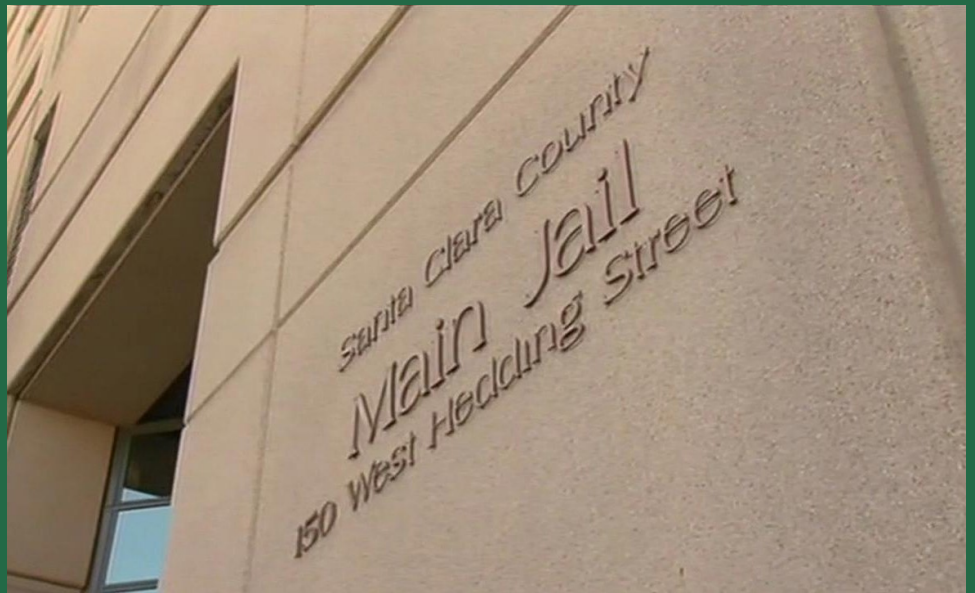




An Analysis of the Reasons for Termination of Santa Clara County Jail Employees During the Period of 2010 to 2015



**Deputy Sheriffs'
Association of
Santa Clara County**

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An Analysis of the Reasons for Termination of Santa Clara Jail Employees During the Period of 2010 to 2015

EXECUTIVE SUMMARY

The Blue Ribbon Commission on Improving Custody Operations (BRC) was created in response to the death of Michael Tyree on August 27, 2015, who died while in custody of the Santa Clara County Sheriff. This report is intended for them. It focuses on one aspect of the culture of the Santa Clara Sheriff's Office, specifically why Santa Clara County Jail Employees were terminated from employment. The report is based on limited data provided by Sheriff Smith. The analysis examines the primary and secondary reasons presented by the Sheriff as to why the jail employees were fired. The reasons range from lapses of integrity, specific criminal conduct, romantic relationships with inmates and the improper use of force. It is important to note that nearly all, if not all of the termination cases were initiated under the administration of the Department of Corrections before the Sheriff's Office took over the operation of the jails. Virtually no termination cases have been identified or prosecuted since the jails were placed under the administration of Sheriff's Office. The report also includes numerous avenues of questioning which the BRC may consider exploring. Finally, there are several observations and recommendations which the Deputy Sheriffs' Association of Santa Clara County (DSA) believes will be of value to the BRC.

PURPOSE OF PAPER

The purpose of this paper is: 1.) To examine the reasons why Santa Clara County Custody Deputy Sheriffs and other employees were terminated from employment during the period of 2010 to 2015; and, 2.) To analyze the reasons for termination and categorize them into manageable data sets to determine if there are observable patterns of behavior leading to termination.

BACKGROUND

The study is based on data provided by Santa Clara County Sheriff Smith. The data are the reasons deputies and other personnel assigned to custody were terminated from employment from 2010 to 2015. The data was published in an article in the *San Jose Mercury News* titled "Santa Clara County's troubled jails" (Kaplan, 2015). As of January 11, 2016, no data as to the terminations or the reasons for terminations were found on the Sheriff's Office website.

DATA

From the year 2010 to 2015, there were 24 Santa Clara County jail employees terminated. Twenty-two of them were deputies and two were civilian employees. All of the employees were included in this analysis.

Although the terminations were for the period of 2010 to 2015, the actual violation of policy and/or law which led to the terminations would have been identified approximately one to four years prior to the actual termination. The process to identify, investigate and adjudicate an accusation of serious wrong doing takes between one to four years. That means if an employee was terminated in 2010, the offense leading to the termination would have committed several years before. Because the data were limited, the date that the investigation/adjudication process was initiated is not known. The following is an estimate of time frame for the investigation/adjudication process.

In 2010, there were seven employees terminated. The process would have begun somewhere between 2009 and 2006.

In 2011, there were eight employees terminated. The process would have begun somewhere between 2010 and 2007.

In 2012, there were six employees terminated. The process would have begun somewhere between 2011 and 2008.

In 2013, there were three employees terminated. The process would have begun somewhere between 2012 and 2009.

In 2014, there were NO employees terminated.

In 2015, there were NO employees terminated.

It is very clear that the number of investigations leading to termination have progressively declined after the Sheriff took back control of the jails. In fact the number of investigations termination investigation declined to zero in both 2014 and 2015.

Chart 1, below shows the decline in the number of terminations beginning in 2012, going to zero in both 2014 and 2015. It is important to put the year of termination into the context of the lag time for investigation and adjudication.

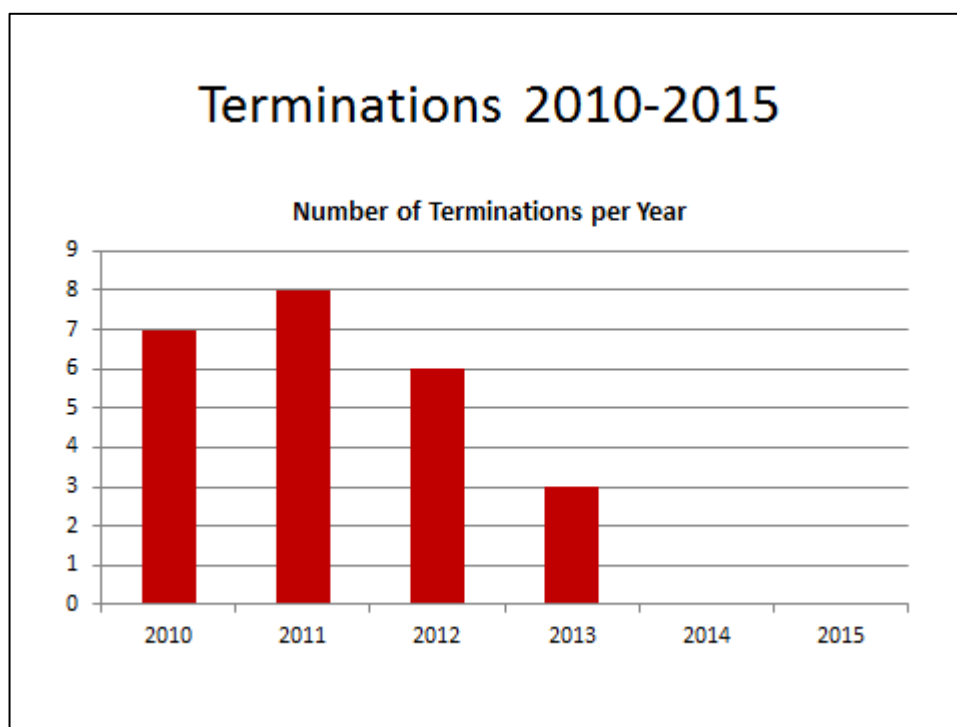


Chart 1 Depicts the decline in the number of terminations.

There are two possible explanations for the decline in serious discipline since the Sheriff took over the jails. First is that the Sheriff is doing so well in managing the jails that employees are not committing any fire-able offenses. That is unlikely since the Blue Ribbon Commission was created in response to strong public demand for an investigation into the operation of the jails based on the death of an inmate and other complaints. The other possibility is that there were limited or no investigations by the Sheriff.

The reasons for termination were stated by the Sheriff in the form of a narrative-list. Some, but not all terminations included two or more charges. It is reasonable to believe that the charge

which the Sheriff considered to be the most serious violation would be listed as the primary reason or the first reason on the list of reasons for termination. Any subsequent violations would be listed in descending rank order of importance.

To organize the data, the reasons for the termination were grouped into four classifications: Integrity, Driving Under the Influence (DUI) or other Crimes, Romantic Relations and Use of Force. For purposes of this report, integrity means keeping ones word, living up to one's oath of office including complying with the law, legal orders, policies, rules and regulations. It could be argued that violating the law, becoming romantically involved with an inmate and improperly using force are all violations of integrity. For purposes of this report, unless the reason for termination easily fit into one of the three categories of DUI/Crime, Romantic Involvement or Use of Force, it was categorized as an Integrity violation.

The list of violations which were used come from Sheriff Smith through the *San Jose Mercury News*. (Kaplan, 2015) (See Appendix A) The data were tallied based on this eight cell matrix which was titled Primary and Secondary Reasons for Termination (Table 1).

How to Read the Matrix Each termination was listed by year of occurrence. To facilitate tracking, an incident number was created for each termination by using the last two numbers of the year in which the termination was reported and the number of termination in the order of occurrence during that year. As an example, incident number 10.1, "officer lied on report about inmate altercation . . ." was the first termination in the year 2010. The second termination in 2010 was referred to as 10.2, "officer unnecessary force . . ." The last example was the fifth termination in 2012, it was identified as 12.5, "civilian worker, negligent in duties, lied,"etc.

- In the category DUI/Other Crime the "D" following the incident number indicates a DUI; the "O" following the incident number indicates Other Crime.
- Similarly, under Use of Force, the "P" following the incident number indicates the use of physical force and the "V" indicates the use of verbal force.
- The "T" means the total number of incidents in that category.

This is important because openness, clarity and understanding the process are of great importance. By showing the reader how decisions were made with the data, anyone can follow the logic. Readers may or may not agree with the use of the data but how decisions were made are very clear. Simply, the process explains why incidents were categorized as they were. Those data are in Table 1 below.

In Table 1 each incident was placed in a category (Integrity, DUI/Crime, Romance, and Force) and was shown by incident number. The first charge on the list of charges was the most serious charge and was listed as a primary reason for termination.

Primary and Secondary Reasons for Termination

	Integrity	DUI / Other Crime	Romance	Force
PRIMARY	T=4 10.1 11.5 11.8 13.2	T=6 3=D 3=O 10.3- D 10.4- D 11.4- D 12.2- D 10.5- O 13.1- O	T=8 10.6 10.7 11.1 11.6 11.7 12.4 12.5 12.6	T=6 3=P 3=V 10.2- P 11.3- P 13.3- P 11.2- V 12.1- V 12.3- V
SECONDARY	T= 8 10.2 11.3 11.6 11.8 12.3 12.5 13.2 13.3	T=6 6=O 10.7- O 11.1- O 11.4- O 11.7- O 12.4- O 12.6- O	T=0	T=1 1=V 10.1- V

Table 1: This table categorizes each of the terminations of Santa Clara County Sheriff personnel into a primary and secondary grouping or classification.

The second charge on the list of charges was the second most serious charge and was listed as the secondary reason for termination. The study did not go beyond two charges. Some terminations had only one reason for termination. The totals (“T”) in each box of the matrix are listed at the top of the box.

Table 2 is a basic summary of the data in Table 1. Table 2 shows both the primary and secondary reasons for termination and the combined (sum) primary and secondary reasons for termination per category.

Summary: Primary and Secondary Reasons for Termination

	Integrity	DUI/Other Crime	Romance	Use of Force
PRIMARY	4	6	8	6
SECONDARY	8	6	-0-	1
COMBINED	12	12	8	7

Table 2: This is a summary of Table 1. It depicts the totals for the primary, secondary and combined reasons for termination based on categorical reasons.

Use of Force Specific Since the use of force has historically been the focus of media attention and inquiries about law enforcement over the past few years, it was important to be more specific about the levels of force. As a category use of force was subdivided into verbal use of force and physical use of force. Below in Table 3 are the results of that categorization.

Summary: Use of Force as a Reason for Termination

	Verbal Force	Physical Force
PRIMARY	3	3
SECONDARY	1	-0-
COMBINED	4	3

Table 3: This represents the number of times Verbal Use of Force and Physical Use of Force were used as grounds for termination.

DUI and Other Crimes Criminal activity does not seem to be a focus of the Blue Ribbon Commission or the Sheriff’s inquiry. Based on preliminary findings it appeared the violations of the law need to be considered as a separate category.

Summary: Crimes Committed as a Reason for Termination

	DUI	Other Crimes
PRIMARY	5	1
SECONDARY	-0-	6
COMBINED	5	7

Table 4: This represents the number of times DUI (Driving Under the Influence) and Other Criminal activities were used as grounds for termination.

There were a significant number of DUI crimes listed as a primary cause for terminations. Importantly non-DUI crimes were a significant number of secondary causes for termination. That is why this report divides the crimes into two sub-categories, DUI and Other Crimes.

DISCUSSION

The Blue Ribbon Commission on Improving Custody Operations (BRC) was created in response to the death of Michael Tyree who was in custody. The purpose of the BRC is to focus on improving the conditions and accountability of the jails, through a comprehensive review of the custodial policies, processes, procedures, protocols and operations in order to swiftly guide the reform so that “the community we serve [will] have the utmost confidence that our custodial facilities are as humane as possible, safe for inmates, visitors, and staff, and are able to provide for the well-being and rehabilitation of those incarcerated.” (BOS: 2015-138, 2015). It is clear that the focus of some is moving toward concentrating on the use of force in the jail. (Bay City News) (Kaplan, 2015) (Sulek, 2015) According to the Sheriff’s data, use of force is the least significant reason for termination.

Primary Reasons for Termination The list of terminations and the reasons for the termination are found in “Appendix A” at the end of this report. The data were presented by Sheriff Smith to the BRC. The data for all four categories are presented in graphic form below in Chart 2.

The data show that the category of action or errant behavior by employees of the Sheriff’s Office, which is most often cited as the reason for termination, was being involved in a romantic relationship with an inmate. It was cited as the primary cause in eight terminations. It was not cited as a secondary cause in any of the terminations.

The next two highest primary reasons for termination were criminal conduct and improper use of force. First, we will look at criminal conduct. Of the six criminal incidents, four were for driving under the influence and two were for other crimes including hit and run and forgery.

Importantly there were no instances of driving under the influence listed as a secondary cause for termination.

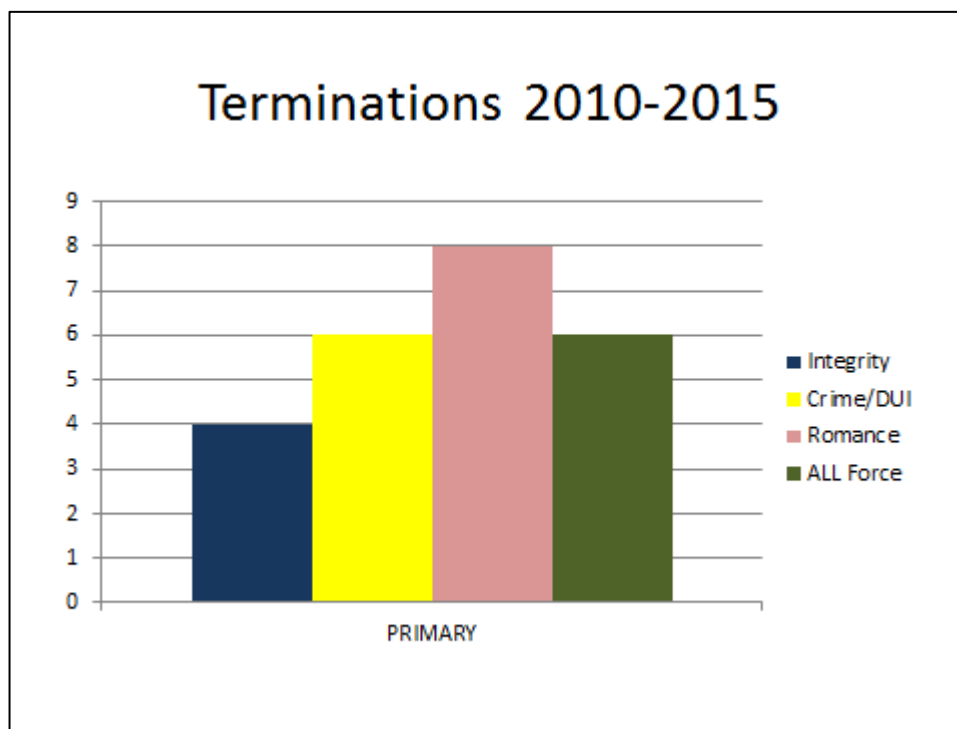


Chart 2: Depicts the primary reasons that Santa Clara Sheriff Personnel were fired.

Six acts of criminal behavior were cited as the secondary cause for termination. Examples of the secondary causes included facilitating the exchange of drugs and illegally accessing official computer records and data.

There were six terminations where the primary cause was improper use of force. Three of the six terminations were for the physical use of force. Three terminations for use of force were verbal including offensive banter, unprofessional and obscene language, cursing and yelling at inmates. Because the use of force is always a focal point for law enforcement reform efforts, future research should consider whether or not three terminations for physical use of force is better, worse or consistent with other agencies of similar size.

Secondary Reasons for Termination Secondary reasons for termination are instructive. Although romantic relationships with inmates were the most frequent primary reasons for termination, romantic relationships were never mentioned as a secondary cause.

Lapses of integrity were the most significant secondary cause for termination followed by criminal activity. There was only one instance where use of force was a secondary cause of termination. In that instance the excess force used was verbal force. The graph in Chart 3 illustrates the secondary causes for termination.

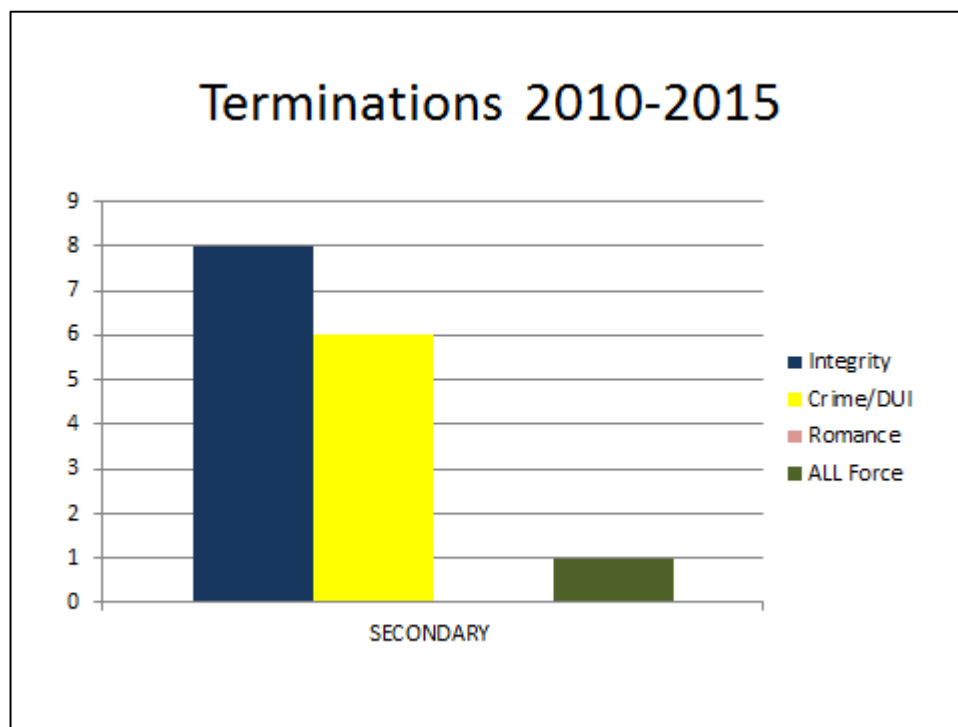


Chart 3 Depicts the secondary reasons that Santa Clara Sheriff Personnel were fired.

Who Decides the Reasons for Termination The Sheriff charges employees with violations of laws, policies or procedures. The employee has the opportunity to present a defense at a hearing. The selection of the charges, accusations and indictments upon which sheriff personnel are brought to a hearing are presumably selected by the administration or the Sheriff. It is further assumed that the Sheriff approves all charges when it is a termination case. Examining the data gives us insight into what the Sheriff and the administration actually believe are the most important values to which the deputies and other employees need to adhere. For reference, the core values of the Department are found in Appendix B. (Santa Clara Sheriffs Office, 2014) We did not compare and contrast those values to the reasons for termination.

Because termination cases are among the most important personnel issues in any organization, it would be irresponsible for the Sheriff not to be fully informed of the issues of each termination case and not to approve of the actions of her staff. It is reasonable to believe that both the primary and secondary causes for termination are high priorities for the Sheriff. That

is why the primary and secondary causes were combined. It is very instructive. It shows that the personnel fired from the Santa Clara County Sheriff's Office are fired primarily for integrity issues and violation of criminal statutes; that romantic involvement is also an important reason for termination, and use of force is the least important reason for termination, almost by half. The combined categories are depicted in Chart 4 below.

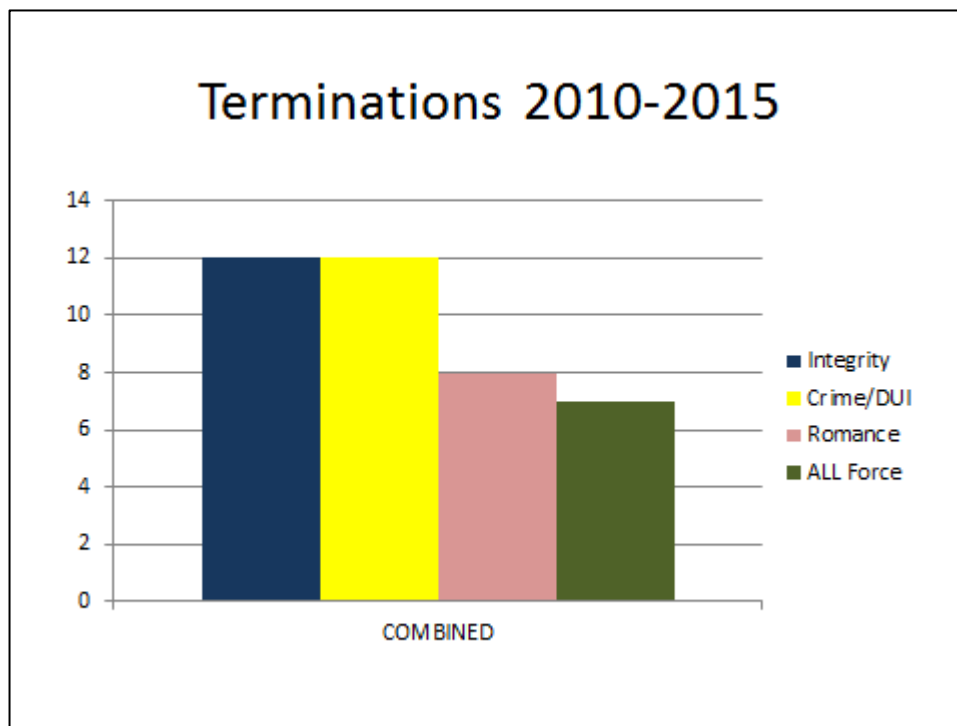


Chart 4 Depicts the combined the primary and secondary reasons that Santa Clara Sheriff Personnel were fired. It clearly shows that integrity and complying with the law are the most significant issues upon which terminations are based. The use of force is the least important issue upon which terminations are based.

Based on data supplied by the Sheriff's Office, these are violations that the Sheriff thinks are the most problematic in the agency. These categories are the reasons why employees were fired. What is not clear is what is the Sheriff doing to remediate these behaviors? What is it in the culture of the Sheriff's Office that would make it okay to commit violations in these areas?

ORGANIZATIONAL CULTURE

There are significant indicators that the organizational culture of the Santa Clara County Sheriff's Office is an organization in distress. Problematic cultures lead to problematic outcomes.

Organizational Culture Defined *"The culture of a group can now be defined as a pattern of shared basic assumptions learned by a group as it solved its problems of external adaptation and internal integration, which has worked well enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think and feel in relation to those problems."* (Schien, 2010)

Organizational Cultures are top-down driven. (Brown, 1996) One of the most important ways that organizations teach employees "the pattern of shared basic assumptions" is through initial training, in-service training and the organizations system of rewards and punishment. That system is created and controlled by the head of the organization. If there are problems in the organization's culture it would be prudent to examine the pinnacle of the culture where the beliefs and values are determined, fostered and enforced.

SUMMARY

This review and study was based on data provided by Sheriff Smith and found in the *San Jose Mercury News*. (Kaplan, 2015) It shows in order of importance the reasons Sheriff Personnel are most often terminated. Those reasons include lapses of integrity¹, specific criminal conduct, and romantic relationships with inmates and improper use of force.

OBSERVATIONS AND CONCLUSIONS

The ability to develop substantive conclusions in this report is limited because the available data are limited. However, there are indicators of organizational dissonance and distress.

That is based on linking the serious problems in the jail to other problematic indicators such as the inability to hire and retain personnel, questionable personnel arrangements and isolation of the Santa Clara Sheriff's Office from other law enforcement organizations specifically in training.

The tendency toward isolation causes one to ask whether or not the death of Mr. Tyree is simply an issue of defective custodial processes, procedures and protocols or something else? After all, the BRC has been charged to examine only processes, procedures and protocols.

¹ For purposes of this report, integrity means keeping ones word, living up to one's oath of office including complying with the law, legal orders, rules and regulations. Unless the reason for termination easily fit into one of the three categories, e.g., DUI/Crime, Romantic Involvement, Use of Force, it was categorized as an Integrity violation.

Was the tragic death of Mr. Tyree a symptom of an organization in distress with multiple inconsistencies between its stated beliefs and values and the actions of the organization's leaders and managers? In a paramilitary law enforcement environment, officers do what they are taught-to-do, told-to-do and allowed-to-do. Beliefs and values when operationalized lead to the outcomes generated by line officers. Was the BRC been assigned to examine the core problems that will lead to meaningful holistic changes or has the BRC's assignment been specifically limited for other reasons?

At the core of what you are investigating are personnel issues; which do not only exist in the custody division. Today, the DSA has 106 vacancies, which is a 20 percent vacancy rate. Why can't the Sheriff hire and keep qualified employees?

Recruiting and retaining deputy sheriffs is the same as recruiting and retaining an employee for any organization. It is based on the economic theory of supply and demand. The supply of qualified law enforcement candidates is very limited because only a few people meet the high physical, mental, psychological, moral and ethical standards.

Employers who need deputy sheriffs are on the demand side. They offer competitive wages, benefits and working conditions which will attract qualified employees. The Santa Clara County Sheriff's Office offers competitive wages and benefits. Unfortunately, the Sheriff's Office has a reputation of poor working conditions. Not the equipment or buildings but the culture. The Sheriff's Office has a reputation outside the organization as a bad place work.

From the early 1990s through 2002, the Los Angeles Police Department (LAPD) was rocked by one scandal after another. In 2000, LAPD management completed its own internal investigation of the Rampart Scandal called the Board of Inquiry Report. Erwin Chemerinsky who was a USC Law Professor at the time and is now dean of University of California Irvine School of Law, told CNN, "The Board of Inquiry report fails to recognize that the central problem in the Los Angeles Police Department is the culture within the department." (Chemerinsky, 2000) He was saying the management was simply rearranging the deck chairs on the Titanic and not examining the core issues of the organization, the culture.

The Los Angeles Police Protective League (PPL), the union representing LAPD officers understood the organizational culture based on the dissonance in LAPD. They lived it every day. They understood there would continue to be a cycle of crisis-and-reform until the cultural of the agency was addressed. The PPL commissioned Professor Chemerinsky "to prepare an independent analysis of the Board of Inquiry's report." (Chemerinsky, Hoffman, Levenson, Rice, & Sobel, 2001)

This report is not an independent analysis. The BRC's role should be to conduct an analysis at a deeper level. It is likely that every member of the BRC understands the need for a deeper probe. Some of the questions below may be helpful in prompting the expansion and realignment of the focus and scope of the BRC.

- Is the current process of the BRC treating symptoms of the maladies at the Santa Clara County Sheriff's Office or is it drilling down to determine the cause of discord and conflict?
- Why has the number of terminations declined since the Sheriff took over the jails?
- What is the timeline for the investigation and adjudication of fire-able offenses beginning with the discovery of a possible violation through the adjudication during the period of 2010-2015?
- Why was no one terminated in 2014?
- Why was no one terminated in 2015?
- There are 31 investigations in process. What is the timeline for them, e.g., discovery, investigation and adjudication; and how many of them are termination cases per se?
- What is it within the culture that leads jail deputies to believe they can conduct romantic relationships with inmates, and ostensibly, to do so and not get discovered?
- What is it within the culture that leads jail deputies to believe they can drive under the influence and not get into a collision or to get caught?
- What is it within the culture that leads jail deputies to believe integrity is not important?
- Are there daily roll-call training systems in place to prevent errant behavior?
- What is the return on investment for the Sheriff to establish an independent academy?
- Why has training been reduced dramatically?
- Is there a correlation between reduced training and increased personnel complaints; including terminations?
- Why was the vitally important roll call briefing eliminated?
- What are the criteria for selecting jail deputies and does it differ from an enforcement deputy?
- Why are Sheriff's Office employees not regularly trained alongside deputies and police officers from similar agencies in this County?

The culture of an organization comes primarily from the top, the source. Is the BRC examining the symptoms of the illness or searching for the cause? If one treats the symptoms only the illness is likely to return because the causation has not been addressed.

RECOMMENDATIONS

RECOMMENDATION: Being involved in a romantic relationship was linked to illegally accessing data and performing other illegal acts on behalf of an inmate. The Sheriff considers this some of the most serious violations based on the number of terminations.

- What preventative training programs are in place to mitigate romantic involvement with inmates and related illegal conduct including accessing data, etcetera?

RECOMMENDATION: Driving under the influence is considered by the Sheriff as one of the most serious violations based on the number of terminations.

- What preventative training programs are in place to mitigate driving under the influence, the use of alcohol and obeying the laws outlined in the Vehicle Code?
- What programs are in place to identify alcohol related problems and to address them?

RECOMMENDATION: Knowing when and how to use force requires focused training that is on-going, realistic and verifiable. That type of training is typically accomplished during the roll call briefing period prior to deputy going to their duty station or out on patrol. It is also accomplished during annual in-service training days.

- Does the training correct the problem or is it just training to comply with a state mandate or other requirements?
- Does the training program address both the legal and ethical-moral application of the use of force?
- Do the preventative training programs integrate the legal-ethical-moral considerations in the use of force – the thought process - with the actual physical use of force which is a perishable skill?

RECOMMENDATION: The BRC should consider an evaluative study of the Sheriffs Office's stated-values, meaning values which are formally presented and taught and the values in use, meaning the values and behavior which are rewarded and which are punished. Comparing and contrasting the values to the reasons for termination would be informative.

RECOMMENDATION: The BRC should consider an evaluative study of the Sheriffs Office's internal investigations process.

- Include time line studies: Who knew what, when did they know it and what actions did they take?

- Is the process at SCCSO consistent with the processes of similar agencies in the Bay Area and is it similar to the rest of California?

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APPENDIX A

CUSTODY PERSONNEL FIRED by SHERIFF L. SMITH (Kaplan, 2015)

2010-2015 (six years)

2010:

- [10.1] #1 officer lied on report about inmate altercation, profanity toward inmates, may have left inmates unsecured
- [10.2] #2 officer unnecessary force, lied about actions, claimed to have a concussion
- [10.3] #3 officer arrested by CHP, admitted being under influence of alcohol and cocaine
- [10.4] #4 officer arrested for drunken driving, probationary release
- [10.5] #5 officer arrested for two hit and runs, and resisting arrest
- [10.6] #6 off-duty officer involved in inappropriate or romantic relationship with former inmate and convicted felon
- [10.7] #7 officer involved in inappropriate/romantic relationship with convicted felon in custody, also used law enforcement database illegally and gave inmate contraband items

2011:

- [11.1] #1 probationary release, officer involved in romantic or otherwise inappropriate relationship with inmate or convicted felon, used law enforcement database, provided false info during department investigations, impeded investigations by advising involved party
- [11.2] #2 officer engaged in verbally offensive banter and made derogatory and inappropriate remarks to pair of female arrestees in intake/booking lobby.
- [11.3] #3 officer involved in excessive force incident in intake/booking lobby and failed to accurately report the facts
- [11.4] #4 off-duty officer arrested for drunken driving, resisting arrest in solo car accident, observed removing an ammo cartridge from arresting officer's rifle.
- [11.5] #5 officer made untruthful statements in interview with internal affairs
- [11.6] #6 officer involved in romantic or otherwise inappropriate relationship with inmate or convicted felon, disobeyed order to stop, submitted false reports, used computer databases without legitimate need
- [11.7] #7 officer developed inappropriate relationships with inmates in and out of custody, facilitated the exchange of drugs, cell phones and communications with those inmates, and profited, provided false statements to investigators, etc.
- [11.8] #8 officer failed to perform necessary duties, made false entries into log books

2012:

[12.1] #1 officer cursed and yelled at inmate and removed him from his inmate worker job for no reason.

[12.2] #2 off-duty officer arrested for drunken driving

[12.3] #3 officer was unprofessional and used obscene language when interacting with inmates, retaliated v inmates after they submitted a grievance

[12.4] #4 civilian worker, involved in sexual relationships with inmates in and out of custody. provided inmates with contraband.

[12/5] #5 civilian worker, negligent in duties, lied, jeopardized inmates' safety, took unauthorized photos at jail facility

[12.6] #6 Officer involved in inappropriate relationship with inmate and violated the law during it, violated law enforcement database rules and failed to report association with known felon

2013:

[13.1] #1 officer convicted of misdemeanor involving forged loan documents

[13.2] #2 officer engaged in outside employment that he failed to report and engaged in conduct that would tend to discredit the dept and county

[13.3] #3 officer involved in excessive force incident with inmates, failed to accurately report the facts

2014: None

2015: None, but several pending actions

APPENDIX B

Core Values of the Santa Clara County Sheriff's Office (Santa Clara Sheriffs Office, 2014)

Our principal mission is protection of life and property.

Our employees are our most valued asset.

We strive to maintain the highest level of public trust.

We demand the highest standards of honesty and integrity.

We value community partnerships.

We treat each other, and the community, with dignity and respect.

We recognize diversity as a strength.

We value personal and professional growth through education and training.

We recognize the importance of investing in the future of our community's children.

We recognize the importance of fiscal responsibility through performance-based management.