CITY OF PALO ALTO
Memorandum

TO: **CITY COUNCILMEMBERS**

FROM: **CITY MANAGER** **DEPARTMENT: CITY MANAGER'S OFFICE**

DATE: **JUNE 1, 2009** **CMR: 271:09**

SUBJECT: **Transmittal and Discussion of Report from the Independent Police Auditor Regarding Children's Theatre Police Investigation**

Attached is a copy of the Independent Police Auditor's report by Michael Gennaco on his review of the Palo Alto Police Department's Children's Theatre Criminal Investigation. I received a copy of this report late Wednesday and have placed it on the Council agenda for discussion June 1. There has been only an initial review by staff at this point and the report has yet to be fully reviewed by the relevant Department Directors. Most of the principals involved in this episode have retired but I have asked current staff to refrain from public comment on the report, pending review and discussion with the Council in your public meeting on Monday.

Given the importance of this matter to the Council and your direction to engage the Independent Auditor in review of this event, the Council and the community deserve that staff commentary first takes place in your public forum at the Council meeting on Monday. Mr. Gennaco, the Independent Police Auditor and author of the report, will be attending the Council meeting on Monday.

City staff takes the report and its recommendations seriously. As you know, a number of changes in City financial management practices in Community Services and Administrative Services have already been instituted. I plan to review the report, your comments and any direction you provide with our staff and establish specific follow up actions that I will share with Council in a subsequent report.

JAMES KEENE
City Manager

INDEPENDENT POLICE AUDITOR'S REVIEW OF THE PAPD CHILDREN'S THEATRE CRIMINAL INVESTIGATION

May, 2009

Prepared by Michael Gennaco

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INTRODUCTION

On June 18, 2007 the Children's Theatre ("CT") in Palo Alto was burglarized. Officers from the Palo Alto Police Department responded and began a criminal investigation into the burglary. As with any other burglary investigation, the employees of the Theater were asked to identify missing items. Several days later, PAPD was informed that pursuant to an investigation being conducted by another law enforcement agency, traveler's checks made out to employees of the Children's Theatre had been recovered. Eventually, additional traveler's checks were located and presented to PAPD from another source.

The traveler's checks that were located had not been reported by the CT employees as missing from the burglary. As a result, suspicions were raised about actions of certain of the CT employees. As a result, the tenor of the Police Department's investigation transformed from a routine burglary investigation to suspicions of fraud and embezzlement on behalf of certain CT employees. A detective was assigned full time to the investigation to attempt to determine whether financial crimes had been committed by any of the suspected CT employees.

As a result of the PAPD investigator's initial investigation, search warrants were eventually applied for and obtained for CT offices, residences of certain CT employees, and storage lockers maintained by the CT. In addition, judicial authority was also obtained to search lockers maintained by the Friends of the Theatre, a non-profit group formed to support the CT. After the search warrants were obtained and as the search warrants for the CT were being executed, the targeted CT employees were visited at work and asked to travel to the police station for interviews. In the meantime, PAPD personnel were assigned to search the remaining targeted locations. In order to effectuate the search of the CT, the theatre was closed.

At that time, the investigation drew significant attention from the citizens of Palo Alto and local media. As the investigation proceeded, questions and concerns were raised by the community about the nature of the investigation. The investigation eventually concluded with a public announcement that no criminal charges would be filed against the targeted CT employees. At the same time, a redacted version of the lengthy investigative report was voluntarily released by PAPD. Rather than resolve issues, the closing of the criminal case and the release of the report only served to heighten concern about the criminal investigation itself. As a result, your Council requested that the Independent Police Auditor conduct a review of the investigation to assess the decisions made by PAPD officials as the investigation progressed and offer any recommendations for reforms to address issues arising out of that assessment. Please consider this report as the IPA response to that request.

DISCUSSION

I. IPA's Assessment Protocol

It was not the intent of IPA to "re investigate" the investigation in any formal sense. However, in order to ascertain the thoughts, theories, and steps of the investigation, it became important to talk with those involved or connected with the investigation. In the same way, targets of the investigation and actual and potential witnesses to the investigation had important perspectives to provide on these salient issues. Finally, it was critical to review the investigative report and related materials in order to address issues that arose after the investigation became overt. During this analysis, the IPA was able to gain the cooperation of each of these important sources of information save one. Unfortunately, the former and now retired Detective Supervisor assigned to lead the criminal investigation for PAPD declined to speak with the IPA regarding his mindset and investigative decision making. While that individual's participation in this process would certainly have provided another important perspective, the cooperation from PAPD and City officials as well as those directly and indirectly impacted by the criminal investigation provided the IPA inquiry a wealth of information and perspectives from which to assess the matter.

II. Answers to Questions Presented

The following questions were presented to the IPA for consideration:

Question 1: Based on the information initially presented, was it appropriate to initially proceed with a criminal investigation?

Answer 1: Perhaps, but for the reasons delineated below, better alternatives existed that could have eventually obviated the need for a criminal investigation. Moreover, as detailed below, the Department may not have been appropriately equipped to conduct a criminal investigation of the sort envisioned.

Question 2: Did the conduct of the criminal investigation follow accepted practices?

Answer 2: The conduct of the criminal investigation was lacking in several dimensions as detailed below.

Question 3: Were internal and public communications accurate and consistent with the evidence obtained and accepted practices?

Answer 3: The decision about what information to release and when to release it deserves to be revisited for future occurrences.

The review also requested recommendations for reforms which are included at the end of this document. To further flesh out the answers to the questions presented above, it is important to discuss relevant aspects of investigative decision making as the matter progressed.

III. The Decision by PAPD to Pursue an Embezzlement Investigation

Certainly, PAPD's initial response to the burglary of the CT was appropriate and professional. Moreover, when additional information was received about the recovered traveler's checks, additional inquiry was appropriate about whether irregularities were being undertaken by employees of the CT. While the failure to report the missing traveler's checks to the responding burglary investigators could have been a simple failure to remember to report them, a more sinister interpretation could have been, and clearly was formulated by PAPD personnel. This interpretation was buttressed by the admittedly "strange accounting" practices for expense reimbursement in place for CT employees. As a result of these suspicions, the focus of the criminal investigation shifted from one of commercial burglary to one of financial embezzlement. When the investigative focus shifted, a detective supervisor took over responsibility of the investigation. At that time, some efforts were made to develop a "paper trail" through requests for documents from City officials and financial institutions. However, most of the resource dedication at this juncture of the investigation consisted of interviews with various city officials and other individuals familiar with City procedures and the financial workings of the CT.

The point at which suspicion began to shift from that of a commercial burglary to a potential embezzlement investigation was a pivotal moment in the case. At that point, the Department was faced with various options besides the path taken, namely, the decision to move ahead on its own with a criminal embezzlement investigation:

- The Department could have recommended that an independent audit be conducted of the CT's "strange accounting" practices, reimbursement requests, contracts, dealings with the Friends, and other assorted monetary dealings.
- The Department could have considered referring the matter to an outside agency.
- The Department could have requested an early consult with the District Attorney's Office.

In retrospect, either of these options, or a combination thereof, may have been the road better taken. If the Department had worked with City leaders to request an independent audit, a disciplined professional group could have been tasked to identify irregularities. A methodical paper trail could have been developed by persons trained, experienced, and equipped to "follow the money" and then assess how the CT accounted for

its expenses, requests for resources and reimbursements, as well as any evidence of undue financial gain. Once such an audit was completed, the information elicited from that assessment could then have been used to revisit whether a criminal investigation was warranted, and if so, what the scope of that investigation should be. Alternatively, the audit's results could have indicated that a criminal investigation was not appropriate but that CT financial practices were in need of clear reform and/or that the audit results suggested potential violations of City policy indicating an internal administrative investigation was necessary.

The only real potential disadvantage of conducting an audit of this sort was that it could "tip off" those involved in potential criminal wrongdoing. While there is certainly a likelihood that those guilty of criminal activity might be placed on guard with any overt financial review, it is much more difficult to cover the tracks of financial crimes cases than other crimes. The paper trail is difficult to erase, particularly in these days of computer databases and electronic storage and any real effort to destroy evidence often places the perpetrator in peril of being caught not for the crime itself but for the criminal "cover up". In addition, if there is any concern about records being destroyed during an audit, protective mechanisms can be devised to lessen the likelihood of such occurring. Finally, those suspected of criminal activity can be interviewed before the audit is begun, "locking them in" to statements before they are aware of the suspicions against them.

The hand off to an outside agency also has inherent advantages over continued local control. First, an outside agency may have more expertise and resources at its behest. It is undisputed that the resources eventually dedicated by PAPD to this investigation placed a significant strain on the Department's other law enforcement responsibilities. Second, an outside agency will not be potentially subject to attacks from the community of partiality, i.e., that the "iconic" status of the CT and its managers caused PAPD to either pursue that icon with too much or too little zeal. An outside agency is better insulated from both ongoing and subsequent criticism that the local law enforcement agency may suffer, i.e., that a local law enforcement agency cannot be impartial in determining the appropriate degree of investigative energy to be deployed because of its closeness to the situation and the persons and organizations targeted for investigation. In fact, when PAPD determined to continue on with the case, it clearly did recognize from the outset that it was investigating an organization and individuals which were seen by many as pillars of the community. That recognition raised concern from PAPD managers that a tepid investigation might be viewed as an unwillingness to investigate robustly those entities and may have resulted in conscious or subconscious overcompensation regarding the vigor with which the investigation was conducted. In any event, outside agencies are certainly more immune from charges of partiality, either in favor or against the subjects of potential criminal activity.

For financial crimes cases, early and frequent discussion with the prosecuting agency is a desirable and important feature. White collar crimes are usually complex and unique and discussion with the prosecutorial entity regarding the necessary evidence and potential defenses is a discussion that should be had early on in the life of an investigation. In this case, PAPD eventually did bring the District Attorney's Office into a substantive discussion but by then much investigative work had already been conducted.[1] As a result, the ability for the District Attorney to meaningfully counsel PAPD regarding the strength of the evidence, the potential existence of significant defenses, and appropriate investigative strategies was significantly diminished.

In sum, while PAPD cannot be faulted for its decision to proceed with a criminal investigation based on the information initially available, it is mindful for future cases to be aware that other options exist. That being said, the decision for PAPD to move forward with a criminal investigation was not in and of itself inappropriate. It is quite likely that the decision not to proceed with a criminal investigation would also have subjected the Department to criticism, as it has regarding recent alleged acts of City employees in another department that were not investigated criminally. Nonetheless, and as explained further below, the execution of the criminal investigation was problematic in several regards.

IV. The Assignment of the Investigation to a Detective with No Apparent Formal Financial Crimes Training

By opting not to avail itself of these alternative paths, the Department was left to its own devices, resources, and abilities to pursue the investigation. In this case, a veteran police detective supervisor assigned himself to the case, with his supervisors' approval, and was largely responsible for the shape and path of the investigation. Unfortunately, while this individual had a wealth of experience and detective work in other criminal arenas, his experience in working financial crimes case was not nearly as robust. Even more importantly, this individual who quarterbacked the investigation may not have received any formal financial crimes training in his years as a police officer. For financial crimes in particular, training in how to conduct such investigations is critical. The assignment of an officer to investigate this complex financial case with no significant formal training in the

[1] While there was at least one telephone conversation about the matter with other District Attorney representatives earlier on in the investigation, the understanding from this review was that the first substantive meet to consider the state of the evidence with a representative of the District Attorney's Governmental Integrity Unit occurred in November of 2007, after the investigation had been well underway. It should also be noted that the investigative report reflects a telephone conversation between the lead PAPD investigator and a representative in the District Attorney's Office. While the report reflects support from the DA representative for a criminal investigation it also recommends conducting an audit, a recommendation apparently not carried forward by the investigator.

area was an unfortunate decision that likely worked to the disadvantage of the resulting investigation.

V. The Import of Interviews of City Employee Witnesses

As the criminal investigation progressed, numerous City employees were interviewed in an effort to divine City policies regarding reimbursement procedures, approval requirements for contracts, how excess property was to be handled, and the like. While there is no evidence of dissembling by those witnesses, the focus on "appropriate" procedures did not sufficiently consider what procedures and processes had been "de facto" tolerated over years and years of operation. In other words, the investigation failed to sufficiently pursue and assess how City officials had been aware of, allowed, and endorsed procedures that may have been against the letter of City policy but were both implicitly and explicitly authorized for years.

For example, one focus of the criminal investigation was the allowance by CT managers of the Friends to sell costumes that had been created with City funds. The criminal investigators interviewed City officials and learned that in order to conduct such a transaction, the CT managers would have needed to obtain authorization for the transaction at the highest levels of City governance. However, the investigation also learned that the decision to begin a costume sale did not originate from the current CT managers and targets of the criminal investigation. Most importantly, the investigation also learned that the costume sales had been occurring openly and with at least implicit authorization for years, a fact fatal to any successful criminal prosecution. The failure to recognize the import of this information was a significant shortcoming of the investigation.

This recognition failure also appears in the investigative report prepared in this matter. For example, the report discusses an incident in which a City employee allegedly discovered a "misappropriation" by the CT Director at which time he informed the Director to cease the activity but she did not do so. The witness further indicated that he then requested an audit be conducted of CT operations but that because of a friendship with the Director, the audit did not occur. The report however, fails to recognize the import of this exchange. If "misappropriation" is in fact going on and the City indeed became aware yet took no action to learn more about the actions, an embezzlement criminal action cannot survive years later.

Later in the report, a witness is reputed to have told the investigator that the CT Director admitted that she was aware of policy but failed to follow it. The witness further indicated, according to the report, the Director failed to follow the policy, her supervisor failed to follow the policy, and the staff of the witness failed to follow the policy. Again, the import of this statement is apparently not recognized by the investigator. The unchecked policy violations that immediate supervisors and other City staff became aware of and

chose to do nothing about provide a strong defense to the CT Director with regard to potential criminal charges.

From a review of the evidence, it appears that with regard to every other allegation of criminality, the City's awareness, authorization, and/or tolerance of the actions of CT managers was devastating to any viable criminal prosecution of the acts being investigated. In other words, the City's awareness, toleration, and endorsement of the various financial undertakings by CT authorities provided a complete defense to the criminal charges being considered. The failure of the investigation to fully understand the import of this potential defense and learn the depth of any such authorization over the years is a fatal flaw.

VI. The Search of the Children's Theater, Personal Residences, and Interview of CT Officials

After the interviews of the City officials and other witnesses had been undertaken and some financial documents had been collected, the investigation proceeded to another phase. At this point, affidavits were prepared by the investigative team requesting judicial authority to search the CT office, residences of CT officials, lockers of the CT and CT officials, and lockers maintained by the Friends. While the application for the search warrants was approved by the judge, there is some question about the appropriateness of the affidavits. The affidavits only contain evidence indicative of guilt and do not iterate the potential defenses of prior authorization exemplified in the proceeding section. In addition, it was learned during this review that rather than seek counsel and authorization from the Deputy District Attorney of the Government Integrity Unit who had been previously consulted, the affidavits were apparently presented for review to a Deputy District Attorney unfamiliar with the investigation. As a result, the sifting mechanism role often assumed by the District Attorney's Office was compromised as a result of the initial consulting Deputy District Attorney not having the opportunity to review the search warrant applications.

Once the search authorization was obtained, a plan was devised that while the search of the numerous locations was underway, the subjects of the criminal investigation would be interviewed. It has been suggested that in order to ensure that the CT employees would be found at work, recommendations from persons outside the Police Department that the search of the CT be conducted while the theatre programs were on hiatus were not accepted. In any event, while there were apparent attempts to conduct the search at the CT in a way to shield children participants from the law enforcement activity, the success of these efforts is still open to considerable debate.

As the search and interview operation progressed, it became apparent that the plan to interview all CT subject employees and all of the search locations was impracticable. As a result, padlocks were placed on several of the search sites and they were searched several

days later. More problematic, while the lead subject did agree to be interviewed and was interviewed for several hours, two other subjects of the investigation were not interviewed. The failure of the Department to interview these two individuals on the date of the search resulted in them never being interviewed as part of the criminal investigation. Accordingly, the inability of the Department to take advantage of their availability on the date of the search resulted in critical information, namely the account of two of the subjects of the criminal investigation not being available to that investigation.

VII. The Processing of Evidence Obtained During the Search

The search of the CT office, the storage spaces, and residences of the subjects of the investigation resulted in a raft of documents and other materials. The sheer number of materials seized overwhelmed the resources available for the investigation. As a result, a significant portion of the materials collected were not analyzed by investigators and the depth of the import of some documents was not realized. The investigative report itself admits that not all of the seized documents were analyzed during the criminal investigation. Subsequent to the closure of the criminal investigation, other interested parties have actually identified documents seized by the investigators that contain significantly exculpatory information.

Costume Sales

The following documents were retrievable pertaining to the costume sales issue:

- A 2002 memorandum to the City Manager from the CT Director requesting authorization to donate costumes to the Friends. The approval signature lines include representatives of Finance, the Director of Community Services, the Director of Arts and Culture, and the Assistant City Manager. Both the Director of Arts and Culture and Assistant City Manager's signatures are identifiable.

- A 2004 memorandum to the same effect with similar approval signatures. [Apparently, no costume sale was held in 2003.]

- An email message in 2006 from the City Community Services Director to Department Heads setting out new disposal procedures for department surplus property.

- An email message in 2006 from the CT Costume Supervisor to the CT Director requesting direction on whether she needed to fill out a surplus property form for approval before discarding damaged costumes and the new procedures on how to provide costumes to the Friends for sale. The CT Director than forwards these questions on to an Administrative Services employee.

- A return email in 2006 from the Administrative Services Deputy Director to the Children's Theater Director indicating that the request had been passed on the City Attorney and City Auditor for feedback given newly instituted policies and procedures. The email indicates that if there are any issues that need vetting, he would do so.

- An email message in 2006 from the CT Costume Supervisor to staff detailing a list of discards for either the Friends costume sale, the EPA job reentry program, or to be thrown away.

- Several follow up emails in 2006 from the CT Costume Supervisor updating CT staff on additional information regarding costumes to be donated or discarded.

- An email from the Administrative Services Manager to the CT Director indicating that current practice is "consistent with the new policy and procedures".

- A flyer announcing the 2006 costume sale by the Friends of the Theatre to be held in the Ballroom at the Lucie Stern Community Center.

The above documents indicate that the CT Costume Supervisor was made aware of the new policies for handling surplus property instituted in 2006 and asked her supervisor whether current practices of donating to the Friends [which had been authorized in 2002], the EPA job reentry program, or throwing damaged costumes away was still acceptable. The CT director forwarded on to the Administrative Services Deputy Director the questions raised by the CT Costume Supervisor and received a response indicating that he would forward the question to the City Attorney and City Auditor and that if the current procedures needed to be revised, he would let CT staff know. In the meantime, the CT Costume Supervisor dutifully kept track of costumes to be allocated waiting for an answer from the City. The group of documents finishes with a flyer announcing the fall 2006 sale of costumes by the Friends.

This trail of documents demonstrates the existence of an overt practice before 2006 of allowing costume sales to be donated to the Friends. When discard practices were due to be changed in 2006, CT Staff dutifully asked the City whether their practices also needed to be changed. After hearing from the Administrative Services Director that the current policies were consistent with the new policy, later that year the costume sale was held. Surely, the City was placed on notice about the costume sales in 2006 and could have caused the CT to change their practices at that time had it desired. The evidence also shows intent on behalf of CT to comply with any new practices and a search for direction from City supervisors on how to proceed. The existence of this group of documents is most likely fatal to any potential prosecution for the sale of costumes by CT staff in that it demonstrates both City authorization and awareness of the costume sale procedures and

the intent by CT staff to follow any new procedures regarding surplus sales instituted by the City.

Agreements for Special Performances

The following documents were retrievable pertaining to the agreements for special performances:

- A 1988 agreement between the Friends and the Children's Theater whereby the Friends will hold fund raising events for the CT.
- A 1996 agreement between the Friends and the Children's Theater whereby the Friends will receive funds from the Children's Theater in exchange for volunteer help provided by the funds with the understanding that all funds to the Friends will be used for the benefit of the CT program. The contract is apparently signed by someone from the City Manager's, Risk Manager, Purchasing and Contract Administration Departments.
- A 1997 agreement to the same effect.
- A 1998 agreement and purchase order to the same effect.
- A 1999 agreement and purchase order to the same effect.
- A 2000 agreement to the same effect.
- A 2002 agreement and purchase order to the same effect.

The above documents first illustrate a years long practice of contractual arrangements between the CT and the Friends. The documents are accompanied by receipts showing payment in support of the contract. Some of the agreements have empty boxes on approval signature lines for various City entities. On the other hand, some of the agreements do have approval signatures for City entities, including the City Manager's Office. (There was no evidence put forward in the criminal investigation that these signatures were not actual signatures of the various department representatives.) While the existence of these contracts may be contrary to City ordinance and should have been vetted and approved by both the City Attorney's Office and possibly City Council, the evidence of the contracts and accompanying purchase orders indicates City knowledge, tolerance, and apparent authorization for the CT staff to enter into such contracts. The fact that the City paid on the contracts is further evidence for CT staff to believe that they were authorized to continue to enter into such contracts. The failure of the City to correct this belief likely provides a complete defense to CT staff to any criminal prosecution focusing on the execution of "illegal" contracts.

Inquiry Whether the Friends Could Pay CT Staff Expenses

The following documents exemplify CT Staff inquiring of City officials whether certain actions are permissible:

- An email from the CT director to her supervisor regarding whether the Friends could pay for CT staff to attend a music festival in Atlanta. The email asks that the supervisor check into this and ends: "We want to be sure we don't end up doing something that is deemed unacceptable or can be considered a gift."
- A forwarding email from the supervisor to the City Attorney's Office requesting an opinion.
- An opinion from the City Attorney's Office authorizing the request and indicating: "The employees attending need not report the value of the travel OR worry about the gift limits."

Again, this email chain is indicative of CT staff seeking approval to not violate City policy and requesting and receiving assurances from the City Attorney that they are not doing so.

Requests for Other Financial Adjustments

The following documents exemplify the looseness with which financial accounts are "adjusted" with the full knowledge and cooperation of City staff:

- An email "ok" to the CT director from City staff to "adjust" an account from the Community Theater to the Children's Theatre because of a mistake made by City staff.
- An email from the CT Director to her supervisors requesting authorization to transfer funds from an overspent account because of mistaken charges to that account and a list of the various mistaken charges. A reply email authorizing the request for transfers.
- An email from a City official authorizing the juggling of moneys from various accounts.

The emails above suggest issues regarding the moving of monies among contracts and accounts and "mistakes" by both City and CT staff regarding the charging of expenses to wrong accounts. However, the emails also are indicative of CT Staff bringing to the City's attention such mistakes, requesting authorization to adjust accounts, and receiving such authorization. The above emails are tip offs to faulty and insufficiently monitored accounting. They also, however, provide an excellent defense to any criminal charge of embezzlement.

A fact soon learned by the criminal investigators and documented in their investigative report is the disarray of record keeping and documents seized from the various sites. While that disarray is indicative of poor recordkeeping, the disarray is not consistent with the investigator's criminal theory; namely, the existence of a group of crafty criminals carefully counting the days in which the traveler's checks could be cashed free of detection from the City. Rather the more accurate picture painted by what the investigators found when they searched the office and other locations was a "rat pack" collection of materials in disarray that provide no particular sense of purpose, but that contained a good deal of exculpatory information for those with the stamina, acumen, and resources to sort the documents out.

The failure of the investigation to possess sufficient resources to process the seized materials and gain understanding from them caused a good deal of exculpatory material not to be sufficiently considered by the criminal investigation. Moreover, the gestalt of what was learned the day of the search about the recordkeeping style of the subjects of the investigation was not consistent with the theory promoted in favor of criminal prosecution.

VIII. The Determination Not to Interview Certain Witnesses

The actions of the Friends, a non-profit support group of the CT, became a centerpiece to some of the alleged criminal activity. At some point, the investigator declined to interview the Friends witnesses due to their having obtained counsel and a stated view that, as a result, those interviews would have been unhelpful to the investigation. However, investigations should seek out all potential sources of relevant information. The mere fact that a witness has retained counsel does not mean that the witness account will not be helpful to the investigation.

Moreover, an investigator should not equate exculpatory information with unhelpful information. In many ways, the plumbing of information tending to exonerate criminal subjects is more important than incriminating evidence. A full examination of potentially exculpatory information is essential for investigators and prosecutors to determine whether a crime has been committed and the earlier such information is accessed and analyzed the better. Any concern that the attorney will be able to strategically gain knowledge about the details of the investigation can be mitigated by the careful development and asking of questions. Finally, the mere fact that a witness has retained counsel does not necessarily mean the witness will be unhelpful; particularly in financial crimes investigations the wise counsel of an attorney instructing the witness of the need for honesty will often result in more truthful information being provided to the investigator than less.

According to the investigative report, another witness to the investigation was not interviewed due to "scheduling conflicts". Such scheduling conflicts should not have

prevented the investigator from obtaining information from this witness. The import of this investigation and the potential consequences to the City and the subjects of the investigation demanded a greater effort to obtain any relevant information this witness could provide. Sometimes grave illness, an ability to locate a witness, great distances, and non-cooperation can justify the failure to obtain information from a witness; the Report however, only points to "scheduling conflicts" as a reason for this investigative lead not to have been pursued.

The failure of the investigation to fully explore the authorization provided CT managers to conduct the activities that were the focus of the investigation, the decision not to interview Friends witnesses and another witness because of scheduling issues, and the failure to fully assess documents that supported an "authorization" defense all point to the investigation's tendency to ignore facts that suggested a crime may not have been committed. This failure to evaluate exculpatory information is apparent throughout this criminal investigation. For example, the original suspicion cast on CT staff stemmed from their failure to report the missing traveler's checks in the original burglary report. However, as learned later in the fall, the CT staff also failed to list $17,000 worth of video projectors as missing during the burglary. This fact tends to suggest a reassessment that the failure to report the missing traveler's checks may have been more demonstrative of poor inventory tracking by CT staff rather than a calculated attempt to shield them from public purview.

As new facts become available, an investigator must reassess the viability of a criminal prosecution and retain the flexibility to discard original suspicions. Moreover, complete witness statements must be obtained and analyzed for evidence helpful and harmful to the criminal investigative theory; certain witness statements cannot be selectively "shoehorned" to fit the theory while others are discarded. A robust investigation develops and seeks all of the facts; those helpful to show guilt as well as those pointing toward innocence. An investigation that fails to pursue all the relevant facts is not a complete investigation.

These concepts are well recognized by the PAPD. In its Report Writing Manual, it explicitly states: "Normally facts which tend to minimize or disprove the subject's guilt should be documented in your report." It is apparent that in this case, the investigative report did not fully subscribe to this principle.

IX. The Role of the City Manager In the Investigation

Numerous allegations were raised about the City Manager's role in the criminal investigation. This review revealed no significant evidence that the City Manager improperly directed the police investigation, including which witnesses to interview or how to proceed with the investigation.

X. Public Comments from PAPD During an Ongoing Investigation

At times, police officials commented publicly about the pending criminal investigation. For example, at one point, a witness who had been interviewed by the investigation reported to the media about his account of the interview. In response, the Department contested the witness' account of the interview by referring to the tape recorded witness interview. While it is sometimes difficult to stand mute while a witness is contesting the integrity of an ongoing investigation, the better practice is to hold comment until the investigation has taken its course. To do otherwise, is to potentially compromise a pending investigation.

XI. The Preparation of the Investigative Report

From the inception of the financial crimes investigation, a narrative report was prepared by the lead investigator. In several respects, the report lacks the dispassionate qualities expected of police reports. First, the report is an amalgam of facts, theories, and conjecture. While summaries of interviews and investigative tasks provide a helpful road map to the investigation and are appropriately part of a report, investigative reports should be free of conjecture, inferences, and investigative theories. In addition, extraneous information and unattributed and irrelevant statements and acts regarding the subjects of the investigation should not be included in the official report. For example, unless a connection can be shown, the fact that CT managers may have gone on expensive trips are not appropriate for inclusion into a police report. Finally, the use of first names when referring to some of the witnesses detracts from the professionalism expected of police reports.

These concepts are recognized and accepted by PAPD. In the Department's Report Writing Manual, it is noted that "a police report should be written using facts, not conclusions or opinions. Avoid making inferences about what something means, and instead just stick to reporting facts." It is apparent that the report eventually released by the investigator in the CT investigation did not always subscribe to these admonitions.

XII. The Statute of Limitations Issue

The Statute of Limitations issue and the failure of the investigation to recognize how a prosecution was time barred is worthy of further comment. Crimes such as embezzlement have provisions for extending the ordinary three year statute of limitations to the time at which the scheme is discovered or should have reasonably been discovered. This legal extension exists so that persons who successfully conceal their financial crimes can be held criminally accountable when those crimes are discovered.

However, in the instant case, the extension of the statute of limitations was not available since each of the acts investigated had been conducted openly by each of the subjects. In other words, the weight of the evidence was that the CT employees did little, if anything, to hide their actions or cover their tracks. As exemplified above, numerous communications were discoverable among the seized materials demonstrating overt submissions and questions by the subjects to City authorities regarding each of the type of transactions investigated. The City was placed on clear notice regarding the actions that became the subject of the criminal investigation, yet little action was taken to address or sanction the activities. To the contrary, many of the actions were authorized, and thus, there was no basis for the tolling of the statute of limitations in this case.

XIII. The Stolen Traveler's Checks: Lack of Conversion

As noted above, the criminal investigation was instigated when stolen traveler's checks were recovered by a neighboring agency. Those checks became the starting point of the ensuing criminal investigation. However, as eventually pointed out by the District Attorney, because the checks had never been "converted" by the subject employees of the CT, an essential element to the misappropriation charge was arguably missing. The investigation apparently learned this fact very late in the investigative process. An earlier consult with the District Attorney could well have educated the PAPD investigation of this fact farther upstream and curtailed the need to criminally investigate these transactions since a key element of the crime being investigated might never be provable.

XIV. The Decision to Close the Investigation and Release a Redacted Investigative Report

At some point, PAPD revisited the Deputy District Attorney and was told definitively that there was no case in support of criminal prosecution. However, rather than quietly close the investigation, the decision was made to release a redacted copy of the investigative report to the public. This controversial decision was not without some logic. First, after the investigation became known in the community, there was considerable pressure from the media, the general public, and elected officials to provide information about the criminal investigation. Second, it was expected that should the City decide not to release the report, media outlets and other community entities would seek access to the report through a Public Records Act request, and the City might well be required to release the report should it attempt to shield it from public purview.

As a result of these concerns, but contrary to the advice of the Deputy District Attorney, the report was released. Once released, the report did serve the purpose of transparency. In fact, and ironically, much of the tumult and criticism raised by concerned community members about the criminal investigation came from exposure and access to the information contained in the report -- information that might not have been available if

the report had not been released. Accordingly, the release of the report did better inform the public about the nature of the criminal investigation.

On the other hand, various aspects of the report made its release problematic. First, unlike situations in which criminal investigations result in charges being filed, in this case no charges were filed. Accordingly, activities about targets of the investigation that were not subject to criminal prosecution were detailed in a report for all to see. While such a release might be appropriate and helpful to subjects who are exonerated by the criminal investigation, what made the release of the report in this case particularly problematic was the continued insistence by PAPD authorities that the subjects of the investigation had actually committed the criminal acts alleged. A PAPD press statement accompanying the release of the report indicated that there was evidence of "significant instances of serious financial misconduct and other possible criminal activity." The release of the report was not accompanied by a clean bill of exoneration by investigative authorities, rather, the Department continued to maintain that criminal acts had been committed but that technicalities such as the statute of limitations were the only reason these subjects could not be brought to answer in a criminal prosecution.

The combination of the release of the report and the use of information in the report to continue to assert that the criminal subjects actually committed criminal acts is problematic. This is particularly so in this matter in which complete defenses available to the subjects of the investigation may exist but are not fully set out in the report. And it is inaccurate to assert that the subjects committed the alleged criminal activity but that prosecution was not available because of the technical defense of the statute of limitations. In this case, the real defense of authorization meant that no criminal actions had been committed by the subjects.

Finally, the way in which the report was prepared did not lend itself to public release. As noted above, the report was an amalgamation of facts, witness summaries, investigative tasks, as well as investigative theories, unsupported inferences, and conjecture. Moreover, because the investigation was not focused on cataloguing and collecting exculpatory evidence, such evidence is not prominently featured in the police report. In short, the way in which the report was prepared led to justifiable criticism of the report when it was released.

CONCLUSIONS

This review is not intended to render judgment on the guilt or innocence of the subjects of this investigation. The decision by the District Attorney not to file charges has already answered that question. Rather, this review is intended to provide an analysis as to why the investigation took the path it did and suggest areas for reflection and reform. However, it would be remiss to not indicate that there was no evidence from this review

that indicated malice on behalf of anyone affiliated with the investigation, either from the Police Department or the City. While miscalculations were made during this investigation, they can be attributable to the milieu in which the suspicions arose and a lack of training and expertise rather than a calculated plan to investigate and attempt to prosecute certain individuals, exculpatory evidence notwithstanding. In addition, the poor recordkeeping, laxity of control, intermixing between public and private entities, poor and outdated financial practices for reimbursement of CT employees, and the toleration of these arrangements by City officials that went outside the bounds of appropriate checks and balances presented a perplexing fact set that was left for PAPD authorities to attempt to sort out. As it turned out and for the reasons elicited above, a criminal prosecution was not viable. However, had both CT employees and City oversight officials been more attentive over the years to these administrative financial matters farther upstream, the trauma wrought on the City and its community by the resulting criminal investigation could have well been avoided.

With regard to the way financial matters were handled by the CT, the City and its employees, this review found no heroes. The "system" set up decades earlier by which CT employees could seek reimbursement was an outdated relic that should have been reformed years ago. Saddled with such a system, the CT employees did a poor job of ensuring appropriate reimbursement, at times seeking multiple reimbursements for the same expenses and then at times not seeking reimbursement at all for legitimate expenses. There were no effective "checks and balances" to the reimbursement system and the arrangement was permitted to bounce around unregulated and largely unmonitored for years and years. While there were some attempts over the years during the evaluation process to message the CT Director of the need to improve accounting practices, there was no significant follow up to ensure that the accounting practices were, in fact, improved.

The same can be said with regard to the relationship between the CT and the Friends. Monies and resources were permitted to slosh between the two entities with very little questioning of whether the transactions were appropriate and consistent with City policies. Because the entities were seen as working together for the common good, persons in positions of authority not only tolerated the arrangement but at times endorsed and authorized it, sometimes contrary to City policy.

As a result, when the police began to be exposed to this "crazy accounting system", suspicions were raised that persons were stealing city monies. Instead of seeking the answers through an audit or consulting with an expert, the Police Department decided to go it alone with a lead investigator not trained in the niceties of financial crimes investigations. The resulting criminal investigation inevitably was destined to make mistakes as detailed above. The mistakes of the criminal investigation were made available to all when the investigative report was released for public scrutiny.

It cannot be disputed by the managers of the CT that legitimate expenditures and reimbursements did not always match up. It also cannot be divined the degree to which CT employees may have "benefited" from the discrepancies, if at all. On the other hand, the financial records are in such disarray that the CT employees may be owed further monies for expense reimbursements not sought. While these discrepancies are disconcerting, the way in which the City failed to monitor, regulate, and reform the system left any potential criminal case dead upon arrival.

Many in Palo Alto would agree that there are heroes with regard to the years of good work of the CT. Once the investigation became overt, CT supporter have been concerned that the financial irregularities uncovered that ended up not being prosecutable not detract from the positive experiences the CT provided youngsters in Palo Alto. In fact, because the energies of the CT managers were almost exclusively focused on providing this service, the financial issues of keeping track of money and operating according to Hoyle unfortunately took a back seat. The positive aspect of the attention drawn to this affair is that state of the art financial systems will replace the anachronistic ones and appropriate controls will ensure that the CT's financial recordkeeping will not jump the rails in the future.

SYSTEMIC RECOMMENDATIONS

1. Allegations of financial crimes are often fraught with complexity. Accordingly, it is recommended that in future cases, the Police Department should consult early with the District Attorney regarding the structure, form, and strategies of the criminal investigation.

2. In consultation with the District Attorney, the Department should determine whether an independent financial audit should be requested before a financial crimes investigation is begun in earnest.

3. In similar cases, the Police Department should consider the advantages of referring the investigation to an outside agency.

4. Investigators assigned to lead financial crimes investigations should have training and experience in the conduct of financial crimes investigations.

5. Ongoing criminal investigations should not be tried in a public forum and the Department should refrain from substantive public comment during a pending criminal investigation.

6. In cases in which no charges have been filed, the City should consider the advisability and appropriateness of releasing related police reports, taking into account any legal requirements that may mandate release.

7. Police reports should not include conjecture and investigative theories; the Department should ensure that its detectives receive appropriate training about compiling appropriate police reports consistent with the Department's current Report Writing Manual.

8. Training should also be provided to Departmental staff on the need to search for and document both evidence showing guilt as well as evidence indicative of innocence consistent with the Department's Report Writing Manual.