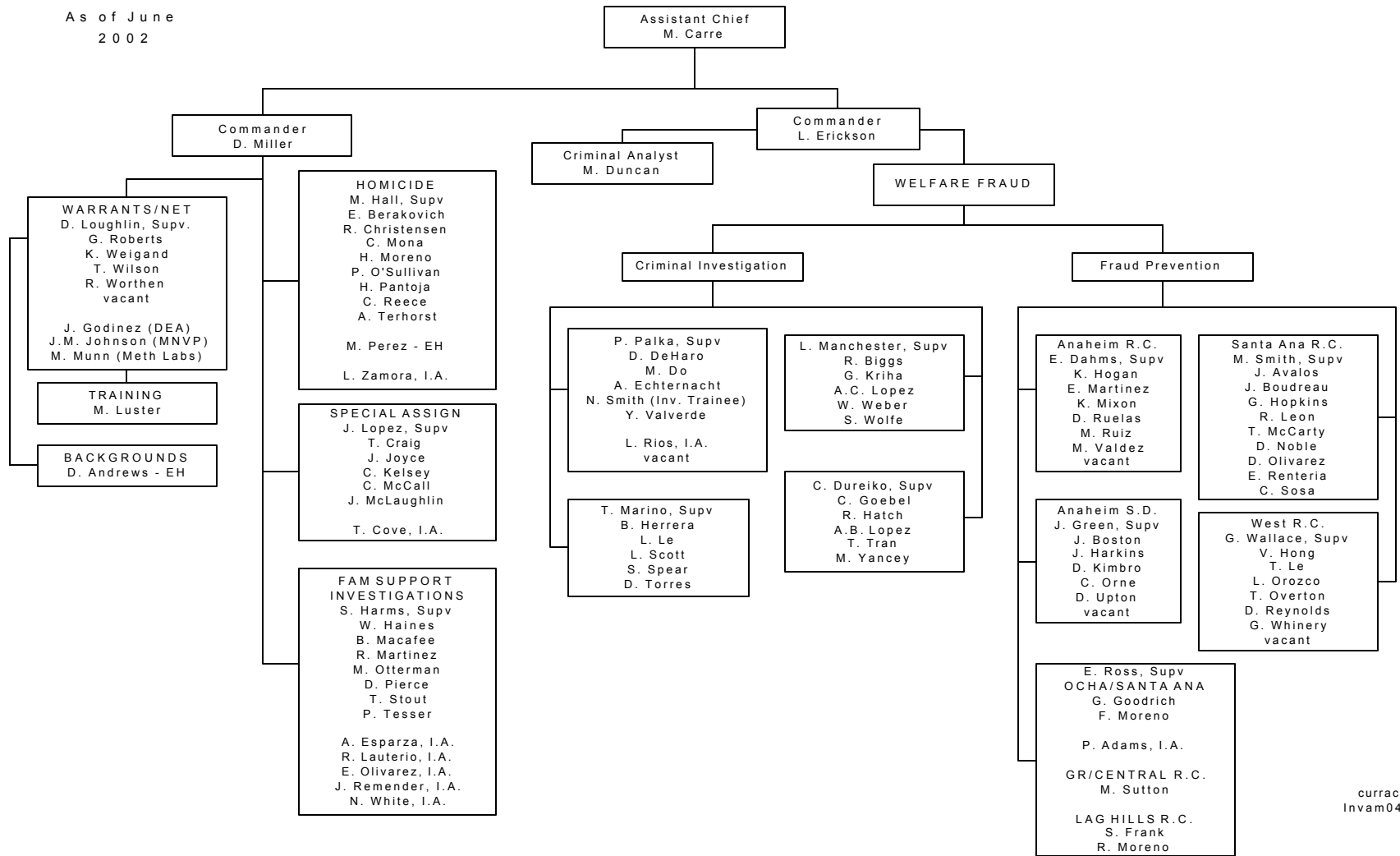
OFFICE OF THE DISTRICT ATTORNEY
BUREAU OF INVESTIGATION
JUNE 2002



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Figure 2B

As of June
2002



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Encouraged Early Retirement of Capizzi Administration Investigative Command Staff

After District Attorney Rackauckas took office, the chief and commanders under the prior administration were called to a meeting with Mr. Rutledge and Mr. Rackauckas. They were told that Mr. Clesceri and Mr. Carre would outrank them. Mr. Rackauckas offered them an early retirement package, which would credit an additional two years of service. He indicated he would like them to take the offer. None of the prior command staff accepted the offer. In January 1999, Chief Blankenship and the two acting deputy chiefs met with the unit supervisors, outside the presence of the commanders. At the meeting, the supervisors were encouraged to participate more in decision making.

Campaign Support and Contributions

Mr. Carre contributed \$700 to Mr. Rackauckas' 1998 election campaign. He was a member of the Board of Directors and the Political Action Committee for the Association of Orange County Deputy Sheriffs (AOCDS) during the campaign. He acted as a liaison between AOCDS and the Rackauckas campaign. AOCDS endorsed Mr. Rackauckas and its Political Action Committee contributed \$1,750 to the Rackauckas campaign.

Mr. Clesceri and his wife, Michelle Clesceri (a deputy district attorney) were close personal friends of Mr. and Mrs. Rackauckas. When Mr. Rackauckas decided to run for district attorney, Mr. Clesceri volunteered to work on the campaign and offered to try to obtain law enforcement endorsements. Mr. Clesceri had previously served on the Board of Directors for the Tustin Police Officer Association. The Clesceris did a substantial amount of work for the Rackauckas campaign - - opened a campaign account and assisted in fund-raising, worked on campaign literature, walked precincts, etc. Mr. Clesceri made campaign appearances for Mr. Rackauckas. He also contributed \$1,000 to the campaign.

Chief Blankenship was the President of the Santa Ana Police Officers Association (SAPOA), at the time of the 1998 campaign. He had some interaction with Mr. Clesceri about the campaign. The SAPOA endorsed Mr. Rackauckas. The SAPOA Political Action Committee contributed \$2,025 to the Rackauckas campaign.

FINDINGS

1. The persons hired by Mr. Rackauckas for the Chief Investigator position and the two Acting Deputy Chief positions did not have the supervisory experience commensurate with their positions.
2. There were no job recruitments, open application process, or formal interviews for the position of Bureau Chief and the newly created acting deputy chief positions.
3. The three top positions in the Bureau of Investigations went to persons active in police associations and/or were Rackauckas campaign supporters.

4. Mr. Rackauckas encouraged the prior administration's command staff, commanders and above, to accept an early retirement incentive package. The former command staff did not feel welcome in the new Rackauckas administration.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. An open hiring process with applications and formal interviews should be part of the hiring process for District Attorney investigative command positions, whether permanent or acting positions. (Findings 1 through 3)
2. The hiring of investigative command staff should be based solely on merit, with a significant weight given to command supervisory experience. (Findings 1 through 3)
3. When there is a change in administrations, the new administration should welcome existing investigative supervisory employees and afford them an opportunity to contribute to the District Attorney's Office in a manner befitting their capabilities. (Finding 4)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

USE OF COUNTY RESOURCES: TIME AND EQUIPMENT

FACTUAL BACKGROUND

The County of Orange and the District Attorney's Office have long-standing policies that prohibit the use of county resources, time, and equipment for non-county activities. The District Attorney's Office policy emphasizes that employees may not take part in political activities during working hours, or use any office equipment, facilities, or resources for political activities. Contrary to policy, county resources, time, and equipment have been used by employees of the District Attorney's Office for non-county purposes. This includes use of equipment such as fax machines, telephones, and computers for political activities, non-county business activities, and other non-county related purposes.

The above mentioned policies were enacted prior to the establishment of an e-mail system in the District Attorney's Office. District attorney employees, when they log onto their computer, receive a computer screen admonition that states e-mails, Internet, and other computer use is for county-related business only. There is no comprehensive policy concerning the use of e-mail and the Internet. Further, there is no policy as to the appropriate discipline for violation of the policy prohibiting the use of time, equipment, or resources for non-county purposes.

The District Attorney, as an elected official with no minimum work schedule, may be permitted to engage in non-county activities during what would otherwise be normal working hours of other county employees. However, the District Attorney is subject to the prohibition against using county staff, equipment, or resources for non-county purposes, including political activities.

There have been numerous violations of policy concerning the use of county time, equipment, or resources for non-county purposes, including:

- E-mails between Mr. Rackauckas' executive secretary and DDA Scott Steiner concerning DDA Steiner's campaign for Orange City Council and Mr. Rackauckas' assistance in the campaign.
- E-mails from Mr. Rackauckas' executive secretary to DDA Susan Schroeder concerning Mr. Rackauckas' district attorney-related calendar to avoid conflicts with his 2002 district attorney re-election campaign calendar.
- E-mails between DDA Schroeder and DDA Steiner regarding DDA Steiner's campaign and the downloading of Steiner campaign material onto DDA Steiner's office computer.
- Faxes sent or received on office fax machines concerning political campaigns.
- Numerous telephone calls, using District Attorney office/cell phones, during normal business hours concerning political campaigns, primarily in seeking endorsements.
- Chief Blankenship's dissemination of information concerning a recent statewide campaign to persons within and outside the District Attorney's Office using office e-mail. At least four of the e-mails were created and mailed after the computer screen admonishment prohibiting use for non-county purpose came on line.

- E-mail dissemination of numerous profane jokes and on one occasion, a photo of naked women was disseminated to persons inside and outside the District Attorney's Office.
- Use of District Attorney's office computer to create class materials as part of a District Attorney employee's paid position as a law school professor.

There is no training program for district attorney employees, with the exception of new hire orientation classes, on the appropriate use of county time, equipment, and resources. In addition, there is no description of disciplinary measures for violations of the office policy that prohibits non-county business purpose use.

FINDINGS

1. There have been numerous incidents of district attorney employees violating the policy prohibiting the use of county time, equipment, and other resources for non-county purposes.
2. Notwithstanding the computer screen admonition concerning the use of the computer for county-related purposes only, there is no comprehensive policy concerning the inappropriate uses of department equipment, e.g. fax machines, desk phones, cell phones, copying equipment, and computers (e-mail and Internet); county time; or other county resources, including staff.
3. There is no policy concerning the appropriate level of discipline for varying degrees of prohibited use of county time, equipment, or other resources.
4. There is neither a training program, nor training manual for district attorney employees concerning the inappropriate use of department time, equipment, or resources.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. The District Attorney's Office should enact a comprehensive written policy concerning the inappropriate use of county time, equipment, and resources. The policy should define appropriate disciplinary action for misuse of county time, equipment, and resources. (Findings 1 through 3)
2. A training manual should be prepared which describes department policies and procedures concerning inappropriate use of department time, equipment, and resources. (Findings 1 through 4)

3. There should be a training program instituted that gives verbal instructions on the inappropriate use of county time, equipment, and resources to all employees. (Findings 1 through 4)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

USE OF COUNTY RESOURCES: MISUSE OF INVESTIGATIVE STAFF

FACTUAL BACKGROUND

There have been several occasions where investigative time and resources have been abused or misallocated for inquiries or investigations that either did not sufficiently further the public interest or were contrary to District Attorney's Office practice. These inquiries or investigations would not have been conducted except for the private interest of certain members of upper management of the District Attorney's Office.

Surveillance and Meetings in Riverside County Regarding Mr. Rackauckas' Son

For the purpose of ensuring that Mr. Rackauckas' son, who it was believed had his driver's license suspended, did not drive a vehicle, a District Attorney investigator on four occasions, either went to the son's County of Riverside residence to confirm the residence address, or to surveil occupants of the residence driving a vehicle, or to meet with local and state law enforcement personnel in Riverside County to explain concerns regarding Mr. Rackauckas' son driving a vehicle. The exact amount of time spent on the inquiry was not documented because district attorney investigators do not keep time sheets or other logs as to time spent on cases, investigations, or inquiries.

An investigator also went to an Orange County court appearance, and a Los Angeles County court appearance to see if the son appeared in court, or if a warrant had been issued.

Towing of Chief Blankenship's Family Car

Chief Donald Blankenship instructed the investigative commander, in charge of supervising the Major Fraud Unit, to inquire into the towing of the car which Chief Blankenship's son had parked in a library parking lot while he was at the beach. Chief Blankenship wanted the commander to look into the legality of the towing because of the short duration of time between when the car was parked and when it was towed, and the purported high towing fee. The commander reported back to Chief Blankenship that the towing company acted within its right to tow an illegally parked vehicle.

Inquiry as to Former Chief Assistant Rutledge and a Car Business

On November 17, 2000, pursuant to instructions from upper management, an investigator contacted the City of Orange Police Department and an owner/employee of a car business as to an allegation that former Assistant Chief District Attorney Devallis Rutledge had identified himself as an employee of the District Attorney's Office to influence the outcome of the repossession of a car which belonged to a client. As of November 17, 2000, Mr. Rutledge was no longer an employee of the District Attorney's Office and was in the process of litigating a claim against the District Attorney's Office over the circumstances under which he had left his employment. The Orange Police Department informed an investigator that no report was taken because the police had responded to the

car business to keep the peace in a civil situation, and that no inappropriate conduct had been observed on the part of Mr. Rutledge. An investigator was instructed to continue the inquiry, in part to obtain a copy of an alleged videotape which purportedly recorded all or part of Mr. Rutledge's interaction with the car business. An investigator made phone calls, went to the car business, talked to the car business' attorney, and performed other fieldwork. No videotape was obtained. A supervising investigator concluded that no videotape ever existed. Investigator(s) spent an estimated six to seven hours on the inquiry. The exact time spent on the inquiry was not documented.

Missing Person Investigation

District Attorney Investigators investigated a missing person, an adult male, who was the former long-term boyfriend of Chief Blankenship's daughter. A missing persons investigation had already been opened by the Orange County Sheriff's Department when the District Attorney's Office got involved in the case pursuant to Chief Blankenship's instructions. The investigators met with the missing person's father, viewed the missing person's residence, conducted undercover work at a bar, and contacted numerous friends and acquaintances of the missing person by telephone.

The Orange County Sheriff's Department took the initial missing person report on December 31, 2000. The District Attorney's Office became involved on January 2, 2001. On January 6, 2001, the District Attorney's Office was notified that the missing person had returned home from Las Vegas.

The District Attorney's Office assistance in the missing person investigation furthered the public interest. However, as to adult missing persons, the District Attorney's Office practice is to not become involved in missing person investigations; the appropriate local law enforcement agency conducts these investigations.

FINDINGS

1. District Attorney's Office investigative resources were not appropriately utilized in the monitoring/surveillance of Mr. Rackauckas' son; conducting the inquiry into the legality of the towing of Chief Blankenship's family car; and conducting the inquiry concerning Mr. Rutledge's involvement with a car business.
2. The District Attorney's Office missing person investigation concerning an adult male, who was the former boyfriend of Chief Blankenship's daughter, was in the public interest. However, assistance in such investigation was contrary to the practice of the District Attorney's Office in regard to adult missing persons.
3. The District Attorney's Office use of investigators time in the above referred to inquiries or investigations would not have occurred except for the close present or former relationship of persons involved in the underlying circumstances with upper management personnel of the District Attorney's Office.

4. The investigators' time expended on the inquiries/investigations was not documented because it is the practice of the District Attorney's Office that investigator do not fill out time sheets or other logs to document time spent on cases, investigations, or inquiries.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. A written policy should be established as to the types of inquiries and investigations to which investigators can be assigned. (Findings 1 through 3)
2. Any employee of the District Attorney's Office, who has a close personal or business connection to any subject of, or person involved in the circumstances of, an inquiry or investigation, should not participate in the decision to conduct an inquiry or investigation, or otherwise participate in the investigation or inquiry in any way. (Findings 1 through 3)
3. District attorney investigators should document their time spent on inquiries, investigations, or cases on time sheets or other logs to be maintained by the District Attorney's Office. (Finding 4)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

USE OF COUNTY RESOURCES: DISTRICT ATTORNEY'S SPECIAL FUND

FACTUAL BACKGROUND

The California Government Code, Section 29404 provides that the District Attorney may use the District Attorney's Special Fund to pay:

- “(a) His expenses incurred in criminal cases arising in the county;
- “(b) Expenses necessarily incurred by him in the detection of crime, other than those declared to be misdemeanors by the Vehicle Code;
- “(c) Expenses in civil actions, proceedings, or other matters in which the county is interested.”

The District Attorney's Office, under the prior administration, had a comprehensive policy and protocol, effective March 1, 1994, as to the use of the District Attorney's Special Fund (also known as the Chief Investigator's Fund) and other special funds. As to **allowable expenditures**, the policy stated,

“Expenditures from the fund must be of a nature that they are extraordinary or special, but necessary to promulgate the prosecution/investigation on a criminal or civil case(s).”

In an attachment to the policy, the following examples were given for appropriate uses of the District Attorney Special Fund: expenses for protected witnesses; confidential informant expenses; meeting with informants; undercover investigative expenses; evidence experiments; special witness expenses; expenses for outside agency investigators not otherwise covered; undercover post office boxes; and unusual investigator/attorney and investigation expenses not covered by other means.

For fiscal year 2001-2002, the County Board of Supervisors approved an appropriation of \$90,000 for the District Attorney's Special Fund.

At the commencement of his administration in 1999, Mr. Rackauckas understood that the allowable expenditures under the District Attorney's Special Fund were as defined by Government Code, Section 29404. It is clear that the portions of the March 1, 1994 policy statement as to what constitutes allowable expenditures for the District Attorney's Special Fund are no longer followed by the District Attorney's Office. However, it is unclear how much of the balance of the March 1, 1994 policy/protocol is being followed, if at all, by the Rackauckas administration. The only written policy as to the use of the District Attorney's Special Fund that is clearly and currently in effect is the express language of Government Code, Section 29404. The language of Government Code, Section 29404 can be interpreted so broadly, that almost any conceivable expenditure can be justified.

The expense vouchers for the District Attorney's Special Fund were created for the more restrictive 1994 use policy. The 1994 policy stated that the District Attorney's Special Fund would only be used for criminal and civil cases, primarily for expenses incurred in

the area of undercover operations and the protection of witnesses. Because of such focus, the forms do not provide identifying information as to protected witnesses or confidential informants, nor do the forms provide any detail as to the nature of the expenses. The employee who claims expense reimbursement from the District Attorney's Special Fund does attach supporting receipts, e.g., restaurant, hotels, transportation, etc.

In August 1999, Chief Blankenship began using the District Attorney's Special Fund to pay for expenditures not included in the sample categories of allowable expenditures in the March 1994 District Attorney policy statement. Periodically, from late summer 1999 until fall 2001, Chief Blankenship used the special fund to pay for his and others' meals and/or alcohol expenses incurred in meetings with law enforcement personnel, lobbyists, politicians, county and other government employees, campaign consultants, clergy, and media personnel. The purpose(s) of the meetings covered a broad spectrum, including investigative command staff conferences, pending and proposed law enforcement legislation, pending investigations and cases, keeping in contact with individuals of interest to the administration, task force operations, and other matters that are of interest to the District Attorney's Office. Because, in large part, of the scarcity of descriptive information contained in the District Attorney's Special Fund voucher forms, it is not known except on a few occasions, with whom Chief Blankenship met and exactly what District Attorney Office-related topics were discussed.

Approximately 38 of Chief Blankenship's expenditures between October 12, 1999 and August 9, 2001 were for expense payments at the Santa Ana Elk's Club. Chief Blankenship is a member of the Elk's Club and a membership card is necessary for access to the club. Meals were eaten at some of the Elk's Club meetings; however, most of the meetings entailed alcohol expenses only.

Chief Blankenship's expenditures from the District Attorney's Special Fund for fiscal year 1999-2000 totaled \$1,364.69. His expenditures for fiscal year 2000-2001 totaled \$2,464.44. His expenditures for fiscal year 2001-2002 through October 4, 2001, totaled \$794.32. Mr. Rackauckas approved Chief Blankenship's expense vouchers for the District Attorney's Special Fund.

Between 1999 and 2001, Chief Blankenship attended numerous conferences and meetings outside the County of Orange, mainly in Sacramento and Palm Springs.

Chief Blankenship, like any other District Attorney Office employee, files a monthly travel expense claim form that itemizes expenses incurred for approved out-of-county District Attorney Office business trips. A district attorney employee claimant is reimbursed for meals at a \$32 per diem rate (\$5.50 for breakfast, \$9.50 for lunch, and \$17.00 for dinner).

Between August 18, 1999 and August 20, 2001, Chief Blankenship took seven out-of-county business trips where he was reimbursed for restaurant and bar expenses from the District Attorney's Special Fund and was also reimbursed for per diem meal expenses pursuant to his monthly travel expense claim forms. As to the seven trips, it is not known

for how many meals Chief Blankenship received double payment because of the lack of descriptive detail on the District Attorney's Special Fund voucher forms. At the time of the respective payments, the District Attorney's Office did not cross-check Chief Blankenship's special fund vouchers with his monthly travel expense claims to ensure that Chief Blankenship was not being paid twice for the same meals. The fact that the special fund vouchers and the monthly travel expense forms are submitted at different times contributed to the District Attorney's Office failure to cross-check the monthly travel forms with the special fund expense vouchers.

The following is an example of probable double payment for meals reimbursed for an out-of-county trip. At an Orange County Chief of Police and Sheriff's Association training conference trip held in Palm Springs, the District Attorney's Special Fund reimbursed Chief Blankenship:

- \$80.00 based on a 4/25/01 guest receipt (apparently a restaurant).
- \$37.72 based on a 4/25/01, 12:33 p.m., California Pizza Kitchen receipt.
- \$89.28 based on a 4/25/01, 9:47 p.m., Las Casuelas Viejas restaurant receipt.
- \$83.50 for a 4/26/01, 10:45 p.m., Café 286 restaurant receipt.

For April 25 and April 26, Chief Blankenship was also paid the full \$32 per diem meal expense pursuant to his monthly travel claim submission.

Chief Blankenship did not appear to have been paid twice for meals on an eighth out-of-county business trip which took place in Palm Springs on November 9 and 10, 2000. Chief Blankenship was paid the full per diem meal rate of \$32 for November 9 and November 10 for the California Coalition of Law Enforcement Association meeting. Chief Blankenship appears to have been reimbursed from the District Attorney's Special Fund during the trip only for alcoholic drink expenses:

- Payment of \$21.55 for alcoholic drinks based on a November 10, 2000, 5:53 p.m. receipt from the Marquis Hotel.
- Payment of \$76.09, based on a credit card receipt from the Palm Springs Conference Resort Lobby Bar, at 9:31 p.m., which sets forth an amount of \$38.09, a subtotal of \$38.09, a gratuity of \$5, and a handwritten total by Mr. Blankenship of \$76.09.

For fiscal year 2000-2001, the District Attorney's Office submitted a budget request of \$19,600 for Chief Blankenship's expected travel expenses for attending various conferences and meetings. Chief Blankenship did not attend all the conferences and meetings referenced in the budget request.

FINDINGS

1. There is no single, comprehensive District Attorney Office policy statement concerning allowable expenditures and payment protocols for the District Attorney's Special Fund.

2. The current District Attorney's Office practice and policy for allowable expenses, the language of Government Code, Section 29404, can be interpreted so broadly as to justify almost any expense.
3. Current District Attorney's Office practices do not adequately document the nature of the expenditures to be reimbursed from the District Attorney's Special Fund.
4. Chief Blankenship was reimbursed from the District Attorney's Special Fund for numerous, alcohol-only expenses, incurred at meetings at the Elk's Club, bars, and restaurants. Many of the meetings, for which Chief Blankenship received reimbursement for meals and/or alcohol expenses from the special fund, did not concern pending criminal or civil investigations or cases.
5. The monthly travel claims for out-of-county business trip reimbursements are not cross-checked with District Attorney Special Fund expense vouchers to ensure that a claimant does not receive double payment for meals or other expenses. Chief Blankenship received double payment for certain meals, the exact nature and amount is unknown at this time because of inadequate documentation. The monthly travel claims and the District Attorney's Special Fund expense vouchers are submitted to district attorney administrators at different times for processing and payment.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. The District Attorney's Office should re-enact or reactivate the more restrictive and comprehensive March 1, 1994 policy concerning allowable expenditures and payment protocol for the District Attorney's Special Fund. (Findings 1 through 4)
2. Except where necessary in undercover operations and the use of confidential informants in pending criminal investigations and cases, the District Attorney's Special Fund should not be used for meetings where food and alcohol expenses are incurred. (Findings 1 through 4)
3. The District Attorney's Office should establish a protocol where monthly travel expense claims are cross-checked with District Attorney's Special Fund Expense vouchers, or any other expense vouchers from special funds, to ensure that a claimant is not paid twice for the same expense. Documentation as to expenses for special fund expenditures and travel claims should be submitted on a weekly basis to facilitate cross-checking of claims. (Finding 5)

4. The District Attorney's Office should investigate the extent of double payments to Chief Blankenship for meals, and have Chief Blankenship reimburse the county for any and all double payments. (Finding 5)
5. When there are District Attorney's Special Fund expenditures for meals and alcohol, the expenditures should be documented in more detail, including the names and titles of the persons whose meals and/or alcoholic beverages were paid, a several line description of the purpose of the meeting and, as is the practice, all supporting receipts attached. Proper internal control should be maintained to keep the identity of "criminal" confidential informants and protected witnesses confidential. (Findings 1 through 5)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

PERSONNEL PRACTICES: LINES OF COMMUNICATION

FACTUAL BACKGROUND

Chain of Command

A “chain of command” model defines the relationship of subordinates and supervisors within an organization and provides for a structure of communication. An effective chain of command model:

- Defines employees’ responsibilities so they have a clear understanding of what they are expected to do, and from whom they receive job related instructions.
- Identifies accountability for actions taken.

The chain of command on the legal side of the District Attorney’s Office is:

District Attorney
Chief Assistant District Attorney
Senior Assistant District Attorney
Assistant District Attorney
Deputy District Attorney (Level I, II, III, IV, and IV ½)

The chain of command for the Bureau of Investigation is:

District Attorney
Chief Investigator
Assistant Chief Investigator
Commander
Supervising District Attorney Investigator
Investigator

There have been several instances of failure by District Attorney’s Office personnel, primarily by members of the Bureau of Investigation management, to communicate job assignments or work-related instructions through the chain of command. This breakdown in the structure of communication has led to confusion with regard to responsibility and accountability. Further, in certain cases where Chief Donald Blankenship has given work assignments directly to an investigator or to a supervising investigator, the direct supervisor is by-passed. This direct supervisor might be informed only on the initiative of the investigator or supervising investigator.

Examples of job assignment instructions that have either by-passed immediate supervisors or completely circumvented the chain of command structure include:

- Chief Blankenship ordered a line investigator to monitor proceedings and conduct surveillance. (Bypassing one level of management.)

- Chief Blankenship repeatedly gave verbal assignments, without sufficient information to adequately commence the job task, to a supervising district attorney investigator. The supervising investigator's commander at the time was not informed of the assignment by Chief Blankenship and was unable to give further information to the supervising investigator when he requested assistance and clarification of Chief Blankenship's instructions. (Bypassing multiple levels of management.)
- Investigators were ordered to conduct background checks for the Tony Rackauckas Foundation by an assistant chief, who did not have supervisory responsibility over the investigative unit in charge of background checks. The assistant chief, who had such responsibility, was not informed of the order to do the background checks. (Circumventing command structure.)
- Chief Blankenship ordered a commander to inquire into the towing of a car. (By-passing one level of management.)
- An assistant chief ordered a supervising investigator to investigate possible organized crime connections with certain persons. (By-passing one level of management.)
- DDA IV Kay Rackauckas instructed a DDA IV^{1/2} in March 2001, to research the appropriateness of DDA Scott Steiner's campaign e-mails as they related to District Attorney Rackauckas. This occurred while DDA Kay Rackauckas was on a leave of absence. (Chain of command circumvented.)
- In March 2001, DDA Kay Rackauckas instructed a senior assistant district attorney to prepare a memorandum as to then Assistant District Attorney Mike Jacobs' management skills. (Chain of command circumvented.)

DDA Kay Rackauckas has assumed a level of authority inconsistent with her non-management job description. DDA Kay Rackauckas has occupied a non-management position during her entire tenure with the District Attorney's Office. DDA Kay Rackauckas has been on a leave of absence since February 2001 and continued to have direct access to the District Attorney's Office, influencing policy and personnel decisions. The effect of this access gave DDA Kay Rackauckas the ability to bypass all links in the chain of command.

Organizational Meetings and Activity Reports – Bureau of Investigation

Management organizational meetings are used as a tool for efficient communication. Such meetings reinforce goals and objectives, minimize confusion, maintain rapport, and keep supervisors abreast of policy, personnel issues, and cases. Pursuant to a February 24, 1999 memorandum from Chief Blankenship, the command staff of the Bureau of Investigation (commander and above), had weekly meetings, and each commander had a meeting every other week with the respective supervising investigators under his command. Over time, only the two assistant chiefs and the chief attended the periodic command staff meetings because, in part, of a perception that one or more of the

commanders engaged in obstructive behavior. Over time, the commanders have not maintained the practice of having periodic meetings with all of the supervising investigators under their respective commands. Commanders have frequent meetings with one or more of their respective supervising investigators. There have only been a few bureau wide supervisor meetings (all bureau management) during the Rackauckas administration.

Periodic case reporting for dissemination to appropriate command staff is necessary for case load management and to keep the bureau command staff abreast of significant and/or sensitive cases.

There is periodic reporting of caseload information via e-mail or other media to bureau supervisors. In the beginning of the Rackauckas administration, there was periodic status reporting to appropriate command staff concerning organized crime unit cases and special assignment unit cases (sensitive cases). However, the periodic reporting concerning the status of special assignment cases ceased early in the Rackauckas administration and the periodic organized crime unit status reports ceased for over one year. In early 2002, Chief Blankenship instituted a policy of weekly status reports concerning sensitive cases because on several occasions he was unable to respond to outside law enforcement inquiries due to of lack of information. Chief Blankenship is not receiving periodic status reports from other specialized units, i.e. Major Fraud, Welfare Fraud, and Homicide (unless the case fits the sensitive case criteria).

Organized Crime Unit Chain of Command

The Organized Crime Unit supervisor, as has been the practice in prior administrations, reports directly to the Chief Investigator (Chief Blankenship). It is a common practice for supervisors of intelligence units of police agencies to report directly to the head of the agency because of the sensitive nature of the information.

After the events of September 11, 2001, the Organized Crime Unit has been involved in anti-terrorist functions.

Although Chief Blankenship is available by pager, he is frequently not in the office during normal business hours because of meetings and conferences within the county and outside the county. On occasion, he is not at the District Attorney's Office at the time important decisions concerning the handling of organized crime unit cases need to be made.

Chief Blankenship has not had regularly scheduled periodic meetings with the supervisor of the Organized Crime Unit. On numerous occasions, an Organized Crime Unit supervisor discussed Organized Crime Unit matters with an assistant chief because Chief Blankenship was unavailable.

FINDINGS

1. Members of upper management of the Bureau of Investigation have made job assignments to investigators, supervising district attorney investigators, and commanders in a manner that has by-passed one or more layers of supervision.
2. DDA Kay Rackauckas has been permitted a greater level of authority and influence than is characteristic of her job description, which has resulted in circumventing the chain of command.
3. Periodic meetings with the Bureau command staff (commanders and above), and between commanders and their respective unit supervisors have not been held on a consistent basis during the Rackauckas administration. Periodic meetings of this nature benefit the Bureau.
4. There have not been Bureau-generated status reports on significant and/or sensitive cases during a major portion of the Rackauckas administration. Periodic status reports on such cases benefit the District Attorney's Office.
5. The Organized Crime Unit supervisor reports directly to Chief Blankenship. The Organized Crime Unit handles sensitive cases, including anti-terrorist matters that would require rapid decision making. Chief Blankenship is frequently not in the office because he attends numerous meetings and conferences within the county and outside the county. Chief Blankenship and the respective supervisors of the Organized Crime Unit have not had regularly scheduled periodic meetings to discuss Organize Crime Unit matters.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. A chain of command model should be adopted and followed in the District Attorney's Office for making work and case assignments. (Findings 1 and 2)
2. Implement, at least, bimonthly meetings of the bureau chief with the assistant chiefs and all commanders. (Finding 3)
3. Implement, at least, monthly meetings of each assistant chief with commander(s) and supervisors in his respective chain of command. (Finding 3)
4. Implement, at least, monthly meetings of each commander with his respective unit supervisors. (Finding 3)

5. Continue the practice of preparing weekly status reports on sensitive and/or significant cases. Require the necessary contribution by the legal side of the District Attorney's Office to ensure timely and thorough reporting. The status report should be distributed to bureau command staff and legal executive staff. (Finding 4)
6. The Organized Crime Unit supervisor should report directly to a commander. (Finding 5)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

PERSONNEL PRACTICES: POSITION OF MEDIA RELATIONS DIRECTOR

FACTUAL BACKGROUND

A writer employed by a legal newspaper wrote articles about the 1997-1998 campaign for the District Attorney. The writer attended fund-raisers for the current District Attorney and became friends with his wife, DDA Kay Rackauckas. The writer and others recommended to District Attorney Elect Rackauckas that the District Attorney's Office needed a press officer. The District Attorney elect took steps to create a media relations director position, and the writer assumed the position in the summer of 1999.

There was no recruitment or application process for the media relations position. Further, there is no job description or any written qualification requirements. The media relations position has evolved from the director often being present at sensitive investigation/case debriefings with daily access to the District Attorney, to a more limited involvement in cases and less personal access to the District Attorney. The media relations director reports directly to the District Attorney.

FINDINGS

1. There is no job description for the position of media relations director.
2. There are no minimum qualification criteria for the position.
3. There are no guidelines regarding the "need to know" limitations of the position of media relations director.
4. The media relations director attended numerous highly sensitive debriefings about criminal investigations/cases.
5. There was no job recruitment or application process, posted or otherwise, for the media relations director position.
6. The media relations director reports directly to the District Attorney.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. There should be a written detailed job description for the position of District Attorney's Office Media Relations Director. (Findings 1 and 3)
2. There should be written minimum qualification requirements for this position including a background in criminal law. (Findings 2 and 4)

3. There should be specific guidelines and limitations for the position, including a need to know criteria. Media releases and other dissemination of information about cases to the press should be approved by the deputy district attorney handling the case, or one of the deputy's supervisors. (Findings 3 and 4)
4. The Media Relations Director position should be subject to an open recruitment process with application and selection protocols in accordance with county employment policies. (Finding 5)
5. The Media Relations Director should report to the Chief Assistant District Attorney or a Senior Assistant District Attorney, not the District Attorney. (Finding 6)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

PERSONNEL PRACTICES: HIRING PRACTICES FOR PROSECUTORS

FACTUAL BACKGROUND

Orange County's Personnel and Salary Resolution document adopted a merit system for the personnel administration of the county, basing appointments, promotions, demotions, and discharges specifically on merit for all employees except for certain classes of clerical employees and other "at will" employees.

The Orange County Equal Employment Opportunities (EEO) Policy and Procedure manual states, in part, that the purpose of the county's EEO policy is to ensure full realization of non-discrimination and equal employment opportunity by selecting and promoting employees based on their ability and job performance. The EEO policy expressly states:

"All employment related decisions will be based on merit. Unlawful discrimination, harassment, and retaliation in any form will not be tolerated."

District Attorney Elect Rackauckas publicly criticized then District Attorney Capizzi's hiring and promotion practices which occurred between the June 1998 election and when Mr. Rackauckas took office in January 1999.

Spring 1999 Recruitment

The time period for the receipt of applications for the District Attorney's Office spring recruitment for new deputies closed on February 23, 1999. Approximately 277 persons applied. Approximately 41 candidates were interviewed. Thirteen deputies were hired between July 16, 1999 and August 9, 1999.

Upper management created objective criteria or "paper screen" to evaluate the candidates' applications. Candidates were rated in four categories, with numerical values between 1 and 3 to be assigned each category, for possible scores ranging from 4 to 12. Two panels of three attorneys each performed the paper screen evaluations of the 277 candidates and gave each individual a numerical score. Based on the scores from the paper screen, the top scorers were eligible for the next step in the hiring process, the oral interviews.

There were approximately five to seven candidates who Mr. Rackauckas wanted to have interviewed of which at least two did not qualify for interviews pursuant to the paper screen scoring. Mr. Rackauckas had the paper screen protocol changed. All the candidates' applications were re-evaluated by the Chief Assistant District Attorney and an experienced assistant district attorney. Instructions were given that the five to seven persons were going to qualify for interviews this time. Mr. Rackauckas gave a written list to the senior administrative manager with the names of the five to seven persons he wanted to qualify for interviews.

Candidate applications were re-evaluated and adjustments in certain scores were made in pencil. The list of candidates qualifying for interviews was expanded to ensure that the five to seven pre-selected candidates, and all other candidates of equal or greater merit, qualified for interviews. The re-evaluation process delayed the hiring of the spring recruitment class by approximately two months.

Two of the pre-selected interview candidates were friends or family members of political supporters of Mr. Rackauckas. Both were hired by the District Attorney's Office. Certain records as to the spring recruitment were lost or misplaced by the District Attorney's Office, apparently in the move to the new offices at 401 Civic Center Drive West.

Recruitment of Other Deputy District Attorneys

In other recruitments, several deputy district attorneys were hired that were family members of friends and/or political supporters of Mr. Rackauckas.

The District Attorney's Office has a long-standing law-school clerk internship program where qualified law students are chosen to intern, in paid positions, with the Law and Motion Unit (formerly known as Writs and Appeals). Many clerks participate in the program in consecutive years. Clerks who perform well in the program are recommended for hiring and are normally hired if positions are available. In one of the recruitment cycles under District Attorney Rackauckas, a clerk from the Law and Motion program was highly recommended for hiring as a deputy district attorney. This individual was passed over in favor of two other candidates, who clerked in non-paid positions, in an informal program in other DA Office units. The two clerks from the informal program were family members of political supporters of Mr. Rackauckas.

FINDINGS

1. In the spring recruitment of 1999, the paper screen protocol was changed in order to insure that approximately 5 to 7 candidates, of whom at least two had not qualified under the initial paper screen evaluation, would receive interviews. Two of these persons were given special consideration, in part or in whole, because of a friend or family member who was a political supporter of Mr. Rackauckas.
2. Several other family members of friends and/or political supporters of Mr. Rackauckas have been hired by the District Attorney's Office.
3. Certain spring 1999 recruitment rating worksheets and other hiring materials were lost or misplaced by the District Attorney's Office.
4. It is the policy that in the County of Orange departments and agencies hire employees based solely on merit.

5. A highly recommended intern from the Law and Motion Unit was passed over for employment as a deputy district attorney in favor of two law clerks from an informal internship program whose family members were political supporters of Mr. Rackauckas.
6. There is a negative impact on the ability of the Law and Motion Unit to recruit law students for their formal clerkship program when qualified candidates from the program are not hired when positions are available.
7. Certain less qualified candidates, who were family members or friends of political supporters or friends of Mr. Rackauckas, were hired as prosecutors over more qualified candidates.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. Deputy district attorneys should be hired on merit alone. (Findings 1, 2, 4, 5, 6, and 7)
2. Mr. Rackauckas should not participate in the hiring decisions of any applicant. The person or persons in the District Attorney's Office who make the hiring decisions should not consider the relationship, or perceived relationship, of such candidate to Mr. Rackauckas. (Findings 1, 2, 4, 5, 6, and 7)
3. District Attorney Office Policy and Protocol needs to ensure that only the most qualified candidates are hired to ensure the ability of the office to attract and recruit the most able attorneys and law students. (Findings 4, 5, and 6)
4. Retain recruitment scores in dedicated computer archives for at least five years. (Finding 3)
5. All hiring worksheets need to be filled out using indelible ink and kept for a minimum of five years. (Findings 2 and 3)
6. The rating criteria, recruitment protocol, and time parameters of recruitment should not be changed or altered once the recruitment has commenced. (Finding 1)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

PERSONNEL PRACTICES: PERFORMANCE EVALUATIONS

FACTUAL BACKGROUND

Most medium to large companies in the private sector recognize the value of annual performance reviews for all employees. The reviews benefit the employee and the employer because employee deficiencies can be corrected at an early stage and the reviews help focus an employee on accomplishing goals for the greater success of the organization. Most companies require their annual performance reviews to follow a well-delineated structure and to be in writing.

In two memoranda, dated February 23, 1999 and August 27, 1999, the District Attorney set forth his policy for fair and honest written evaluations of employee performance. A Memorandum of Understanding (MOU) between the Orange County and the Orange County Attorneys Association (OCAA), covering the time period between October 23, 1998 and June 26, 2003, stipulates that the "County shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee." The MOU requires that a new or probationary attorney must have an annual performance evaluation and an interim evaluation near the middle of the probationary period (six months). Further, the first year probationary attorney may be released (terminated) at any time at the sole discretion of the department as long as the release does not violate county policies regarding nondiscrimination. Lastly, the MOU specifies that an annual performance review be given to all attorneys who are covered by civil service protection (specifically deputy district attorneys I, II, III, and IV). Deputy district attorney (DDA) performance evaluation reports include specific rating categories, including but not limited to legal knowledge, courtroom skills, case preparation, initiative and resourcefulness, attitude, judgment, and dependability.

Although the county does not require that the executive managers be subject to a formal performance review process, the District Attorney's Office has implemented a performance/objectives review process for assistant district attorneys and senior assistant attorneys, which primarily focuses on setting goals and monitoring the manager's efforts and success in achieving the goals. A similar manager review is performed in regards to the commander and assistant chief positions for the District Attorney's Office Bureau of Investigation. However, there is no formal performance review process for legal and investigative managers that includes traditional rating categories analogous to the non-management performance reviews, such as communication skills, attitude, dependability, judgment, decision-making, initiative and resourcefulness, ability to work with others, supervisory ability, knowledge, etc.

Supervisory district attorney investigators are evaluated on an annual basis pursuant to specific rating categories, including productivity, work quality, adaptability, attitude, judgment, initiative and resourcefulness, and dependability.

The performance evaluation process during the Rackauckas administration was inappropriately used on at least two occasions. The use of the process and protocol

followed were contradictory to the policy statements of the District Attorney and/or the applicable MOU. The Grand Jury recognizes that only two incidents are documented, but strongly believes that if the fair evaluation procedure is not followed, even in a single instance, the entire evaluation process is tainted.

The first instance involved a probationary DDA. The employee was considered to be performing in a less than satisfactory manner. Contrary to the MOU, the DDA was not given the mandated interim (six months) performance evaluation. There was a consensus among various members of executive management during the course of the attorney's probationary year that, based on less than satisfactory performance up to that time, probation should not be passed. The DDA passed probation at the time of the performance report. The attorney was known to be a family member of a political supporter or friend of Mr. Rackauckas.

The other instance regarding the inappropriate use of the performance evaluation process involved an experienced DDA. This employee supported one of Mr. Rackauckas' opponents during the 1998 district attorney campaign and was a named defendant in a lawsuit brought by then Chief Assistant District Attorney Rutledge's wife (former DDA Victoria Chen). In mid 1999, an opportunity arose for the DDA to transfer to a position in a specialized unit for which he/she was qualified. The supervisor wrote an interim performance evaluation at the time of the transfer. This evaluation was not authorized by the MOU nor was it the practice of the District Attorney's Office to give such an interim evaluation for non-probationary deputies. The performance evaluation did not portray the DDA in a favorable light, and included specific details concerning purported negative conduct. Then Chief Assistant District Attorney Rutledge had discussed the evaluation of the DDA with the ADA who was to prepare it, and told the ADA to include negative instances of the employee's conduct in the performance evaluation. The employee filed a grievance and prevailed. The performance evaluation was removed from the employee's personnel file.

FINDINGS

1. The District Attorney's Office has a policy that employee performance evaluations should be fair and honest.
2. The MOU requires annual performance evaluations for DDAs from Level I through Level IV, and interim (six months) evaluations are required for non-management probationary employees.
3. The performance evaluations and/or protocol followed in the two instances described above, violated District Attorney policy and the MOU. In the first instance a DDA with a political friend connection to the District Attorney was inappropriately rated favorably, and in the other, a DDA politically opposed to the District Attorney and a defendant in the Chief Assistant's wife's lawsuit was inappropriately rated negatively.

4. Executive management are not evaluated pursuant to traditional rating categories.
5. Non-executive management prosecutors and supervising district attorney investigators receive performance evaluations based on specific rating categories.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. All members of management (legal and investigative), below the level of the elected District Attorney, should have an annual performance evaluation at the same interval and based on relevant, specific rating categories comparable to the criteria existing to evaluate non-management deputy district attorneys (applied to legal executive managers) and comparable to the criteria existing to evaluate supervising district attorney investigators (applied to investigative management). (Findings 4 and 5)
2. All performance evaluations should be honest, objective and fair. Political allegiances, or participation in civil lawsuits, should not be a factor, positively or negatively. (Findings 1 and 3)
3. All employee performance evaluations should be given on a timely basis in accordance with applicable provisions following MOU and other personnel policies or agreements. (Findings 2 and 3)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

PERSONNEL PRACTICES: ROTATION OF ASSIGNMENTS

FACTUAL BACKGROUND

Orange County policy states that all employment-related decisions shall be based upon merit.

The District Attorney's Office conducts biannual rotations of job assignments for selected groups of prosecutors based on the performance and expertise of the individual prosecutor, the training/experience needs of the prosecutor, the needs of the District Attorney's Office, and the job preference of the prosecutor.

The decision-making process, in theory, involves:

- Consultation between assistant district attorneys (supervisors of line prosecutors) and their respective senior assistant district attorneys;
- The senior assistants and chief assistant district attorney confer and prepare a recommended rotation; and
- The District Attorney makes the final decision, either approving the rotation as submitted, or making some modification.

The District Attorney disseminated a February 22, 1999 memorandum to all attorney staff that stated, in part, "This policy [attorney rotation and assignment policy] is promulgated to create predictability, consistency and fairness in the determination of attorney assignments." The memorandum sets forth general guidelines for length of assignments in particular units or job classifications.

There have been several instances under the Rackauckas administration where attorney rotations or assignments have violated the above-cited policy and procedures.

Failure to Transfer an Experienced Deputy to the Domestic Violence Unit

An experienced deputy district attorney (DDA) supported one of Mr. Rackauckas' opponents in the 1998 district attorney campaign and was a named defendant in a lawsuit brought by Chief Assistant District Attorney Rutledge's wife (former DDA Victoria Chen). Effective the first day of the Rackauckas administration, the DDA, a former supervisor under the Capizzi administration, was assigned to the Law and Motions Unit, as a line attorney. Early in 1999, a position arose in the Family Protection Unit, a unit that the DDA had previously expressed a written request to be reassigned. The DDA was well qualified for the position. The assistant district attorney in charge of the Family Protection Unit and the supervisor, a senior assistant district attorney, recommended that the DDA be transferred to the Family Protection Unit. Mr. Rackauckas tentatively approved the assignment. Mr. Rutledge was informed of the planned transfer and spoke to the senior assistants about his objections, and the purported problems with the DDA. Mr. Rutledge caused the DDA to remain in her position in the Law and Motion Unit. Shortly thereafter, another position in the Family Protection Unit opened up. A supervisor

indicated to the DDA that she deserved the position. The next day a supervisor told the DDA that she was not going to be reassigned because of Mr. Rutledge. Eventually, in mid 1999, the DDA was transferred to a position in the Sexual Assault Unit.

DDA Not Initially Assigned to the Felony Panel

For the fall 1999 attorney job rotation, the supervisor (ADA) of a skilled trial attorney (DDA) recommended that the DDA be transferred to the Felony Panel. The transfer was consistent with the job rotation practices of the District Attorney's Office and a significant career move for the DDA. The overseeing senior assistant district attorney met with the various heads of court and the DDA's name was placed on the recommended list for transfer to the Felony Panel. Mr. Rackauckas decided not to transfer the DDA to the Felony Panel because of information he had received directly from a defense attorney, and/or from his wife, Kay Rackauckas, who had received the information directly from the defense attorney, a political supporter of Mr. Rackauckas and friend of Kay Rackauckas. The information conveyed to Mr. Rackauckas was that, in a recent case the DDA had litigated with the defense attorney, the DDA purportedly acted inappropriately and had an abusive attitude towards the defense attorney. Mr. Rackauckas rejected the recommended transfer without speaking to the DDA or the DDA's supervisor concerning the purported improper or abusive conduct.

Instead of being transferred to the Felony Panel, as recommended, the DDA was transferred to a misdemeanor assignment. Approximately six months later, the DDA was transferred to the Felony Panel after the above-referenced senior assistant, in response to Mr. Rackauckas' initial reluctance, informed Mr. Rackauckas that the DDA had done everything the DDA had been instructed to do, and that if the DDA was not assigned to the Felony Panel, the senior assistant's credibility would be "shot."

FINDINGS

1. According to policy, job related decisions shall be based on merit and prosecutor job assignments/rotations are to be fair.
2. An experienced deputy district attorney was not transferred to the Family Protection Unit in early 1999, a position the DDA was qualified for, because the DDA was a named defendant in Chief Assistant Rutledge's wife's civil lawsuit.
3. A qualified and recommended deputy for transfer to the Felony Panel did not initially receive such transfer because of information from a defense attorney. The decision not to transfer the DDA to the Felony Panel, based on the defense attorney's information, was made by Mr. Rackauckas without verification or input from the DDA or the DDA's immediate supervisor.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. Job transfers/job rotations should be fair, consistent, and based on merit, as well as being otherwise consistent with the above referred to policies and procedures. (Findings 1 through 3)
2. Except in cases of dire emergencies, a job rotation should be preceded by reasonable notice to all affected personnel, at least a time period of two weeks. (Finding 1)
3. An employee's support of a political candidate, or the fact that the employee was or is a political candidate, should not be a consideration in an employee's job assignment or rotation. (Finding 1)
4. Where a person who is not an employee of the District Attorney's Office complains about the performance or attitude of a District Attorney's Office employee, the subject employee, and the immediate supervisor should be consulted prior to a decision concerning the employee's job assignment or career. (Finding 3)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

PERSONNEL PRACTICES: EXAMINATION OF EMPLOYEES' COMPUTERS / UNAUTHORIZED DISSEMINATION OF CONFIDENTIAL INFORMATION

FACTUAL BACKGROUND

The Office of the District Attorney Administrative Policies and Procedures (effective 10/28/96 as revised 11/15/01) provides:

“All employees of the District Attorney's Office are expected to conduct themselves in an ethical and professional manner.”

The October 28, 1996 policy further provided, in pertinent part, that it was a conflict of interest and a misuse of position to use confidential information acquired through county employment for private gain or advantage or private purposes.

In the fall of 2001, the District Attorney's Office installed a computer screen on all employees' computers. The screen states:

“This computer equipment, software, and its associated servers, peripherals and network (collectively referred to as the System) belong to the County of Orange (county). The use of this System is limited to county related business. E-mail, Internet, and Intranet access and use via this System are also provided to employees for county related business purposes only.

“The county retains the right to access and inspect information that is stored on this System. The county retains the right to audit, inspect, and/or monitor each user's System access and use of e-mail, the Internet and the Intranet.

“By using any part of this System, the user agrees to limit its use to county related business. The user has no expectation of privacy in all content and non-content e-mails, Internet and Intranet accessed information and sites, and in all information stored on this System.

“The county stores Internet, Intranet, and Outlook usage for months and years. The county monitors such usage as it deems appropriate.

“Unauthorized use of this System may result in disciplinary action.”

Searching Office Computers

On January 5, 1999, at a meeting in his office, Mr. Rackauckas told his election opponent Wally Wade, a District Attorney supervisor, that he was being placed on immediate, paid administrative leave. When Mr. Wade returned to his office immediately following his meeting with Mr. Rackauckas, and without any notice to Mr. Wade, he saw that his desktop computer had been removed. Mr. Wade's office computer hard drive was searched for data entries that would show that the computer had been used for non-county

work purposes. Nothing of this nature was found. Mr. Wade was allowed to return to work within several weeks of being placed on paid administrative leave.

Brent Romney, an opponent of Mr. Rackauckas in the District Attorney campaign until he withdrew from the race, and a supervisor, also had his office computer removed without notice. Mr. Romney was also placed on paid administrative leave by Mr. Rackauckas in early January 1999, and allowed to return to work within several weeks.

There were no formal Internal Affairs investigations opened against Mr. Wade or Mr. Romney at the time their respective office desktop computers were removed.

Pursuant to a memorandum dated January 14, 2000, Chief Assistant District Attorney Devallis Rutledge was placed in a non-supervisory position, and his office was relocated to another building. This move was reported to avoid any appearance of a conflict of interest and undue influence arising from the fact that his wife's (former deputy district attorney Victoria Chen) lawsuit against the County of Orange and the District Attorney's Office for purported misconduct occurring during the previous administration was scheduled to go to trial later in January. Mr. Rutledge never returned to work after January 14, 2000, and retired from the District Attorney's Office in March 2000.

On January 21, 2000, with the knowledge and approval of Mr. Rackauckas, a district attorney investigator was instructed to remove Mr. Rutledge's office computer, after hours, and to make a copy of the hard drive. Mr. Rutledge was not informed of the removal. The desktop computer was removed on January 21, 2000. The District Attorney's Office expended \$122.84 to purchase a hard drive to accomplish the task of making a mirror image of the hard drive on Mr. Rutledge's office-issued desktop computer. Mr. Rutledge's computer was returned to his office on Saturday, January 22, 2000.

Mr. Rackauckas instructed the investigator to analyze a copy of Mr. Rutledge's hard drive for any documents connected to Mr. Rutledge's wife's lawsuit against the county. The investigator met with Mr. Rackauckas on several occasions to show him documents downloaded from the hard drive and to discuss the situation.

In early March 2000, the investigator was requested by management to do a forensic examination of the District Attorney's Office laptop computer that had been assigned to Mr. Rutledge. The laptop's hard drive had been reformatted -- the computer data on the hard drive was not easily discernible. Mr. Rackauckas was informed of the need to send the laptop's hard drive to a computer data retrieval company and Chief Investigator Blankenship approved the \$1,264 cost for the data retrieval service. Mr. Rackauckas was aware that his wife, Kay Rackauckas, a deputy district attorney, on more than one occasion, went to the investigator's office and looked at the reformatted data on the laptop computer.

There was no formal investigation against Mr. Rutledge at the time of the examination of his office-issued computers. The investigator devoted at least 20 hours to the Rutledge computer-related work.

Dissemination of Confidential Letters to Orange County Newspaper Offices

At approximately 11:00 a.m. on April 2, 2001, a senior assistant district attorney gave then Assistant District Attorney Mike Jacobs a Notice of Termination letter with attached documents, and told him to pack up and leave the office.

Earlier that morning, and approximately one week prior to that morning, packets of information concerning Mike Jacobs were dropped off by one or more individuals at three to four newspaper offices located in Orange County.

The documents attached to Mr. Jacobs' April 2, 2000 Notice of Termination letter included a number of confidential letters between the Orange County District Attorney's Office and the California Attorney General's Office related to the handling of certain death penalty cases which Mr. Jacobs had prosecuted at the trial court level.

The packets included four of the same letters that were part of the attachments to the April 2 Notice of Termination: Two letters were stamped "received" by the District Attorney's Office. The packet also contained documents from an early 1980s domestic proceeding that placed Mr. Jacobs in a bad light.

Chief Investigator Blankenship instructed a member of his investigative staff to look into the release of the confidential District Attorney office documents (letters) to the newspapers. A July 20, 2001 memorandum from a district attorney investigator to Chief Blankenship stated, in pertinent part:

“. . . Some of these documents were obviously obtained from a mole inside our office.

“There are many leads which should be investigated to determine the person responsible for the release of these confidential documents. The person responsible must have had the ability to move about the office without raising suspicion, combined with the authority to easily access office documents. . . I would recommend an internal investigation be conducted to determine who released the documents.”

Nothing was done by the District Attorney's Office to follow up on the recommendation to conduct an internal investigation to determine who obtained and released the confidential documents.

Dissemination of Other Confidential Documents to Unauthorized Persons or Entities

The Grand Jury has heard testimony concerning several incidents of unauthorized dissemination of confidential documents or other materials to the press by unidentified employees in the District Attorney's Office, including certain unfiled pleadings in the Arnel case. The Grand Jury has also heard testimony that employee(s) of the District Attorney's Office have gone through other employees' offices to search for, and obtain, documents for dissemination.

FINDINGS

1. Upper management of the District Attorney's Office had the desktop office computers assigned to Mr. Rutledge and Mr. Wade removed and their hard drives examined, without good cause. Mr. Romney's office-issued desktop computer was also removed without good cause.
2. The \$1,386.84 cost for the Rutledge desktop computer duplicate hard drive and the Rutledge laptop hard drive data retrieval, as well as the investigator's time spent on examining Mr. Rutledge's office-issued computers (at least 20 hours) and Mr. Wade's desktop computer were unjustified and a waste of county resources.
3. There is no District Attorney office policy, protocol, or guidelines which set forth the circumstances, and the level of justification (cause) needed for the administration to cause the forensic examination of the hard drives, and other computer storage medium, of office computers assigned to District Attorney employees. (The computer screen advisory constitutes a warning, not a policy or protocol.)
4. An employee of the District Attorney's Office obtained confidential letters between the Attorney General's Office and the District Attorney's Office, which were improperly disseminated to newspapers with the intent of casting a deputy district attorney, who the office intended to terminate, in a bad public light.
5. The District Attorney's Office did not follow through on an investigator's recommendation to conduct an internal investigation to determine who released the confidential documents (AG/DA letters).
6. There has been several instances of confidential District Attorney documents, or other materials, disseminated to the press by unknown employees of the District Attorney's Office, without authorization.
7. Employees of the District Attorney's Office have searched through other employees' offices, personal belongings, and office-issued computers to obtain documents for dissemination.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. The District Attorney's Office should establish a written policy concerning the circumstances, and the level of justification needed, for the examination of employees' office-issued computers, and the protocol to conduct such examinations. The protocol should include the involvement of the subject employee's supervisor, to ensure that the protocol is followed and that any employee's privacy interests are respected. (Findings 1 through 3)
2. District Attorney's Office written policies should be established or updated prohibiting employees going through other employee's offices, belongings, and office-issued computers to obtain confidential documents or materials for dissemination to inappropriate entities or persons without proper authorization; or otherwise disseminating confidential materials to entities or persons. The policy should specify the level of disciplines for inappropriate actions in violation of the policy. (Findings 4, 6, and 7)
3. There should be a formal investigation conducted to ascertain the District Attorney employee or employees who removed from the office confidential letters between the Attorney General's Office and the District Attorney's Office for dissemination to the press in March and April 2001. (Findings 4 and 5)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

**PERSONNEL PRACTICES: DDA KAY RACKAUCKAS RE SUPERVISION,
INFLUENCE ON MANAGEMENT DECISIONS, AND GIVING SUPERVISORY
INSTRUCTIONS**

FACTUAL BACKGROUND

The long-standing District Attorney policy, consistent with Orange County personnel provisions, states:

“No person may be appointed, promoted, reduced, transferred or reassigned to a position in which that person is in the direct line of supervision of a **close relative**; nor shall close relatives have the same immediate supervisor. 'Supervision' includes the assignment of work, evaluation of performance and setting or influencing the pay or granting benefits to the other.” [Emphasis added.]

A spouse, for purposes of County and District Attorney office policy, is a close relative. The county policy on employment of relatives expressly acknowledges that close relatives, working in the same county department, may result in morale problems, inappropriate supervision, conflict of interest, or public criticism.

At the time Mr. Rackauckas assumed office, his spouse, Kay Rackauckas, a Deputy District Attorney (DDA), was assigned to the Sexual Assault unit. In March 1999, Mr. Rackauckas directed the transfer of DDA Kay Rackauckas to the Felony Projects unit. At that time, Felony Projects was located on the same floor as the executive offices of the District Attorney's Office. Effective September 17, 1999, Mr. Rackauckas ordered the transfer of DDA Kay Rackauckas to the Target/Gang unit, with her office located at the Westminster Police Department. DDA Kay Rackauckas was transferred in October 2000 to the Felony Charging unit. In early February 2001, DDA Kay Rackauckas began an approved maternity leave from the District Attorney's Office.

At all times mentioned above, DDA Kay Rackauckas was a senior line deputy (non-management) with no supervisory responsibilities over other prosecutors.

During the first nine months of the Rackauckas administration (prior to DDA Kay Rackauckas' transfer to the Westminster Target/Gang Unit), DDA Kay Rackauckas spent significant time in and around the executive offices of the District Attorney's Office, talking on virtually a daily basis with one or more members of upper management about office policy, personnel issues, and other District Attorney Office matters. Certain senior assistants and the Chief Assistant District Attorney, would speak to her on District Attorney matters as a means to influence decisions made by the District Attorney. DDA Kay Rackauckas in turn would discuss District Attorney Office matters with the senior assistants and the Chief Assistant in an attempt to influence decisions made by upper management. DDA Kay Rackauckas' involvement in office matters ranged from:

- Acting as a sounding board for deputy district attorney complaints on a policy of turning off lights to conserve energy; to

- A campaign to censure Chief Assistant District Attorney Devallis Rutledge for ordering expensive office furniture (she caused an anonymous letter criticizing the furniture to be placed in the District Attorney Office suggestion box and disseminated copies of the letter to senior assistants); to
- Keeping a book on the District Attorney's secretary in an eventual successful effort to get her to change her position (secretly transferred to another department);
- Redrafting a proposal as to the structure of a new unit; and
- Input into decisions as to attorney job transfers, promotions and demotions.

In one particular instance, DDA Kay Rackauckas was instrumental in setting up a special executive meeting (attended by senior assistants and above, with the exception of Chief ADA Devallis Rutledge) on or about January 12, 2000. The meeting was to modify the District Attorney's agreement with Mr. Rutledge as to the status and treatment of Mr. Rutledge during his wife's pending civil lawsuit against the District Attorney's Office (stemming from an incident that took place during the prior administration). DDA Kay Rackauckas attended and participated in this special executive meeting.

DDA Kay Rackauckas made derogatory remarks as to what would happen to the careers of prosecutors she did not like and/or believed were disloyal to Mr. Rackauckas. DDA Kay Rackauckas called two senior assistants "girlie men" for their opposition to Mr. Rackauckas' initial desire to fire deputy district attorneys who had been recently hired under the prior administration and who were still on probation.

DDA Kay Rackauckas' involvement, as above described, was detrimental to office morale and created the widespread perception among prosecutors that she wielded significant power in the office. The primary reasons for Mr. Rackauckas' decision to transfer DDA Kay Rackauckas to a different physical location -- Westminster in September 1999 -- was to remove her from the executive office location, to curb her interaction with upper management and to diffuse the perception that she wielded significant power in the office.

DDA Kay Rackauckas was subject to minimal supervision during her six-month assignment to Felony Projects, and was left, in large part, to her own devices. During this time period, DDA Kay Rackauckas was not subject to the same accountability as that of a similar deputy district attorney with her non-management job classification.

While assigned to Westminster Police Department as part of the Target/Gang Unit, DDA Kay Rackauckas spent a significant portion of time, during normal working hours, discussing and/or working on DDA Stephanie George's campaign for judge against former District Attorney Mike Capizzi. DDA Kay Rackauckas recruited DDA Stephanie George to run against Mr. Capizzi, solicited campaign contributions/loans, and assisted in obtaining endorsements. Many of the same persons including Pat DiCarlo and Gabriel Nassar who supported Mr. Rackauckas' campaign supported DDA Stephanie George's

campaign. Mr. DiCarlo and Mr. Nassar hosted separate fund-raisers for Stephanie George. Mr. Nassar's company loaned Stephanie George's campaign fund \$5,000.

DDA Stephanie George was inexperienced about running a campaign for public office. She relied on others to assist her with the campaign. Stephanie George attended four of her fund-raising events, but did not organize them.

DDA Stephanie George's judicial campaign ran from approximately November 1999 until she won the judicial seat on March 7, 2000. Her second recorded donation was \$1,000 from Pat DiCarlo on November 10, 1999. DDA Kay Rackauckas' office-issued cell phone records show two calls to Stephanie George's district attorney office number during normal business hours (Monday to Friday from 8:00 a.m. to 5:00 p.m.) in June 1999; there were no calls from July 1999 through October 1999. She received nine in November 1999, 13 in December 1999, 14 in January 2000, four in February 2000, and one in March 2000.

DDA Kay Rackauckas' cell phone records show nine calls placed to a Peggi Buff during normal business hours in November 1999, ten in December of 1999, five in January 2000, nine in February 2000, and three between March 6 and March 8, 2000. Peggi Buff acted as Stephanie George's campaign treasurer.

On one occasion, during working hours, DDA Kay Rackauckas went to the Orange County Sheriff's Office to retrieve a fax she had sent on a District Attorney Office fax machine concerning Stephanie George's campaign.

While DDA Kay Rackauckas was assigned to the Westminster Police Department Target/Gang Unit between September 1999 and October 2000 she handled a reduced caseload, approximately three to six filed cases at any given time. The normal caseload for the Westminster Target/Gang prosecutor, subsequent to her rotation, ranged between 12 to 21 filed cases. DDA Kay Rackauckas was subject to minimal supervision during her Westminster Target/Gang assignment. As was the practice for Target/Gang units, she was the sole prosecutor assigned to the Westminster Target/Gang Unit.

During DDA Kay Rackauckas' leave of absence from the District Attorney's Office, she contacted district attorney employees on numerous occasions during normal business hours concerning matters relating to Mr. Rackauckas' 2002 re-election campaign, including telephone contact with Chief Investigator Blankenship and others about securing law enforcement and/or district attorney association endorsements for Mr. Rackauckas.

During DDA Kay Rackauckas' leave of absence, she gave instructions to senior prosecutors on at least two occasions, without Mr. Rackauckas' purported knowledge or authorization.

DDA Kay Rackauckas called Senior Assistant District Attorney Bruce Patterson (immediate supervisor of ADA Mike Jacobs) on March 28, 2001, and requested that he

write a memorandum about ADA Jacobs' management skills. Chief Assistant District Attorney Charles Middleton had made a similar request to Senior Assistant Patterson earlier that day. Senior Assistant Patterson wrote the memo, faxed it to the Rackauckas residence, and the memorandum was included in Mr. Jacobs' April 2, 2001, Notice of Termination packet.

On March 28, 2001, during working hours, DDA Kay Rackauckas phoned a senior deputy district attorney requesting him to research the appropriateness of using county time and resources to engage in political activities as it related to the subject matter of e-mails between DDA Scott Steiner and Mr. Rackauckas' executive secretary concerning Mr. Steiner's campaign for the Orange City Council. The senior deputy district attorney was unable to locate a supervisor to discuss the appropriateness of DDA Kay Rackauckas' request. A short time later, a senior assistant district attorney called the senior deputy and indicated that he/she had received a phone call from DDA Kay Rackauckas on the same subject matter. The senior assistant attorney approved the research and the senior attorney drafted a research memorandum with the subject entitled, Research for Kay Rackauckas.

FINDINGS

1. Mr. Rackauckas' decisions concerning DDA Kay Rackauckas' job rotations violated the County of Orange and the District Attorney's office policies concerning employment of relatives.
2. DDA Kay Rackauckas participated in managerial decisions, especially in the area of personnel, for which she was not entitled as part of her non-management job description. Until DDA Kay Rackauckas was transferred in September 1999 to the Westminster Target/Gang Unit, she spent significant time, almost on a daily basis, in and around the executive offices of the District Attorney's Office.
3. There was a pervasive perception within the District Attorney's Office that DDA Kay Rackauckas wielded significant influence in the District Attorney's Office based on her conduct and on her status as wife of the District Attorney.
4. DDA Kay Rackauckas expended significant time during normal business hours discussing and/or working on the Stephanie George campaign for judge against former District Attorney Mike Capizzi. On occasion, DDA Kay Rackauckas used county equipment to facilitate her involvement in the Stephanie George campaign. County of Orange and District Attorney policy prohibits employees from using county time or county resources (e.g., office equipment) to engage in political activities.
5. DDA Kay Rackauckas was subject to minimal and inadequate supervision from the commencement of the Rackauckas administration until the transfer to the Felony Charging Unit in October 2000.

6. DDA Kay Rackauckas, while on leave of absence, during normal business hours, called district attorney employees on numerous occasions as to Mr. Rackauckas' re-election campaign, including discussing the need and means to obtain endorsements from law enforcement agencies/political associations and the district attorney association.
7. While on her leave of absence, DDA Kay Rackauckas requested or instructed senior prosecutors, at her job classification or higher, to perform tasks.
8. DDA Kay Rackauckas' interaction with district attorney personnel, as described above, had a negative impact on the effective operation of the District Attorney's Office and on office morale.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. If DDA Kay Rackauckas returns to work, she should be assigned to work in a location other than the location of the executive offices. Mr. Rackauckas should remove himself completely from any supervisory decisions concerning DDA Kay Rackauckas. DDA Kay Rackauckas should be subject to the same supervision and accountability as other deputy district attorneys in her job classification. DDA Kay Rackauckas should not give input or otherwise participate in managerial decisions except as would be appropriate for a deputy district attorney of her same job classification who has no family relation to District Attorney Rackauckas. (Findings 1 through 8)
2. As to any circumstance where two or more relatives are employed by the District Attorney's Office within the meaning of county of Orange and District Attorney Office policy for the employment of relatives, the District Attorney's Office should adhere in form and substance to the employment of relatives policy and purposes behind such policy as expressed by County of Orange Personnel Provisions. The Orange County Chief Executive Office (CEO) should monitor the District Attorney's Office to insure that the employment policy of relatives is followed. (Findings 1, 2, 3, 4, 5, 7, and 8)
3. The District Attorney's Office should strictly enforce the County of Orange and District Attorney's Office policies that prohibit county employees from using county time and county resources (e.g. office equipment) to engage in political activities. (Findings 4 and 6)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

TONY RACKAUCKAS FOUNDATION

FACTUAL BACKGROUND

During Mr. Rackauckas' first campaign for district attorney, Mr. Rackauckas discussed the idea of an Orange County District Attorney Advisory Board or Commission with campaign supporters.

In the Fall of 1999/early 2000, Gabriel Nassar and Eugene Abbadessa, two campaign supporters who had hosted two fund-raisers for Mr. Rackauckas' campaign, Tony Rackauckas and others discussed in earnest the idea of having District Attorney Commissioners. It was agreed that a nonprofit corporation would operate as a vehicle for member/commissioner donations to support programs and activities that furthered the objectives of the organization -- assisting youth, mainly by providing guidance and counseling. It was discussed, but not implemented, except for a firearms course put on by one of the commissioners, that commission members could lend expertise to the District Attorney's Office in a variety of areas, such as computer use. It was decided that the nonprofit organization would be called the Tony Rackauckas Foundation. A few early supporters of the Foundation viewed the Foundation as an opportunity to further Mr. Rackauckas' political career.

In the year 2000, and in the early part of 2001, District Attorney personnel expended time and used District Attorney equipment for investigators to perform background checks on many prospective and existing Foundation members; designing and arranging for commissioner identification cards, badges and plaques; preparing for and presenting commissioners with a morning-long orientation training program on July 12, 2000 (lunch was held afterwards at a cost of \$437.90 to the Foundation); and coordination of motivational speeches by a community speaker.

There were many meetings held in the District Attorney's Office regarding the creation and implementation of the Foundation, some attended by Mr. Nassar, Mr. Abbadessa, and District Attorney personnel, and other meetings attended only by District Attorney personnel. There were ongoing discussions as to whether to give law enforcement-size commission badges, with wallets (flashers) to commissioners, or give badges mounted on plaques. Mr. Nassar advocated the distribution of badges in wallets, while District Attorney employees opposed the wallet badges because of the potential for abuse (e.g., showing badges when stopped for traffic tickets as a "get out of jail free card", see Penal Code, Section 146d). Mr. Nassar repeatedly showed to District Attorney employees one or more badges he obtained from different government entity(ies), and on occasion would carry a handgun into the District Attorney's Office, in accordance with his concealed weapons permit. Sometime prior to the July 12, 2000, commissioner orientation meeting, Mr. Rackauckas approved the idea of giving out wallet badges. Fifty advisory commission badges were ordered, which had the seal of the State of the California encircled by the words "District Attorney Orange County," with the word "Commissioner" at the top of the badge and the words "Advisory Commission" at the bottom. Fifty black wallet holders were also ordered. The Foundation paid the total cost

of the badges and wallets, of \$3,508.24, and the badges and wallets were kept in the District Attorney's office. The Foundation was funded by member donations.

Mr. Nassar and Mr. Abbadessa, unbeknownst to Mr. Rackauckas, each obtained a badge and wallet holder directly from the retailer on or about June 14, 2000. They kept such wallet badges for at least a six-month period -- returning the same to Mr. Rackauckas at his request. Although not a commissioner, a badge, mounted on a plaque, was given to Mr. DiCarlo as a gift by Mr. Rackauckas, pursuant to Mr. DiCarlo's request.

Sometime after the orientation meeting, upon advice by members of the District Attorney's office, Mr. Rackauckas changed his mind and it was agreed that badges would only be given to commissioners on plaques, to preclude any possible abuse.

Plaques were designed and ordered by members of the District Attorney's Office and 15 badge plaques, at a cost of \$742.63, were picked up in early January 2001.

As of early 2001, there were approximately 19 commissioners. Badge plaques were given out to commissioners at a celebration dinner held at the Hyatt Newporter on or about January 10, 2001. The dinner cost the Foundation \$1,322.50.

Mr. Nassar and Mr. Abbadessa were the driving forces behind the Foundation, in charge of recruitment of commissioners, obtaining commissioner applications, arranging for the filing of corporate and nonprofit organization paperwork, and paying Foundation expenses. For the most part, Mr. Nassar's and Mr. Abbadessa's decision-making regarding the Foundation was subject to Mr. Rackauckas' input and direction. Mr. Rackauckas approved most, if not all, of the Foundation expenditures, even co-signing a February 22, 2001 check in the sum of \$450 for a February 22, 2001 Foundation business dinner at the Hyatt Newporter, although he was not a signatory on the Foundation bank account -- Mr. Nassar and Mr. Abbadessa were the only signatories.

With legal assistance, Mr. Nassar and Mr. Abbadessa caused to be filed on May 31, 2000, with the Secretary of State, articles of incorporation for the Tony Rackauckas Foundation as a nonprofit, public benefits corporation for charitable purposes to promote social welfare. The May 31, 2000 minutes of the first meeting of the Board of Directors lists Mr. Abbadessa and Mr. Nassar as the only incorporators and directors. The minutes list Eugene Abbadessa as president and chief financial officer and Mr. Nassar as secretary. The listing of Mr. Abbadessa as both president and chief financial officer was in violation of California Corporations Code, Section 5213, subdivision (a).

The Foundation statement as a Domestic Nonprofit Corporation was filed on June 11, 2000, with the Secretary of State. The statement listed Mr. Nassar as CEO and secretary and listed Mr. Abbadessa as chief financial officer. Mr. Nassar and Mr. Abbadessa's office address was listed as the principal executive offices for the Foundation.

A Tony Rackauckas Foundation corporate bank account was opened on or about June 12, 2000, having Mr. Nassar and Mr. Abbadessa as the sole signatories on the account.

The background checks by District Attorney investigators on many of the initial commissioners was deemed necessary by Mr. Rackauckas and other District Attorney's Office upper management. It was contemplated that some of the commissioners could have frequent access to the District Attorney's Office to lend possible technical assistance and that persons associated with the District Attorney's Office should be persons in good standing. Mr. Nassar and Mr. Abbadessa never submitted to background checks. At some point, Mr. Rackauckas changed his mind and did not believe that background checks on all the commissioners were necessary.

Generally, commissioners were asked to donate \$5,000 to become a commissioner. Most commissioners did donate \$5,000 apiece to the Foundation. Several did not donate any money, including Mr. Nassar and Mr. Abbadessa. One commissioner donated two days of firearms training to deputy district attorneys and district attorney investigators, at an estimated value of \$4,800, in lieu of the \$5,000 donation.

A community speaker gave several motivational speeches to youth groups concerning the adverse consequences of crime and was paid a total of \$750 by the Foundation for his services. A portion of the \$750 (a check for \$450) was issued by Mr. Nassar and Mr. Abbadessa based upon a handwritten direction by Mr. Rackauckas, with no invoice.

One of the Foundation members, a doctor, had been involved in the service of removing gang tattoos. Having gang tattoos removed, as one of the Foundation programs, was contemplated by Foundation leadership, but not discussed with the rank and file membership.

Foundation officers were elected at a February 22, 2001 business meeting by Foundation members. Mr. Abbadessa retained the position of president. No directors were elected. The only two directors that had been listed for the Foundation were Mr. Abbadessa and Mr. Nassar, although the by-laws of the Foundation specify three directors. The by-laws also specify that the directors elect the officers of the Foundation, and that the members of the Foundation elect the directors.

Regulations, Orders and Report Re: District Attorney Support of Charitable Organizations

California Code, Section 26500.5 provides that: The District Attorney may sponsor, supervise, or participate in any project or program to improve the administration of justice.

A February 10, 1998 order of the Orange County Board of Supervisors approved the policy of the use of county resources to assist and participate in fund-raising activities of Orange County by nonprofit organizations provided that:

- The money raised using county staff time and county resources would remain in Orange County and directly benefit the charities supported.

- The mission of the organizations supported should be consistent and compatible with the mission of the county agency that uses its resources to support the organization.
- The organizations supported should exist primarily for the purpose of supporting the programs or activities of a given county agency or department.

A county department or county agency must file an annual charitable organization activity plan which sets forth the name of the charity supported, the number of employee hours expended on behalf of the organization, estimated cost to the county in salaries, supplies, and equipment, value of services donated by the organization to the department, and other information.

The District Attorney's Annual Report of Charitable Activities for the Year 2000, signed by Mr. Rackauckas, dated June 20, 2001, sets forth an estimated 59 hours of District Attorney employee time, at an estimated cost of \$2,443 (based on per hour salary calculations), in support of what, as of June 20, 2001, was called the Orange County District Attorney Foundation (previously known as Tony Rackauckas Foundation), \$6,766 in Foundation expenses, \$4,800 for firearms training donated by the Foundation to the District Attorney's Office, and \$58,000 in Foundation member contributions.

Because of time constraints caused by the annual report being long overdue, calculations for staff time expenditures were based on the administrator of the District Attorney's Office contacting persons she had heard were involved in the Foundation. No office-wide e-mails were disseminated, or other means of communication occurred, to ensure that all employees who worked on the Foundation reported their time and use of county resources. The report significantly understates the time that District Attorney personnel expended on the Foundation's behalf. As to at least two employees, the calculations understated the actual hours spent and did not include at least three other members of the District Attorney's office who expended significant time on Foundation matters during office hours, including the District Attorney.

The members of the Foundation commenced the voluntary dissolution of the Tony Rackauckas Foundation in the Fall of 2000 pending an investigation conducted by the Charitable Trust section of the California Attorney General's Office.

FINDINGS

1. The stated objectives of the Tony Rackauckas Foundation were laudatory.
2. The Foundation was poorly organized. Directors and officers were self-appointed or elected contrary to an applicable California Corporations Code statute or the Foundation's own by-laws.
3. The objectives of the Foundation were poorly implemented.
4. Under the circumstances of the creation and operation of the Tony Rackauckas Foundation, the use of significant District Attorney resources, and attaching the name of the elected District Attorney to the Foundation, were ill advised. District

Attorney office resources were wasted, except those expended to obtain firearms training and to coordinate the motivational speeches. Use of District Attorney resources under the circumstances, and the controversy over giving wallet badges to commissioners, caused grave concerns within the District Attorney's office over the appropriateness of the District Attorney's office participation in the Foundation.

5. The District Attorney's Office 2000 Annual Charitable Activities Report submitted to the Board of Supervisors was inaccurate. Hours expended by District Attorney employees and office resources used, in support of the Foundation were not documented at the time.
6. The initial decision to give out badges in wallets to commissioners exhibited poor judgment.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. Before the District Attorney's office in any way lends its name to a foundation, advisory commission, or other nonprofit organization, and expends county resources in support of such an organization, the organization should have its legal structure firmly in place. The organizers should be experienced and competent in nonprofit organization matters, and the organization's purposes and the District Attorney's participation should clearly be within the parameters of the February 10, 1998 Board of Supervisors' order concerning participation in charitable organizations. (Findings 1 through 4)
2. As to any nonprofit organization, or other organization, District Attorney Commissioner [] wallet badges should not be given to members of the organization because of the possibility of abuse. The District Attorney's Office should be cognizant of Penal Code, Section 146d which provides that a person who gives another a membership card, badge, or device where it can be reasonably inferred by the recipient, that display of the badge, card, or device would have the result that the laws will be enforced less rigorously than would otherwise be the case, is guilty of a misdemeanor. (Finding 6)
3. File an amended Charitable Activities Report for the year 2000 which accurately reflects the hours expended by district attorney personnel and accurately estimates the total cost to the county, including the use of equipment and costs of supplies. As to any future District Attorney office participation in a charitable organization, employee hours, and resources used, should be documented accurately at the time. (Finding 5)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

INVESTIGATION INVOLVING PATRICK DI CARLO – APRIL 2000

FACTUAL BACKGROUND

While Mr. Rackauckas was visiting Patrick DiCarlo at his Newport Beach residence on or between March 25 and April 1, 2000, Mr. DiCarlo had Mr. Rackauckas listen to a voice mail message which purported to threaten Mr. DiCarlo over money involved in business dealings. Mr. Rackauckas decided that the Organized Crime Unit would investigate the alleged extortion threats and an interview was set for Mr. DiCarlo at the Organized Crime Unit for Monday, April 3, 2000. Before making the decision to assign the case to the Organized Crime Unit, Mr. Rackauckas was informed by a member of the Organized Crime Unit that the unit could investigate the matter in an unbiased manner.

At the time Mr. Rackauckas made the decision to assign the extortion investigation to the Organized Crime Unit, he was aware that the Organized Crime Unit and Mr. DiCarlo had a confrontational relationship, off and on, for approximately 20 years. Mr. DiCarlo had repeatedly told Mr. Rackauckas that members of the Organized Crime Unit over the years had harassed him (e.g. surveillances, intimidating behavior towards him at restaurants, derogatory comments to him at restaurants and bars, etc.). Further, during the 1997-1998 campaign for District Attorney, the 1998 post-election transition period, and when Mr. Rackauckas first took office, various employees of the District Attorney's Office, including the supervisor of the Organized Crime Unit, cautioned Mr. Rackauckas about Mr. DiCarlo.

Mr. DiCarlo's April 3, 2000 interview was audio taped by Organized Crime investigators, without Mr. DiCarlo's knowledge. Mr. DiCarlo's interview was not handled as a normal law enforcement victim interview in that the interview was covertly taped and the lead investigator asked numerous penetrating questions concerning Mr. DiCarlo's business background and his knowledge of securities law. The interview elicited, and an April 6, 2000 memorandum concerning the interview stated, that two individuals were threatening Mr. DiCarlo. There was a concern that one of the individuals may be connected to traditional organized crime. The other individual, although not discussed in the interview, or reported in the memorandum, had made a significant donation to the Rackauckas 1998 campaign for District Attorney.

As of the time of the April 3, 2000 interview, Mr. Rackauckas and Mr. DiCarlo were close personal friends. They met during the District Attorney campaign and Mr. DiCarlo hosted a fund-raising dinner for Mr. Rackauckas. Agincourt, a company associated with Mr. DiCarlo, as well as a few of Mr. DiCarlo's family members, but not Mr. DiCarlo himself, made significant contributions to the Rackauckas campaign. In January 1999, Mr. DiCarlo hosted and paid for a catered dinner that celebrated Mr. Rackauckas' taking office.

Mr. Rackauckas and Mr. DiCarlo had gone fishing together on numerous occasions, Mr. Rackauckas had given Mr. DiCarlo gifts, in part for going fishing on Mr. DiCarlo's boat, and Mr. Rackauckas had made numerous social visits to Mr. DiCarlo's residence. From

the time that Mr. Rackauckas took office, up through the time of the interview, Mr. Rackauckas and Mr. DiCarlo would talk on the telephone several times a week, and go to lunch together, anywhere from once a week to once a month.

Within a couple of days of the April 3, 2000 interview, Mr. DiCarlo complained to Mr. Rackauckas that he was treated more like a suspect than a victim in the interview. On April 5, 2000, Mr. Rackauckas ordered the Organized Crime Unit investigators pulled off the case immediately without consulting with any of the Organized Crime investigators as to the nature of the interview. As of April 5, 2000, Mr. Rackauckas and upper management of the Bureau of Investigations of the District Attorney's Office intended to pursue the matter further with another investigator, assigned outside of the Organized Crime Unit. However, in order not to ruffle feathers, the Organized Crime investigators were led to believe by Bureau of Investigation's Assistant Chief Mike Clesceri, with Mr. Rackauckas' approval, that the investigation was completely shut down. As of that time, the lead investigator on the DiCarlo case, who had experience in fraud investigations, believed that Mr. DiCarlo was involved in possible criminal business dealings and that the investigation had been shut down because of Mr. DiCarlo's relationship with Mr. Rackauckas.

The lead investigator was requested to prepare a memorandum about the status of the investigation and set forth any possible involvement of Mr. DiCarlo in criminal activities. Two members of upper management in the Bureau of Investigation and Mr. Rackauckas read the April 6, 2000 18-page memorandum, and did not believe that the memorandum showed that Mr. DiCarlo was involved in any criminal activity.

On April 6, 2000, Assistant Chief Clesceri, Assistant Chief Carre, and District Attorney Rackauckas met with an experienced District Attorney investigator, assigned outside of the Organized Crime Unit, and tasked him with finding out whether or not one of the alleged extortionists was connected to traditional organized crime. It was determined within one day that the person did not have any influence in any organized crime family. Mr. Rackauckas told Mr. DiCarlo of this circumstance and Mr. DiCarlo informed Mr. Rackauckas that he did not want the case pursued any further. The District Attorney's Office did not pursue the case after April 7, 2000, neither as to Mr. DiCarlo being an alleged victim of extortion, nor as a possible suspect concerning illegal business dealings.

Within a week of the April 3, 2000 interview, the supervisor in charge of the Organized Crime Unit ordered the lead investigator, who had been assigned to the DiCarlo case, to give him the complete file. On or about April 10, 2000, Chief Investigator Blankenship, believing that the Organized Crime Unit was still investigating DiCarlo after the shut-down order, told the supervisor of the Organized Crime Unit, "What don't you [expletive deleted] understand about shutting down this [expletive deleted] investigation?" On April 18, 2000 the supervising investigator of organized crime was told of his transfer from the Organized Crime Unit, and within a few days of the notification, this supervisor, on his own initiative, destroyed what he believed was the original Organized Crime Unit DiCarlo file, including the covert audio tape of the April 3, 2000 interview. Meanwhile, upper management of the District Attorney Office was trying to get a copy of the tape

recording of the April 3, 2000 interview to see how the interview, in fact, was conducted. Management never obtained a copy of the audio tape.

Mr. Rackauckas gave Mr. DiCarlo a semiautomatic Glock handgun, valued at approximately \$600, for his April 15th birthday. On April 24, 2000, Mr. Rackauckas and Mr. DiCarlo documented the transfer of ownership at a gun dealership. Mr. DiCarlo later received a concealed weapons permit for the semiautomatic gun. With the permit, Mr. DiCarlo carried a handgun with him, concerned for his safety, and his family's safety, based mostly on his belief of the possibility of a threat of violence posed from the District Attorney Organized Crime Unit.

Mr. DiCarlo informed Mr. Rackauckas of the potential of substantial business losses resulting from a District Attorney investigator speaking to one of Mr. DiCarlo's business associates. On April 25, 2000, Mr. Rackauckas and Assistant Chief Investigator Michael Clesceri went to Mr. DiCarlo's office to meet with the business associate and to investigate whether the business associate had been contacted by an Organized Crime Unit investigator after being told to shut down the case. The business associate was relieved to hear from Mr. Rackauckas personally that the District Attorney Office was not investigating Mr. DiCarlo.

Newspaper articles concerning the alleged mishandling of the DiCarlo case were printed in February 2001. At such time, the Orange County District Attorney Office made a criminal referral to the Attorney General's office of the State of California as to possible unlawful destruction of District Attorney files (DiCarlo files) by one or more former Organized Crime Unit investigators and the possible theft of District Attorney property (DiCarlo file). In February 2001, the District Attorney Office also referred the entire DiCarlo matter to the Attorney General's office for its review. The Attorney General's office obtained the original District Attorney office DiCarlo file and audio tape of the April 3, 2000 DiCarlo interview through a representative of the investigator who conducted the April 3 interview. The audio tape and District Attorney file had not been turned over to the administration of the District Attorney Office as the administration had requested, because the investigator who conducted the investigation did not trust what the Rackauckas administration would do with the file, concerned that the file might be destroyed. The Attorney General's office did not file criminal charges against the District Attorney Office investigator or against anyone associated with the underlying DiCarlo case.

FINDINGS

1. The District Attorney Office should not have investigated the extortion case (victim Mr. DiCarlo) nor assigned it to the Organized Crime Unit because of Mr. Rackauckas' close personal friendship with Mr. DiCarlo, the DiCarlo family involvement in the District Attorney campaign, and the rancorous history between Mr. DiCarlo and the Organized Crime Unit. The case should have been submitted to the Newport Beach Police Department (original jurisdiction) or another agency such as the State Attorney General, the FBI, or the U.S. Attorney.

2. At the time that the lead investigator focused his suspicions upon Mr. DiCarlo, the case should have been immediately referred to another agency because of the circumstances referred to in Finding 1.
3. Upper management's misleading statements to members of the Organized Crime Unit as to closing down the investigation fueled certain members of the Organized Crime Unit's distrust in the manner in which the administration would handle the DiCarlo case.
4. Mr. Rackauckas gave, or assisted in the recording of a transfer of, a semiautomatic handgun to Mr. DiCarlo around the time that the Organized Crime Unit was investigating extortion threats and whether Mr. DiCarlo was engaged in criminal conduct.
5. Mr. Rackauckas and Mr. Clesceri met with Mr. DiCarlo's business associate on April 25, 2000, in part to investigate whether an Organized Crime investigator had improperly continued to investigate the DiCarlo matter after being taken off the case.
6. The inactive and active Organized Crime Unit files were poorly organized and not electronically indexed on a computer database as of April 2000.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. Where Mr. Rackauckas or any other employee of the District Attorney's Office has a personal relationship to a victim, suspect, or witness in a case, such District Attorney Office employee should insulate himself from any decision making or participation in the case. If this cannot be accomplished, the matter should be referred to an outside agency, and if the circumstances warrant it, the office should recuse itself. (Findings 1 and 2)
2. Upper management should communicate fully and accurately with investigators who are assigned to cases, the reason(s) for investigator reassignment, termination of an investigation, or other significant decisions concerning the handling of cases. Significant decisions as to handling and assignment of cases should not be made solely on the basis of complaints about investigators from persons outside the District Attorney's Office; verification of complaints should be obtained. (Finding 3)
3. Investigations of possible misconduct by District Attorney employees should be handled pursuant to the normal protocol for Internal Affairs investigations, not by the District Attorney and the Assistant Chief of Investigations. (Finding 5)

4. Mr. Rackauckas, or any employee of the District Attorney's Office, should not give or transfer a firearm under circumstances similar to the transfer of the Glock handgun to Mr. DiCarlo. Any transfer of a handgun by a District Attorney employee should be done with the utmost circumspection and caution. (Finding 4)
5. An inventory of inactive and active Organized Crime Unit files should be taken, and the location of the files and other identifying information should be electronically indexed and periodically updated. (Finding 6)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

ARNEL MANAGEMENT CONSUMER FRAUD CASE

FACTUAL BACKGROUND

Arnel Management Company (Arnel) operated apartment buildings in Orange County and Los Angeles County for a number of years, including between 1996 and 2001. The District Attorney's Office commenced a consumer fraud investigation into the purported wrongful retention of apartment tenants' security deposits by Arnel in late 1999. The District Attorney's Office ascertained that Arnel had been a defendant in excess of 200 Small Claim filings in the County of Orange between 1996 and 1999. George Argyros was the president and owner of Arnel.

During the investigative stage, attorney Leonard Hampel commenced the representation of Arnel, later, in the spring of 2000, attorney Al Stokke became involved in the case, as Mr. Hampel's co-counsel.

Deputy District Attorney Wendy Brough, an experienced consumer fraud attorney, met with Mr. Hampel on March 30, 2000, to discuss the case. On June 22, 2000, there was a meeting between Assistant District Attorney Bob Gannon (supervisor of Consumer Fraud Unit), DDA Brough, a forensic auditor, Mr. Hampel, Mr. Stokke, and others to discuss the case. Issues concerning civil penalties, restitution to tenants for wrongfully withheld security deposits, injunctive relief, and naming George Argyros as an individual defendant were discussed. DDA Brough and Mr. Stokke had several conversations concerning whether or not Mr. Argyros should be named as a defendant during this time period. Mr. Stokke contending that it was inappropriate and DDA Brough contending that he should be named because of his purported instrumental role in Arnel and its day-to-day operations. In a 15-page letter dated July 18, 2000, and pursuant to an enclosed Proposed Injunction and Final Judgment Pursuant to Stipulation, DDA Brough offered, on behalf of the DA's office, to settle the case for \$2,840,100 in penalties, \$2,565,860 in restitution to be placed in a restitution fund, administered by an independent administrator, and extensive injunctive relief concerning the manner in which security deposits would be refunded or retained in the future by Arnel. These figures were based on the DA's office calculation that approximately 11,000 tenants over a four-year period had been adversely impacted by Arnel's security deposit policies and practices. Arnel's attorneys were informed that if the case was settled before the filing of a complaint, Mr. Argyros would not be named as an individual defendant in the complaint/stipulated final judgment, but would be bound as an individual by the injunctive relief provisions. Arnel's attorneys were further informed that if the case was litigated, Mr. Argyros would be named as a defendant because of his purported involvement in Arnel's operations.⁴

In a September 18, 2000 letter, Mr. Hampel responded to the DA's office offer of settlement, contending that the DA's office assertions of violations by Arnel lacked factual and legal support, and the penalties sought in the settlement were far in excess of

⁴ The District Attorney's Office successor in handling the Arnel consumer fraud case, the California Attorney General's Office, had the same position as to the circumstances when Mr. Argyros would be named as a defendant, or just bound by the injunctive relief provisions.

those likely to be recovered. The 13-page letter contained factual and legal arguments in support of Arnel's position.

Mr. Hampel, Mr. Stokke, ADA Gannon, DDA Brough, and others met again on September 19, 2000, to discuss the case -- no progress toward settlement was made.

On or about September 29, DDA Brough informed Arnel's attorneys that they must submit a counteroffer in order to continue settlement discussions. Mr. Stokke responded that Arnel Management was not interested in submitting a counteroffer. It was agreed that the attorneys for Arnel would accept service of the consumer fraud case expected to be filed against Arnel and George Argyros.

In the fall of 2000, Mr. Rackauckas and Mr. Stokke had one or more meetings to discuss the case. Neither DDA Brough nor ADA Gannon was present at the fall 2000 meeting(s). In a series of three or four discussions between Mr. Rackauckas and Mr. Stokke which occurred prior to February 1, 2001, Mr. Rackauckas informed Mr. Stokke that he would review the case, look into Mr. Stokke's allegations as to improper handling of the investigation, and would consider whether or not Mr. Argyros should be named as a defendant. Mr. Rackauckas did review pertinent case documents and told Mr. Stokke, prior to February 1, 2001, of his decision that Mr. Argyros would not be named as an individual defendant. Mr. Rackauckas' decision to not name Mr. Argyros as an individual defendant was contrary to the recommendation of DDA Brough, ADA Gannon, and Senior ADA Bruce Patterson, the immediate supervisor of ADA Gannon.

As of February 1, 2001, ADA Gannon believed he had the authority to file the civil complaint case against Arnel Management, as long as George Argyros was not named as an individual defendant. His belief was based on his seven-plus years of experience in the Consumer and Environmental Fraud Unit, and recent conversation(s) with Mr. Rackauckas, wherein Mr. Rackauckas told him that he (Gannon) had the evidence, had a case, but he could only go against Arnel Management as a defendant. ADA Gannon authorized the February 1, 2001 filing of a civil consumer fraud complaint against Arnel. Mr. Rackauckas was told of the filing of the complaint within approximately one hour of the occurrence. Mr. Rackauckas told Mr. Gannon to try to get the complaint withdrawn because Mr. Rackauckas had told defense counsel that he would meet with them for further negotiations before filing. ADA Gannon and DDA Brough rushed to the court clerk's office and were able to get the complaint withdrawn.

Unbeknownst to DDA Brough and ADA Gannon at the time, two meetings were held in Mr. Rackauckas' office, one on February 6, 2001, and the second on February 8, 2001, with Senior ADA Patterson, Mr. Rackauckas, Mr. Hampel and Mr. Stokke in attendance to negotiate terms of settlement. Except for executive management oversight roles, neither Mr. Rackauckas nor Mr. Patterson had experience as government lawyers in consumer fraud cases.

Based on discussions which took place in the February 6 and February 8 meetings, Arnel's attorneys contended that it was agreed between the parties that George Argyros

would not be named as a defendant, there would be no injunctive relief, \$100,000 in investigative costs were to be paid to the District Attorney's office by Arnel, no fines or penalties would be paid, and restitution would be paid for any inappropriate retention of security deposits as determined by an independent arbitrator over a four-year statute of limitation time period.

On February 9, 2001, Mr. Hampel caused the hand delivery of a Proposed Judgment to Senior ADA Bruce Patterson that embodied the above-described terms of settlement.

The District Attorney's office's position was that it was agreed or understood at the February meetings that full restitution would be paid over a four-year statute of limitation time period as determined by an independent arbitrator, no fines or penalties would be paid; \$100,000 in investigative costs would be paid by Arnel, George Argyros would not be named as a defendant, and although the term "injunction" would not be used in a Stipulated Final Judgment, some sort of court order restricting future behavior of Arnel would be part of the final judgment.

In early February 2001, certain unfiled, nonpublic District Attorney's office pleadings concerning the Arnel case were leaked to the press. Based on the leaked documents and other information, several articles were published by The Orange County Register during the 2001 time period of the February 6 and February 8 meetings which placed Arnel Management's purported security deposit practices in a poor light. A February 7, 2001 article stated that Arnel Management Company had donated \$1,000 to Mr. Rackauckas' district attorney campaign. Apparently, because of the press articles, the District Attorney's office received hundreds of additional complaints from Orange County residents about Arnel.

In a February 28, 2001 letter from Senior Assistant Patterson to Mr. Hampel, Mr. Patterson rejected Arnel's February 9, 2001 Stipulated Judgment, indicating that the District Attorney's Office had received over 300 telephone calls from past Arnel tenants and employees which included reports of additional serious violations, and enclosed his own Proposed Stipulated Judgment. Patterson's February 28 Proposed Final Judgment contained extensive injunction provisions as to future conduct of Arnel in regards to the handling of security deposits, provided for a \$3 million restitution fund to be administered by an independent administrator, and as to any unused monies (not paid to the tenants) in the restitution fund, the same would revert to the District Attorney's office in the form of a *cy pres*⁵ trust fund to be used for the investigation and prosecution of civil and criminal consumer protection actions brought by the Orange County District Attorney's Office.

In response to a suggestion made to the District Attorney's Office by Senior Assistant Attorney General Gary Schons in late February 2001, that the California Attorney General's Office assume the Arnel consumer fraud case, the case was turned over to the Attorney General's Office in late April 2001.

⁵ Black's Law Dictionary, Rev. 7th Ed., defines the rule of *cy pres* as "a rule for the construction of instruments in equity, by which the intention of the party is carried out as *near as possible*. . . ."

The Attorney General's Office commissioned a study by the certified public accountant firm Deloitte & Touche, paid by Arnel Management Company, to analyze the aggregate security deposits and the tenant turn-over costs incurred by Arnel.

A Stipulation for Entry of Final Judgment and Permanent Injunction, and a Stipulated Final Judgment, entered into between the Attorney General's Office and Arnel, were filed on September 28, 2001. The restitution fund figure of \$1,072,363 was based, on large part, on the calculations of the Deloitte & Touche report -- approximately 9,000 overcharged tenants, at a set overcharged amount. The Stipulated Judgment also provided for \$200,000 in civil penalties plus \$150,000 to be paid by Arnel for costs of investigation. Further, the first \$100,000 of the costs of the administration of the restitution fund by an independent administrator to be borne by Arnel. Mr. Stokke was not one of the Arnel attorneys who negotiated with the Attorney General's Office.

Arnel Management Company was the only named defendant in the Stipulated Final Judgment part. As part of the judgment, Arnel (by definition in the Stipulated Final Judgment included successor corporations or entities, directors, and officers of Arnel) was permanently enjoined from engaging in 12 categories of activities in relationship to the handling of security deposits.

Relationship of DA Rackauckas to Argyros and Arnel Counsel

Mr. Alan Stokke contributed in excess of \$1,000 to Mr. Rackauckas' first campaign for district attorney. He solicited other attorneys to donate money to Mr. Rackauckas' campaign and co-hosted a fund-raiser at the Balboa Bay Club that raised in excess of \$30,000 for the campaign.

Mr. Argyros and Mr. Rackauckas know each other only as passing acquaintances, attending certain common functions or events. Mr. Rackauckas did not travel to or from Washington, D.C. for President Bush's inauguration with Mr. Argyros. They had one brief chance encounter in Washington, D.C. during the inauguration period.

Mr. Rackauckas was one of the spokespersons in opposition to Measure F on the March 7, 2000 ballot. Mr. Rackauckas' concerns about Measure F related to the adverse impact the passage of Measure F would have on the building of new jails. Measure F would also have an adverse impact on the design or construction of new hazardous waste landfills and civilian airports in the County of Orange. Committee campaign statements, Forms 460, show hundreds of thousands of dollars was loaned to a No on F Ballot Measure Committee by George Argyros in the first six months of 2000.

Mr. Rackauckas' campaign statement, Form 490, shows that Arnel Management Company Commercial contributed \$1,000 to the Rackauckas campaign for district attorney during the May 17, 1998 to June 30, 1998 reporting period.

FINDINGS

1. Mr. Rackauckas and Mr. Patterson negotiated terms of settlement in the Arnel case, a highly complex case in a very specialized area of the law, without the presence of District Attorney's office attorneys and staff who possessed the necessary expertise in the area.
2. At the time of the settlement negotiations between Mr. Rackauckas, Mr. Patterson, Mr. Hampel and Mr. Stokke, District Attorney office prosecutors, who were handling the case and had the required expertise in consumer fraud, were not informed of the negotiations.
3. There were stark contrasting views as to what had been orally agreed to during the February 6 and February 8 meetings as to injunctive relief between Mr. Rackauckas and Mr. Patterson on one hand, and Arnel's attorneys on the other.
4. Oral agreements between prosecutors and defense counsel are a normal part of the practice in Orange County. For the integrity and efficient running of the justice system, prosecution and defense counsel must abide by their oral agreements.
5. At the time that Mr. Rackauckas and Mr. Patterson took over the settlement negotiations of the Arnel case, Mr. Rackauckas did not pay proper attention to a possible appearance of impropriety based on Arnel Management Company contributing \$1,000 to his campaign, Rackauckas being one of the ballot spokespersons in opposition to Measure F, and Mr. Stokke being a significant campaign contributor as well as co-hosting a very lucrative fund-raiser for Mr. Rackauckas.
6. It is the practice of the Orange County District Attorney's Office and the California Attorney General's Office to obtain injunctive relief as part of a settlement in a consumer fraud case.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. In complex cases, in highly specialized areas of the law, a line prosecutor who is an expert in the area of law and is intimately familiar with the facts of the case should be present and participate in settlement negotiations. (Findings 1, 3, 4, and 6)
2. The deputy handling the case and his or her immediate supervisor should be informed, at the time, when upper management of the District Attorney's office takes over a case for settlement purposes. (Finding 2)

3. Mr. Rackauckas should be very sensitive to appearances of impropriety and take necessary steps to reasonably alleviate concerns in such area as to direct participation in cases, including, but not limited to, a decision to insulate himself from decision-making in particular cases where the circumstances warrant such insulation. (Finding 5)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

SELECTED CRIMINAL CASES -- DISPOSITIONS

In addition to the Arnel Management case and the DiCarlo investigation, the Grand Jury heard testimony on many additional cases. Several of the cases were appropriately handled and are not delineated in this report. However, three cases, set forth hereinafter, serve as the basis for Grand Jury recommendations.

FACTUAL BACKGROUND

Case No. 1 -- Domestic Violence

As a result of a 9-1-1 call, a man was arrested in October 2000 on three misdemeanor charges of spousal abuse and child endangerment (Penal Code, Section 273.5(a), and Penal Code, Section 273(a)(b), and Penal Code, Section 243(e)(1)). The photographs of the victim show bruises, including a goose egg bump on her forehead from the two head butts applied by the victim's spouse. The defendant was on probation for a driving under the influence conviction (Vehicle Code, Section 23152(a). When the officer responded to the 9-1-1 call, the defendant appeared slightly intoxicated from alcohol.

The protocol for a domestic violence case includes the assignment of the case to a deputy district attorney who specializes in such cases. The progress of the case is monitored by the assigned deputy district attorney along with the judge who is assigned to the domestic violence calendar. In this case, the deputy district attorney recommended a 60-day jail sentence as a term of probation. The judge indicated a 30-day jail sentence and a four-year probationary time period.

Sometime in December 2000, a friend and campaign contributor of Mr. Rackauckas made an appointment to see Mr. Rackauckas with the victim. The victim recanted her charge of domestic violence and implored Mr. Rackauckas to have the case dismissed. By the end of the meeting, Mr. Rackauckas had agreed to dismiss the charges, if the defendant did not violate any laws for a certain time period. Anger management classes for the defendant were also discussed.

Mr. Rackauckas did not obtain any input from the line deputy who was handling the case or any other prosecutor prior to his decision to dismiss the case. Further, he did not inform, or cause to be informed, the line deputy or the line deputy's supervisor of his decision. The friend and campaign supporter of Mr. Rackauckas told the line deputy of Mr. Rackauckas' decision. The decision to dismiss the case was confirmed by the line deputy's supervisor in a conversation with Mr. Rackauckas.

It was placed on the record that the case would be dismissed, after the defendant attended a 10-week anger management class, and as long as there were no further law violations for six months.

Frequently in domestic violence cases the victims recant, citing fear of spousal retaliation and loss of income, and/or the victims want the charges dropped. It is the practice of the district attorney's office to continue the prosecution of domestic violence cases where the victims recant -- a recanting victim often strengthens a prosecutor's case.

Case No. 2 -- Auto Burglaries

In late 1998 and early 1999, two men in their early 20's, committed 16 felony crimes, based on 16 separate incidents. The crimes consisted of 11 car burglaries, four grand thefts, and one school break-in (commercial burglary). Approximately \$17,500 in losses was sustained in property stolen or damaged. The defendants admitted their criminal conduct to the police.

One defendant was on a medical leave from a service academy at the time of the crimes and a felony conviction would terminate his status at the service academy. This defendant did not have a criminal record. A well-known Orange County attorney and campaign supporter of Mr. Rackauckas represented this defendant for a significant portion of the case.

The District Attorney's Office, at some point, considered a two-year state prison offer.

In June 1999, pursuant to a request by the predecessor attorney for the service academy defendant, five senior members of the District Attorney's Office, including the Assistant District Attorney supervisor overseeing the case, and a Senior Assistant District Attorney, reviewed the case and concluded that no special considerations were going to be given to the defendant because there were too many instances of felony conduct. In September 1999, the same supervising Assistant District Attorney and Senior Assistant District Attorney again discussed the case and again concluded that no special deals would be proffered and that the case would be handled like any other.

Sometime prior to the end of 1999, the prominent defense attorney met with Mr. Rackauckas to discuss the case. Subsequent to the meeting, Mr. Rackauckas obtained the file for review. At Mr. Rackauckas' direction, Chief Assistant District Attorney Devallis Rutledge took over the settlement negotiations with the defense attorney. Mr. Rutledge verbally agreed that the defendant could plead guilty to one count of a non-moral turpitude misdemeanor, pay restitution in the amount of out-of-pocket losses to the victims, probation could be terminated upon payment of restitution, and the 16 felony charges would be dismissed. The deputy(ies) handling the case and the senior attorneys who had earlier rejected the defense entreaties for special consideration, were not consulted by Mr. Rutledge, nor were they told of the disposition until the defense attorney related the terms after Mr. Rutledge left the District Attorney's Office, sometime after January 14, 2000.

For approximately six months after Mr. Rutledge's departure, several senior members of the District Attorney's Office wrestled with the question of whether to abide by the verbal agreement as outlined by the defense attorney or take a position that the defendant must plead to a more serious crime, with more serious consequences, in keeping with their position of the case's seriousness. No one at the District Attorney's Office checked with Mr. Rutledge to verify the accuracy of the terms of the proposed disposition because of the acrimony surrounding Mr. Rutledge's departure from the District Attorney's Office. The senior assistant district attorney, in direct supervision of the case, decided to abide by

the disposition related by the defense attorney because of the need for the District Attorney's Office to live up to its verbal agreements. The same disposition was offered to the co-defendant.

The disposition in the case was entered into on or about September 2000; the felony counts were dismissed and a plea was entered on one misdemeanor charge. By the end of December 2000, probation as to the service academy defendant had been terminated upon payment of \$1,896.38 in restitution, his guilty plea was withdrawn, and the case was dismissed.

Case No. 3 -- Misdemeanor Hit and Run

A deputy district attorney was the victim in a hit and run accident when his/her car was struck in February 2001, while parked in a parking lot. A bystander took down the personalized license plate of a white Mercedes and gave it to the victim. The damage to the victim's car was \$1,300.00 and the cost of the rental car was \$219.13. When initially questioned by the police about the incident, the defendant indicated that he did not recall being in the area of the accident. He later acknowledged that he was in the parking lot and recalled bumping the car. A misdemeanor hit and run case was filed by the Orange County District Attorney's Office.

A senior assistant district attorney contacted the California Attorney General's Office about a possible conflict of interest. The defendant was a father of prominent persons in the Orange County legal community, and a deputy district attorney was the victim. The senior assistant was told that this case did not require that it be taken over by the Attorney General's Office.

The victim deputy district attorney wanted the case to be heard in court, and was not interested in a "civil compromise." A "civil compromise" consists of a criminal case being dismissed upon the payment of restitution to the victim. The practice of the District Attorney's Office, as required by Penal Code, Sections 1377 and 1378, is to enter into "civil compromises" only when approved by the victim. The standard offer in a property damage only, vehicle hit-and-run case is three years informal probation and restitution. Depending upon the circumstances of the individual case, a 90-day driver's license restriction and 10 to 20 hours of community service can also be imposed. The deputy, who issued the criminal complaint, recommended a sentence of three years informal probation, a fine, and restitution.

A senior assistant district attorney spoke to the victim deputy district attorney on two occasions and asked the DDA to consider a "civil compromise" because of the defendant's age (over 70 years old). The victim eventually agreed to the "civil compromise" because of a concern that the DDA might face adverse employment consequences if he/she did not agree, and the DDA did not want to cause any problems for the senior assistant district attorney, whom he/she respected.

The victim deputy district attorney was paid \$69.13 in restitution for his/her out-of-pocket expenses, which consisted of a portion of the car rental fee that was not covered by her insurance, and the case was dismissed in April 2001 as a “civil compromise.” Neither the senior assistant district attorney, nor any other district attorney’s office employee documented the reason for the civil compromise in the case file.

FINDINGS

1. Mr. Rackauckas agreed to dismiss a domestic violence case without consulting with the line deputy, or the line deputy's supervisor, and did not inform these individuals of his decision to dismiss. Mr. Rackauckas did not document his decision to dismiss, or his reasons for such decision, in the district attorney case file. Mr. Rackauckas’ friend and campaign supporter informed the line deputy of Mr. Rackauckas’ decision. The dismissal of the domestic violence case was inconsistent with the standard practice of the District Attorney's Office in similar domestic violence cases.
2. There was an appearance of impropriety surrounding Mr. Rackauckas' decision to dismiss the domestic violence because of the fact the case was dismissed in relationship to normal practice in similar cases, the decision to dismiss was made at a meeting attended by the victim and a campaign supporter/friend, and in the manner in which Mr. Rackauckas' decision was conveyed to the line deputy.
3. Then Chief Assistant Rutledge agreed to a misdemeanor disposition in a 16-count felony (auto burglaries, etc.) case without consulting with the deputy(ies) handling the case, or any of the managers below him in the chain of command, who had previously rejected defense's entreaties for special consideration. Mr. Rutledge did not inform these district attorney employees of his decision. Mr. Rutledge did not document the disposition agreement, nor the reasons for the disposition, in the district attorney case file. Although senior management questioned the appropriateness of the disposition after Mr. Rutledge's last day at the District Attorney's Office (on or about January 14, 2000), no one at the District Attorney's Office contacted Mr. Rutledge to verify the terms of the disposition.
4. The terms of the misdemeanor disposition in the 16-count felony case were significantly less, as to the nature of the charges pled to, and the degree of punishment, as compared to similar multiple count felony cases.
5. The defense attorney, who discussed settlement with Mr. Rackauckas, and negotiated terms of settlement with Mr. Rutledge, contributed in excess of \$1,000 to Mr. Rackauckas' initial district attorney campaign and co-hosted a fund-raiser for Mr. Rackauckas. The defense counsel did not act improperly in the matter in which he sought the best possible terms of disposition for his client.

6. It is proper for a prosecutor to consider as one factor, out of many, the impact of terms of a disposition on a person's career.
7. The senior assistant district attorney's request that a victim deputy district attorney agree to a "civil compromise," in a standard hit and run case, influenced the victim deputy district attorney to accept the "civil compromise" where he/she otherwise would not have done so. The senior assistant district attorney did not document his/her reasons for wanting a "civil compromise" in the district attorney office case file. The immediate family of the defendant included prominent members of the Orange County legal community.
8. A standard offer in a vehicle, property damage only, hit and run case, at a minimum, is three years probation and restitution. A "civil compromise" disposition under circumstances of the particular hit and run case does not conform to the standard practices of the District Attorney's Office in similar cases.

For a complete list of findings with required and requested agency responses, see Appendix A, List 1.

RECOMMENDATIONS

1. When senior management (senior assistant and above) of the District Attorney's Office agrees to a disposition in a criminal case, a final decision should not be made without consulting with the trial deputy handling the case or the appropriate supervisor; the disposition and reasons for the disposition, especially if the disposition is less than the standard practice, should be documented at the time in the district attorney case file; and the senior management should assure that the disposition is communicated as soon as possible to the affected line deputy and/or line deputy's supervisor. (Findings 1, 3, 4, 6, 7, and 8)
2. Where an agreed to disposition is not documented in the case file, and the prosecutor who is currently handling the case did not participate in the settlement, reasonable attempts should be made to verify the exact terms of the disposition with the prosecutor, or former prosecutor, who entered into the proposed disposition. (Finding 3)
3. Senior management (senior assistant district attorney and above) should be very sensitive to appearances of impropriety in the disposition of cases and take necessary steps to reasonably alleviate concerns in such area, including, depending on the circumstances, removing one's self from any participation in decision-making, fully documenting the file as to terms of disposition and the reasons for disposition, consulting with appropriate line deputies or their supervisors before entering into a disposition, and communicating the disposition in a rapid fashion to affected employees of the District Attorney's Office. (Findings 1 through 7)

4. Senior management (senior assistant district attorneys and above) should be very sensitive to the impact upon line deputies of their direct involvement in standard cases, and their actions should reflect such sensitivity. (Finding 7)

For a complete list of recommendations with required and requested agency responses, see Appendix A, List 2.

APPENDIX A

List 1: Complete List of Findings

List 2: Complete List of Recommendations

List 1. Complete List of Findings

Under *California Penal Code* Sections 933 and 933.05, responses are required to all findings. The 2001 – 2002 Orange County Grand Jury arrived at 92 findings.

1. The DDA V position, in effect, was not eliminated. It was renamed ADA, while the job remained functionally the same as that of the DDA V position. This left an impression throughout the organization that the intention was to selectively eliminate former District Attorney Mike Capizzi administration managers rather than a job category.
2. The “at will” status that was associated with the newly created ADA position has had no positive impact on the organization. Conversely, it introduced a pervasive hesitance to engage in open and honest communication.
3. Good policy indicates that extensive interviews are necessary for hiring into positions such as ADA. Although cursory applications were processed, no interviews were conducted. The process, which gave the appearance of “appointing” persons to these positions, resulted in a widespread perception of a lack of fairness and intentional retribution on the part of the District Attorney.
4. The existing job description for the ADA position is inadequate; it does not specifically apply to the District Attorney’s Office.
5. The significantly increased salary and benefits package for the ADA position, as compared to the eliminated DDA V position, makes ADAs more “economically beholden” to upper management than their former DDA V counterparts.
6. The elimination of fallback rights from the At Will Agreements has had a negative effect on department effectiveness and efficiency. It discourages qualified candidates from seeking management positions and has led to the need for adjunct verbal and notational agreements of questionable legality and enforceability that promise “no risk of termination” to handpicked candidates. Furthermore, this “at will to the street” status inhibits open and honest communication, resulting in an environment of mistrust and insecurity, and impedes meaningful on-the-job training.
7. Prosecutors are rightfully bound by very stringent ethical laws and guidelines. They occupy positions that mandate a high level of fiduciary responsibility. Open and honest communication up the chain of command, as to handling cases and the appropriateness of District Attorney policies and practices, is a necessary part of a prosecutor’s job. A District Attorney’s office, because of its ethical responsibilities, is not analogous to a private corporation.
8. At the time Mr. Rackauckas assumed the position of district attorney, he treated three of the former District Attorney Mike Capizzi ADAs (upper management in the DA’s office) in an intimidating and unjustifiable manner, to the detriment of the office.

9. The persons hired by Mr. Rackauckas for the Chief Investigator position and the two Acting Deputy Chief positions did not have the supervisory experience commensurate with their positions.
10. There were no job recruitments, open application process, or formal interviews for the position of Bureau Chief and the newly created acting deputy chief positions.
11. The three top positions in the Bureau of Investigations went to persons active in police associations and/or were Rackauckas campaign supporters.
12. Mr. Rackauckas encouraged the prior administration's command staff, commanders and above, to accept an early retirement incentive package. The former command staff did not feel welcome in the new Rackauckas administration.
13. There have been numerous incidents of district attorney employees violating the policy prohibiting the use of county time, equipment, and other resources for non-county purposes.
14. Notwithstanding the computer screen admonition concerning the use of the computer for county-related purposes only, there is no comprehensive policy concerning the inappropriate uses of department equipment, e.g. fax machines, desk phones, cell phones, copying equipment, and computers (e-mail and Internet); county time; or other county resources, including staff.
15. There is no policy concerning the appropriate level of discipline for varying degrees of prohibited use of county time, equipment, or other resources.
16. There is neither a training program, nor training manual for district attorney employees concerning the inappropriate use of department time, equipment, or resources.
17. District Attorney's Office investigative resources were not appropriately utilized in the monitoring/surveillance of Mr. Rackauckas' son; conducting the inquiry into the legality of the towing of Chief Blankenship's family car; and conducting the inquiry concerning Mr. Rutledge's involvement with a car business.
18. The District Attorney's Office missing person investigation concerning an adult male, who was the former boyfriend of Chief Blankenship's daughter, was in the public interest. However, assistance in such investigation was contrary to the practice of the District Attorney's Office in regard to adult missing persons.
19. The District Attorney's Office use of investigators time in the above referred to inquiries or investigations would not have occurred except for the close present or

former relationship of persons involved in the underlying circumstances with upper management personnel of the District Attorney's Office.

20. The investigators' time expended on the inquiries/investigations was not documented because it is the practice of the District Attorney's Office that investigator do not fill out time sheets or other logs to document time spent on cases, investigations, or inquiries.
21. There is no single, comprehensive District Attorney Office policy statement concerning allowable expenditures and payment protocols for the District Attorney's Special Fund.
22. The current District Attorney's Office practice and policy for allowable expenses, the language of Government Code, Section 29404, can be interpreted so broadly as to justify almost any expense.
23. Current District Attorney's Office practices do not adequately document the nature of the expenditures to be reimbursed from the District Attorney's Special Fund.
24. Chief Blankenship was reimbursed from the District Attorney's Special Fund for numerous, alcohol-only expenses, incurred at meetings at the Elk's Club, bars, and restaurants. Many of the meetings, for which Chief Blankenship received reimbursement for meals and/or alcohol expenses from the special fund, did not concern pending criminal or civil investigations or cases.
25. The monthly travel claims for out-of-county business trip reimbursements are not cross-checked with District Attorney Special Fund expense vouchers to ensure that a claimant does not receive double payment for meals or other expenses. Chief Blankenship received double payment for certain meals, the exact nature and amount is unknown at this time because of inadequate documentation. The monthly travel claims and the District Attorney's Special Fund expense vouchers are submitted to district attorney administrators at different times for processing and payment.
26. Members of upper management of the Bureau of Investigation have made job assignments to investigators, supervising district attorney investigators, and commanders in a manner that has by-passed one or more layers of supervision.
27. DDA Kay Rackauckas has been permitted a greater level of authority and influence than is characteristic of her job description, which has resulted in circumventing the chain of command.
28. Periodic meetings with the Bureau command staff (commanders and above), and between commanders and their respective unit supervisors have not been held on

- a consistent basis during the Rackauckas administration. Periodic meetings of this nature benefit the Bureau.
29. There have not been Bureau-generated status reports on significant and/or sensitive cases during a major portion of the Rackauckas administration. Periodic status reports on such cases benefit the District Attorney's Office.
 30. The Organized Crime Unit supervisor reports directly to Chief Blankenship. The Organized Crime Unit handles sensitive cases, including anti-terrorist matters that would require rapid decision making. Chief Blankenship is frequently not in the office because he attends numerous meetings and conferences within the county and outside the county. Chief Blankenship and the respective supervisors of the Organized Crime Unit have not had regularly scheduled periodic meetings to discuss Organize Crime Unit matters.
 31. There is no job description for the position of media relations director.
 32. There are no minimum qualification criteria for the position.
 33. There are no guidelines regarding the "need to know" limitations of the position of media relations director.
 34. The media relations director attended numerous highly sensitive debriefings about criminal investigations/cases.
 35. There was no job recruitment or application process, posted or otherwise, for the media relations director position.
 36. The media relations director reports directly to the District Attorney.
 37. In the spring recruitment of 1999, the paper screen protocol was changed in order to insure that approximately 5 to 7 candidates, of whom at least two had not qualified under the initial paper screen evaluation, would receive interviews. Two of these persons were given special consideration, in part or in whole, because of a friend or family member who was a political supporter of Mr. Rackauckas.
 38. Several other family members of friends and/or political supporters of Mr. Rackauckas have been hired by the District Attorney's Office.
 39. Certain spring 1999 recruitment rating worksheets and other hiring materials were lost or misplaced by the District Attorney's Office.
 40. It is the policy that in the County of Orange departments and agencies hire employees based solely on merit.

41. A highly recommended intern from the Law and Motion Unit was passed over for employment as a deputy district attorney in favor of two law clerks from an informal internship program whose family members were political supporters of Mr. Rackauckas.
42. There is a negative impact on the ability of the Law and Motion Unit to recruit law students for their formal clerkship program when qualified candidates from the program are not hired when positions are available.
43. Certain less qualified candidates, who were family members or friends of political supporters or friends of Mr. Rackauckas, were hired as prosecutors over more qualified candidates.
44. The District Attorney's Office has a policy that employee performance evaluations should be fair and honest.
45. The MOU requires annual performance evaluations for DDAs from Level I through Level IV, and interim (six months) evaluations are required for non-management probationary employees.
46. The performance evaluations and/or protocol followed in the two instances described above, violated District Attorney policy and the MOU. In the first instance a DDA with a political or friend connection to the District Attorney was inappropriately rated favorably, and in the other, a DDA politically opposed to the District Attorney and a defendant in the Chief Assistant's wife's lawsuit was inappropriately rated negatively.
47. Executive management are not evaluated pursuant to traditional rating categories.
48. Non-executive management prosecutors and supervising district attorney investigators receive performance evaluations based on specific rating categories.
49. According to policy, job related decisions shall be based on merit and prosecutor job assignments/rotations are to be fair.
50. An experienced deputy district attorney was not transferred to the Family Protection Unit in early 1999, a position the DDA was qualified for, because the DDA was a named defendant in Chief Assistant Rutledge's wife's civil lawsuit.
51. A qualified and recommended deputy for transfer to the Felony Panel did not initially receive such transfer because of information from a defense attorney. The decision not to transfer the DDA to the Felony Panel, based on the defense attorney's information, was made by Mr. Rackauckas without verification or input from the DDA or the DDA's immediate supervisor.

52. Upper management of the District Attorney's Office had the desktop office computers assigned to Mr. Rutledge and Mr. Wade removed and their hard drives examined, without good cause. Mr. Romney's office-issued desktop computer was also removed without good cause.
53. The \$1,386.84 cost for the Rutledge desktop computer duplicate hard drive and the Rutledge laptop hard drive data retrieval, as well as the investigator's time spent on examining Mr. Rutledge's office-issued computers (at least 20 hours) and Mr. Wade's desktop computer were unjustified and a waste of county resources.
54. There is no District Attorney office policy, protocol, or guidelines which set forth the circumstances, and the level of justification (cause) needed for the administration to cause the forensic examination of the hard drives, and other computer storage medium, of office computers assigned to District Attorney employees. (The computer screen advisory constitutes a warning, not a policy or protocol.)
55. An employee of the District Attorney's Office obtained confidential letters between the Attorney General's Office and the District Attorney's Office, which were improperly disseminated to newspapers with the intent of casting a deputy district attorney, who the office intended to terminate, in a bad public light.
56. The District Attorney's Office did not follow through on an investigator's recommendation to conduct an internal investigation to determine who released the confidential documents (AG/DA letters).
57. There has been several instances of confidential District Attorney documents, or other materials, disseminated to the press by unknown employees of the District Attorney's Office, without authorization.
58. Employees of the District Attorney's Office have searched through other employees' offices, personal belongings, and office-issued computers to obtain documents for dissemination.
59. Mr. Rackauckas' decisions concerning DDA Kay Rackauckas' job rotations violated the County of Orange and the District Attorney's office policies concerning employment of relatives.
60. DDA Kay Rackauckas participated in managerial decisions, especially in the area of personnel, for which she was not entitled as part of her non-management job description. Until DDA Kay Rackauckas was transferred in September 1999 to the Westminster Target/Gang Unit, she spent significant time, almost on a daily basis, in and around the executive offices of the District Attorney's Office.

61. There was a pervasive perception within the District Attorney's Office that DDA Kay Rackauckas wielded significant influence in the District Attorney's Office based on her conduct and on her status as wife of the District Attorney.
62. DDA Kay Rackauckas expended significant time during normal business hours discussing and/or working on the Stephanie George campaign for judge against former District Attorney Mike Capizzi. On occasion, DDA Kay Rackauckas used county equipment to facilitate her involvement in the Stephanie George campaign. County of Orange and District Attorney policy prohibits employees from using county time or county resources (e.g., office equipment) to engage in political activities.
63. DDA Kay Rackauckas was subject to minimal and inadequate supervision from the commencement of the Rackauckas administration until the transfer to the Felony Charging Unit in October 2000.
64. DDA Kay Rackauckas, while on leave of absence, during normal business hours, called district attorney employees on numerous occasions as to Mr. Rackauckas' re-election campaign, including discussing the need and means to obtain endorsements from law enforcement agencies/political associations and the district attorney association.
65. While on her leave of absence, DDA Kay Rackauckas requested or instructed senior prosecutors, at her job classification or higher, to perform tasks.
66. DDA Kay Rackauckas' interaction with district attorney personnel, as described above, had a negative impact on the effective operation of the District Attorney's Office and on office morale.
67. The stated objectives of the Tony Rackauckas Foundation were laudatory.
68. The Foundation was poorly organized. Directors and officers were self-appointed or elected contrary to an applicable California Corporations Code statute or the Foundation's own by-laws.
69. The objectives of the Foundation were poorly implemented.
70. Under the circumstances of the creation and operation of the Tony Rackauckas Foundation, the use of significant District Attorney resources, and attaching the name of the elected District Attorney to the Foundation, were ill advised. District Attorney office resources were wasted, except those expended to obtain firearms training and to coordinate the motivational speeches. Use of District Attorney resources under the circumstances, and the controversy over giving wallet badges to commissioners, caused grave concerns within the District Attorney's office over the appropriateness of the District Attorney's office participation in the Foundation.

71. The District Attorney's Office 2000 Annual Charitable Activities Report submitted to the Board of Supervisors was inaccurate. Hours expended by District Attorney employees and office resources used, in support of the Foundation were not documented at the time.
72. The initial decision to give out badges in wallets to commissioners exhibited poor judgment.
73. The District Attorney Office should not have investigated the extortion case (victim Mr. DiCarlo) nor assigned it to the Organized Crime Unit because of Mr. Rackauckas' close personal friendship with Mr. DiCarlo, the DiCarlo family involvement in the District Attorney campaign, and the rancorous history between Mr. DiCarlo and the Organized Crime Unit. The case should have been submitted to the Newport Beach Police Department (original jurisdiction) or another agency such as the State Attorney General, the FBI, or the U.S. Attorney.
74. At the time that the lead investigator focused his suspicions upon Mr. DiCarlo, the case should have been immediately referred to another agency because of the circumstances referred to in Finding 1.
75. Upper management's misleading statements to members of the Organized Crime Unit as to closing down the investigation fueled certain members of the Organized Crime Unit's distrust in the manner in which the administration would handle the DiCarlo case.
76. Mr. Rackauckas gave, or assisted in the recording of a transfer of, a semiautomatic handgun to Mr. DiCarlo around the time that the Organized Crime Unit was investigating extortion threats and whether Mr. DiCarlo was engaged in criminal conduct.
77. Mr. Rackauckas and Mr. Clesceri met with Mr. DiCarlo's business associate on April 25, 2000, in part to investigate whether an Organized Crime investigator had improperly continued to investigate the DiCarlo matter after being taken off the case.
78. The inactive and active Organized Crime Unit files were poorly organized and not electronically indexed on a computer database as of April 2000.
79. Mr. Rackauckas and Mr. Patterson negotiated terms of settlement in the Arnel case, a highly complex case in a very specialized area of the law, without the presence of District Attorney's office attorneys and staff who possessed the necessary expertise in the area.
80. At the time of the settlement negotiations between Mr. Rackauckas, Mr. Patterson, Mr. Hampel and Mr. Stokke, District Attorney office prosecutors,

who were handling the case and had the required expertise in consumer fraud, were not informed of the negotiations.

81. There were stark, contrasting views as to what had been orally agreed to during the February 6 and February 8 meetings as to injunctive relief between Mr. Rackauckas and Mr. Patterson on one hand, and Arnel's attorneys on the other.
82. Oral agreements between prosecutors and defense counsel are a normal part of the practice in Orange County. For the integrity and efficient running of the justice system, prosecution and defense counsel must abide by their oral agreements.
83. At the time that Mr. Rackauckas and Mr. Patterson took over the settlement negotiations of the Arnel case, Mr. Rackauckas did not pay proper attention to a possible appearance of impropriety based on Arnel Management Company contributing \$1,000 to his campaign, Rackauckas being one of the ballot spokespersons in opposition to Measure F, and Mr. Stokke being a significant campaign contributor as well as co-hosting a very lucrative fund-raiser for Mr. Rackauckas.
84. It is the practice of the Orange County District Attorney's Office and the California Attorney General's Office to obtain injunctive relief as part of a settlement in a consumer fraud case.
85. Mr. Rackauckas agreed to dismiss a domestic violence case without consulting with the line deputy, or the line deputy's supervisor, and did not inform these individuals of his decision to dismiss. Mr. Rackauckas did not document his decision to dismiss, or his reasons for such decision, in the district attorney case file. Mr. Rackauckas' friend and campaign supporter informed the line deputy of Mr. Rackauckas' decision. The dismissal of the domestic violence case was inconsistent with the standard practice of the District Attorney's Office in similar domestic violence cases.
86. There was an appearance of impropriety surrounding Mr. Rackauckas' decision to dismiss the domestic violence because of the fact the case was dismissed in relationship to normal practice in similar cases, the decision to dismiss was made at a meeting attended by the victim and a campaign supporter/friend, and in the manner in which Mr. Rackauckas' decision was conveyed to the line deputy.
87. Then Chief Assistant Rutledge agreed to a misdemeanor disposition in a 16-count felony (auto burglaries, etc.) case without consulting with the deputy(ies) handling the case, or any of the managers below him in the chain of command, who had previously rejected defense's entreaties for special consideration. Mr. Rutledge did not inform these district attorney employees of his decision. Mr. Rutledge did not document the disposition agreement, nor the reasons for the disposition, in the district attorney case file. Although senior management

questioned the appropriateness of the disposition after Mr. Rutledge's last day at the District Attorney's Office (on or about January 14, 2000), no one at the District Attorney's Office contacted Mr. Rutledge to verify the terms of the disposition.

88. The terms of the misdemeanor disposition in the 16-count felony case were significantly less, as to the nature of the charges pled to, and the degree of punishment, as compared to similar multiple count felony cases.
89. The defense attorney, who discussed settlement with Mr. Rackauckas, and negotiated terms of settlement with Mr. Rutledge, contributed in excess of \$1,000 to Mr. Rackauckas' initial district attorney campaign and co-hosted a fund-raiser for Mr. Rackauckas. The defense counsel did not act improperly in the matter in which he sought the best possible terms of disposition for his client.
90. It is proper for a prosecutor to consider as one factor, out of many, the impact of terms of a disposition on a person's career.
91. The senior assistant district attorney's request that a victim deputy district attorney agree to a "civil compromise," in the standard hit and run case, influenced the victim deputy district attorney to accept the "civil compromise" where he/she otherwise would not have done so. The senior assistant district attorney did not document his/her reasons for wanting a "civil compromise" of a district attorney office case file. The immediate family of the defendant included prominent members of the Orange County legal community.
92. A standard offer in a vehicle, property damage only, hit and run case, at a minimum, is three years probation and restitution. A "civil compromise" disposition under circumstances of the particular hit and run case does not conform to the standard practices of the District Attorney's Office in similar cases.

Responses to Findings 1–92 are required from the Orange County Board of Supervisors and the Orange County District Attorney's Office.

Responses to Findings 1, 2, 3, 5, 6, 7, 59, 60, 61, 62, 63, 65, and 66 are requested from the Orange County Chief Executive Officer.

List 2. Complete List of Recommendations

In accordance with *California Penal Code* Sections 933 and 933.05, each recommendation must be responded to by the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2001–2002 Orange County Grand Jury recommends that:

1. Ensure that all job categories within the organization are defined according to specific activities that can be evaluated during performance evaluation, within formal job descriptions. (Findings 1 and 4)
2. A formal and specific job description should accompany proposals for new or reclassified job categories. (Findings 1 and 4)
3. Reclassify the ADA position to eliminate its “at will” status, thereby establishing civil service protection for this job classification and eliminating the need for adjunct verbal agreements. The good cause for demotion/termination or “at will” attributes of District Attorney management positions should reflect the need for honest, open communication without fear of retribution. Promotion, demotion, and transfer should be based solely on merit. (Findings 1, 2, 3, 5, 6, and 7)
4. Require an open recruitment process for senior ADA and ADA employees that includes formal interviews with standardized criteria and evaluation techniques. (Findings 3 and 7)
5. Where there is a change in district attorney administrations, former management of the prior administration should be made to feel welcome and should be given the opportunity to contribute to the District Attorney’s Office in a manner befitting their capabilities. (Finding 6)
6. An open hiring process with applications and formal interviews should be part of the hiring process for District Attorney investigative command positions, whether permanent or acting positions. (Findings 9 through 11)
7. The hiring of investigative command staff should be based solely on merit, with a significant weight given to command supervisory experience. (Findings 9 through 11)
8. When there is a change in administrations, the new administration should welcome existing investigative supervisory employees and afford them an opportunity to contribute to the District Attorney’s Office in a manner befitting their capabilities. (Finding 12)
9. The District Attorney’s Office should enact a comprehensive written policy concerning the inappropriate use of county time, equipment, and resources. The

- policy should define appropriate disciplinary action for misuse of county time, equipment, and resources. (Findings 13 through 15)
10. A training manual should be prepared which describes department policies and procedures concerning inappropriate use of department time, equipment, and resources. (Findings 13 through 16)
 11. There should be a training program instituted that gives verbal instructions on the inappropriate use of county time, equipment, and resources to all employees. (Findings 13 through 16)
 12. A written policy should be established as to the types of inquiries and investigations to which investigators can be assigned. (Findings 17 through 19)
 13. Any employee of the District Attorney's Office, who has a close personal or business connection to any subject of, or person involved in the circumstances of, an inquiry or investigation, should not participate in the decision to conduct an inquiry or investigation, or otherwise participate in the investigation or inquiry in any way. (Findings 17 through 19)
 14. District attorney investigators should document their time spent on inquiries, investigations, or cases on time sheets or other logs to be maintained by the District Attorney's Office. (Finding 20)
 15. The District Attorney's Office should re-enact or reactivate the more restrictive and comprehensive March 1, 1994 policy concerning allowable expenditures and payment protocol for the District Attorney's Special Fund. (Findings 21 through 24)
 16. Except where necessary in undercover operations and the use of confidential informants in pending criminal investigations and cases, the District Attorney's Special Fund should not be used for meetings where food and alcohol expenses are incurred. (Findings 21 through 24)
 17. The District Attorney's Office should establish a protocol where monthly travel expense claims are cross-checked with District Attorney's Special Fund Expense vouchers, or any other expense vouchers from special funds, to ensure that a claimant is not paid twice for the same expense. Documentation as to expenses for special fund expenditures and travel claims should be submitted on a weekly basis to facilitate cross-checking of claims. (Finding 25)
 18. The District Attorney's Office should investigate the extent of double payments to Chief Blankenship for meals, and have Chief Blankenship reimburse the county for any and all double payments. (Finding 25)

19. When there are District Attorney's Special Fund expenditures for meals and alcohol, the expenditures should be documented in more detail, including the names and titles of the persons whose meals and/or alcoholic beverages were paid, a several line description of the purpose of the meeting and, as is the practice, all supporting receipts attached. Proper internal control should be maintained to keep the identity of "criminal" confidential informants and protected witnesses confidential. (Findings 21 through 25)
20. A chain of command model should be adopted and followed in the District Attorney's Office for making work and case assignments. (Findings 26 and 27)
21. Implement, at least, bimonthly meetings of the bureau chief with the assistant chiefs and all commanders. (Finding 28)
22. Implement, at least, monthly meetings of each assistant chief with commander(s) and supervisors in his respective chain of command. (Finding 28)
23. Implement, at least, monthly meetings of each commander with his respective unit supervisors. (Finding 28)
24. Continue the practice of preparing weekly status reports on sensitive and/or significant cases. Require the necessary contribution by the legal side of the District Attorney's Office to ensure timely and thorough reporting. The status report should be distributed to bureau command staff and legal executive staff. (Finding 29)
25. The Organized Crime Unit supervisor should report directly to a commander. (Finding 30)
26. There should be a written detailed job description for the position of District Attorney's Office Media Relations Director. (Findings 31 and 33)
27. There should be written minimum qualification requirements for this position including a background in criminal law. (Findings 32 and 34)
28. There should be specific guidelines and limitations for the position, including a need to know criteria. Media releases and other dissemination of information about cases to the press should be approved by the deputy district attorney handling the case, or one of the deputy's supervisors. (Findings 33 and 34)
29. The Media Relations Director position should be subject to an open recruitment process with application and selection protocols in accordance with county employment policies. (Finding 35)

30. The Media Relations Director should report to the Chief Assistant District Attorney or a Senior Assistant District Attorney, not the District Attorney. (Finding 36)
31. Deputy district attorneys should be hired on merit alone. (Findings 37, 38, 40, 41, 42, and 43)
32. Mr. Rackauckas should not participate in the hiring decisions of any applicant. The person or persons in the District Attorney's Office who make the hiring decisions should not consider the relationship, or perceived relationship, of such candidate to Mr. Rackauckas. (Findings 37, 38, 40, 41, 42, and 43)
33. District Attorney Office Policy and Protocol needs to ensure that only the most qualified candidates are hired to ensure the ability of the office to attract and recruit the most able attorneys and law students. (Findings 40, 41, and 42)
34. Retain recruitment scores in dedicated computer archives for at least five years. (Finding 39)
35. All hiring worksheets need to be filled out using indelible ink and kept for a minimum of five years. (Findings 38 and 39)
36. The rating criteria, recruitment protocol, and time parameters of recruitment should not be changed or altered once the recruitment has commenced. (Finding 37)
37. All members of management (legal and investigative), below the level of the elected District Attorney, should have an annual performance evaluation at the same interval and based on relevant, specific rating categories comparable to the criteria existing to evaluate non-management deputy district attorneys (applied to legal executive managers) and comparable to the criteria existing to evaluate supervising district attorney investigators (applied to investigative management). (Findings 47 and 48)
38. All performance evaluations should be honest, objective and fair. Political allegiances, or participation in civil lawsuits, should not be a factor, positively or negatively. (Findings 44 and 46)
39. All employee performance evaluations should be given on a timely basis in accordance with applicable provisions following MOU and other personnel policies or agreements. (Findings 45 and 46)
40. Job transfers/job rotations should be fair, consistent, and based on merit, as well as being otherwise consistent with the above referred to policies and procedures. (Findings 49 through 51)

41. Except in cases of dire emergencies, a job rotation should be preceded by reasonable notice to all affected personnel, at least a time period of two weeks. (Finding 49)
42. An employee's support of a political candidate, or the fact that the employee was or is a political candidate, should not be a consideration in an employee's job assignment or rotation. (Finding 49)
43. Where a person who is not an employee of the District Attorney's Office complains about the performance or attitude of a District Attorney's Office employee, the subject employee, and the immediate supervisor should be consulted prior to a decision concerning the employee's job assignment or career. (Finding 51)
44. The District Attorney's Office should establish a written policy concerning the circumstances, and the level of justification needed, for the examination of employees' office-issued computers, and the protocol to conduct such examinations. The protocol should include the involvement of the subject employee's supervisor, to ensure that the protocol is followed and that any employee's privacy interests are respected. (Findings 52 through 54)
45. District Attorney's Office written policies should be established or updated prohibiting employees going through other employee's offices, belongings, and office-issued computers to obtain confidential documents or materials for dissemination to inappropriate entities or persons without proper authorization; or otherwise disseminating confidential materials to entities or persons. The policy should specify the level of disciplines for inappropriate actions in violation of the policy. (Findings 55, 57, and 58)
46. There should be a formal investigation conducted to ascertain the District Attorney employee or employees who removed from the office confidential letters between the Attorney General's Office and the District Attorney's Office for dissemination to the press in March and April 2001. (Findings 55 and 56)
47. If DDA Kay Rackauckas returns to work, she should be assigned to work in a location other than the location of the executive offices. Mr. Rackauckas should remove himself completely from any supervisory decisions concerning DDA Kay Rackauckas. DDA Kay Rackauckas should be subject to the same supervision and accountability as other deputy district attorneys in her job classification. DDA Kay Rackauckas should not give input or otherwise participate in managerial decisions except as would be appropriate for a deputy district attorney of her same job classification who has no family relation to District Attorney Rackauckas. (Findings 59 through 66)
48. As to any circumstance where two or more relatives are employed by the District Attorney's Office within the meaning of county of Orange and District Attorney

Office policy for the employment of relatives, the District Attorney's Office should adhere in form and substance to the employment of relatives policy and purposes behind such policy as expressed by County of Orange Personnel Provisions. The Orange County Chief Executive Office (CEO) should monitor the District Attorney's Office to insure that the employment policy of relatives is followed. (Findings 59, 60, 61, 62, 63, 65, and 66)

49. The District Attorney's Office should strictly enforce the County of Orange and District Attorney's Office policies that prohibit county employees from using county time and county resources (e.g. office equipment) to engage in political activities. (Findings 62 and 64)
50. Before the District Attorney's office in any way lends its name to a foundation, advisory commission, or other nonprofit organization, and expends county resources in support of such an organization, the organization should have its legal structure firmly in place. The organizers should be experienced and competent in nonprofit organization matters, and the organization's purposes and the District Attorney's participation should clearly be within the parameters of the February 10, 1998 Board of Supervisors' order concerning participation in charitable organizations. (Findings 67 through 70)
51. As to any nonprofit organization, or other organization, District Attorney Commissioner's wallet badges should not be given to members of the organization because of the possibility of abuse. The District Attorney's Office should be cognizant of Penal Code, Section 146d which provides that a person who gives another a membership card, badge, or device where it can be reasonably inferred by the recipient, that display of the badge, card, or device would have the result that the laws will be enforced less rigorously than would otherwise be the case, is guilty of a misdemeanor. (Finding 72)
52. File an amended Charitable Activities Report for the year 2000 which accurately reflects the hours expended by district attorney personnel and accurately estimates the total cost to the county, including the use of equipment and costs of supplies. As to any future District Attorney office participation in a charitable organization, employee hours, and resources used, should be documented accurately at the time. (Finding 71)
53. Where Mr. Rackauckas or any other employee of the District Attorney's Office has a personal relationship to a victim, suspect, or witness in a case, such District Attorney Office employee should insulate himself from any decision making or participation in the case. If this cannot be accomplished, the matter should be referred to an outside agency, and if the circumstances warrant it, the office should recuse itself. (Findings 73 and 74)
54. Upper management should communicate fully and accurately with investigators who are assigned to cases, the reason(s) for investigator reassignment, termination

- of an investigation, or other significant decisions concerning the handling of cases. Significant decisions as to handling and assignment of cases should not be made solely on the basis of complaints about investigators from persons outside the District Attorney's Office; verification of complaints should be obtained. (Finding 75)
55. Investigations of possible misconduct by District Attorney employees should be handled pursuant to the normal protocol for Internal Affairs investigations, not by the District Attorney and the Assistant Chief of Investigations. (Finding 77)
 56. Mr. Rackauckas, or any employee of the District Attorney's Office, should not give or transfer a firearm under circumstances similar to the transfer of the Glock handgun to Mr. DiCarlo. Any transfer of a handgun by a District Attorney employee should be done with the utmost circumspection and caution. (Finding 76)
 57. An inventory of inactive and active Organized Crime Unit files should be taken, and the location of the files and other identifying information should be electronically indexed and periodically updated. (Finding 78)
 58. In complex cases, in highly specialized areas of the law, a line prosecutor who is an expert in the area of law and is intimately familiar with the facts of the case should be present and participate in settlement negotiations. (Findings 79, 81, 82, and 84)
 59. The deputy handling the case and his or her immediate supervisor should be informed, at the time, when upper management of the District Attorney's office takes over a case for settlement purposes. (Finding 80)
 60. Mr. Rackauckas should be very sensitive to appearances of impropriety and take necessary steps to reasonably alleviate concerns in such area as to direct participation in cases, including, but not limited to, a decision to insulate himself from decision-making in particular cases where the circumstances warrant such insulation. (Finding 83)
 61. When senior management (senior assistant and above) of the District Attorney's Office agrees to a disposition in a criminal case, a final decision should not be made without consulting with the trial deputy handling the case or the appropriate supervisor; the disposition and reasons for the disposition, especially if the disposition is less than the standard practice, should be documented at the time in the district attorney case file; and the senior management should assure that the disposition is communicated as soon as possible to the affected line deputy and/or line deputy's supervisor. (Findings 85, 87, 88, 90, 91, and 92)
 62. Where an agreed to disposition is not documented in the case file, and the prosecutor who is currently handling the case did not participate in the settlement,

reasonable attempts should be made to verify the exact terms of the disposition with the prosecutor, or former prosecutor, who entered into the proposed disposition. (Finding 87)

63. Senior management (senior assistant district attorney and above) should be very sensitive to appearances of impropriety in the disposition of cases and take necessary steps to reasonably alleviate concerns in such area, including, depending on the circumstances, removing one's self from any participation in decision-making, fully documenting the file as to terms of disposition and the reasons for disposition, consulting with appropriate line deputies or their supervisors before entering into a disposition, and communicating the disposition in a rapid fashion to affected employees of the District Attorney's Office. (Findings 85 through 91)
64. Senior management (senior assistant district attorneys and above) should be very sensitive to the impact upon line deputies of their direct involvement in standard cases, and their actions should reflect such sensitivity. (Finding 91)

Responses are required to Recommendations 1 – 64 from the Orange County Board of Supervisors and the Orange County District Attorney's Office.

Responses to Recommendations 3 and 46 are requested from the Orange County Chief Executive Officer.