

# MONO COUNTY GRAND JURY

---



Final Report  
2008-2009

## **TABLE OF CONTENTS**

### **INTRODUCTION**

Judge's Filing Decree .....	1
Jury Foreman's Letter to Judges.....	2-4
The Grand Jury System.....	5
Grand Jurors & Committees .....	6
Complaints.....	7
1. 08-01.....	7-8
2. 08-02.....	8-11
3. 08-03.....	11-13
4. 08-04.....	13-16
5. 08-05.....	16-34
Mono County Jail Tour.....	35-37
Probation Department and Juvenile Detention Facility..	38-39
Public Defender Inquiry.....	40-41

#### **LOGO**

Laura Patterson Design

#### **COVER**

Haven Kiers

#### **LAYOUT**

Barbara Smith

#### **PRODUCTION**

Chris Lizza & Barbara Smith

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MONO

IN RE: 2008-2009 Grand Jury	GENERAL ORDER
--------------------------------	---------------

I certify that the 2008-2009 Mono County Grand Jury Final Report complies with Title Four of the California Penal Code and direct the County Clerk to accept and file the final report as a public document.

Dated this 28 day of JULY 2009.

  
EDWARD FORSTENZER  
Presiding Judge of the Superior Court



# **COUNTY OF MONO – SUPERIOR COURT**

---

## **GRAND JURY**

---

Chris Lizza  
Grand Jury Foreman  
2008-2009

June 30, 2009

Superior Court Judge Edward Forstenzer  
Superior Court Judge Stan Eller  
P.O. Box 1037  
Mammoth Lakes, CA 93546

Dear Judge Forstenzer and Judge Eller:

Please find attached to this letter the Final Report of the 2008-2009 Mono County Grand Jury. It is comprised of reports generated from the investigation of five Complaints, two investigations undertaken as part of the Grand Jury's watchdog function, and an inspection of the Mono County Jail. These reports are submitted for your approval, to answer the criticisms of persons who believe they have been wronged, and to inform persons interested in the operations of County government. Two complaints have been forwarded to the succeeding Grand Jury because they were received too late in our term to complete a full investigation.

At the beginning of our term, you expressed difficulty in finding eleven people to fill all of the seats of the Jury. You eventually empanelled four carryover jurors, including myself, and seven others who represented an ideal geographic diversity and came from various backgrounds that served to enlighten our deliberations. Each member arrived with great enthusiasm to serve and without any preconception or preconceived agenda. I cannot imagine that you will ever find another group to serve as open, committed, independent, and driven as this group, and I believe that the attached reports demonstrate these qualities.

Our carryover jurors recognized a few areas where operational efficiencies could be improved. First, the standard committee structure used in past years and described in the Mono County Grand Jury Handbook was abandoned in favor of an issue oriented approach. Subject based committees too often resulted in a few overloaded groups while most received no complaints. Organizing committees based on subject areas seems antiquated and not reflective of the types of complaints received in recent years. Instead, we formed committees around each complaint received. This system worked better in placing jurors into issues in which they were interested and minimized conflicts of interest when a juror was too close to an issue or an involved party.

We made two changes in handling our mail. First, we entrusted the Foreman with opening all mail and agendaizing each correspondence received in advance of each meeting. This saved much time at our meetings. Second, we arranged for a new post office box dedicated exclusively to the Grand Jury (apart from the Superior Court). The issue is confidentiality, and through the past couple of years of encouraging people to submit complaints to the Grand Jury, I have learned that this is the paramount issue for would-be complainants. For these citizens, they don't even want their return address to be seen by court workers.

Because court clerks continue to inadvertently open Grand Jury mail sent to the court, a new mailing address became necessary. The new Grand Jury address is P.O. Box 978, Mammoth Lakes, and only Grand Jurors have access to this box.

Confidentiality was paramount to our group, and we made gains in this area by utilizing divergent meeting spaces. Traditionally, most meetings have been held in the County Conference Room located between the County and Town offices in Mammoth Lakes. We felt that this facility was too close to government offices and officials to achieve real confidentiality: even the sight of a witness entering or leaving an interview compromises confidentiality. We found my home in Lee Vining to be a secure, comfortable, and conveniently located venue for many meetings, and we used the homes of other members as well. The new County Administrative Conference Room also provided a more private place for interviews. We used several courtrooms, and found ourselves in the Judges' Library often. In interviewing a large group of sensitive witnesses, we were directed to the conference room of the Eastern Sierra Transit Authority in the Mammoth Industrial Park. That venue provided a less traditional space far from interested eyes where even the parking lot was hidden, and our most sincere thanks are extended to Rick Nash for hosting our gatherings in his space.

Confidentiality issues arose in one complaint when the District Attorney objected to the Grand Jury's withholding of the written complaint from his own examination. It is a clear breach of confidentiality when a complaint is shown to the entity or person that is the subject of the complaint. When the subject of the complaint is a Grand Jury legal advisor, standard precautions must be taken to maintain confidentiality. This is why the Grand Jury uses both the District Attorney and the County Counsel as legal advisors: when the complaint is against a county entity or person, advice should be sought from the District Attorney; when the complaint is against a law enforcement agency, the County Counsel is the proper source for advice. The mere revealing of the identity of the complainant to the improper advisor led to a confidentiality breach during the term.

By my rough count, this Grand Jury conducted more than 50 interviews, held over 25 meetings, and examined thousands of documents during the past year. All of our document requests were met in a complete and timely manner, and the interviewees were remarkably honest and open. While we expected interviewees to be guarded and elusive, we instead found that witnesses were enthusiastic to speak with us, perhaps even grateful for the opportunity to express themselves to our inquisitive group. Such frankness is critical to assist our understanding and to produce accurate, informative, and constructive reports, and we thank each and every interviewee for their forthright participation. Special appreciation is extended to Mark Magit, Assistant County Counsel, and Peter Tracey, Town Attorney, in producing confidential documents to our group.

In order to keep all of this information organized, we needed a capable secretary, and it was our great fortune to have Vicky Phelps serve on this year's Grand Jury. Vicky is a former paralegal, and her skills were a tremendous asset to our group. She took minutes at every meeting and recorded notes at most of our committee interviews. These notes were organized, typed, and sent to the rest of us typically on the day following the meeting. Her abilities allowed the rest of us to focus on the interview rather than concern ourselves with organizing our own notes. Vicky's notes were invaluable in helping us to write our reports, and she was our 'fact check' when we debated issues. I cannot imagine the amount of time she put into our efforts, and my only complaint is that I could not keep up with her pace.

In the middle of our term, one of our valued members was faced by the sudden, unexpected death of her spouse. Roy Saari was an involved member of our community as well as a proud parent and personal friend. The Saaris have been a part of Mammoth for some 25 years, and I am sure that you share our sadness at Roy's loss. Please join me in supporting Sheryl, Jeff, and Joanni as close members of our Mammoth family.

The greatest challenge faced by me this year was the absurd conflicts that can arise due to the nature of our small, rural county. As someone who was raised in Mammoth and operates a business in Lee Vining, I had close friends on both sides of many of our complaints. Initially intimidated by the prospect, I became more confident by observing how our public officials and others handle these conflicts every day. Mono County's public employees and officials are not just here doing a job, but they are as involved in community affairs and service as are private sector employees and retirees. As such, they are often called to enforce an action, issue a permit, or otherwise act on issues that directly affect other community members. Their professionalism is evident every day and served as a model for us.

Grand Jurors also serve on the Election Observer Panel. During our term, we were privileged to gain unique access to an election of historic proportions, at least at the national level. I personally visited two polling places and inspected the ballot counting center in Bridgeport where I observed ballot tabulation. All poll workers were helpful and open in explaining the process and progress at the time I visited. Linda Roberts and Linda Romero in the County Clerk's Office were also very courteous in explaining to me what is perhaps a banality to them. The overvote phenomenon was particularly interesting, and the remedy, though primitive, is effective. Voters need to exercise greater care in completing their ballots!

Lastly, I would like to thank you and our advisors for your assistance. We encountered several difficult, complex issues that included issues of ethics, morals, confidentiality, relevance, jurisdiction and conflicts of interest. We often and freely sought advice from District Attorney George Booth, County Counsel Marshall Rudolph, and his Assistant Mark Magit. We also conducted a few interviews for background information only and thank Doug Northington and Rick Scholl for their time.

Grand Jury service, and jury service in general, is one of the greatest rights we enjoy as citizens of a free nation. True patriots ought to relish such service rather than cringe at the inconvenience presented by this unique opportunity. Jurors are respected community members who must put aside personal feelings and biases to help enact local justice. This system is a pillar of our democratic republic that helps to keep power in the citizenry. When chosen to serve on a jury, people must drop their cynicism and engage in our system of justice. I was truly honored by your request to lead this Grand Jury, and hope that my skills and efforts have met your expectations and will help illuminate the reported affairs to the exceptional members of our community.

Sincerely,

Chris I. Lizza, B.A., M.I.M., J.D.  
Foreman, 2008-2009 Mono County Grand Jury

## **THE GRAND JURY SYSTEM**

Shrouded in secrecy, the functions of a grand jury are not widely known. The following summary describes what a grand jury is and does:

The grand jury system dates back to 12<sup>th</sup> century England during the reign of Henry II. Twelve “good and lawful men” were assembled in each village to investigate anyone suspected of crimes. The jurors passed judgment based on what they themselves know about a defendant and the circumstances of the case. It was believed that neighbors and associates were the most competent to render a fair verdict. By the end of the 17<sup>th</sup> century, the principle that jurors must reach a verdict solely on the basis of evidence was established, and that practice continues today. Although California Supreme Court decisions have curtailed the historical criminal indictment function, the grand jury still serves as an inquisitorial and investigative body functioning as a “watchdog” over regional government.

The Mono County grand jury, as a civil grand jury, is not charged with the responsibility for criminal indictments except in the case of elected or appointed county officials. Its primary function is the examination of county and city government, including special legislative districts such as community service districts and fire protection districts. The grand jury seeks to ensure that government is not only honest, efficient and effective, but also conducted in the best interest of the citizenry. It reviews and evaluates procedures, methods and systems used by governmental agencies to determine compliance with their own objectives and to ensure that government lives up to its responsibilities, qualifications and the selection process of a grand jury are set forth in California Penal Code Section 888 et seq.

The grand jury responds to citizen complaints and investigates alleged deficiencies or improprieties in government. In addition, it investigates the county’s finances, facilities and programs. The grand jury can not investigate disputes between private citizens or matters under litigation. Jurors are sworn to secrecy, and all citizen complaints are treated in strict confidence.

The Mono County grand jury is a volunteer group of 11 citizens from all walks of life throughout the county. Grand jurors serve a year-long term beginning July 1, and the term limit is two consecutive years. Lawfully, the grand jury can act only as an entity. No individual grand juror, acting alone, has any power or authority. Meetings of the grand jury are not open to the public. By law, all matters discussed by the grand jury and votes taken are kept confidential until the end of term.

One of the major accomplishments of a grand jury is assembling and publishing its Final Report. This document is the product of concentrated group effort and contains recommendations for improving various aspects of governmental operations. When it is completed, the Final Report is submitted to the presiding judge of the Superior Court. After release by the court, it is directed first to county department heads for review, then to the communications media. The Final Report is a matter of public record, kept on file at the count clerk’s office. It is also available on line at: [www.monocourt.org](http://www.monocourt.org).

## GRAND JURORS AND COMMITTEES

### 2008-2009 Grand Jurors:

Chris I. Lizza, Foreman  
Lee Vining

Michelle Layne  
Tom's Place

Eric Wasserman, Vice Foreman  
Mammoth Lakes

Frances Rich  
Coleville

Vicky Phelps, Secretary  
Crowley Lake

Sheryl Saari  
Mammoth Lakes

Dana M. Grenier  
Mammoth Lakes

Doug Weitz  
Bridgeport

Diane Bramlette  
Benton

Bruce Woodworth  
Coleville

### Grand Jury Committees:

#### Complaint 08-01:

Sheryl Saari, Chair  
Doug Weitz  
Dana Grenier

#### Complaint 08-05:

Dana Grenier, Chair  
Vicky Phelps  
Doug Weitz  
Sheryl Saari

#### Complaint 08-02:

Michelle Layne, Chair  
Dana Grenier  
Vicky Phelps  
Sheryl Saari  
Frances Rich

Michelle Layne

#### Public Defender Inquiry:

Bruce Woodworth, Chair  
Diane Bramlette  
Dana Grenier

#### Complaint 08-03:

Dana Grenier, Chair  
Diane Bramlette

#### Jail Tour and

Probation Department and  
Juvenile Detention Facility:  
Dana Grenier, Chair

#### Complaint 08-04:

Doug Weitz, Chair  
Bruce Woodworth  
Phelps

all other Grand Jurors

Note: The Foreman is a member of all Vicky committees.



## COMPLAINT 08-01

### STATEMENT

The Grand Jury received a complaint against the Mammoth Lakes Police Department (“MLPD”) and Mono County's District Attorney's Office (“DA”) alleging the mishandling of an assault charge that occurred on August 3, 2007, during the Bluesapalooza Barbeque at Sam's Woods in Mammoth Lakes. Complainant states she was at the above function with her husband and step-daughter. She states she was holding the child when the biological mother, approached her and tried to take the child from her. Complainant stated that in the scuffle the mother twisted her wrist. Complainant's husband separated the two women and escorted the mother away from the child and Complainant.

The mother went home and phoned the MLPD to report the incident and request a citizen's arrest be made against the Complainant. The MLPD went to the mother's home, picked her up, and transported her to Sam's Woods. She pointed out the Complainant and stated Complainant had twisted her finger. Complainant then requested a citizen's arrest against the mother stating she had twisted her wrist very severely causing injury. Complainant claims the MLPD officer recording the case did not interview a sufficient number of witnesses to make an accurate and thorough report. Complainant asks the Grand Jury to consider the following concerns:

1. Complainant and her husband were breathalyzed; was the other party?
2. Why were only two witnesses interviewed when over twenty were present?
3. There was an off duty CHP officer present; why wasn't he interviewed?
4. Why was Complainant's assault charge never considered by the DA?
5. Did a relationship involving the MLPD Chief's (“Chief”) daughter affect the investigation?
6. Did the Chief's dislike of the Complainant's business affect the investigation?

### INVESTIGATION AND FINDINGS

The Grand Jury members reviewed the police report which indicated that all parties had been breathalyzed. The results showed that none of the parties were under the influence of alcohol. The police report further indicates that the Complainant refused police transport to the hospital to have her wrist examined. The reporting officer states that he could see no signs of trauma to the Complainant's wrist. Complainant later transported herself to the hospital and had her wrist examined. The medical report indicates that she had a sprained wrist. This report is a part of the police report.

The Grand Jury also interviewed the Chief and the reporting officer. They provided the Grand Jury with an audio tape of the initial investigation. Considering the tape, police reports, and in-person interviews, the Grand Jury determined that the MLPD officer had conducted a thorough and professional investigation. The tape revealed that the MLPD had interviewed several other witnesses, all of whom gave the same account of the incident. The reporting officer said the CHP officer did not want to be involved, and this was also heard on the recording. The reporting officer explained to the Complainant and the mother that he didn't think there was enough

evidence to warrant a citizen's arrest of either party, and that he would file his report with the District Attorney and let them determine if further action was indicated. On the tape both parties agreed with the officer's assessment. Complainant's agreement with the officer at the time of the incident would seem to preclude her from filing this complaint. Further, on the audio tape the reporting officer advised the Complainant's husband to seek a restraining order to prevent future episodes of this nature.

The Grand Jury interviewed the DA who explained the long and contentious relationship between the Complainant and the mother revolving around the custody of the minor child. The DA stated that these parties have been filing complaints and cross-complaints against each other for over two years. He indicated that no charges were filed in this case because of the lack of tangible evidence.

In the Grand Jury's interview with Chief and reporting officer, the Complainant's concerns about the Chief's daughter were also addressed. The Chief indicated that his daughter had a relationship related to the Complainant, but the relationship was not ongoing, and it in no way had effected the investigation. The Chief was also asked if his dislike of the Complainant's business influenced the MLPD's investigation, and he replied that it had not.

The Grand Jury interviewed the Complainant, and she had no further allegations. She stated that she felt she had been lied to and misled, and that the reporting officer had been biased and aggressive to her at the incident. The Grand Jury studied the audio tape that was made at the incident and does not agree.

The Grand Jury also interviewed another witness who did not want to be interviewed at the time this complaint was made. This witness did not provide any testimony to cause the Grand Jury to recommend further action or investigation be taken.

## **RECOMMENDATION**

The Grand Jury finds that the MLPD and the DA acted properly in this case. No violations of policy or protocol were found. The Grand Jury also finds that both parties were treated equally. The Grand Jury recommends no further action be taken regarding this complaint.

## **COMPLAINT 08-02**

### **STATEMENT**

The Grand Jury received a complaint against the Chief of Police (the "Chief"). The Complainant alleged mistreatment and wrongful termination of employment, the destruction of the Complainant's personnel files and 911 logs, unpaid time cards, and inappropriate management style of the Chief. The Complainant noted that the Town of Mammoth Lakes (the "Town") hired an investigator to conduct an independent investigation in 2007 and issued a report (the "Investigation Report") regarding similar complaints. The Complainant asked the Grand Jury to review the results of the Investigation Report.

## **INVESTIGATION**

Through the course of this investigation, members of the Grand Jury have collected and reviewed copies of the Complainant's personnel file from the Town, the Mammoth Lakes Police Department ("MLPD"), the former police chief (the "Former Chief") and the Complainant. The Grand Jury also reviewed the Investigation Report and attached exhibits, the MLPD Policy Manual, documents related to negotiations between the Town and the Complainant related to retaining the Complainant's services as an independent contractor, police reports, 911 logs and other employment documents. The Grand Jury also interviewed the Complainant, the Chief, the Former Chief, The Town Manager, all sworn personnel of the MLPD, former MLPD personnel and other local citizens.

## **FINDINGS**

The Complainant began working for the Town as a wildlife specialist in a volunteer capacity in the mid 1990s when local coyotes exhibited aggressive behavior towards humans. This work evolved into an informal position with the MLPD to manage human/bear interactions within the Town. A program was developed utilizing public education, food source management, and novel behavior modification methods that soon gained the Complainant and the Town national and international acclaim. With this unique part-time non-sworn position came a uniform, a badge and an hourly wage. However, the position was undefined, and had no written guidelines, regulations or direct accountability. The Complainant reported directly to the Former Chief, and together they created an officer training program relating to the handling of wildlife that is still in use today.

In 2006, the Chief was appointed and he sought to formalize the position of a Wildlife Management Specialist by creating a contract of employment that defined the duties, required recordkeeping and reporting of activities, and placed the position within the chain of command of the MLPD. The Former Chief reported that the Complainant was either unable or unwilling to keep proper track of the bear calls he responded to or to provide a proper accounting of his time, despite many requests to do so. As a result of the changes required by the Chief, the rapport between the Complainant and the Chief deteriorated. The Complainant received a "Notice of Termination" in early 2007 ending the working relationship between the Complainant and the Town because, as stated to the Complainant in the Notice and as agreed to by the Complainant in signing the Notice, "there was not enough work for you to do, to keep you employed simply as the Wildlife Specialist."

Although it was apparent that the relationship between the Complainant and the Chief was not friendly, it was professional, and the Chief, pursuant to direction from the Town Manager, sought to continue the personal services of the Complainant through a contractual relationship. The Grand Jury finds that a personality conflict was not the direct reason for the termination of employment; rather it was the failure of all parties to agree to definitive terms of a professional working relationship.

The Grand Jury finds that the Complainant was not wrongfully terminated. The Complainant served the MLPD and community for years as a volunteer. Under the Former Chief, the

Complainant became a part-time at-will employee. The Former Chief tried to make the Complainant accountable like other officers of the MLPD, and he advised the incoming Chief that the Complainant's position required greater formality to ensure his safety and otherwise permit him to be properly paid and evaluated for the work he performed. The Chief explained to the Complainant that in order to continue to serve the community and be an employee of the MLPD, he would have to follow the MLPD's policies and procedures. It was this inability of the Complainant to conform to what the MLPD requires of its employees that caused the misunderstandings by the parties that resulted in the complaints raised by the Complainant.

The Grand Jury reviewed personnel files provided by the Town, the Complainant, the MLPD and those belonging to the Former Chief. All files were different in content, each one containing hiring information, salary records, newspaper articles, receipts, police reports, contract requests, notes and equipment logs. A list of the documents contained in each was compiled and reviewed with the Complainant. The Complainant could not identify what, if any, documents were missing, but seemed relieved to know that the documents he thought were missing appeared to be in the file maintained by the Former Chief.

The Grand Jury questioned the Chief about destroying the Complainant's personnel files and he denied doing so. He explained that the Town has a policy regarding the retention and destruction of official documents, and that any document destruction he undertakes is done following this policy. It was not possible for the Committee to determine what documents were actually destroyed by the Chief at what time, but the Committee did conclude that the contents of the Complainant's personnel file were preserved in several locations.

## **FINDINGS OF INVESTIGATION REPORT**

The Investigation Report into the issues raised by the Complainant was conducted by an independent investigator hired by the Town in 2007. The Investigation Report produced by such investigation is considered by provisions of employment law to be confidential and can be reviewed only by the Town management and the Grand Jury. Prior to its completion, all parties agreed to accept the Investigation Report and its findings and to accept the conclusions set forth therein. The Committee reviewed the Investigation Report in its entirety. The Investigation Report found no wrongdoing, and the conclusions of the Investigation Report are substantially similar to, but further developed than, the findings presented in this report.

## **RECOMMENDATIONS**

All employees of the Town should have formal employment agreements or current and valid written contracts. Informal, oral or "handshake method" agreements pose too great a risk to the Town to be utilized. Contracts should be reviewed on at least an annual basis to be certain that all obligations are being met and the Town's needs have not changed. The Grand Jury believes that personnel files for the Town's employees should be kept confidential at all times and should be located in Town offices. To ensure that employees' personnel files are complete and accurate, they should be reviewed by the employee and the employee's managing supervisor once a year at the time of the employee's annual review.

The Grand Jury further recommends the Complainant and the Town waive confidentiality requirements in regards to the Investigation Report, so that, at a minimum, the Complainant and Town Council could view the full Summary of Conclusions, if not the entire Investigation Report.

### **COMPLAINT 08-03**

#### **STATEMENT**

The Grand Jury received a complaint from an individual who stated that, on two separate occasions, he felt his civil and constitutional rights had been violated by officers of the Mammoth Lakes Police Department (“MLPD”) and that such officers had also committed gross negligence and harassment against him.

#### **INVESTIGATION AND FINDINGS**

The Grand Jury reviewed the complaint, obtained copies of the MLPD arrest records associated with the two incidents, and interviewed the two MLPD officers and the California Highway Patrol (“CHP”) officer involved in one of the incidents. After reviewing the Complainant’s descriptions of the incidents, the MLPD arrest records and the actions of the officers during each arrest and incident, the Grand Jury came to the conclusion that the arrests were warranted and properly conducted.

During its investigation, the Grand Jury found several discrepancies surrounding the facts as stated in the Complainant’s written account. However, the Grand Jury was concerned about the actions of two MLPD officers during one of the arrests, and focused its investigation on the actions of those two officers.

The incident described by the Complainant which the Grand Jury investigated occurred on February 17, 2008. The Complainant stated that two officers were called to his home as a result of an argument between the Complainant and his roommate. Two calls were made to the police: one from the roommate requesting the police; the other from the Complainant stating the police weren’t needed. When the two MLPD officers arrived they found that both the Complainant and his roommate had been drinking and that blows had been exchanged in what was characterized by the police as “mutual drunken combat.” The Grand Jury was informed by the MLPD officers that, in these types of cases, the MLPD would prefer to separate the individuals involved to allow them to cool off and sober up, rather than make an arrest. The MLPD officers determined that the roommate was the lease holder; therefore the Complainant was requested to leave the apartment.

The officers attempted to make contact (by telephone) with friends of the Complainant in order to find a place where the Complainant could stay for awhile. (During the tour of the MLPD police station by the Grand Jury this issue was discussed with the MLPD Chief. He stated that due to limited facilities to accommodate individuals who are inebriated, MLPD prefers not to make an arrest if a friend of the individual can be found and is willing to take responsibility for the person.) Since this was not successful, and the Complainant

stated he needed some cigarettes but had no money, the MLPD officers decided to take the Complainant to the Chevron gas station (thereby separating the two individuals) and gave the Complainant \$5.00 to help buy coffee and cigarettes instead of arresting the Complainant and his roommate. The officers told the Complainant not to leave the gas station so that they could return to check on him later.

The Complainant stated he had nowhere to go from the Chevron gas station but walked to the post office and sat on the wall there. Not long afterwards, one of the MLPD officers involved in the original call pulled up and asked the Complainant if he was alright and whether he was cold or not (Safety Check). The Complainant responded he was fine. The officer left. The Complainant then decided to go to a nearby friend's house and, while crossing Highway 203/Main Street, he slipped and fell. The Complainant stated that a CHP officer noticed the Complainant lying in the street and that the CHP officer asked the Complainant if he was alright and if he needed a ride home. As this was occurring, one of the MLPD officers was driving down Main Street and noticed the car in front of him swerve and then was also forced to swerve to avoid the Complainant. The MLPD officer followed the Complainant who had now crossed over to the frontage road paralleling Main Street and informed the Complainant that he would be arrested for public intoxication. When the Complainant asked the officer why he was being arrested for doing what the MLPD officer had ordered him to do under the threat of going to jail, the MLPD officer stated that the officer was now "correcting that mistake."

The MLPD officer later explained that, when asked, the Complainant did not remember falling on Main Street and, therefore, had become a public safety risk to himself and to others. After the Complainant had not followed the orders given to him by the MLPD earlier by staying at the Chevron station, he had put himself and others in jeopardy. The MLPD officer determined that the Complainant was unable to make clear decisions and felt that the Complainant, for his own safety, could no longer be left on his own. The officer also concluded that if the Complainant returned to his domicile, he and his roommate would likely brawl again. Therefore, the officer decided to take the Complainant into custody. At the time of the arrest, the Complainant's alcohol level was .125. Fourteen hours later upon release from the county jail, the Complainant's alcohol level was 0.031. Also, at the time of the arrest, the Complainant was on probation from an earlier incident. The Grand Jury also determined that this incident was the first of three arrests of the Complainant in Mono County during 2008, and all of these arrests involved alcohol.

The Grand Jury finds that the MLPD officers acted appropriately and in the interests of public safety and the safety of the Complainant.

## **RECOMMENDATIONS**

The MLPD is challenged when handling those who are so inebriated due to alcohol or drugs as to cause a public safety risk to themselves and others. If the person is arrested, the MLPD must take officers off patrol duties to drive the arrestee to Bridgeport. This is a costly two to three hour process that lengthens during late hours when Sheriff Deputies are not available or during inclement weather. It also inconveniences the arrestee who must arrange for his own return upon release. An overnight jail facility is desperately needed within the Town. With a new Police

Station unlikely to be built in the near future, a temporary solution might be found when a new Mono County courthouse is built in Mammoth. The Grand Jury urges the Town and the County meet and confer on incorporating an overnight jail facility in this new courthouse.

The Grand Jury also finds that the “community style” of policing may contribute to the perception of unfairness by those arrested after leniency is shown earlier for actions that could have resulted in an arrest. The Grand Jury notes that officers use their professional judgment in making these types of decisions. MLPD officers should explain to individuals when leniency is being given and that, at any time, they may be arrested.

Finally, the Grand Jury recommends that a high priority be given to installing and using audio and video recording equipment in patrol cars to determine more accurately events that have occurred, not only for the safety of officers, but to also help determine the culpability of those arrested.

## **COMPLAINT 08-04**

### **STATEMENT**

The Grand Jury received several complaints alleging voter intimidation by the Mono County Clerk-Recorder-Registrar (the “County Clerk”). The complaints received were in response to a letter, dated October 1, 2008, written by the County Clerk and sent to 14 persons, most of whom had registered to vote in Mammoth Lakes, and several of whom had registered to vote in June Lake. The Complainants asked the Grand Jury to address a variety of concerns generated by such letter about voter intimidation and voter rights.

### **INVESTIGATION**

The Grand Jury interviewed numerous individuals, including the County Clerk, the Mono County Counsel, and the Mono County District Attorney. Numerous documents regarding these complaints were also reviewed, including letters and emails from and to the County Clerk, correspondence between the County Clerk and the California Secretary of State’s office, correspondence between the County Clerk and an attorney for the Mono County District 3 Supervisor (the “Supervisor”), materials regarding investigations by the Mono County District Attorney’s office, and voter registration rolls.

### **FINDINGS**

During 2008, the County Clerk sent two letters to a limited number of persons registered to vote in Mono County but with mailing addresses located outside of Mono County (the “Recipients”). The first letter was dated May 21, 2008 (the “May Letter”), and was addressed to 18 Recipients, all of whom had registered to vote in June Lake (District 3), and the second letter was dated October 1, 2008 (the “October Letter”) and was addressed to 14 recipients, most of whom had recently registered to vote in Mammoth Lakes.

The May Letter was written by the County Clerk in response to a letter sent to the editor of the Mammoth Times titled "Charming June Lake" (the "Letter to the Editor") in which the author encouraged second home owners to re-register to vote in Mono County in order to participate in the June 2008 primary election. The editor of the Mammoth Times contacted the County Clerk prior to publication of the Letter to the Editor to inquire as to the legality of the suggestion. Following consultation with County Counsel, the County Clerk provided the Mammoth Times with disclaimer language to be added at the end of the Letter to the Editor explaining that California election laws permit a person to vote in the county where such person is domiciled. The Letter to the Editor, with the disclaimer language provided by the County Clerk, was published in the May 15, 2008 edition of the Mammoth Times.

Subsequently, the County Clerk, in consultation with County Counsel, prepared and sent the May Letter to 18 Recipients who, according to Mono County voter registration rolls, had registered to vote in Mono County during the Spring of 2008 around the time of the publication of the Letter to the Editor, and had mailing addresses outside of Mono County. The May Letter was intended to be educational and to inform voters that, under the California Elections Code, in order to be eligible to vote in a particular county, a person's domicile must be located in that county. The May Letter further informed voters of the difference between "residence" and "domicile" as set forth in Section 349 of the California Elections Code. As a further reminder to voters, the Mono County District Attorney published an article in the May 29, 2008 edition of the Mammoth Times reminding voters of their voting rights and of the requirement to be domiciled in the county in which voters register to vote.

In late June 2008, the Mono County District Attorney ("DA") initiated an investigation into potential voter registration fraud. This investigation was prompted by the events leading to the May Letter and by concerns raised with the DA by the Supervisor following the June election regarding improper voter registration by second homeowners.

On August 6, 2008, an attorney representing the Supervisor sent a letter to the County Clerk requesting that the County Clerk take action to cancel the voter registrations of 28 persons determined by the Supervisor to have invalidly registered to vote in Mono County. The County Clerk responded by letter, dated September 8, 2008, declining to investigate the voter registrations of the 28 persons listed in the attorney's letter and further declining to cancel any voter registrations.

The October Letter was written by the County Clerk in response to an email, dated September 6, 2008 (the "September Email"), which was received by a candidate for the Mammoth Unified School Board, who brought it to the attention of the County Clerk. The September Email encouraged second homeowners to register in Mono County in order to participate in the November election which included a \$65 million bond issue to construct a new high school facility in Mammoth Lakes. Again, after consultation with County Counsel, the County Clerk sent the October Letter, which was a more sternly worded version of the May Letter, to 14 Recipients who, according to Mono County voter registration rolls, had registered to vote in Mono County in early Fall 2008 around the time of, and subsequent to, the date of the September Email and had mailing addresses located outside of Mono County. Again, the purpose of the October Letter was to educate and inform voters of the requirements of the California Elections



Code as to voter registration. One of the Complainants forwarded the October Letter to the California Secretary of State's office alleging voter intimidation. The Secretary of State's office investigated the matter with the County Clerk and did not feel it sufficiently serious to make a formal report of its investigation.

With respect to the concerns set forth in the Complainants' letters, the Grand Jury finds as follows:

1. The May Letter and the October Letter were prepared and authorized by the County Clerk, in consultation with the Mono County Counsel.
2. The County Clerk sent the May Letter to a limited group of persons who had registered to vote in Mono County in Spring 2008 around the time of publication of the Letter to the Editor, but who had mailing addresses outside of Mono County. The October Letter was sent to a limited group of persons who had registered to vote in Mono County in early Fall 2008 around the time of the September Email, but who had mailing addresses outside of Mono County. Because the letters were only sent to a few select second homeowners in each case, this may have caused an unintentional appearance of discrimination or targeting.
3. The purpose of the May Letter and the October Letter were to educate and inform voters of the requirements regarding voter registration as set forth in the California Elections Code. Neither of the letters was intended to intimidate or harass, nor did the Committee find the letters intimidating or harassing.
4. There are no secret proceedings to determine who should have the right to vote and how that person voted. Information as to how a person voted is not available to any person for any reason.
5. No person who chose to register in Mono County for the June or the November elections was denied a ballot, was removed from the Mono County voter registration rolls, or was denied the right to vote. No voter's rights were violated.
6. The County Clerk acted within the duties and responsibilities of her office and sought legal guidance from the Mono County Counsel, as needed, to guide the actions taken by her office.
7. Following the June election, the Supervisor questioned the validity of certain voter registrations within her District and requested an investigation by the County Clerk into such registrations. The County Clerk took no action in response to the issues raised by, and actions requested by, the Supervisor and so informed the Supervisor in writing in September 2008. The County Clerk is employed by Mono County under an at-will contract and serves at the pleasure of the County Administrative Officer, thereby avoiding any appearance of pressure from, or conflict of interest with, the Mono County Board of Supervisors.
8. The law in California as it relates to residence, domicile and where a person may register to vote is complex. It is not within the Grand Jury's purview to address the legality of

each voter registration in Mono County or to determine who is or is not eligible to vote in Mono County. The legality of such issues must necessarily be determined by the Secretary of State's office or through legal proceedings in the Mono County courts. The DA has initiated a criminal investigation into possible voter registration fraud in Mono County, and that investigation is ongoing.

## **RECOMMENDATIONS**

- A. Educational and informational letters sent by the County Clerk to persons registered in Mono County, who have mailing addresses outside of Mono County, should be sent, at a minimum, to ALL persons so registered at that time to ensure that there is no appearance of discrimination or targeting of voters. The Grand Jury further recommends that the County Clerk consider the mailing of such letters to ALL voters in Mono County.
- B. The Mono County District Attorney should continue to pursue the investigation and potential prosecution of cases determined to involve intentional voter registration fraud.
- C. In order to avoid the appearance of undue influence from elected officials in voter registration matters, the Grand Jury recommends that the County Clerk continue to discharge his or her duties in a transparent manner and to exercise restraint when responding to complaints or requests from any elected official regarding an election within such official's District.

## **COMPLAINT 08-05**

### **STATEMENT**

The Grand Jury received several complaints (collectively, the "Complaints") regarding the current Chief of Police (the "Chief") and the general management of the Mammoth Lakes Police Department (the "MLPD").

### **INVESTIGATION**

The Grand Jury has several advisors who provided guidance in the course of this investigation. These advisors include the Mono County Superior Court Presiding Judge (the "Judge"), the Mono County Counsel and the Mono County District Attorney. In addition, the Grand Jury interviewed many other individuals, including: all of the current sworn MLPD officers, two retired MLPD officers, the MLPD Lieutenant (the "Lieutenant"), the Chief, the former MLPD Police Chief (serving immediately prior to the Chief, the "Former Chief"), a representative of the California Highway Patrol, the Mammoth Lakes Wildlife Management Specialist (the "Wildlife Specialist"), the Mono County Sheriff (the "Sheriff"), a Mono County Sheriff's deputy, a Mono County Sheriff's investigator, the Mammoth Lakes Town Manager (the "Town Manager") and local citizens. All persons interviewed, including the MLPD officers, cooperated fully with the Grand Jury and openly shared their thoughts and concerns with the Grand Jury.

The Grand Jury reviewed numerous documents, including personnel files, police records, internal affairs ("IA") investigations and reports, files provided by the Wildlife Specialist, the

new Wildlife Management Contract between the Town of Mammoth Lakes (the "Town") and the Wildlife Specialist, the Peace Officers' Code of Ethics (the "Code of Ethics"), the Public Safety Officers' Procedural Bill of Rights as set forth in Sections 3300-3313 of the California Government Code (the "POBR"), the "Brady" decision, and the MLPD Policy Manual (the "MLPD Manual").

## **SUMMARY CONCLUSIONS**

The Grand Jury received several Complaints, both written and verbal, containing numerous allegations. Some allegations were of a personal nature and other allegations addressed management issues within the MLPD. The allegations were generally wide ranging and occasionally quite descriptive, even inflammatory, so much so that the Grand Jury questioned the relevance of many of the allegations. Although there appear to be some organizational and communication issues within the MLPD (described in Part III below) that should be addressed without delay, many of the allegations were not supported by this investigation and appeared to be based on unfounded rumors and misrepresentation of events and facts.

The Grand Jury finds that the dissemination of inflammatory and unfounded rumors and the misrepresentation of events and facts are detrimental to the individuals involved, their families, the MLPD in general and the community at large. Furthermore, the rumors and the resultant investigations (including this one) serve only to distract the Chief and the MLPD from their main goal, which is to provide quality law enforcement services throughout the Town.

## **ORGANIZATION OF REPORT**

The Grand Jury has divided this report into four parts. Part I discusses the ethical and legal guidelines governing the behavior of law enforcement officers, the relevance of the POBR to disciplinary proceedings, the "Brady" decision which addresses lying by law enforcement officers, the MLPD Manual, and the Police Officers' Association (the "POA"). Part II addresses certain personal complaints directed against the Chief. Part III addresses complaints of job performance, morale issues within the MLPD, and general management problems within the MLPD. Part IV addresses issues brought forth by the MLPD officers as to vehicles, equipment, training, staffing and an inadequate police building.

### **I. ETHICAL AND LEGAL GUIDELINES**

**A. Code of Ethics:** The MLPD has adopted the Peace Officers' Code of Ethics. The Code of Ethics, a copy of which is attached as Appendix A, is also set forth on the MLPD website and in the MLPD Manual, and is required to be memorized by police academy cadets. The Code of Ethics provides a standard for both professional and personal conduct. Under the Code of Ethics, officers are held to a higher standard than citizens, and such standard applies both on and off duty. The goal is to avoid conduct unbecoming an officer or any other conduct which reflects negatively on the MLPD. Violations are typically dealt with through informal counseling (first), a written reprimand in an officer's personnel file for a year (second), or an IA investigation which typically remains in an officer's file for five years, but can be retained for

longer periods. Typical punishments for violations of the Code of Ethics include suspension for a period of days, demotion or termination.

**B. POBR:** The POBR was adopted by the California Legislature effective as of January 1, 1977, and was intended to give protection to police officers against their own department's investigatory zeal and inappropriate outside influences. As a result of the adoption of the POBR, police officers enjoy far more protections in disciplinary matters than do private sector employees. All disciplinary matters in a police department, including the MLPD, are governed by the specific rules and regulations of the POBR. A police chief does not have the latitude that a chief executive officer has to take immediate and/or severe disciplinary action against one of his employees. For example, during an IA investigation, the formal investigation must be completed and the actions that are the subject of the IA investigation must be sustained before any disciplinary action can be taken. Once a formal IA investigation has been initiated, no informal discussions or interviews relating to the matter under investigation are permitted. All IA investigations are confidential and the findings are not available to the public.

**C. "Brady" Decision:** The landmark decision of *Brady v Maryland* (1963) places an affirmative constitutional duty on a prosecutor to disclose exculpatory evidence to a defendant. This duty has been extended to police agencies through case law, requiring law enforcement agencies to notify the prosecutor of any potential exculpatory information. In 1972, the *Giglio v United States* case expanded the "Brady" decision to require prosecutors to provide information to the defense counsel which could tend to impeach a witness. This includes information about the credibility and veracity of the testimony of police officers. If an officer has a past record of falsifying reports or other conduct that could impact his or her truthfulness, the prosecutor must provide the defense with that information.

**D. MLPD Manual:** The MLPD Manual is very detailed and comprehensive and contains numerous policies related to the operations of the MLPD, including policies regarding disciplinary procedures, personnel complaint procedures and wildlife training.

**E. POA:** The POA is a nonprofit organization whose members include all sworn MLPD officers other than the Chief. Monthly dues are required. The POA is involved in the negotiation of salary and benefits for officers, helps to protect officers' rights, and sponsors the Officer of the Year award. The POA also makes donations to certain causes and sponsors charitable events. The President of the POA usually sits in on regular meetings of the staff (Chief, Lieutenant and Sergeants). The POA will sometimes get involved in the resolution of conflicts among officers.

## **II. ALLEGATIONS OF A PERSONAL NATURE AGAINST THE CHIEF**

**Statement:** The Complaints contained several allegations of a personal nature against the Chief, including allegations that (i) the Chief engaged in a recent extramarital affair, (ii) the Chief does not spend enough time on the job, and (iii) the Chief has been drunk in public.

The Grand Jury has questioned the relevance of the Chief's personal life in the performance of his professional duties. Much counsel has been sought on this issue, from legal advisors, from other peace officers, and from members of the public. There is a divergence of opinions on the

issue, but this Grand Jury finds that the personal life of all members of the MLPD has been made relevant by MLPD management. The MLPD Manual begins with the Code of Ethics which provides, among other things, that law enforcement officers will lead a "...private life unsullied as an example to all..." The second page of the MLPD Manual contains the Mission Statement which provides that MLPD officers will "...hold ourselves to the highest ethical and professional standards of conduct..." Such pronouncements, which are also listed on the MLPD website, solidly place personal indiscretions at issue when investigating job performance on the MLPD. For this reason, the Grand Jury undertook to investigate certain personal complaints against the Chief, but, as stated below, found these complaints to be unsubstantiated.

**Findings:** Both the Chief and the other party alleged to have been involved in an extramarital affair have consistently and emphatically denied such an affair, both verbally and in writing, and both in public and directly to the Grand Jury. Furthermore, the Grand Jury found no factual evidence to support the allegation of such an affair and has determined that this allegation is unsubstantiated. The Grand Jury is also aware that this allegation was previously investigated by the Town Manager who also found the allegation to be unsubstantiated.

By all accounts, the Chief is very attentive to his job and, when not in the office, notifies his assistant or the Lieutenant where he is going. There is no evidence to suggest that the Chief does not spend sufficient time on the job. The Grand Jury finds this allegation to be unsubstantiated.

The Grand Jury has spoken with individuals who have witnessed the Chief drinking in public. However, such activity is legal and occurred "off duty." There is no evidence that the Chief has been "drunk in public," a legal term to describe someone who poses a danger to himself and to others. There is also no evidence that the Chief was ever stopped or arrested for DUI. Again, the Grand Jury finds this allegation to be unsubstantiated.

**Recommendation:** None

### **III. ALLEGATIONS RELATED TO JOB PERFORMANCE AND MANAGEMENT OF MLPD**

#### **A. Hiring of the Chief**

**Statement:** The Complaints alleged that the Town erred in appointing the Chief without first conducting a search of possible candidates from outside of the MLPD.

**Findings:** There are two schools of thought on the issue of hiring a police chief. Hiring from within can be beneficial to a small community where the candidate is aware of the environmental challenges, is well known in the community and understands the politics and the needs and wants of the community. The downside to hiring from inside is that it can perpetuate a perception of a "good old boys" method of management. Hiring from outside can be beneficial to a community by bringing in a fresh face and new ideas. However, there is the danger of appointing a person who will not adapt to the small town and community-based style of policing prevalent in the MLPD.

In 2006, the Chief was appointed by the Town Manager as acting chief for three months during a medical leave of absence taken by the Former Chief. Rather than return to work, the Former Chief decided to retire. At the time, one MLPD officer approached the Town Manager and asked that an outside search for a new chief be conducted. However, that officer did not have the support of the POA or other officers in the MLPD and later withdrew his request.

Due to the structure of Town government, the Town Manager has sole authority for hiring all Town department heads, including the Chief. Ultimately, the Town Manager made the appointment of the Chief permanent and cited the following reasons to the Grand Jury: (i) the Chief's performance as acting chief during the Former Chief's leave of absence was excellent; (ii) the Chief was highly recommended by the Former Chief who, by all accounts, was well liked and respected in the community; (iii) the Chief was well prepared for the job and had the skills, dedication and loyalty that the Town Manager found to be essential to the job, (iv) the Chief was a resident of the Town which the Town Manager and Town Council members believed was important given that so many MLPD officers had moved out of Town due to the high living costs in Town, and (v) the Chief had a good relationship with the then Sheriff of Mono County, which the Town Manager found to be important to help repair a previously strained relationship between the Town and the then Sheriff's Department.

A review of the Chief's personnel file revealed that the Chief has a master's degree in education, has completed the 18 month command college course offered by the Commission on Peace Officer Standards and Training ("POST"), and has also taken numerous other training courses for police officers. Additionally, he has received numerous commendations.

The Grand Jury found that the appointment of the Chief in 2006 was properly conducted, and that the Chief met all of the necessary qualifications for a chief of police.

**Recommendation:** The Grand Jury learned that approximately half of new police chief appointments in California result from inside promotions and approximately half result from outside searches. Since the formation of the MLPD in 1986, chiefs have always been promoted from the ranks. However, that may not always be possible or desirable, and bringing fresh ideas into a police agency or any organization can be advantageous to the agency. The Grand Jury recommends that, when the Chief retires, the Town Council should consider doing a comprehensive search for a new chief, including recruitment of both inside and outside candidates.

## **B. Election of Officer of the Year**

**Statement:** The Chief was elected by the MLPD officers as the Officer of the Year in December 2008. The Complaints alleged that the vote was rigged and not properly counted.

**Findings:** The Grand Jury asked each MLPD officer whom they had voted for as 2008 Officer of the Year and determined that the allegation is false. The Chief received seven confirmed votes. A more junior officer received three votes and three other officers received one vote each. Some officers did not vote. Several officers commented that they were approached by a patrol officer soliciting votes for the Chief and were uncomfortable with this situation. The soliciting

officer felt that the Chief was being "beat up" in the media and local politics and felt the Chief needed a vote of confidence. The Chief was elected 2008 Officer of the Year, having received the largest number of votes.

**Recommendation:** The Grand Jury recommends that the Officer of the Year award be reserved exclusively for patrol officers. For these officers, this award is recognition from their peers for excellent work.

### **C. "Brady" Violations**

**Statement:** The Complaints alleged that there are "Brady" issues within the MLPD that have not been properly addressed.

**Findings:** The Grand Jury has determined that there is one officer within the MLPD with a "Brady" issue. The officer was the subject of an IA investigation and received appropriate discipline. The Grand Jury determined that this "Brady" issue has, so far, not affected the officer's ability to pursue his police duties or to testify in court.

The second alleged "Brady" issue concerned the actions of a MLPD officer in connection with the release from jail of a prisoner who offered to act as a drug informant. At the time, the officer in question was working on special assignment with the Mono Narcotics Enforcement Team ("MONET") and incorrectly thought that he had the authority to release said prisoner. He did not have such authority and was so informed by the Sheriff's Department. However, the Grand Jury determined this issue to be a lack of understanding of proper procedure with regard to the release of prisoners, and not a case of lying that would constitute a "Brady" issue.

**Recommendation:** The MLPD must ensure that all officers working on special assignments are properly trained in how to complete the assignment correctly and with confidence.

### **D. Actions by the Chief to Discredit the Wildlife Specialist**

**Statement:** The Complaints alleged that the Chief has attempted over the past several years to personally discredit the Wildlife Specialist and to create a hostile work environment for the Wildlife Specialist within the MLPD. Several issues related to this Complaint are addressed in Report 08-02.

**Findings:** In late 2008, the Town Council decided that the activities conducted through the Bear-With-Us organization were not sufficient to address the bear problem in town. The Town Council once again brought up the issue of hiring a Wildlife Specialist on a contractual basis to perform wildlife management services under the supervision of the MLPD. There has been a complaint regarding a letter written by the POA in November 2008 in opposition to the rehiring of the Wildlife Specialist. The letter was intended only for the Town Manager, but was mistakenly published in the Mammoth Times. There has also been a complaint regarding the attendance of many MLPD officers at a Town Council meeting to discuss rehiring of the Wildlife Specialist which some attendees thought was an act of intimidation. The Grand Jury notes that Sections 4.4 and 4.5 of the Town Council's "rules of procedures" required by Town of

Mammoth Lakes Municipal Code Section 2.04.040 provide that the Chief is the Sergeant-At-Arms of all Town Council meetings.

The Grand Jury has determined that the letter from the POA was indeed written by the then President and other representatives of the POA and not by the Chief as some have claimed. The Grand Jury has further determined that the attendance of officers at the Town Council meeting was encouraged by MLPD patrol officers, and not by the Chief, again as many have claimed. The Grand Jury has also determined that the opposition from the POA to the rehiring of the Wildlife Specialist was related mostly to budget issues and the officers' belief that they were adequately trained to handle wildlife calls in the Town. The MLPD officers have been forced to give up certain pay and benefits as part of the Town budget cuts. The officers were not happy that the Town had agreed to pay the Wildlife Specialist to handle only "significant calls for service" (bears under a residence, bears breaking into vehicles, or bears exhibiting aggressive behavior) while the officers continue to handle the vast majority of wildlife calls, just as they have been doing for the past few years.

The Wildlife Specialist entered into a new Wildlife Management Contract (the "Wildlife Contract") with the Town on February 11, 2009. It appears that this Wildlife Contract is beneficial for the Town because, although the MLPD officers do handle the majority of wildlife calls, most officers have conceded that they are not always willing to handle "significant calls for service." As the Wildlife Specialist is willing to handle these "significant calls for service," the Grand Jury agrees that the services of the Wildlife Specialist are necessary to ensure the safety of residents of the Mammoth Lakes community. However, it is imperative that the Wildlife Specialist be held accountable to the Town and its taxpayers for his time and activities. The Grand Jury has been informed that, at this time, the Wildlife Specialist, the Town and the MLPD are all complying with their contractual commitments under the Wildlife Contract.

The Grand Jury has interviewed many persons in the course of its investigation and none of those persons claimed to have ever heard the Chief make disparaging or negative comments about the Wildlife Specialist or to instruct others to make such disparaging comments. Further, both the Chief and the Lieutenant informed the Grand Jury that the Chief, in order to avoid any misunderstanding with the Wildlife Specialist, never meets one on one with the Wildlife Specialist, but always asks someone else, usually the Lieutenant or the MLPD administrative assistant, to sit in on such meetings in order to be a witness to remarks made during the meetings. Most sworn MLPD officers stated that they had no objections to working with the Wildlife Specialist. Their issue is the cost of the Wildlife Contract in view of the Town's current budget constraints.

The Grand Jury finds that, while there may be personality conflicts between the Chief and the Wildlife Specialist as a result of their long history of interaction, the allegations that the Chief attempted to discredit the Wildlife Specialist or to create a hostile working environment for the Wildlife Specialist are not substantiated.



**Recommendation:** The Grand Jury recommends that the current Wildlife Contract be carefully monitored by all parties to ascertain that all are complying with their contractual commitments under the Wildlife Contract so as to provide proper accountability to the Town and its taxpayers for expenditures made under the Wildlife Contract.

#### **E. Misrepresentations Regarding Wildlife Training**

**Statement:** The Complaints alleged that the Chief lied about the number of hours of wildlife training required for MLPD officers.

**Findings:** The Chief has previously informed Town Council and members of the public that MLPD officers receive at least four (4) hours of wildlife training per year. However, Policy 527 of the MLPD Manual states only that officers shall receive an initial four hours of training in the use of wildlife distraction and/or dispatching devices. According to the Chief and the MLPD officers, new officers receive wildlife training from their field training officers. Annual wildlife training for all officers is now included in the range training all officers receive during the year. The number of hours of formal wildlife training included in this range training is typically less than four hours. However, both the Chief and the officers stated that the officers respond to the vast majority of wildlife calls in the community, and use the very same methods of distraction that were taught and put into practice years ago by the Wildlife Specialist. The Chief and the officers indicated that, due to the number of wildlife calls in the community, the officers receive constant and ongoing on-the-job training with respect to wildlife issues. The Grand Jury finds that the Chief has accurately and consistently represented the amount of wildlife training provided to MLPD officers.

**Recommendation:** None

#### **F. Evaluation of MLPD Officer**

**Statement:** The Complaints alleged that a MLPD officer (now retired) received a poor evaluation from the Chief in 2008 due to such officer's outspoken support for the Wildlife Specialist. This Complaint was directed at the Chief even though the officer's evaluation was done by the Lieutenant, not the Chief.

**Findings:** In 2008, the officer received a poor annual evaluation from the Lieutenant that the officer felt was unwarranted. As a result of the evaluation, the officer lost 7.5% of his annual pay for a period of one year, until his next annual evaluation. The officer in question appealed the evaluation to the Town Manager. After investigating the matter, the Town Manager upheld and sustained the original evaluation by the Lieutenant as correct, but offered the officer the opportunity to undergo an interim evaluation at a six month interval rather than waiting a full year until the next annual evaluation. At the subsequent six month evaluation, the officer received an improved evaluation from the Lieutenant and his performance pay was restored.

The Grand Jury reviewed the officer's personnel file, including the 2008 evaluation in question, the appeal filed by the officer with the Town Manager, the Town Manager's response, and the rebuttals prepared by both the Lieutenant and the Chief (in support of the Lieutenant). The Grand Jury finds that the reasons cited by the Lieutenant in the officer's evaluation, and

supported by the Chief and the Town Manager, were performance related and not related to the officer's support of the Wildlife Specialist.

**Recommendation:** None

#### **G. Traffic Enforcement/Heavy Handed Behavior**

**Statement:** The Complaints alleged that MLPD officers conduct an excessive number of traffic stops. Furthermore, when vehicle stops are made, MLPD officers show heavy handed behavior by sending several additional police cars to the assistance of the officer who made the initial stop, leading to a perception of excessive force by the MLPD.

**Findings:** The Town Manager and the Chief explained to the Grand Jury that, several years ago, the Town Council became concerned about traffic issues in the Town and asked the MLPD to increase its traffic enforcement efforts. These efforts have been generally successful and, as a result, the Town Council has recently asked the MLPD to back down somewhat on traffic enforcement and to make sure that officers are more cognizant of their actions in enforcing traffic stops. The Chief also explained to the Grand Jury that, as a result of this change, the MLPD now uses more passive traffic enforcement tactics, such as positioning empty police cars at certain locations and placing speed monitors on certain streets. According to the Chief, these passive measures have been successful in keeping traffic issues under control.

The Chief also explained to the Grand Jury that it is proper police procedure, for safety reasons, for officers to come to the assistance of another officer who has stopped a vehicle for an infraction. However, it appears that the Town Manager and the Town Council are aware of complaints in this area and have asked the MLPD officers to find a better way to address this safety issue. The Chief informed the Grand Jury that a new policy has been adopted within the MLPD. Such new policy sets forth a method by which the officer who has stopped a car for a vehicle infraction can signal to other officers rolling by whether or not assistance is needed. If no assistance is needed, the additional responding officers will not stop.

**Recommendation:** The Grand Jury believes that the new measures adopted by the MLPD with respect to traffic enforcement and vehicle infraction stops will change the perceptions of the residents and visitors in Mammoth Lakes while still ensuring the safety of MLPD officers.

#### **H. Promotions Within the MLPD**

**Statement:** The Complaints alleged that promotions within the MLPD are not done fairly.

**Findings:** Many MLPD officers complained to the Grand Jury that the promotion of a Sergeant under the Former Chief was unfair and inappropriate. The promotion in question occurred very shortly after another Sergeant promotion was made and came as a surprise to many officers. There is a perception among the officers that a new Sergeant position was specifically created by the Former Chief in order to promote an officer who was a close friend of the Former Chief. The Grand Jury notes that this Sergeant promotion was done at the request of the Former Chief, although the Chief (then Lieutenant) is the person who wrote the request to the Town to create

the additional Sergeant position. The Chief informed the Grand Jury that the promotion of both Sergeants under the Former Chief was done under a process that had been recommended and approved by the POA.

There has been only one Sergeant promotion done under the Chief. Several officers felt that the process was not entirely fair or transparent. However, the Chief consulted with the POA on the process to follow for this promotion and implemented the POA's recommendation.

**Recommendation:** The Grand Jury recommends that the MLPD develop a standardized promotion process, with input from the POA, that is clear and consistent and enables officers to be fully aware of qualifications for promotion. A part of this process should include an oral interview with representatives from outside agencies.

### **I. Morale of MLPD Officers**

**Statement:** The Complaints alleged that the morale of the MLPD officers is at an all time low due to the inefficiencies and unfairness in the MLPD and the actions of the Chief, and that numerous officers are considering leaving the MLPD.

**Findings:** The Grand Jury found that the morale of the MLPD officers is indeed at a low point. However, morale problems were determined to be due mainly to budget issues, the consequent loss of pay and benefits, and the ever present threat of additional layoffs. A number of officers also expressed concerns about favoritism (see paragraph J below), problems with a particular Sergeant (see paragraph J below), communication issues with and between management of the MLPD (see paragraph K below), and equipment and an inadequate facility (see Part IV below). The Grand Jury also determined that one officer is considering leaving the MLPD for personal and family reasons. Another officer may consider leaving if the number of patrol officers is cut because he feels that such cuts would jeopardize officer safety. Other officers, particularly the junior officers, are very concerned about potential additional layoffs.

**Recommendation:** An improved budget situation in the Town would help to increase morale within the MLPD. It is also clear that concerns of favoritism and lack of communication (see paragraphs J and K below) also need to be addressed. The Grand Jury has also made recommendations regarding equipment and a new police building (see Part IV below).

### **J. Favoritism or "Good Old Boy" Network within the MLPD**

**Statement:** The Complaints alleged that a "good old boy" network exists in the MLPD and that certain individuals are treated as favorites by the Chief and the Lieutenant. The Complaints, some of which came from MLPD officers and outside agencies, were related to favoritism, special assignments, mistreatment of officers, and off duty officer behavior.

**Findings:** The first complaint concerned a special assignment. MONET is a joint task force between the Sheriff's office and the MLPD. MONET consists of one Sheriff's deputy and two MLPD officers. Assignment to MONET is considered to be a special assignment that affords the assigned MLPD officers an increase in pay of 5% for the duration of the assignment. Special

assignments are typically for two years, although they can continue for longer periods. Officers who are interested in receiving a special assignment are asked to indicate their interest in a letter, and the staff (Chief, Lieutenant and Sergeants) reviews the requests and makes the assignments.

While considered to be a good investigative officer, the officer in question was not good at dealing with drug enforcement in general and informants in particular. Concerns about the officer were brought to the Chief and the Lieutenant by other officers. It is the policy of the MLPD to counsel officers who are having difficulties in their assignments and to encourage them to improve their performance, i.e. to "correct behavior." The Chief and the Lieutenant informed the Grand Jury that they engaged in such counseling with the officer in question on several occasions. Several months ago, the officer in question agreed with the MLPD management to step down from the assignment.

The Chief acknowledged that the officer in question may have been left too long in the MONET assignment, but the Chief reiterated his belief that officers should be given adequate opportunity to improve. The Chief further acknowledged that this may have been a contributing factor in the perception of favoritism toward this officer. Additionally, the officer in question was then President of the POA which granted him access to the Chief without having to go through the MLPD's normal chain of command. This also may have contributed to a perception of favoritism. The Chief stated that he did not show any favoritism to this officer.

The second complaint concerns a Sergeant who is perceived to have an especially close relationship with the Chief, and this has contributed to a perception of favoritism toward the Sergeant in question. The Grand Jury determined that there appears to be a close working relationship between the Lieutenant and this Sergeant, but not necessarily between the Chief and this Sergeant. However, the Chief considers this Sergeant to be an excellent police officer.

The Grand Jury also received complaints about this Sergeant's behavior, including excessive micromanagement, and lack of support and mistreatment of subordinate officers. Given the number of complaints about this Sergeant's behavior, the Grand Jury can only conclude that the complaints concerning this Sergeant's behavior have merit and must be addressed.

The third complaint concerns the off duty behavior of another Sergeant that may have violated the Code of Ethics. This Sergeant was involved in two highly publicized recent events, one in Las Vegas and one in Bishop. These events occurred while the Sergeant was off duty.

The incident in Las Vegas resulted in an IA investigation of the Sergeant. The Grand Jury has reviewed the IA investigation and determined that it was completed in accordance with the rules and regulations of the POBR and Policies 340 and 1020 of the MLPD Manual and that the Sergeant received appropriate discipline. Two other MLPD officers involved in the incidents were the alleged victims and their actions were not part of the investigation.

A second investigation relating to the Las Vegas incident was undertaken by an independent investigator hired by the Town as a result of a formal complaint received by the Town alleging that the Chief and the MLPD tried to "whitewash" the incident. The Grand Jury has reviewed the results of this second, independent investigation and has determined that the investigation was

properly conducted. All parties involved have acknowledged that the Chief was not present during the incident and was not informed of the incident until several days after it had occurred. The Grand Jury finds that, although mistakes were made by certain MLPD staff in carrying out the instructions of the Chief to obtain information about the incident, the Chief did not delay the investigation and acted appropriately and in a timely manner in pursuing the IA investigation against this Sergeant, and that no cover up occurred. The Grand Jury finds that friendships among MLPD staff may have contributed to a perception of favoritism or delay in pursuing the investigation.

This Sergeant was later involved in an incident in Bishop. The Grand Jury has reviewed the Bishop Police report regarding this incident, but, at the time of writing this report, the Bishop Police and the Inyo County District Attorney's Office are investigating whether to bring criminal charges. The Chief's job, pursuant to the POBR, is to undertake and oversee investigations into behavior issues that may affect the MLPD and to determine appropriate discipline and corrective action, if any, once the investigation is complete. Due to the fact that the incident involves a criminal investigation, and as required by the rules and procedures of the POBR, this Sergeant, as well as the other MLPD officer involved in the incident, was placed on paid administrative leave while the incident is being investigated. In order to attain objectivity, the IA investigation into this incident was moved out of the MLPD by the Chief to the Mono County District Attorney's office.

#### **Recommendations:**

1. The Grand Jury finds that officers who are not suited to special assignments, when left too long in such assignments, can inhibit the ultimate mission of the MLPD, and can further lead to a perception of favoritism. The Grand Jury recommends that the Chief and other management staff of the MLPD monitor more closely the performance of all officers who are placed on special assignment to determine whether the objectives of the assignment are being met.
2. The Grand Jury recommends that the Chief take immediate steps to address the complaints of excessive micromanagement and lack of support and mistreatment of subordinate officers by a Sergeant. Should this mistreatment of officers continue, personnel may be lost, a hostile work environment complaint may arise and the Town could incur financial liability.
3. To avoid the perception of favoritism or "whitewashing," the Grand Jury recommends that future IA investigations involving MLPD sworn management staff (Chief, Lieutenant and Sergeants) be conducted by an outside law enforcement agency or by an independent investigator.

#### **K. Management Communication Issues**

**Statement:** Several MLPD officers complained to the Grand Jury about the lack of communication at the management levels of the MLPD. The officers acknowledged that both the Chief and the Lieutenant have an "open door" policy and that officers are always welcome to come and speak with them. However, the MLPD is a paramilitary organization with a strict chain of command. The Chief is the head of the MLPD. The Lieutenant runs the day-to-day

operations of the MLPD and reports to the Chief, and the four Sergeants report to the Lieutenant. Each Sergeant has a small group of patrol officers that report directly to such Sergeant while assigned to a particular shift. Shift assignments are changed every three months or so and, as a result of such shift changes, the patrol officers' supervisory Sergeant may also change. Due to this command structure, issues relating to supervisor complaints, for example, are expected to be taken up through the chain of command. Many officers commented on the difficulty of working through the chain of command on certain issues, the perceived lack of communication between the management levels of the MLPD, and the frustration this situation has caused.

**Findings:** The Chief acknowledged that there are issues of communication between himself and the Lieutenant. The Chief, the Lieutenant and many officers acknowledged that the Lieutenant has an enormous and stressful job in managing both the administrative and operational aspects of the MLPD.

The Grand Jury finds that the Lieutenant does not communicate adequately or equally with all four Sergeants. This communication path may contribute to the perception of favoritism within the MLPD. This unequal communication impedes the flow of upward and downward information in a department where the chain of command is expected to be followed.

Additionally, some officers stated that the Sergeants do not communicate well among themselves, argue often and have different supervisory styles. This situation contributes to lack of direction and an inconsistent work environment.

**Recommendation:** The Grand Jury finds this lack of effective communication among the management levels of the MLPD as the most pressing organizational issue. It is not unusual for organizations to suffer some organizational challenges due to the presence of many different personalities. However, in a strict chain of command organization, lapses in communication between the different levels of the organization are not acceptable. Furthermore, these communication issues threaten to impede the MLPD's ability to fully accomplish its job of providing quality law enforcement services in the Mammoth Lakes community. This is a leadership issue that must be forcefully addressed. That leadership must come from the Chief.

When and if Town budget constraints permit, the MLPD should consider changing its management structure to provide for two lieutenants. One lieutenant would manage all administrative aspects of the MLPD, such as personnel and grants. The other lieutenant would manage all operational aspects of the MLPD, such as patrol operations. However, the Grand Jury believes that a second lieutenant position should only be considered if budget considerations permit the MLPD to maintain the same number of patrol officers as it employs today.

The Grand Jury recommends that the Chief undertake once again, and at regular intervals, the "fireside chats" with all MLPD officers that he first implemented a year or two ago. The Grand Jury finds that while it can shed some transparency on the operations of the MLPD and the concerns and issues of MLPD officers, the Chief would benefit from hearing these issues and concerns, on a more timely basis, directly from the MLPD officers.

Finally, in an effort to improve general communication within the MLPD and the airing of potential grievances and difficult working relationships, the Grand Jury recommends that the MLPD offer all officers in the MLPD the opportunity to do an annual evaluation of their peers and supervisors.

#### **L. Town Manager Interaction With Chief**

**Statement:** The Complaints alleged that the Town Manager is ineffective at controlling the Chief and reprimanding the Chief for alleged infractions.

**Findings:** The Town Manager and the Chief appear to have an excellent working relationship and communicate frequently. The Grand Jury finds that both the Town Manager and the Chief are professional public servants who undertake their duties responsibly.

**Recommendation:** None

#### **M. IA and Other Formal Investigations**

**Statement:** The Complaints alleged that certain IA or formal investigations within the MLPD were done in house or by independent investigators hired by the Town and resulted in a "whitewash" of the Chief's and/or the MLPD's actions.

**Findings:** The MLPD and the Town are required to conduct an IA or formal investigation whenever a complaint is received, whether that complaint is credible or not. In addition, the Town Manager may also conduct informal investigations into certain matters if he deems such investigations to be warranted. The number of recent IA and other investigations relating to MLPD personnel has led to widespread speculation, which in turn has damaged the reputation of the MLPD.

IA investigations and other formal investigations are generally conducted by an officer's immediate supervisor but may also be conducted by an independent investigator. Large California police agencies may have a separate IA department to conduct internal investigations. However, in smaller California police agencies, such as the MLPD, IA investigations are conducted internally unless persons within the agency feel they are too close to the matter under investigation and request that an investigation be moved to an outside agency. In some cases, to further guarantee objectivity, an investigation is conducted by an independent investigator who is paid by the jurisdiction or agency requesting the investigation. Certain persons have complained to the Grand Jury that this process encourages a "whitewash" of investigations. However, the Grand Jury finds that this is the general process followed by police agencies in California. The Grand Jury also finds that it is logical and practical for the jurisdiction or agency requesting an investigation to pay the costs of such investigation. There is no one else who can pay these costs.

The Grand Jury is aware of, and reviewed, or asked the Judge to review, a number of IA and other formal and informal investigations, some of which have already been referenced above. These investigations included:

(i) A complaint of sexual harassment by an employee of the MLPD against three supervisors, including the Chief (then Lieutenant) (2002), conducted by an independent investigator hired by the Town. This investigation was reviewed by the Judge who informed the Grand Jury that the investigation was extensive and professionally done and that he could not find any fault with its conclusions. The Judge further stated that the report of this investigation did not contain any facts that are relevant to the Grand Jury's current investigation of the Chief and the MLPD.

(ii) The Wildlife Specialist's complaint of unlawful termination and hostile work environment (2007), conducted by an independent investigator hired by the Town (see paragraph III(D) above and Grand Jury Report 08-02).

(iii) The informal investigation by the Town Manager into the allegation that the Chief engaged in a recent extramarital affair (September 2008) (see paragraph II above).

(iv) The informal investigation by the Town Manager and the Human Resources Manager of general operations of the MLPD, conducted through interviews with approximately 10 MLPD personnel (January 2009). The Grand Jury reviewed this investigation wherein the Town Manager determined that there were an adequate number of sworn personnel, but an inadequate number of non sworn personnel, at the MLPD, that officers thought promotions and assignments were done fairly, and that the only ethics violation mentioned by officers was occasionally speeding to work.

(v) The off duty behavior of a MLPD Sergeant in Las Vegas (2009), conducted by the Lieutenant who is the Sergeant's immediate supervisor (see paragraph III(J) above).

(vi) The Chief's handling of the IA investigation into the behavior of the MLPD Sergeant in Las Vegas (2009), conducted by an independent investigator hired by the Town (see paragraph III(J) above).

(vii) The off duty behavior of two MLPD officers in Bishop (2009), being conducted by the Mono County District Attorney's office (see paragraph III(J) above).

With the exception of the 2002 investigation (subparagraph (i) above), the Grand Jury has reviewed notes, memos, reports and other documents associated with all of these IA and/or other formal investigations (other than the Bishop matter which is still under investigation at the time of writing this report). The Grand Jury found that these investigations were conducted in a professional and thorough manner and that the conclusions reached were appropriate. It is important for the public to know that the details of all IA and formal internal investigations are confidential and cannot be revealed to the public (including the Town Council) pursuant to the provisions of the POBR. Only the Grand Jury can legally access these reports. In the interests of transparency, the Grand Jury examined these reports and found that these investigations were conducted in accordance with all required rules and procedures and did not contain any irregularities.



**Recommendation:** In order to provide independent oversight of investigations relating to management personnel in the MLPD, the Grand Jury recommends that copies of all future IA and independent investigations regarding MLPD staff (Chief, Lieutenant and Sergeants) be submitted to the Grand Jury for their review and oversight.

#### **IV. Vehicles/Equipment; Training; Staffing; Police Building**

**Statement:** The Grand Jury interviewed all sworn MLPD officers during the course of this investigation. Many officers voiced concerns about the vehicles and equipment used by the MLPD, about insufficient training, and about the inadequate police building that houses the MLPD and its operations.

The MLPD was formed in 1986 with 15 sworn officers. Today, the MLPD has 21 sworn officers. As the population of the Town and the number of visitors to the Mammoth Lakes area has increased over the years, so too have the crime levels in the Mammoth Lakes community. In 1991, the MLPD received 1,884 calls for service and made 184 arrests; in 2007, the MLPD received 3,416 calls for service and made 556 arrests. According to the Chief and the MLPD officers, the types of crime in the community have also changed over the years, with crimes becoming progressively more violent. According to MLPD officers, approximately, 75-90% of crimes committed in the Mammoth Lakes community are related to alcohol use. Given the increase in criminal activity in the Town over the last two decades, the Grand Jury believes that it is important for community safety reasons that the MLPD officers have adequate vehicles, equipment, training, staffing levels and a safe working facility.

#### **Findings:**

1. Vehicles and equipment: The MLPD uses four-wheel drive SUVs as its vehicles. According to the officers, some of these vehicles have constant maintenance problems and are unreliable if an officer has to engage in a high speed, long distance pursuit. Furthermore, the vehicles are not fast enough to catch some speeders, especially if pursuit is required uphill. The vehicles are not designed as police vehicles and do not have some of the preferred features of vehicles specifically designed for police work. For example, the MLPD vehicles do not have the plastic molded back seats designed to accommodate a prisoner in handcuffs. The back seats of the MLPD vehicles are just regular seats. On occasion, prisoners stuff things into the cracks of the seat, become sick or relieve themselves. On those occasions, the officers then need to take the time to carefully search the seat and/or clean it up. The Chief explained to the Grand Jury that, due to winter conditions in the Town, the four-wheel drive SUVs are more appropriate than four-wheel drive sedans. Originally, the vehicles were replaced every four years. But, due to budget considerations, the vehicles are now replaced every five years. The Chief acknowledged that some vehicles have very high mileage on them by the time they are replaced.

Lack of audio/video equipment and on board computer access was also mentioned by the officers. Some of the MLPD patrol vehicles have on board video equipment which can be very helpful when making a DUI stop or a vehicle infraction stop. Some of the patrol vehicles do not have such equipment. Officers are also generally very unhappy with the current dispatch system in Mono County (see Jail Tour report). The Grand Jury has shared these concerns regarding

dispatch with both the Chief and the Sheriff. The officers mentioned that having on board computer equipment would allow the officers to pull up information on persons and vehicles immediately without having to wait on such information from dispatch. This immediate access to information would contribute to the safety of officers who would have helpful information before they exited their vehicles during a stop.

2. Training: The Chief informed the Grand Jury that the MLPD's annual budget for training is \$29,000. The MLPD is required to provide sufficient training in order to avoid liability. Training in the MLPD is coordinated by the training officer. State regulations issued by POST require that all police officers receive range training at least once a year. The MLPD exceeds that requirement by offering range training four times a year. Each MLPD officer is required to attend at least three of those training sessions. State regulations also require 24 hours of advance officer training every two years, and the MLPD is in compliance with this requirement. The Chief informed the Grand Jury that, when he became Chief, he implemented a defensive tactics training program and that, in the past two years, officers have received 16 hours of training in this area. Finally, all MLPD officers have been trained in CPR procedures, and some officers have received specialized training depending on their assignments. Although some MLPD officers indicated a desire for even more training, it is the Grand Jury's determination that the MLPD currently exceeds state mandated training requirements and that training levels are at an acceptable level. That being said, the Grand Jury finds that any additional operational and management training the MLPD is able to provide to officers is always beneficial.

3. Staffing: The Chief and the MLPD officers believe that the current number of sworn officers of the MLPD provides the minimum level of staffing necessary to provide quality law enforcement services in the Town. Any decrease in the number of sworn officers may have a negative impact on the MLPD's ability to adequately serve the needs of the community. In addition, the MLPD has recently lost several non sworn positions, including the animal control officer and the records clerk. It is the Grand Jury's understanding that steps are being taken to hire a new records clerk. Since MLPD officers do not have specific training in animal control procedures, the Grand Jury believes that the hiring of a new animal control officer should be a high priority for the MLPD.

4. Police building: The Chief gave the Grand Jury a tour of the current police building. The building formerly housed a spa and was converted some years ago for use by the MLPD. The building is very small and the MLPD has divided the space to provide the necessary areas for offices, squad room, evidence and file storage, and holding and booking facilities. The Grand Jury was informed that one corner of the building (where the women's locker room is located) has a door to the outside that is not well sealed. Consequently, flooding occurs in that corner with regularity during the winter. One of the primary issues within the building is the holding and booking area. That area lacks sufficient space to properly separate prisoners by gender and age and is an unsafe environment for officers, prisoners and the public.

The Chief showed the Grand Jury the drawings and plans for the proposed new police building. The Grand Jury noted that the new building would not only provide far more space for MLPD operations, but would also provide four temporary holding cells, one for males, one for females, one for juveniles (who cannot by law be held with adults), and one for intoxicated persons.

**Recommendation:** The Town's budget situation makes it impossible to adequately address these issues at this time. However, in anticipation of an eventual economic recovery and a consequent improvement in the Town's finances, the Grand Jury recommends, in no particular order: (i) that police vehicles be replaced every four years rather than every five years; (ii) that all police vehicles be equipped with audio and video recording equipment; (iii) that all vehicles be equipped with mobile on board computers (or an equivalent system, for example, through a Town-wide WiFi system); (iv) that the MLPD consider additional training programs as desired by the officers; (v) that the Town proceed with hiring a new records clerk and a new animal control officer; and (vi) that the Town move forward at the earliest possible opportunity with the construction of the planned new police building, and not spend funds to modify or improve the existing building, other than to make emergency repairs. The Grand Jury further recommends that no funds be expended to purchase and improve an interim facility. The Grand Jury notes that since the new police building would have temporary holding cells, prisoners would no longer have to be transported to Bridgeport at all times of the day and night. This in turn would significantly reduce the overtime costs of the MLPD.

## **SUMMARY**

While there are some organizational and communication issues to address within the MLPD, the Grand Jury feels that the MLPD, under the management and leadership of the Chief, is generally providing quality law enforcement services in the Mammoth Lakes community. The Grand Jury would like to reiterate its conclusion that most of the allegations set forth in the Complaints against the Chief and the MLPD, in particular the allegations of a personal nature, have not been substantiated, and that the constant churning of rumors and misrepresentations of events and facts relating to the Chief and the MLPD is counterproductive and detrimental to the operations of the MLPD and possibly to the safety of the community as a whole.

This investigation, like all Grand Jury investigations, was conducted with complete confidentiality. Any statements in the media speculating as to the Grand Jury's activities were done so without the Grand Jury's participation. The Grand Jury made no public statements or released any information to media sources prior to the release of this report.

The Grand Jury conducted 37 interviews, held numerous committee meetings, and reviewed hundreds of documents during this investigation. All interviewees were remarkably honest and open. Often, the Grand Jury expected interviewees to be guarded and elusive but found instead that interviewees were happy to speak with the Grand Jury, perhaps even grateful for the opportunity to openly express themselves. Such frankness was critical in assisting the Grand Jury to understand issues and events and to produce an accurate, informative, and constructive report.

The Grand Jury believes that its exhaustive and thorough investigation of this complex series of complaints and rumors has brought transparency and clarity to the operations of the MLPD. The Grand Jury encourages all parties involved to review the Grand Jury's findings and to implement its recommendations.

## APPENDIX A - LAW ENFORCEMENT CODE OF ETHICS

---

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional Rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession... law enforcement.

## **MONO COUNTY JAIL TOUR**

The Grand Jury inspected the County Jail (the “Jail”) facility in Bridgeport, unannounced, on March 6, 2009.

In attendance were the Mono County Sheriff (the “Sheriff”), the Mono County Undersheriff, the Jail Commander and the Grand Jurors.

In addition to the Jail tour, the Grand Jury conducted two interviews with the Sheriff and statements from those interviews are included in this report.

The Sheriff stated that the Jail is currently configured to hold 40 men and 4 women, and this capacity is often exceeded. The average daily inmate count at the Jail is 35 to 40 – triple what it was five years ago. Yet staffing levels have remained the same. The Sheriff would like the County to increase jail staff in order to better handle the increased number of inmates.

The Jail is currently staffed around the clock, including female jailers for all shifts, and several staff members speak Spanish. The Jail is an economic base for the northern part of Mono County, and no jail employee lives south of Bridgeport.

For decades, Mono County has had jail employees serving a dual role as dispatcher/jailer. The State mandates a minimum of six weeks of training for dispatchers and about six to eight weeks of training as a jailer. Although the County has significantly increased the pay of the dispatcher/jailer position to about \$3,000/month, the Sheriff would like to see pay for the position increased even more, as the turnover rate is very high.

The Sheriff would also like to have a jail facility in southern Mono County as 80% of arrests are made in Mammoth Lakes (primarily during the winter months) and because southern Mono County and Bishop have a larger employee applicant pool. A new jail facility would likely have to be built on land located in the unincorporated area of Mono County as, according to the Sheriff, the Town of Mammoth Lakes (the “Town”) has consistently refused to consider a jail within the Town boundaries. The Sheriff stated that an optimum size for a new jail would be 80 beds. The State requires a jail facility with over 100 beds to have 24/7 medical care which would be expensive and difficult for Mono County to provide. Currently, medical care in Mono County is provided by a physician assistant three times a week at a cost to the inmate of \$3.00 per visit.

The County has considered applying for funds to build State re-entry facilities for inmates who are paroled, but the Sheriff believes that the communities in southern Mono County would not support such a facility in “their neighborhood,” even if such facility could guarantee additional jobs. The establishment of “temporary jail facilities,” in southern Mono County would not likely be viable since the State has very stringent requirements about the design and maintenance of such facilities.

Currently Mono County is undertaking a needs assessment for the Jail to determine what the jail needs will be in 10-20 years.

As part of the tour, the Grand Jury was shown the inmate booking area. The booking area is a "filmed" area, including audio recording which is on while individuals are being booked. A new system was just installed one week prior to the Grand Jury's arrival, switching the recording from VHS to a digital system. The Sheriff stated that there is no expectation of privacy in this area, and if individuals talk about their incidents before or during booking, the District Attorney may use such information in prosecuting such individuals.

During booking, none of the deputies solicit information nor ask questions pertaining to the incident which led to the booking; only questions pertaining to booking information (name, address, next of kin, etc) are asked. Additionally, booking questions are asked to ascertain segregation and classification. The Sheriff and his jailers stated that they "don't want to put someone who's in jail for the first time with someone who has been in state prison for twelve years."

The breath analyzer machines are calibrated twice a week by the Sheriff's department. If the machine is found to not be working, it is switched out with one of three others located in the County. The California Department of Justice tests the breath analyzer machines as well via the phone lines.

The Grand Jury was then shown the laundry and kitchen facilities. All laundry is done by inmates who have asked to work and who have no jail infractions. The Grand Jury spoke with several inmates who stated that they worked in the laundry and the kitchen because time passes more quickly when they are busy. The inmates stated that they had no complaints. The kitchen was exceptionally well kept and "spic and span." Four meals are served each day with menus written by the State nutritionist. Utensil counts are also conducted four times each day and the employees, not the inmates, count the utensils before and after each incoming staff change.

Visiting hours are now available five days, and some evening hours have been added.

The Sheriff's department is responsible for providing the infrastructure for the 911 system and receives all emergency calls by phone except those received by cell phones which transfer to the California Highway Patrol dispatchers in Bishop. The 911 dispatch system is replaced every eight to nine years. A new system was installed this year, and the system will be digital within four to six months.

Leaks in the Jail roof over the 911 computer dispatching and Jail control room equipment were a particular problem noted by last year's Grand Jury. This year, the Sheriff informed the Grand Jury that he had secured funds to replace the roof. These repairs are expected to be completed by the end of summer 2009.

The Grand Jury was informed during the tour that the State Corrections Auditors were very impressed with the Mono County Jail, especially the automated features that control the jail cells from the control room.

Additional information and pictures of the jail facility can be found on the Sheriff's website at: <http://www.monosheriff.org/jail.html>

## **911 DISPATCH SYSTEM**

After interviewing all officers in the Mammoth Lakes Police Department as part of investigations into other complaints, the Grand Jury learned of a deficiency concerning dispatching that was not addressed during the jail tour. The Grand Jury conducted an interview with the Sheriff and addressed this deficiency with him.

Most officers of the MLPD stated that dispatching is slow to respond with requested information and relevant facts concerning the call. Sometimes the information given was incomplete and inaccurate. Often, officers have to repeatedly request the information that should have been given in the initial communication which impacts their safety and delays their ability to address the situation in a timely manner.

The Sheriff stated that he has discussed this issue with the MLPD Chief of Police. The Sheriff stated that it is a training and retention issue. There is a limited employment pool located in the northern part of the County and often, once an individual is trained and employed for a year or two, the individual will leave the County for better wages in another part of the State. The Sheriff stated that he has requested that the Board of Supervisors approve an increase in the jailer/dispatcher salary.

The Sheriff stated that he has prepared a proposal to move dispatch in the future to the southern part of Mono County where the employment pool from Mammoth Lakes and Bishop is much larger and where he thinks retention would likely be improved.

The Grand Jury recommends the County initiate a retention bonus program for the dispatcher/jailer position.

## **PROBATION DEPARTMENT AND JUVENILE DETENTION FACILITY**

The Grand Jury toured the Probation Department and the Juvenile Detention Facility in Bridgeport. One building housing both, and it was built in 1989 with grant money. The State certification received for this building does not allow for adult housing. If a juvenile is present at the facility during a meal time, the County Jail provides food service.

There are also County probation offices in Mammoth Lakes. There are no detention facilities in Mammoth Lakes or elsewhere in southern Mono County, although the County does provide for 'temporary custody' of juveniles in the Mammoth Lakes office. The Grand Jury was informed that previously, there had been a lack of sufficient space in Mammoth Lakes for juvenile probation offices. However, with the recent relocation of the District Attorney's office in Mammoth Lakes, the County Probation Department now feels it has sufficient space for juvenile probation in Mammoth Lakes.

Mono County has a contract with Inyo County for juvenile beds if over 96 hours of detention is required for a juvenile. The cost to Mono County is \$95/day. If the Inyo County juvenile facility is not available and a longer detention term is required (over 2 months), Mono County has arrangements with Trinity County to house juveniles at a cost of \$70-\$75/day.

For the most part, the juvenile detention criteria are designed to return juveniles to their home as soon as possible. If that cannot be done and juveniles have exhausted all the services provided by the County, then the juveniles are sent to group homes outside of the County, at a cost of approximately \$100/day. In that case, although the juveniles are housed outside of the County, the Mono County probation department retains responsibility for the child and makes monthly visits to the group home.

Parents are required to reimburse the County for a juvenile in detention at the rate of \$15 per day. If a juvenile has a history of drug or alcohol use, the juvenile must be cleared by medical officials at Mammoth Hospital, at a cost of approximately \$300-\$400 per juvenile. Bills are sent to the juvenile's parents. Often, the Probation Department is not able to recoup losses when parents do not pay the bill.

The Juvenile Detention Facility was clean, well designed and surprisingly "homey." Rather than a typical sterile jail stainless steel sink, commode, and non-private shower, the juvenile bathroom (toilet and shower) resembled what would be found in a middle-class home. This area was also separate from the probation offices.

### **RECOMMENDATIONS**

The probation department employees expressed a concern that security at the facility needs improvement. Currently there is no way of knowing who is at the front door without first opening the door. Anyone can push his or her way in or kick in the door. The Grand Jury agrees that security at the front door of the probation building should be improved. The County's own recommendation of installing a 'peep hole' is viewed as unacceptable by the Grand Jury. The Grand Jury recommends a more secure solution, such as a locked gate in the breezeway leading



to the front door that can only be buzzed open from inside the building and a video monitoring and intercom system. Additional security measures should be considered for the windows and back door as well.

It is also of concern to the Grand Jury that monies are “lost” when the probation/juvenile department bills parents for services that their children have incurred and do not receive payment. The County should be more proactive in pursuing collection of these outstanding debts, perhaps investigating wage garnishing as a solution.

## **PUBLIC DEFENDER INQUIRY**

### **STATEMENT**

The Grand Jury is charged with reviewing, from time to time, aspects of county governance; inquiry into the Public Defender system in Mono County was not the result of any complaint.

### **INVESTIGATION**

The Grand Jury interviewed two Superior Court Judges, the District Attorney (“DA”) and his Chief Investigator, the County Counsel, attorneys of the current Mono County Public Defender office, and the (In-House) Public Defender of Lassen County. A juror also attended the 2009 County interview session considering a new Public Defender contract.

**Current System:** Three private attorneys comprise the current Fixed Fee (by-contract) Public Defender office. For about a decade, they have arranged with the County to defend indigents as mandated by the Supreme Court decision *Gideon v. Wainright* (1963). In the recent contract negotiations with Mono County they sought additional funding for one more lawyer to assist with the caseload and where there are conflicts of defendant’s interests. (Conflicts arise when a group of defendants is involved in the same offense. Each defendant requires a separate, independent attorney).

**Past System:** Prior to the current Fixed Fee (by-contract) Public Defender system, Mono County used a pool of attorneys paid hourly for services provided to each defendant client.

**In-House System:** Now Mono County Supervisors will consider an In-House Public Defender Office, an equivalent to the DA’s office. The Public Defender may be elected (like the DA) or appointed (like the County Counsel). Employees of the Office would no longer be under private contract, but would be public employees.

### **RECOMMENDATIONS**

1. There are strong arguments favoring an In-House Public Defender structure as opposed to the current Fixed Fee (by-contract) system. The current contracting Public Defender attorneys all endorse changing to an In-House approach and as Dr. Benner’s paper cautions:

“The temptation to use Contract Systems solely for the purpose of saving money by awarding contracts to the lowest bidder, presents a serious danger to the integrity of our criminal justice system.”<sup>i</sup>

2. A full-time exclusive Public Defender Investigator should be recruited. He/she would be a county employee with benefits. It is recommended that the Investigator be fluent in Spanish. In any case, the cost should not come out of net personal compensation of the Public Defender if a

---

<sup>i</sup> Benner, Laurence A., Sterhn, Lorenda S., and Avakian, Alan, “Systematic Factors Affecting the Quality of Criminal Defense Representation,” (2008). See [lbenner@cwsu.edu](mailto:lbenner@cwsu.edu). This paper is an extensive study of recommended actions to improve the criminal justice system in California.

Fixed Fee (by-contract) system is continued.<sup>ii</sup> These matters were recommended by the current Public Defender attorneys and the Grand Jury is in agreement.

Analysis of 54% of “deficient performances” by defense attorneys indicates a “failure to investigate.”<sup>iii</sup> Additionally, it was a comment from the Public Defender attorneys that the current system of investigation needed improvement.

Mono County has a substantial disparity in favor of the DA’s expenditures per capita (\$121.07) vs. the expenditures by the Public Defender (\$35.67). In California, only Alpine County gives such an advantage to the DA.<sup>iv</sup>

Compensation necessary to recruit a highly competent investigator (and interpreter) for the Public Defender will partially redress this imbalance.

3. County cost recovery. Some indigents who are accorded Public Defender services sign agreements to later compensate the County for these legal services. Mechanisms (perhaps through state legislation) should be sought for computerized wage garnishing, where necessary.

4. Given the changing demographics, the standard judicial Plea Agreement form signed by a defendant should be provided in Spanish as well as English.

5. Unanimously, the Public Defender, the DA and County Counsel thought that the current private contract attorneys’ need to make a profit did not compromise their preparation of a full defense. (It was argued that Judges would not tolerate substandard legal representation and the Public Defender attorneys’ California Rules of Professional Conduct was a bulwark against it as well.) The Grand Jury had no reason to dispute this.

6. Spanish language interpreters are needed for interviewing witnesses, and to avoid conflict, one should be readily available to each the DA and the Public Defender. The deficiency in translation services was a comment by attorneys in both offices.

---

<sup>ii</sup> State Bar of California Guidelines on Indigent Defense Services (2006). See also, Uelmen, Gerald, ed., “Final Report, California Commission on the Fair Administration of Justice,” (2008), 102. See [www.ccfaj.org](http://www.ccfaj.org).

<sup>iii</sup> Benner, et al., 12.

<sup>iv</sup> Ibid, 17.