

County of Santa Clara
Board of Supervisors
Supervisorial District 5
Supervisor S. Joseph Simitian



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DATE: August 17, 2021
TO: Board of Supervisors
FROM: Supervisor S. Joseph Simitian, District Five
Supervisor Otto Lee, District Three
SUBJECT: Jail Oversight

RECOMMENDED ACTION

Direct Administration, the Office of the County Counsel, the Office of Correction and Law Enforcement Monitoring (OCLEM), and any other relevant County department to make public information specified below relating to the County jail and the operations of the Sheriff's Office, transmit that information to relevant parties at the State and local level, and report to the Board of Supervisors with further information.

Possible Actions:

- a. Direct County Counsel to make public prior to the September 14, 2021 Board of Supervisors meeting a copy of County Counsel's February 10, 2020 19-page report relating to the case of Andrew Hogan, redacted to the minimum extent required by law; and, if deemed desirable by County Counsel, a non-confidential summary of that report also accessible to the public.
- b. Direct County Counsel to make public prior to the September 14, 2021 Board of Supervisors meeting a copy of the roughly 38 video/audio recordings related to the August 25, 2018 incident involving the case of Andrew Hogan (amounting to approximately 4.5 hours of content), redacted to the minimum extent required by law.
- c. Direct the Office of Correction and Law Enforcement Monitoring (OCLEM) to review, assess, describe, comment, and make recommendations on the issue of disciplinary action and/or lack thereof (to the maximum extent allowed by law), undertaken by the Sheriff's Office in connection with the Hogan case and report to the Board of

Supervisors at the September 14, 2021 meeting, and share that same report with the County's Community Correction and Law Enforcement Monitoring Committee (CCLEMC), to the maximum extent allowed by law.

- d. Direct County Counsel to provide a public report regarding the status of County compliance with consent decrees involving the jail.
- e. Direct Administration to refer the above information, along with any additional relevant information relating to salary, overtime, promotion, and disciplinary action regarding relevant employees (i.e., employees involved in the below incidents), along with information regarding political endorsements, contributions, and independent expenditures by parties associated with these incidents to the California Fair Political Practices Commission (FPPC).
- f. Direct County Counsel to refer this legislative file, attached and/or supporting documents, if any, and all of the above-referenced information (i.e., as noted in paragraphs "a" through "e") to the Santa Clara County Civil Grand Jury for evaluation and consideration pursuant to California Government Code Section 3060 (re: misconduct in office).
- g. Direct County Counsel to refer this legislative file, attached and/or supporting documents, if any, and all of the above-referenced information (i.e., as noted in paragraphs "a" through "e") to the Office of the Attorney General, State of California for investigation relating to a possible pattern or practice of unconstitutional corrections conduct and/or civil rights violations and/or other violations of state or federal law; and for other such actions as may be appropriate consistent with the provisions of Article V Section 13 of the California Constitution, which provides in pertinent part: "The Attorney General shall have direct supervision over every district attorney and sheriff...in all matters pertaining to the duties of their respective offices..."
- h. Direct County Counsel to report to the Board of Supervisors in closed session at the earliest opportunity on the status of litigation involving former County jail inmate Martin Nunez.

BACKGROUND

Since July 2010 the Sheriff has been responsible for the vast majority of jail functions and staff, and is the appointing and supervising authority for more than 700 sworn correctional deputies and correctional officers employed in the County jails. Thus, the Sheriff is responsible for the management, operation, organizational culture, and conduct within the jail.

That said, the jail has been the scene of a series of tragic and costly incidents, sometimes without explanation, and without apparent accountability. Answers are few and far between. And in the absence of greater transparency, the question of possible political influence looms large. These would be challenging issues under any set of circumstances. The challenge of addressing these issues is exacerbated, however, by both a lack of information and the limits of Board authority.

Efforts by the Board of Supervisors, County Administration and members of the public to address mismanagement issues endemic to the jails have been repeatedly stymied, largely as a result of the Sheriff's assertion of her prerogatives as an independently elected official and in reliance on the provisions of California Government Code Section 25303.

We are mindful and respectful of both. However, it must be noted that Section 25303 also provides that, “The board of supervisors shall supervise the official conduct of all county officers...particularly insofar as the functions and duties of such county officers...relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties...Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.”

The conundrum here is that as a matter of law and policy we are obligated to confront these issues of mismanagement, but are simultaneously impeded in our ability to do so. Hence the need to refer these matters to other agencies and to make information public as recommended above.

This referral is an attempt to keep the public, our correctional officers and jail inmates safe; to ensure some measure of accountability; to prevent such tragic and costly events from occurring in the future; to restore trust in our law enforcement institutions and officials; and to assist various county- and state-level agencies in the performance of their duties.

We begin by reviewing three noteworthy incidents in our jails (there are certainly others) that took place over a four year period.

Michael Tyree

In August of 2015, Michael Tyree, a mentally ill man, spent the night in the Santa Clara County jail. That night, he was beaten to death by three sworn correctional officers. The officers were later convicted of murder, and the County of Santa Clara settled his family’s excessive force claims for \$3.6 million.¹

Andrew Hogan

In August of 2018, Andrew Hogan, another mentally ill man, was awaiting transfer from the County’s Elmwood correctional facility to Main Jail in San Jose, a little over five miles away. Mr. Hogan, suffering from psychiatric distress, was placed in the back of one of the standard vans the Sheriff’s Office uses for such transfers, separated from the drivers by a metal grating. Mr. Hogan’s arms and legs were restrained by shackles, but he was not belted into his seat.

Over the course of the short drive, Mr. Hogan grew increasingly distressed and began to batter his head against the metal grating separating him from the drivers, eventually injuring himself so severely that he fell unconscious. The drivers took him to Main Jail, where he was left unattended in the van for a period of time, bleeding from his head injuries. He was eventually transferred to Valley Medical Center where he received medical treatment. There it was determined that Mr. Hogan suffered a traumatic brain injury that left him incapable of caring

¹ See, e.g., County of Santa Clara, Office of the District Attorney, Three Santa Clara County Correctional Officers Convicted of Mentally-Ill Inmate's Murder (June 1, 2017), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2017/M-Tyree-Conviction.aspx>; Tracey Kaplan and Robert Salonga, The Mercury News, Michael Tyree jury: San Jose jail guards guilty of murdering mentally ill inmate (June 1, 2017), <https://www.mercurynews.com/2017/06/01/breaking-jury-reaches-verdict-in-san-jose-jail-guard-murder-case/>.

for himself. He was subsequently transferred to a long-term care facility, and now resides with his family.²

The County settled with Mr. Hogan and his family for an amount in excess of \$10 million.³

Our offices are unaware of any meaningful disciplinary actions taken against the correctional officers involved in the delay between Mr. Hogan's arrival at Main Jail and his eventual transfer to the hospital to receive medical care. Indeed, payroll records indicate that the Watch Commander on duty during the Hogan incident (then Lieutenant Amy Le) was promoted to Captain with a concomitant increase in pay 3 ½ months later.⁴

Martin Nunez

In August of 2019, yet another incident involving a jail inmate (Martin Nunez) believed to be suffering from psychiatric distress took place. Earlier this year, Mr. Nunez filed a lawsuit against the County regarding that incident.⁵

The complaint alleges that, in August of 2019, while suffering from psychiatric distress, Mr. Nunez ran head-first into the metal door of his cell and injured his cervical spine. The complaint further alleges that Mr. Nunez was left in his cell for an extended period of time, during which period he was moved roughly by correctional officers in a way that exacerbated his spinal injuries. The complaint alleges that such conduct occurred notwithstanding Mr. Nunez screaming in pain and telling correctional officers that he thought he might be paralyzed, and that his signs and symptoms indicated spinal injury.⁶

As of this date, Mr. Nunez's complaint states that he requires substantial ongoing care for his injuries, and his claim against the County remains unresolved.

REASONS FOR RECOMMENDATION

Shortly after Michael Tyree's death, the Board of Supervisors established and empaneled a Blue Ribbon Commission. That body, and roughly a dozen other agencies, entities, and organizations, collectively generated 623 recommendations for jail reform.⁷ These recommendations, along with two existing judicial consent decrees, prompted the spending of

² See, e.g., Robert Salonga, The Mercury News, Hospitalized inmate's family claims Santa Clara County Sheriff's Office mishandled transport (September 21, 2018), <https://www.mercurynews.com/2018/09/21/hospitalized-inmates-family-claims-sheriffs-office-mishandled-transport/>.

³ *Andrew Hogan v. Santa Clara County*, Settlement Agreement, pgs. 1-2.

⁴ See Dan Noyes, ABC 7 News, I-TEAM: Santa Clara Co. Sheriff's Captain Amy Le removed from job over barbecue grill (June 3, 2019), <https://abc7news.com/santa-clara-county-sheriff-amy-le-captain-fired-supervisor/5328400/> ("After Smith won [the 2018 Sheriff's election], she promoted Le to captain").

⁵ *Martin Nunez v. County of Santa Clara et al; Tom Niccum; Haasan Obsiye; Jason Yao; Nicholas Davis; Westmed Ambulance Service; and Does One through One Hundred inclusive*, Complaint (Jan 11, 2021).

⁶ *Id.*, Complaint ¶¶ 14-15 (Jan 11, 2021).

⁷ See County of Santa Clara, *Jail Reform Homepage – Jail Reforms – County of Santa Clara*, <https://www.sccgov.org/jailreforms>.

approximately \$78 million annually and \$370 million in one-time funds by the County to improve conditions in the jails⁸ — with demonstrably insufficient impact.

These three cases alone, over the course of just four years, resulted in one life lost and two destroyed, with settlements and claims that could, if proven, total something like \$25 million. The recurrence of such incidents in the jail, along with others, suggests a lack of accountability resulting, in part, from a lack of transparency.

Lack of Transparency

Six years after the Tyree incident, a year and a half after the County contracted with OIR Group to serve as the County’s Office of Correction and Law Enforcement Monitoring (OCLEM),⁹ and nine months after the Board unanimously approved a resolution “urging the Office of the Sheriff to finalize an information-sharing agreement with the Office of Correction and Law Enforcement Monitoring,”¹⁰ the Sheriff’s Office still has not signed an information sharing agreement with OCLEM. In fact, the Sheriff has retained outside legal counsel (using County funds) to represent her in resisting such an agreement.

Efforts by the Board’s independent management auditor, Harvey M. Rose Associates, LLC, to access necessary information have likewise been rebuffed (see, e.g., the October 11, 2019 audit at page one: “We received no responsive materials from the Office of the Sheriff...” or the February 22, 2021 audit, which notes: “The Custody Bureau did not give the Management Audit Division access to any of the aforementioned records...” and that “...the Custody Bureau also withheld an unknown number of use of force incidents...”).¹¹

This lack of transparency is consistent with a lack of transparency exhibited by the Sheriff in other venues. Efforts by local media to attain documents in connection with concealed weapons permits were rebuffed in 2019 (see the Mercury News’ December 1, 2019 editorial indicating that the Sheriff’s, “...penchant for secrecy undermines the integrity residents deserve...” and that the Sheriff’s “...inability to even provide records to this news organization...suggests either corruption or incompetence.”¹² The Mercury News went on to note that, “The Sheriff’s office also refused to release any documents...in fall 2018...”).¹³

⁸ Memorandum from Martha Wapenski, Deputy County Executive, to the Board of Supervisors, regarding Update on Resources Allocated Towards Jail Reforms (March 24, 2021).

⁹ Santa Clara County Ordinance Code § A20-61 *et seq.*

¹⁰ October 20, 2020 Board of Supervisors Meeting, Item No. 20, Adopt Resolution urging the Office of the Sheriff, in collaboration with County Counsel, the Office of Correction and Law Enforcement Monitoring (OCLEM), and all other relevant County agencies and departments to finalize the information sharing agreement mandated by Section A20-64 of the County Ordinance Code by Tuesday, November 3, 2020, and to ensure that the agreement incorporates all information OCLEM reasonably requires to fulfill its duties and obligations thoroughly and effectively, Legislative File and Attachments.

¹¹ See Board of Supervisors Management Audit Division, Combined Fiscal Year 2017-18 & 2018-19 Jail Improvement Recommendation Audit (Oct. 11, 2019), <https://board.sccgov.org/sites/g/files/exjcpb936/files/com-fy-17-19-jail-imp-rec-audit.pdf>; Board of Supervisors Management Audit Division, Management Audit of the County of Santa Clara Sheriff’s Custody Operations at 32-33, (Feb. 22, 2021), <https://board.sccgov.org/sites/g/files/exjcpb936/files/Document/mngmnt-aud-shrffs-cust-oper-bureau-2-22-21.pdf>.

¹² Mercury News Editorial Board, The Mercury News, Editorial: Hidden-gun permit probe exposes sheriff’s failures (December 1, 2019), <https://www.mercurynews.com/2019/12/01/editorial-ccw-process-showcases-sheriffs-shortcomings/>.

¹³ *Id.*

A similar lack of transparency was evidenced when the Sheriff refused to provide testimony (i.e., invoked her Fifth Amendment right against self-incrimination) when called upon to testify before the Criminal Grand Jury on August 3, 2020.¹⁴

The determination to withhold information is further apparent in connection with the assault and melee at Elmwood Correctional Facility on November 30, 2020 by 31 alleged gang members who repeatedly attacked an individual inmate over a period of almost six minutes without intervention by corrections staff.¹⁵ Notwithstanding the fact that the incident took place last fall, the Board, the County Executive, County Counsel, and the public were not made aware of the incident until six months later, when the matter was revealed by local news media.

All of this is consistent with the finding of our Blue Ribbon Commission on Improving Custody Operations that there is, “a stunning lack of transparency...in the jail operations...”¹⁶

Possible Political Influence

This lack of transparency cannot help but foster a culture of non-accountability. Even more troubling, however, is a series of facts that suggests this lack of transparency and accountability in the system may be rooted in political influence.

As noted above, in connection with the Hogan case our offices are not aware of any meaningful disciplinary action towards either the Watch Commander on duty (then-Lieutenant Amy Le) or the on duty Sergeant. It should be noted that:

- Ms. Le was elected president of the Santa Clara County Correctional Peace Officers Association (SCCCPOA) in May of 2016.¹⁷

Coincidentally, according to “Transparent California” (a public pay and pension database), her total annual compensation (including overtime) jumped from \$189,000 in 2013 to \$363,000 in 2017 (the year just following her election to the SCCCPOA presidency).¹⁸

That increase in total pay was primarily a function of the fact that Ms. Le received \$175,767 in overtime pay in 2017, making her by far the highest recipient of overtime

¹⁴ See Robert Salonga, The Mercury News, Sheriff and undersheriff plead the Fifth, supervisor blames bad memory in Santa Clara County gun-permit probe (August 28, 2020), <https://www.mercurynews.com/2020/08/28/sheriff-and-undersheriff-plead-the-fifth-supervisor-blames-bad-memory-in-santa-clara-county-gun-permit-probe/>.

¹⁵ See, e.g., Robert Salonga, The Mercury News, New charges reveal Santa Clara County jail guards didn't intervene in mass gang beating of informant (May 11, 2021), <https://www.mercurynews.com/2021/05/11/new-charges-reveal-santa-clara-county-jail-guards-didnt-intervene-in-mass-gang-beating-of-informant/>.

¹⁶ April 12, 2016 Board of Supervisors Meeting, Item No. 10, Attachment e. “Final Recommendations relating to Non-Scope Items.” See also Memorandum from Judge Ladoris H. Cordell, Chairperson of the Blue Ribbon Commission on Improving Custody Operations, to the Board of Supervisors, regarding Final Recommendations of the Blue Ribbon Commission (April 12, 2016), <http://sccgov.igq2.com/Citizens/FileOpen.aspx?Type=4&ID=148198&MeetingID=7189>. See generally April 12, 2016 Board of Supervisors Meeting, Item No. 10, Legislative File and Attachments.

¹⁷ See Tracy Kaplan, The Mercury News, Santa Clara County’s jail guards elect first woman as union president (May 12, 2016) <https://www.mercurynews.com/2016/05/12/santa-clara-countys-jail-guards-elect-first-woman-as-union-president/>.

¹⁸ See Transparent California, <https://transparentcalifornia.com/salaries/search/?a=santa-clara-county&q=amy+le&y=>.

pay among the more than 1,500 Sheriff's Office employees receiving overtime pay in that year.¹⁹

- In 2018, the SCCCPOA, led by Ms. Le, endorsed the Sheriff's highly contested reelection bid.²⁰
- On August 25, 2018, the Hogan incident took place while Ms. Le was on duty as Watch Commander.
- In connection with the November 6, 2018 election, the SCCCPOA's Political Action Committee (SCCCPOA PAC) raised and spent approximately \$300,000 in support of the Sheriff's reelection.²¹

This effectively doubled the expenditure of funds on behalf of the Sheriff's reelection.

- On December 3, 2018, immediately following the Hogan tragedy and the Sheriff's reelection, Ms. Le was promoted to Captain.²²

Coincidence alone is certainly not proof of causality, but in this instance the apparent coincidences merit further scrutiny.

Even the appearance of impropriety undermines the public trust and confidence in government and law enforcement, to the detriment of our democracy. And that erosion of trust in law enforcement institutions and law enforcement officers puts our public safety employees at risk.

The wide-ranging and on-going lack of transparency described above not only reinforces the appearance of impropriety, it prevents the identification of actual wrongdoing and precludes the possibility of accountability. Hence the need for the public disclosure of the various documents described above and for the referral of these matters to the appropriate agencies.

MOVING FORWARD

Many of the County's recent jail reforms have been in response to court-overseen consent decrees entered into as part of settlements for complaints filed against the County. County Counsel recently provided the Board with a privileged memorandum describing the current state of County compliance with the consent decrees and communicated that it could, at Board direction, publish a non-privileged version. In the interest of helping the public to understand the progress, or lack thereof, of our many jail reforms, we should do so.

¹⁹ Memorandum from Cheryl Solov, Management Audit Manager, to Supervisor S. Joseph Simitian, President of the Board of Supervisors, regarding Sheriff's Office Budgets, Actuals and Overtime Use, Attach. C (Sept. 19, 2018), <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=178552>.

²⁰ See SCCCPOA for Laurie Smith, <https://www.scccposupportslauriesmithforsheriff.com/>; Recipient Committee Campaign Statements for Santa Clara County Correctional Peace Officers' Association PAC Supporting Laurie Smith for Sheriff 2018 (filed Oct. 25, 2018 and Jan. 8, 2019), available at <https://public.netfile.com/pub2/?aid=SCC>; Recipient Committee Campaign Statement for Laurie Smith for Sheriff 2018 (filed Jan. 31, 2019), available at <https://public.netfile.com/pub2/?aid=SCC>.

²¹ *Id.*

²² Noyes, *supra* note 4.

In closing, it should be noted that the incumbent Sheriff pushed successfully to take operational control of the County's jails in 2010.²³ With the exception of food, laundry, warehousing, and administrative booking, virtually all operations at the jail are now overseen by the Sheriff.

The results have been costly and tragic.

The conduct and consequences described above compel us to offer recommended actions "a" through "h". Given the lack of transparency and the limitations of Board Authority, we have no other choice.

²³ See Memorandum from Orry P. Korb, County Counsel, to the Board of Supervisors, regarding Organizational Structure for Management and Oversight of County Jails (April 21, 2016), <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=152626>.