

2002-2003 SANTA CLARA COUNTY CIVIL GRAND JURY

REVIEW OF POLICE DEPARTMENT ARREST AND INFORMATION RELEASE PROCEDURES: THREE CASES

Summary

In response to a complaint concerning the release of arrest information to the media, the 2002-2003 Santa Clara County Civil Grand Jury (Grand Jury) reviewed procedures followed by Public Information Officers in three police departments within the county. The Grand Jury also interviewed the Assistant District Attorney who issues criminal complaints concerning sexual offenses. Additional research was conducted into the applicable penal codes, as well as Santa Clara County Crime Lab (Crime Lab) procedures. The Grand Jury concluded its work with several findings about police work, Crime Laboratory analysis, and District Attorney's oversight, and one recommendation about police procedures.

Background

The Grand Jury initiated an investigation into the procedures of Public Information Officers in three representative police agencies, in order to ascertain if their operations complied with state law. The Grand Jury also decided to determine if Crime Lab analysis of critical DNA evidence could be completed before the arrest of a suspect(s) takes place. Lastly, the Grand Jury agreed to investigate whether or not the District Attorney's Office sufficiently coordinates its activities with police departments so that an arrest is made only after the DNA evidence is analyzed.

This investigation was prompted by three recent arrests in Santa Clara County, two in Palo Alto and one in San Jose. One Palo Alto case involved sexual abuse of a child; the second Palo Alto incident was a rape case. The San Jose case was first classified as a homicide and later determined to be a sexual assault case. All three involved highly publicized sexual offense crimes and all three resulted with charges being dropped against the arrestees, upon definitive analysis of DNA evidence. During the period between arrest and release, the arrestees' name, physical description (often with photo), and biographical data were well advertised in the media. The complainant believed this intense media coverage harmed the reputation of the individuals charged. Because the cases occurred in Palo Alto and San Jose, the Grand Jury chose to look at those police departments in its

investigation. Mountain View, as the third city, provided the Grand Jury's investigation with a neutral point of comparison.

Discussion

The Grand Jury reviewed applicable state law (California Government Code 6254(f) and California Penal Code Section 841.5) and found that all three police departments were in compliance with California state law regulating disclosure of information to the media. Interviews were conducted with the Public Information Officers of Palo Alto, San Jose and Mountain View. The Grand Jury obtained copies of their department manuals that govern the release of information to the media/public. Upon review, the Grand Jury determined that each city has developed detailed guidelines that define the Public Information Officer's job. The guidelines conform not only to state law, but to county directives and departmental policies. The Grand Jury found that reasonable efforts are made to keep the public well informed of appropriate information about the activities of the police and the details of a given case.

It is important to note that, according to these guidelines, some information can be legally withheld from the public. For example, police departments never want to release facts which could only be known by the perpetrator or which might be used in polygraph tests. Moreover, the identities of adult sexual assault and rape victims of any age, as well as juvenile victims, juvenile suspects and juvenile arrestees may not be divulged. There is also a lengthy list of information that may not be publicly disseminated, in order to protect the accused's right to a fair trial. This includes all prejudicial statements, comments about prior criminal history, observations about character or reputation, as well as opinions about guilt or innocence. Appropriate information for release includes, by law, the name, address, occupation and physical description of the arrestee, as well as biographical data, except when this information might result in retaliation and/or violent acts. Details concerning time and date of arrest, booking, bail, holding facility, charges, outstanding warrants, weapons, injuries, and the nature of the complaint may all be conveyed to the media.

The Grand Jury noted that the number of individuals in the police department allowed to speak to the media/public about a crime varies, even within our small sample. In one department, there are two trained public information officers. They alone deal with the media. In another department, there is one trained public information officer who is assisted by officers in the patrol division. The Grand Jury was told that a trained assistant will soon be hired. In the third department, there are four trained part-time public information officers. However, in this third department, any officer is allowed to give information to the press in the vast majority of cases.

The Crime Lab was an important arm of the investigative process in all three cases. The Grand Jury visited the Crime Lab and obtained information regarding the time required to conduct a complete DNA examination of evidence. Lab workers need at least three days, and often longer, if the sample is obscure or difficult to isolate. The Grand Jury also interviewed the Assistant District Attorney who deals with sexual crimes. He reiterated that once an arrest is made, certain information about the arrestee becomes public information, by law. The Assistant District Attorney explained how the District Attorney's Office has oversight responsibility for all police departments in the county. It acts, in his words, as "a check on the police." The possibility of lawsuits also acts as another check on police action, creating a powerful incentive to act responsibly. The Grand Jury discussed with the Assistant District Attorney for sexual crimes, at some length, the details of the two sexual assault cases and one child sexual abuse case that prompted this investigation. The Assistant District Attorney emphasized that the police cannot always wait three days or more to take action, especially if there is enough persuasive evidence to satisfy the probable cause requirement needed for the police to make an arrest. The existence of non-DNA evidence combines with concerns about public safety to produce an arrest before the critical tests are completed. Once an arrest is made, the Public Information Officer delivers the appropriate information about the case to the various media. In the relatively rare cases where DNA will either corroborate or negate the charges, the District Attorney may wait, along with everyone else, for the lab results to arrive or, alternatively, may decide to push a case to the top of the list.

The Assistant District Attorney also indicated that the police investigator interviewing the four-year old child in the Palo Alto child sexual abuse case was inexperienced in the particular techniques required for this type of questioning. A reading of the transcript of this interview left the Grand Jury concerned as to why some of the child's responses were not further explored.

During the final stages of work on this report, a summary statement of an internal review of these three cases was released by the District Attorney's Office to the press. The Grand Jury requested and received a copy from the District Attorney's Office. Upon reading the report, the Grand Jury learned that the District Attorney's Office undertook a thorough investigation, despite civil lawsuits pending in at least two of the subject cases. The contents of this internal review touch on many of the issues that formed the catalyst for this Grand Jury investigation, and for that reason the Grand Jury offers further comment below.

It is important to note at the outset that this review was undertaken with the benefit of hindsight, a luxury not afforded to police and prosecutors working in the field. After reviewing the details of the Palo Alto child sexual abuse case, the District Attorney's Office concluded that prosecutors should have waited for definitive DNA lab results to arrive before issuing the complaint. The report suggested that both the Palo Alto police and the daycare center where the suspect was employed,

and where the alleged incident took place, could have taken measures to protect all of the children while waiting for the evidence to be analyzed.

In the San Jose rape case, the District Attorney's report stated that although there was evidence a rape had occurred, investigating police detectives pushed their theory, backed by other evidence, that the attempted murder was staged as a rape to cover up the suspect's role. Slow police work, including tardy delivery of police reports to the District Attorney and crime scene evidence to the Crime Lab, delayed prompt handling of this case. The District Attorney's Office concluded, again in hindsight, that follow-up police work was not thorough and police and District Attorney oversight was lax.

The District Attorney's internal report defended both police and prosecutorial treatment of the Palo Alto rape case. The internal review summary ended with a suggestion for implementing two new protocols that will increase protection for the rights of accused persons. The first is an improved protocol for utilizing photographic lineups, and the second is a better child witness interview protocol. The latter is an especially noteworthy, and positive development, in light of what transpired during the Palo Alto child sexual abuse case.

In a final coda to these developments, the Palo Alto Assistant Chief of Police stated in an interview with the local press regarding her upcoming appointment as Chief of Police that, again in hindsight, she would not have issued a press release so quickly in the Palo Alto child sexual abuse case.

Conclusions

During the course of its investigation, the Grand Jury confirmed that law enforcement is a very complex business. Many factors have to be considered in the series of decisions that shape a criminal case. Foremost among these factors is the police department's responsibility for public safety. The Grand Jury is aware that it is often a delicate balancing act to, on the one hand, secure the public's safety, and, on the other hand, preserve the rights of both the victim and the accused. The police also need to help the prosecutors build a successful case against suspected criminals. In sexual assault cases, an understandable sense of outrage and urgency might accompany police decisions. The perpetrator needs to be caught and prevented from fleeing, thus shielding the public from any other acts of sexual predation. Police are continually assessing and reassessing all these factors, as new evidence is uncovered and events are unfolding. Again, police must often act before all the pieces of the puzzle are assembled.

The Grand Jury was particularly interested in the police departments' release of information during the investigation of sexual assault cases. In these cases, there is usually much more evidence than just DNA samples. After all, sexual assault has been prosecuted for many years prior to DNA analysis. Moreover, some

sexual assault cases do not involve DNA evidence. All three cases that prompted the Grand Jury's investigation involved evidence in addition to the DNA found at the crime scene.

It is this additional evidence that may lead officers/investigators to a conclusion of probable cause that, in turn, permits the officers to arrest a suspect. Whether the suspect is arrested immediately or not, a police report is written. A sergeant reviews the police report to ensure that the arresting officer has probable cause for the arrest. Upon the sergeant's approval, the report is passed to the District Attorney to review the evidence. If approved by the District Attorney, a complaint is issued. The judge is then requested to issue an arrest warrant. Again, upon arrest, the accused's name, biographical data, and physical description are lawfully in the public domain (California Government Code Section 6254(f)).

That said, in all three cases, DNA evidence was the conclusive evidence required for dropping charges against the arrested individuals.

The Grand Jury concluded that these three cases were anomalies in a county system that successfully deals with many sexual assault cases. In each of the three, the police accumulated enough evidence to get over the probable cause hurdle. They lawfully arrested the suspect, submitted the DNA evidence for testing, and promptly dropped charges when the evidence cleared the arrestee. Any facts released to the media were in accordance with the governing penal code.

While the District Attorney's internal review did not focus on the public information aspects of the cases, it did deal directly with problematic aspects of police/prosecutor work that led up to the arrests. Many of the details in the report were not previously known by the Grand Jury. Other details involved public judgments, the merits of which the Grand Jury debated prior to release of the District Attorney's report. The Grand Jury was gratified by the seriousness of the District Attorney's professional review and its forthright conclusions. Underlying the report was a candid recognition that false arrests bring irreversible harm to the lives of the arrested suspects and sully the reputations of the responsible police and prosecutors. False arrests are to be avoided, if at all possible. The report reveals that the District Attorney is aware that prosecutors, and the police they oversee, work for the community and must earn, and work assiduously to maintain, the public's confidence. The issuance of the District Attorney's internal review is, in itself, indicative of that belief.

While the Grand Jury commends the report in its entirety, the Grand Jury also understands how easy it is to look back in hindsight and second guess decisions made before definitive DNA information is available. It is important to remember that with the accumulation of probable cause evidence, the police are obligated to arrest the suspect(s) in order to safeguard the public and eliminate the chance of flight. Again, it is also necessary to underline that once an arrest is made, the identity of the arrestee is, by law, public knowledge.

Finding I

The Grand Jury found that all three departments are in compliance with state law governing the release of information to the media/public.

Recommendation I

None

Finding II

The Grand Jury found that within the sample of three police departments, the number of individuals permitted to divulge information to the press varies from department to department. In one department, interactions with the press are tightly controlled by two full-time, trained Public Information Officers. In another department, any officer is permitted to give a statement to the press about a case other than a homicide.

Trained officers know what the public may and may not legally know. Moreover, they are able to exercise good judgment about what the public should be told when there might be sound reasons for withholding information. Trained officers learn how to get their facts straight and stick to their story, thus ensuring that one version—and only one version—goes out the door. Having only professionally trained public information officers as gatekeepers for news better serves the rights of both the victims and the accused, safeguards the prosecutor’s case, protects the public, and furthers the cause of justice.

Recommendation II

The Grand Jury recommends that only trained public information officers be permitted to relay information to the media/public about a given case.

Finding III

The Grand Jury found that there was a need for a police officer trained in interviewing children in the Palo Alto child sexual abuse case. A reading of the child interview’s transcript and comments made by the Assistant District Attorney who deals with sexual crimes indicated that the Palo Alto police interviewer was

not sufficiently skilled in the specialized techniques required to elicit factual information from children.

Recommendation III

The Grand Jury recommends that in-service training be provided to officers in the special techniques required for interviewing children.

Finding IV

The Grand Jury learned that the three sexual assault cases involved evidence in addition to DNA evidence. California Penal Code Section 836 states that an officer can make an arrest when there is probable cause to believe that a crime has been committed, whether or not one has in fact been committed. Analysis of DNA evidence takes time. Police are obligated to arrest the suspect, based on sufficient probable cause evidence, even though the DNA evidence has not yet been analyzed.

Recommendation IV

None

Finding V

The Grand Jury learned that when DNA analysis clears the suspect of being the perpetrator of the crime, and no other evidence supports the arrest, charges are promptly dropped and the suspect is released from detention.

Recommendation V

None

Finding VI

The Grand Jury learned that the Crime Lab must meet exacting standards required by DNA analysis. DNA analysis requires time. According to the Crime Lab, it is not possible to provide accurate results within 24, 48, or sometimes not even 72 hours.

Recommendation VI

None

Finding VII

The Grand Jury learned that the District Attorney's Office is responsive to public opinion and is willing to probe into the details of its own activities, as well as that of the police departments it oversees. It makes the results of its inquiries widely known to the citizenry it serves. The District Attorney's Office is willing and able to both defend appropriate policies/procedures, as well as acknowledge past errors in procedures and judgment. Most importantly, the District Attorney's Office institutes new policies and procedures to minimize future mistakes.

Recommendation VII

None

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 24th day of April, 2003.

Fred de Funiak
Foreperson

Ron R. Layman
Foreperson Pro Tem

Patricia L. Cunningham
Secretary

References

Documents

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Inspection Tour

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