

This is the response of the County Counsel to Report No. 4 of the 1991-1992 San Diego County Grand Jury ("Grand Jury") entitled, "Problem Areas in the Office of County Counsel" ("Report").¹ The response will address the content of the Report, including the Alicia W. case, and the five specific recommendations contained in the Report.

1. Observations re the Grand Jury and its Authority to Issue Reports

The grand jury is a 19 member body of citizens selected for a limited term, usually one year, to perform enumerated duties. The grand jurors are selected by lot from names submitted by the judges of the superior court. The authority of the grand jury to investigate and report upon the affairs of local government (the so-called "watchdog" role) is clear under California law.

Great latitude is given to the grand jury in conducting its investigations and in issuing its reports through the Superior Court. The proceedings of the grand jury are secret. The Superior Court has no authority to refuse to issue such reports because they are ill-advised, insufficiently researched or documented or even libelous. A report of a grand jury is based on the particular grand jury's own criteria or standards and not on any specific measurable legal standards. The fact that the grand jury report is issued by an arm of the judicial system increases the implied credibility it may receive from both the public and the press.

¹ The Final Report of the 1991-92 San Diego County Grand Jury (June 30, 1992) includes Report No. 4.

At the same time, the law requires the grand jury to conduct its investigations in a "careful and diligent" manner in order to assure fairness and impartiality by the grand jury in the exercise of its functions (Pen. Code, § 914.1). Consistent with these statutory requirements, the San Diego County Grand Jury has adopted a Procedures Manual, as approved June 18, 1991 by the Presiding Judge of the San Diego County Superior Court, which, among other things, establishes guidelines for the conduct of investigations as follows:

"7. Suggested Outline for the Conduct of Committee Inquiry of Investigation

- "a. Determine grand jury's jurisdiction. Seek advice of the District Attorney or County Counsel if in doubt.
- "b. Determine legal responsibilities of official, department, office, organization or group as appropriate, and examine State statutes and local ordinances prescribing the authority, responsibilities and constraints relating to the entity involved.
- "c. Determine what the entity in question is currently doing.
 - "(1) Make announced visit with at least two members of committee. (Additional visits may be announced or unannounced as deemed appropriate.)
 - "(2) Interview key personnel and, when appropriate, other knowledgeable persons.
 - "(3) Review records and reports as necessary.
- "d. Determine entity's strengths and weaknesses.
- "e. Base findings, conclusions and recommendations on items b through d above.
 - "(1) Be objective and refrain from making assumptions.

"(2) Gather as much information as possible.

"(3) Support comments with facts.

"(4) Make recommendations which are relevant to the entity in question.

"(5) Avoid recommendations commendations of a general nature. Try to be specific.

"f. Prior to making reports, discuss findings, conclusions and possible recommendations with head(s) of organization(s) involved."

The major concern of County Counsel in responding to the Report is that the 1991-92 San Diego County Grand Jury did not adhere to either its statutory mandate in conducting its investigations in a "careful and diligent" manner or its own procedures in conducting any investigation on any matter relating to the Office of County Counsel. The Grand Jury did not discuss any aspect of the Report with the County Counsel prior to its release on June 2, 1992. Instead, a copy of the Report was hand-delivered to the County Counsel by a member of the Grand Jury one-half hour before its release to the public and press. The Grand Jury did not discuss any aspect of the Report at any time with the Chief Deputy-Juvenile Dependency Division or any other County Counsel management personnel; except for a one-hour meeting between 2 members of the Grand Jury and the Chief Deputy-Litigation on general issues related to claims filed against the County of San Diego.²

² The Office of County Counsel has three divisions (i.e., Advisory, Juvenile Dependency and Litigation), each of which is supervised by a Chief Deputy. The support staff is supervised by a Chief, Administrative Services.

The topics in the Report are areas of great importance to the Office of County Counsel in carrying out its daily responsibilities. However, because of the lack of discussion with the Grand Jury during its investigation, the information contained in the Report is incomplete and misleading and the conclusions drawn from such information are inaccurate. Consequently, a good part of this response is an explication of facts, which, it is hoped, will be of benefit to the Grand Jury and others reading this response. A stealth-like attitude in conducting investigations can undercut the credibility of the Grand Jury as an institution.

This response in no way intends to suggest that the operation of the Office of County Counsel cannot be improved or enhanced. The County Counsel is committed to improvement and evaluation on an on-going basis. Some of our efforts to improve the Office of County Counsel are contained in the following pages.

2. The Content of the Report

This part of the response will comment on issues raised in the body of the Report. The purpose of this discussion will be to correct misperceptions, mistakes and unsupported allegations contained in the Report and to provide the facts. In order to provide a complete understanding of the role and actions of County Counsel in the Alicia W. case, this response also will address the Alicia W. case which is the subject matter of Report No. 6 of the 1991-92 San Diego County Grand Jury entitled, "The

Case of Alicia W."

A. LEGAL REPRESENTATION OF THE GRAND JURY BY COUNTY COUNSEL AND CONFLICT OF INTEREST SITUATIONS

The County Counsel acts as legal advisor to the Board of Supervisors; represents the County of San Diego and its officers and employees in their official capacities in civil actions and proceedings; and provides legal advice and representation to a multitude of County departments and officers. The County Counsel also represents numerous special districts and school districts. In addition, the Superior Court and Municipal Courts, as well as the judges of such Courts, may request legal services from the County Counsel. This representation must necessarily include the duty of the County Counsel to insure confidentiality of privileged records in the possession of its clients.³ Therefore, a conflict may arise when the Grand Jury is investigating the affairs of a department which the County Counsel has advised or represented.

The Charter of the County of San Diego and California law recognize that the County Counsel may determine that a conflict of interest exists in the performance of a duty and choose to be disqualified. Should the County Counsel determine that a

³ This principle is recognized in the San Diego County Grand Jury Procedures Manual in its discussion on the role of County Counsel:

"Since county counsel acts as legal advisor to the grand jury, he is bound by the secrecy restrictions on grand jury matters and the confidentiality of the attorney-client relationship."

conflict of interest exists, the District Attorney may be asked to perform the duty. During the term of the 1991-92 San Diego County Grand Jury, several requests were made to the District Attorney to assist the Grand Jury because the County Counsel, in fulfilling his professional and legal responsibilities, determined that a conflict of interest did in fact exist regarding several specific matters in which legal advice was sought by the Grand Jury. The Grand Jury was advised of these circumstances.

The statutes governing a grand jury provide for the availability of counsel to assist them. The grand jury may ask the advice of the Superior Court, a judge of the Superior Court, the District Attorney or the County Counsel. In addition, the District Attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter being examined by the grand jury. The grand jury may also request the Attorney General or the Presiding Judge of the Superior Court to employ special counsel for the grand jury. However, prior to the Presiding Judge making the appointment of special counsel, the Presiding Judge must conduct an evidentiary hearing and find that a conflict exists that would prevent the District Attorney, County Counsel and the Attorney General from performing such duties. Clearly the California statutes anticipate that conflicts may arise and provide several alternatives for a grand jury to obtain legal advice and representation should the County Counsel professionally

determine, as occurred during the term of the 1991-1992 San Diego County Grand Jury, that a conflict of interest exists which prevents the County Counsel from providing advice to the Grand Jury.

The Office of County Counsel has supported and worked with the San Diego County Grand Jury for many years. Instances in which a conflict of interest requiring alternative counsel (including the Attorney General) have been rare. This working relationship between the Grand Jury and County Counsel has always been cordial and professional. The relationship between the 1991-92 San Diego County Grand Jury and the Office of County Counsel was an aberration. County Counsel believes that its working relationship with future Grand Juries will be a cooperative and productive one. County Counsel is prepared to continue to provide quality legal assistance to the Grand Jury.

B. SCREENING OF JUVENILE DEPENDENCY CASES BY THE OFFICE OF COUNTY COUNSEL

In the United States, it is generally assumed that children are ideally raised in a family setting, especially the family into which they were born. Thus, our laws grant parents broad freedom in deciding how to raise their children. However, this assumption is not absolute and the state has authority to intervene in the parent-child relationship when the welfare of a child is threatened by inadequate parenting. The approaches to the handling of child neglect and abuse in the United States have reflected social values and have attempted to resolve conflicts

among the interests of the state, the parents and the children. Achieving the proper balance of these interests has not proven to be an easy task.

In California, the Juvenile Court Law (Welf. & Inst. Code § 200 et seq.) contains the basic statutory provisions permitting the state to intervene in the parent-child relationship to protect children. It is not surprising that tension arises between the state's duty to protect a child and the parents' rights to raise their child as they see fit. However, it is quite clear that when these tensions clash, the state has created a system designed to protect the child's interests.

The purpose of the Juvenile Court Law is to provide for the protection and safety of minors and to preserve and strengthen the family ties, whenever possible. Consistent with this purpose, the Juvenile Court may assume jurisdiction over children who come within ten statutory descriptions. In enacting these descriptions the Legislature has stated:

"It is the intent of the Legislature in enacting this section [Welf. & Inst. Code, § 300] to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting."

Generally speaking, reports of suspected child abuse or neglect come to the attention of the Department of Social Services under the California Child Abuse Reporting Law (Pen. Code §§ 11165-11174.5). The primary intent of the reporting law is to protect the child. The reporting law also provides an opportunity to provide help to parents to lower the risk of abuse in the home. The Department of Social Services is under a responsibility to investigate charges of alleged abuse or neglect.

Contrary to the impression created by the Report, the Juvenile Court Law grants a social worker authority to take a child into temporary custody only under very limited circumstances: (1) a social worker may receive and maintain, pending investigation, temporary custody of a minor who is described in Welfare and Institutions Code section 300 and who has been delivered to the social worker by a peace officer; and (2) a social worker may take into and maintain temporary custody of a minor who the social worker has reasonable cause to believe is a person described by either Welfare and Institutions Code section 300, subdivision (b) or (g), and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety (Welf. & Inst. Code § 306).⁴ The

⁴ This authority may be contrasted with the broad authority granted to a peace officer to take a minor into temporary custody without a warrant (Welf. & Inst. Code § 305).

Juvenile Court Law directs that a social worker shall consider whether there are any reasonable services available, which, if provided to the parents, would eliminate the need to remove the minor from the custody of his/her parents. If so, the services shall be utilized (Welf. & Inst. Code § 306). If the social worker determines that a minor should remain in custody, a petition to make the minor a dependent of the Juvenile Court must be filed immediately in the Juvenile Court.

The decision to intervene into a family must be based on the legal standards established by the legislature and court decisions. The Report ignores the complexity of the significant problems encountered by a social worker investigating cases of alleged neglect and abuse. Not only is the social worker attempting to determine what has occurred, the social worker is also concerned with assessing the extent of the risk to the child. The information gathered by the social worker may be conflicting, incomplete or strongly suggestive of neglect or abuse. In a short period of time the social worker must determine who must be interviewed, how to weigh the information obtained and whether preplacement services, which would prevent the removal of the child, should or could be offered. The social worker must evaluate the family dynamics, including any history of prior abuse and neglect, any substance abuse problems and the strength of any extended family support system. In summary, the evaluation process is not an exact science. The decisions are complex and may not be reduced to a simple formula.

The decision of a social worker to file a petition in the San Diego County Juvenile Court is subject to a screening process by attorneys from the Office of County Counsel. The screening process, as instituted by the Juvenile Dependency Division of County Counsel, involves an experienced attorney. The screening attorney reviews the information obtained by the social worker, takes any steps necessary to verify or supplement the available evidence and makes the decision as to whether there is sufficient evidence to support the filing of a petition in the Juvenile Court. This screening process is unique to the County of San Diego and provides a thorough and positive check and balance system on the filing of petitions. If the evidence is sufficient, the attorney will authorize the filing of a petition. If the minor has been taken into custody and not released to a parent, a detention hearing to determine the minor's status must be held before the expiration of the next judicial day after the filing of the petition.

One evidentiary test considered during screening is whether there is sufficient evidence upon which to detain the child at the detention hearing to be held the day following the filing of a petition. At the detention hearing, the social worker will inform the Juvenile Court why the minor has been removed; the need, if any, for continued detention; and the availability of services and referrals to those services which could facilitate return of the minor to his/her parents. The Juvenile Court must make a finding that a prima facie showing has been made that the

minor is a person described in Welfare and Institutions Code section 300 and that, if recommended, removal of the minor from the home is appropriate as supported by the facts. "Prima facie" evidence is that which suffices for proof of a particular fact, until overcome by other evidence.

Since the investigation by the social worker continues after the petition is filed and the detention hearing is held, the screening attorney often suggests what additional evidence must be acquired prior to the jurisdictional hearing. Any additional evidence is evaluated by County Counsel as it is gathered by the social worker. County Counsel continues to evaluate the legal sufficiency of the evidence on an on-going basis, recognizing that the removal of a child from his/her parents is a serious matter.

Given the importance of the screening function, all attorneys who are assigned to screening have been provided with training, both on the job and in workshops, and are encouraged to consult with senior attorneys on any questions regarding a case brought to them for screening. County Counsel is also working with the Department of Social Services to review the risk assessment practices and tools used by the Department of Social Services so that social workers and attorneys are making evaluations consistent with the requirements of the law.

Contrary to the implications of the Report, supervisory review of screening decisions is an appropriate management method to provide quality control as well as resolve

disagreements between an attorney and a social worker on whether a petition may be filed. This is part of the system of checks and balances. County Counsel believes this system has been successful. In those few cases which have been reviewed personally by the Chief Deputy-Juvenile Dependency at the request of a social worker, a petition has been filed, the Juvenile Court has concurred with the judgement of the Chief Deputy-Juvenile Dependency in each case. The statement by the Grand Jury that County Counsel has approved the filing of petitions in "questionable" cases is simply unsupported.

County Counsel recognizes the importance of the decisions made at the earliest stages of the juvenile dependency process and encourages attorneys to consult with all appropriate sources of information as part of the decision making process. Each case must be considered on its own merits. Screening and other case related decisions by the Office of County Counsel will continue to be made on the basis of a full review of the known evidence of the individual case and application of the law.

C. ALICIA W. CASE

A response to the Grand Jury's comments on the Alicia W. case is difficult. The Office of County Counsel is hesitant to continue any unnecessary discussion of a case involving the brutal assault on an eight year old child.⁵ Unfortunately, the

⁵ The San Diego County Superior Court issued a Protective Order regarding the contents of the Alicia W. file in November 1991. A copy of that Protective Order is attached. ("Attachment

Grand Jury's mischaracterization of the Alicia W. case and the accusations regarding the conduct of a fine and highly professional member of the Office of County Counsel necessitate a response to bring perspective to the circumstances involved in the Alicia W. case.⁶

The facts of the Alicia W. case may be easily summarized. On the morning of May 9, 1989, Alicia apparently reported to her mother that she had difficulty in urinating. According to her parents and according to Alicia, she did not tell her parents of any sexual assault or of any kidnap. Later that morning, a physician, upon conducting a physical examination of the little girl, realized that she had been raped. She had tearing between her vagina and anus, resulting in the need for surgical treatment and stitching. The girl was likely suffering pain due to the attack. Nonetheless, she told the physician that nothing had happened to her. She repeated that same story to the first social worker and police detective who interviewed her.

After initially providing no explanations for her injuries, Alicia then gave a second story to a Children's Hospital physician. She stated generally that a man came through her

A".) Notwithstanding this Protective Order, Report No. 6 issued by the 1991-92 San Diego County Grand Jury entitled "The Case of Alicia W.", was distributed to the public and made the subject of press conferences by the Grand Jury. Both raised serious questions about the efficacy of court orders aimed to protect the confidentiality of juvenile court records.

⁶ Although not expressly named in either Report by the Grand Jury, the local media identified Ms. Via as the attorney referred to by the Grand Jury.

window, took her out and hurt her. Later she told a different detective more details: that a man who said he was her uncle, but was not, and who she described in detail, entered her brother's bedroom window, carried her outside through the window, put her in a green car like her grandpa's, drove around the corner close to her house by a grassy area near a brown fence, assaulted her, drove her back to her home, carried her back through the window and put her back in bed. She said that she then got up, walked to her mommy's room, got her cat, and went back to bed. Alicia's parents stated she made no report to them of this incident.

Needless to say, the various professionals involved in the investigation of this incident were concerned for the welfare of the child. Common sense suggested that this very painful assault would normally have resulted in an immediate, tearful report to her parents upon return to the home. Common sense also suggested that even a rapist who has the courage to sneak into a stranger's bedroom window does not ordinarily return the victim and quietly place her back in her bed. These aspects of the story, as well as other circumstances, caused the professionals to be concerned that the parents had been involved in some fashion in the assault; or that some aspect of the relationship between Alicia and her parents caused her not to report the incident to them immediately and to hide it; or that the parents were negligent in allowing such a thing to happen or in not discovering it had happened at the time Alicia complained of pain.

In May 1989, a petition was filed in Juvenile Court to declare Alicia a dependent child under Welfare and Institutions Code section 300, subdivision (d). It alleged sexual abuse of the minor in that she had suffered, and there was substantial risk that the minor would suffer, serious physical harm inflicted non-accidentally by her parent or guardian and such injuries which would not ordinarily occur but for the unreasonable and neglectful acts or omissions of her mother. Pursuant to plea negotiations, the Department of Social Services dismissed the allegation of sexual abuse and modified the petition to proceed under Welfare and Institutions Code section 300, subdivision (b) alleging the minor had suffered and was at risk of suffering serious physical harm as a result of neglectful supervision.

All parties agreed that Alicia had been severely sexually molested on the evening of May 8, 1989. On two occasions, Alicia later testified in Court under oath before two separate judges that her father had raped her. This testimony was subject to cross-examination by several attorneys including the following: James Dunn, Rod Underhill, and Michael McGlinn. While the Grand Jury assumed that the testimony of Alicia was the product of coercion by the child's therapist, the attorneys in open court were unable to persuade either judge through cross-examination and argument that such was the case.

Ms. Jane Via served the County during this time period in two different roles. From about January 1989 to December 1989, she was a Deputy District Attorney in the Office of the District

Attorney assigned to the Child Abuse Unit. In that capacity she criminally prosecuted cases involving child abuse. In that role, she successfully prosecuted Albert Carder for sex crimes committed on four young girls. Through Ms. Via's efforts, Mr. Carder was sentenced to 17 years in state prison. After Ms. Via left the District Attorney's Office, another Deputy District Attorney and then Chief of the Child Abuse Unit, Harry Elias, prosecuted Mr. Carder for another assault, obtaining an eight year consecutive sentence on Mr. Carder on September 20, 1990. Mr. Carder is now serving 25 years in state prison, as the direct result of the work of the San Diego Police Department in investigating his criminal activities and the efforts of Ms. Via and Mr. Elias in vigorously prosecuting him. These deputies should be commended, not criticized, for their work.

Ms. Via, in the course of her prosecution of Mr. Carder, observed there were both similarities and differences between Mr. Carder's conduct in the cases she was prosecuting and two other matters in which he was a suspect: Alicia W. and Nicole S.⁷

⁷ The Court of Appeal, in an opinion filed May 3, 1991, affirmed the order of the Juvenile Court declaring Alicia and her brother dependent children pursuant to Welfare and Institutions Code, section 300 subdivision (b), and removing Alicia from the custody of her parents. In the opinion, the Court of Appeal summarized the trial testimony of the second police detective who interviewed Alicia and of other officers. The detective testified she had recently investigated a series of cases involving a stranger entering a home and molesting a child within a five-mile radius of Alicia's home. She testified that when Alicia was presented with a photographic lineup containing the photograph of the suspect in those cases, she was unable to identify anyone in the lineup as her abductor. The officers at the trial also testified that the modus operandi of the suspect was very different from Alicia's attacker since the suspect did

These two cases were under investigation by the San Diego Police Department. Neither was at a stage of investigation ready for referral by the police to the Office of the District Attorney for criminal prosecution. In July 1989, upon the request of the investigating police detective, Ms. Via assisted the San Diego Police Department in obtaining additional evidence to help it determine whether to refer Mr. Carder to the District Attorney for prosecution of these further crimes. Acting in her capacity as a Deputy District Attorney, Ms. Via prepared a motion requesting the Municipal Court to allow the San Diego Police Department to obtain blood samples from Mr. Carder. Ms. Via's role was simply to ask the Municipal Court to issue an order requiring Mr. Carder to provide a blood sample for use in the law enforcement investigation in order to exclude or include Mr. Carder in the category of suspects as to the molests of Alicia W. and Nicole S. The declaration of Ms. Via, submitted with the motion, made it clear that each father of each child was also a suspect. This limited lawyer function of a prosecutor assisting law enforcement in their investigation of an in-custody defendant was and is not uncommon. The Municipal Court did issue an order requiring Mr. Carder to provide a blood sample for use by the San Diego Police Department. The blood sample was not obtained in

Footnote #7 continued:

not abduct the children from their homes and, unlike Alicia's case, he had a previous relationship with the victim's families. The Court of Appeal noted that "overwhelming evidence showed Alicia's story was highly improbable and flatly contradicted by the physical evidence."

any fashion "under the direction of Ms. Via." Indeed, she would never know the results of the blood analysis unless the San Diego Police Department were to request further prosecution of Mr. Carder by the Office of the District Attorney and the case were assigned to her.

In or about December 1989, Ms. Via left the Office of the District Attorney and joined the Office of County Counsel in the Juvenile Dependency Division. Her new responsibilities were to handle juvenile dependency cases involving child molest and other forms of child abuse.

In or about May 1990, Ms. Via began actively working on the juvenile dependency case of Alicia W. which had previously been handled by lawyers in the Juvenile Division of the Office of the District Attorney. Thus, Ms. Via became involved in the Alicia W. juvenile dependency case at a late stage. The Juvenile Court already had removed Alicia from her home and ordered her placed in a foster home. It was the professional responsibility of Ms. Via to present the evidence and law on behalf of the Department of Social Services to the Juvenile Court. It was the professional responsibility of the lawyers retained or appointed to represent Mrs. Wade, Mr. Wade, Alicia and other interested parties to present evidence, cross-examine witnesses, and attempt to obtain appropriate relief for their clients. It was the responsibility of the Juvenile Court, after hearing testimony and arguments, both oral and written, to make appropriate decisions

under the law.⁸ Ms. Via advocated vigorously in a legally appropriate manner on behalf of the Department of Social Services, taking into account all of the facts and evidence then known to her. She did so in furtherance of the Department of Social Services' responsibility to protect Alicia from future abuse and act in Alicia's best interest. There is no evidence or basis for the conclusion she acted inappropriately or unprofessionally.

While the Report is not entirely clear, the basis of the Grand Jury's complaint about Ms. Via's conduct appears to be that (1) she opposed a continuance sought by Mr. Wade's counsel; (2) she took a position in pleadings and in court argument inconsistent with her previous position in seeking a blood sample from Mr. Carder; and (3) she advocated her position vigorously rather than acquiescing to arguments made by opposing counsel.

The apparent contention of the Grand Jury that Ms. Via

⁸ The Court of Appeal, in the opinion filed May 3, 1991, noted that the trial court had "disbelieved the parents' testimony, finding the parents' statements mutually inconsistent and inconsistent with all the other evidence" at the earlier stage of the proceedings. On appeal, the father had argued the Juvenile Court erred in refusing to allow him to introduce the police officers report including information regarding a third party perpetrator. The Court of Appeal devoted three pages of its decision to a discussion of the testimony concerning abduction by a third-party. (This was the same evidence which allegedly implicated Mr. Carder.) The Court of Appeal concluded the testimonial evidence of the possible third party perpetrator was not significantly different from the information contained in the social report and, therefore, exclusion of the police report did not constitute evidentiary error. In addition, the Court of Appeal rejected the argument of the parents that their "plea bargain" had no factual basis since the parents knew the factual underpinnings of the plea.

should not have opposed the request of Mr. Wade's lawyer for a continuance is mistaken. In the first place, the request for a continuance was more than that. The related pleadings sought to set aside the existing jurisdictional findings well after the Juvenile Court had set a date for a hearing to decide whether to change Alicia's permanent plan in a way that could involve termination of her parents' custodial rights.⁹ Alicia had been in foster care for over two years. It was Ms. Via's view, as counsel for the Department of Social Services that the hearing process regarding Alicia as permanent plan, which was going to be a lengthy one, should not be delayed at this stage of the proceedings. Therefore, she opposed both motions based on the state of the evidence at the time. This is a normal judgment made by trial counsel, including a public attorney, on behalf of a client.

It was, of course, up to the Juvenile Court to make a decision on the issue of the continuance based on all of the evidence and arguments put before the Juvenile Court by the lawyers. Ms. Via specifically acknowledged this in her comments to the Juvenile Court. The Juvenile Court independently determined on August 22, 1991 that Mr. Wade's request for a continuance was inappropriate.

Moreover, Ms. Via learned on the evening of the day the Juvenile Court denied the father's motion to continue that the

⁹ A hearing to determine a permanent plan for Alicia would not have included adoption proceedings.

Department of Social Services had not complied with certain notice requirements necessary to go forward with the hearing on the permanent plan. Early the next morning Ms. Via personally advised the father's attorney of this fact and that he was entitled to the continuance he sought. As a result, the Juvenile Court, on August 25, 1991, continued the hearing on the termination of parental rights to November 1991. On September 27, 1991, the Juvenile Court further continued the hearing to consider the termination of parental rights to January 6, 1992.¹⁰

Counsel for Mr. Wade, of course, was free to and did argue vigorously the father's position to the Juvenile Court. During this phase of the litigation, counsel for Mr. Wade attempted to prove to the Juvenile Court that Mr. Carder was the more likely molester of Alicia by identifying alleged similarities between the crimes for which Ms. Via prosecuted Carder and Alicia's case. In response, Ms. Via acknowledged the similarities but also pointed out to the Juvenile Court that there were substantial

¹⁰ It must be noted that the continuance was ordered well before the results of the deoxyribonucleic (DNA) analysis of the semen stains found on Alicia's nightgown became available in October 1991. The DNA testing was the result of action taken by the District Attorney in the criminal case against Mr. Wade after he had been informed by the San Diego Police Department that new equipment had found semen stains on Alicia's nightgown. Ms. Via was on vacation when the final results of the DNA analysis were made available to the District Attorney and the attorney representing Mr. Wade. Interestingly, the admissibility of DNA evidence has been questioned or rejected in recent California appellate court cases. (People v. Pizarro [1992] ___ Cal.App.4th ___; 92 Daily Journal D.A.R. 14128; People v. Barney [1992] ___ Cal.App.4th ___; 92 Daily Journal D.A.R. 10924.)

differences between Mr. Carder's modus operandi and the sexual assault on Alicia. She also pointed out to the Juvenile Court that there was substantial direct evidence against Mr. Wade, namely the sworn testimony of his daughter, given twice in Court, accusing him of the molest. Moreover, Alicia had been presented with a photographic lineup in July 1989, shortly after the assault, to see if she could identify Mr. Carder. She failed to identify him at that time. Ms. Via argued these and other facts which stood contrary to the father's position.¹¹ It would have been a dereliction of responsibility for Ms. Via not to have put before the Juvenile Court the conflicting evidence in these proceedings and merely to have allowed Mr. Wade's counsel to present one side of the picture which ignored the evidence and other facts known to Ms. Via.

The Grand Jury's criticism on the proposed opposition of County Counsel to the parents' motion, made after the final DNA results were available, to set aside their admission of neglect so that the petition in the Juvenile Court could be dismissed, is a similar misunderstanding of the facts of the Alicia W. case. In mischaracterizing these events, the Grand Jury failed to recognize the substantial difference between the purpose of

¹¹ The Grand Jury's claim that Ms. Via's denial that obtaining the sample was done "under her direction" conflicts with her declaration is simply not correct. There is no inconsistency. The initial declaration was made to assist law enforcement in conducting its investigation; the argument made in Juvenile Court pointed out the significant factual differences in the Wade and Carder cases subsequent to the filing of the motion to obtain a blood sample.

criminal proceedings and the purpose of juvenile dependency proceedings. The former is to prosecute wrongdoers; the latter is to protect children from actual or threatened abuse or neglect. The criminal proceedings against Mr. Wade were not filed until December 1990, some 19 months after the juvenile dependency proceedings had been commenced. The final DNA results were not known until October 1991. The October 1991 letter to the County Counsel from the Grand Jury calling for immediate termination of the juvenile dependency case treated the dependency case as though it were a criminal proceeding and failed to consider the possible impact of such action on Alicia as a person.

Legitimate concerns existed in the juvenile dependency proceeding regarding an inordinately quick termination of the dependency case. Those concerns included the bonding of Alicia to her foster parents; Alicia's previously expressed wish that she be adopted by her foster parents; Alicia's previously expressed reluctance to see her father and fear of her father; the therapist's report of Alicia's frustration regarding her mother's unwillingness to believe Alicia's allegation against her father; Alicia's lack of comment, to our knowledge, regarding the results of the DNA analysis and their implications of her previous identification of her father as the perpetrator; the importance of individual therapy for Alicia to deal with the apparent conflict between her allegation regarding her father as perpetrator and the implications of the DNA analysis regarding

the identity of the perpetrator; and the importance of a gradual transition to the parents' home, accompanied by competent therapy, to ensure the success of her return to her natural family.

Alicia was informed of the results of the DNA analysis indicating that her father was not the depositor of the stains on the clothes she was wearing the night of her molest only a short time prior to the abrupt return to her parents. When this information was presented to Alicia by her attorney, in language a child could understand and in the presence of her mother, Alicia made no comment. To our knowledge, prior to the termination of the juvenile dependency proceeding, Alicia never independently concurred with the implication of the DNA analysis results that her father was not the perpetrator of her molest. To our knowledge, she never stated she had wrongly implicated her father nor has she given any explanation for her previous allegation he was the perpetrator.

Between November 12, 1991 and November 18, 1991, the Office of County Counsel had several telephone conversations with the father's attorney, and also spoke with him in person at Juvenile Court, regarding the future of the Alicia W. case. These discussions centered around the father's request that the juvenile dependency case be terminated. The father's attorney was informed that the Department of Social Services and County Counsel probably would agree to dismiss the case but the final decision had not yet been made.

With the agreement of all parties, Dr. David DiCicco, a psychologist, had begun therapy with Alicia in October 1991 after the DNA results were available. The Juvenile Court ordered Dr. DiCicco to address issues regarding the impending return of Alicia to the custody of her parents in order to minimize the impact on Alicia. All parties awaited a report from Dr. DiCicco concerning Alicia's progress in addressing issues related to the transition before dismissing the juvenile dependency case.

A proposed written stipulation to dismiss the juvenile dependency case in the interests of justice and the welfare of the minor was first presented at a hearing on November 21, 1991, when it was given to Mr. Nickell, a deputy County Counsel, by Mr. Underhill, the attorney for Mrs. Wade. It had been signed by Mr. Underhill, Kandy Koliwer, the attorney representing Alicia, and Eric Orloff, the attorney for Alicia's brother. Mr. Nickell advised Mr. Underhill that he could not sign the stipulation at that time because there had been no prior discussion by all of the parties of setting aside the findings of the Juvenile Court in the Alicia W. case or of the already terminated case of Joshua W. In addition, County Counsel had not received the necessary report from Dr. DiCicco regarding Alicia. The Juvenile Court continued the matter to 1:30 p.m. on November 22, 1991 for the purpose of considering dismissal of the original petition in addition to termination of jurisdiction.

On November 22, 1991, after the report of Dr. DiCicco had been submitted to the Juvenile Court, all parties signed the

stipulation that the no contest plea of the parents be withdrawn, that the jurisdictional findings based on those pleas be set aside and that the petitions be dismissed. The Juvenile Court set aside the previous findings of the Juvenile Court as to Alicia and Joshua and terminated jurisdiction over Alicia.

In conclusion, the Grand Jury's account of the Alicia W. case overlooked the reasonable basis for the actions of the Department of Social Services, the District Attorney, the County Counsel and the Juvenile Court in her case and the obvious issues surrounding any sudden and, possibly traumatic, return to her home. Although the Grand Jury had access to all the information provided above and more, the Grand Jury chose not to discuss this information. In addition, when the Grand Jury publicized information regarding Alicia's case in Reports Nos. 4 and 6, it censored from public view those facts which did not support its conclusions. The Grand Jury concluded, without a serious evaluation of all the evidence, that the public servants who handled the dependency and criminal cases had handled them improperly. In the case of Ms. Via, the Grand Jury suggested she be referred to the California State Bar for violations of professional conduct. However, the Grand Jury cites no section of the Code of Professional Responsibility which they think Ms. Via has violated. The Grand Jury cites no evidence of misconduct. Their suggestion that referral be made to the California State Bar, set forth for public consumption, unjustly

impugned the reputation of a highly skilled, dedicated public servant.

A balanced review of the totality of the facts indicates that, contrary to the conclusions of the Grand Jury, the Alicia W. case was handled in a thorough and professional manner and with due concern for the rights and interests of all the parties before the Juvenile Court. A more thorough and balanced investigation of the Alicia W. case by the Grand Jury, together with proper regard for the protective order governing the case, might have prevented widespread publicity about this child and the unjustified public attack on the reputations of highly competent and ethical public attorneys.¹²

D. ACCESS OF THE GRAND JURY TO JUVENILE COURT RECORDS

The Grand Jury's accusation that the Office of County Counsel sought to impeded the legitimate functions of the Grand Jury indicates a serious lack of understanding of its right to have access to Juvenile Court records. The grand jury has been recognized as "fundamentally a judicial entity." The statutes expressly authorize the grand jury to have access to public records (Pen. Code, § 921). In addition, the grand jury "shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county"

¹² As early as October 13, 1991, the San Diego Union was reporting that "[Grand] Jurors say they will investigate possible criminal conduct, malice or malfeasance." The propriety of such public pronouncements by the Grand Jury during the course of an investigation must be questioned.

(Pen. Code, § 925). However, the Juvenile Court Law is clear that access to Juvenile Court records, including those in the custody of the Department of Social Services, is strictly limited unless authorized by court order (Welf. & Inst. Code, § 827 et seq.). There is no exception for the Grand Jury. A statutory procedure exists which would permit the Grand Jury to review confidential Juvenile Dependency case files. County Counsel simply sought to have the Grand Jury comply with these legal requirements and if authorized by the Juvenile Court, keep any records received confidential. The San Diego County Superior Court agreed (see San Diego County Superior Court Order dated December 2, 1991, a copy of which is attached hereto as "Attachment A".) This issue appears to have been the cause of the rupture of an otherwise long standing good relationship between the San Diego County Grand Jury and the Office of County Counsel and led to the crabbed Report by the Grand Jury.

The Juvenile Court, at the request of the Office of County Counsel, has recently issued a special matter order designating that the Grand Jury is entitled to have access to Juvenile Court records provided the contents remain confidential (see San Diego County Superior Court Juvenile Department, Order No. 08-06-92, a copy of which is attached). ("Attachment B".) This order is consistent with the Juvenile Court Law and the views of County Counsel.

E. PERSONNEL

The Grand Jury raised several issues regarding the personnel management practices of the Office of County Counsel. There is misinformation in the Report which could have been easily clarified by discussing the issues with the County Counsel.

The Office of County Counsel is committed to the goal of providing quality legal services to its clients. In order to do this, County Counsel must employ and retain attorneys and other staff who are able to and do perform at expected levels in a variety of activities. It must be a team effort.

As part of our commitment to provide quality legal services to all of our clients, attorney and staff performance is carefully monitored. When performance problems are discovered, efforts are undertaken to correct the identified performance problems. In some instances, these efforts are not successful and the attorney or staff member in question is not retained. Public employment is not a sinecure.

Attorneys and staff have left the Office of County Counsel for a variety of reasons. Some have been related to job performance; some have been related to alternative career goals. The Grand Jury's blanket generalizations critical of the retention rates are unwarranted and without foundation. Over a three-year period, 8 attorneys have left the Juvenile Dependency Division: 6 based on performance related issues and 2 to take positions with other public law offices. Unfortunately, the

Grand Jury chose not to ask about or discuss these matters with the County Counsel.

The Employee Performance Rating Manual issued by the Department of Human Resources of the County of San Diego describes the reasons for an employee rating system as follows: "The purpose of the rating is to help develop a better County service and better County employees through periodic evaluation and recording of the employee's performance on the basis of consistent standards. Its objective is to let management and the employee know how the employee is getting along, . . . strong points as well as those that are weak, giving recognition for good work and providing a guide for improvement."

The County of San Diego has developed a standardized employee performance rating form which defines five potential overall rating categories ranging from unsatisfactory to outstanding. The definitions of these overall ratings are found on the back of the performance report form. For example, a standard rating is defined as "[t]he performance expected of a fully competent employee. It means thoroughly satisfactory and meeting the standards required for the position." Supervisors have received training for the purpose of instructing them in the appropriate and consistent use of the performance report. The assertion that a policy exists in the Office of County Counsel which prohibits the giving of "above standard" performance reports to employees irrespective of performance is patently false. No such policy has ever existed and "above standard"

performance reports have been and continue to be issued to deserving attorneys within the Office of County Counsel.

The County Counsel personally reviews all attorney performance reports in an attempt to assure consistency in the application of standards on an office-wide basis. Any attorney or staff member who disagrees with his/her performance evaluation has a right to appeal the evaluation. An appeal officer is designated and an appeal hearing is held in conformance with the Civil Service Rules of the County of San Diego.

The personnel practices of this Office are designed and intended to meet the goal of providing quality legal services to its clients. Within this context, the Office of County Counsel seeks to retain and promote qualified staff. The realities of public employment in a civil service system, plus the ever increasing workload demands placed on the Office of County Counsel in a time of diminishing resources, require that all members of County Counsel must competently perform their duties. To support the attorneys in this regard, each Chief Deputy has regular staff meetings where office and legal issues are discussed. Team leaders are available to provide guidance in the handling of cases. Recent changes in state law impose mandatory continuing legal education requirements on attorneys. This training is an opportunity for all attorneys to strengthen practice and management skills. The Office of County Counsel has always encouraged attorneys to attend various training courses to improve their skills.

G. USE OF THE RESOURCES OF THE COUNTY COUNSEL LAW LIBRARY
BY MEMBERS OF THE GRAND JURY

For several years, the Office of County Counsel has permitted members of the Grand Jury to utilize the resources of the County Counsel's law library by initiating a request to specific office attorneys who provide legal advice to the Grand Jury. Pursuant to such requests, the Office of County Counsel has copied on many occasions statutes, cases and other legal materials from our library resources and provided them to Grand Jury members for their research purposes. On other occasions, attorneys have accompanied Grand Jury members to the law library area, located resources for them following discussions about the research topic and then arranged for them to review such resources in a private conference room. The reason for this practice has been due to the fact that the attorneys within the Office of County Counsel constantly use the law library area for confidential legal research and discussions concerning client advice and case preparation. Due to these considerations of confidentiality, it has been the policy of the Office of County Counsel not to permit either members of the Grand Jury or others to personally use the resources of the County Counsel's law library without prior authorization. In this specific incident, the member of the Grand Jury, who also happened to be a litigant against the County of San Diego, did not follow the request procedure and was asked to leave the law library area since it was being used by attorneys working on confidential legal matters.

3. Response to Specific Recommendations of Grand Jury

The Grand Jury has made five recommendations. Each will be separately discussed.

RESPONSE TO RECOMMENDATION NO. 92/115: ADVISE COUNTY COUNSEL THAT THE PROTECTION OF DEPARTMENTS FROM THE SCRUTINY OF THE GRAND JURY IN ITS WATCHDOG FUNCTION IS INAPPROPRIATE, AND DIRECT THAT THIS PRACTICE BE TERMINATED.

The Office of County Counsel has not attempted to frustrate the Grand Jury in carrying out its watchdog function. However, the Grand Jury itself must follow the requirements of the law. This includes obtaining the necessary court approvals in seeking access to confidential documents under the jurisdiction of the Juvenile Court. Once this was done by the Grand Jury, all documents were provided to the Grand Jury. County Counsel has had an excellent working relationship with the Grand Jury in the past and anticipates that County Counsel will work successfully with the Grand Jury in the future.

RESPONSE TO RECOMMENDATION NO. 92/116: EITHER PROVIDE ACCESS TO UNCONFLICTED COUNSEL FOR THE GRAND JURY OR DIRECT THE COUNTY COUNSEL TO APPROACH THE PROVISION OF REPRESENTATION IN A MANNER TO AVOID CONFLICT.

The County Counsel will continue to provide legal assistance to the Grand Jury except as to those matters where the County Counsel has determined that a conflict of interest exists. In these few instances, the Grand Jury will be advised that it may turn to alternative sources for legal assistance as is provided by law.

RESPONSE TO RECOMMENDATION NO. 92/117: DIRECT COUNTY COUNSEL TO ESTABLISH A PROTOCOL FOR THE STUDY OF RISK ASSESSMENT AND PREVENTION.

This recommendation is made without any discussion or analysis of the risk management function within the County of San Diego. If the Report had contained such a discussion, it necessarily would have included the fact that the risk management function within the County of San Diego is assigned to the Department of Human Resources, not the Office of County Counsel.

Indeed, in a November 1, 1991 letter to the Risk Management Division of the Department of Human Resources, the Foreman of the Grand Jury stated "It is our understanding that the responsibility to identify potential risk areas and instigate remedial action is vested in the Risk Management Division of Human Resources." The letter went on to indicate the Grand Jury's intention to explore with that division "procedures in place or planned to accomplish this end." During a one-hour meeting in March 1992 between two grand jurors and the Chief Deputy-Litigation in the Office of County Counsel, the Grand Jury acknowledged again that risk management responsibility rests with the Department of Human Resources. During that meeting, the Grand Jury was advised that the County Counsel Claims Section provides the County's Risk Manager with statistical reports on a regular basis.

Given the failure of the Report to acknowledge the structural assignment of the risk management function to another County department, and the lack of any discussion in the Report of areas in which the Grand Jury feels that formal risk management protocols are required, this Office cannot respond

further to Recommendation No. 92/117. However, the Office of County Counsel remains available to assist in any analysis of risk management that might be undertaken.

One additional observation needs to be made. In its Report at page 12, the Grand Jury states:

"This County has been fortunate in not being the target of excessive litigation as compared with other counties. County Counsel deserves some credit for this due to a policy of not settling questionable lawsuits and thus discouraging frivolous suits. Nevertheless, County Counsel has been criticized extensively for litigating and then losing claims which could have settled through mediation. Management failures within the Office of County Counsel may have exposed the County to an increase in litigation with suits which will be neither frivolous nor questionable."

This statement is pure poppycock; lacks any factual basis; and constitutes an unwarranted attack on a group of outstanding attorneys and staff. Attached to this response is a summary of the results in significant litigation handled by the Office of County Counsel during the period July 1, 1990 through June 1, 1992. ("Attachment C".) The outstanding record of the attorneys and staff of the Office of County Counsel in successfully representing the interests of the County of San Diego speaks for itself.

RESPONSE TO RECOMMENDATION NO. 92/118 TO "[D]IRECT THE EQUAL OPPORTUNITY MANAGEMENT OFFICE TO DEVELOP A PLAN TO ADDRESS THE FAILURE OF THE OFFICE OF COUNTY COUNSEL TO COMPLY WITH THE VOLUNTARY CONSENT DECREE FOR AFFIRMATIVE ACTION."

This recommendation is purportedly based on assertions in the Report that the hiring, promotion and retention of minorities within the Office of County Counsel fall below standards established in the Consent Decree. The Report goes on to assert

that the alleged "deficiencies in affirmative action compliance . . . are well known within the Office, County Administration, and by the Board of Supervisors . . . [and that] County Counsel has been informed of this problem directly by the CAO and Board." (Report, p. 5.) These assertions are factually inaccurate.

In 1977, the United States of America, the Chicano Federation, the Union of Pan Asian Communities and the Council of Filipino American Organizations and the County of San Diego entered into a Consent Decree regarding the recruitment, hiring and promotion of women and minorities (i.e., Blacks, Mexican-American/Latinos, and Asians) within the County workforce. The Consent Decree's stated purpose was ". . . to insure that minorities and women are not placed at a disadvantage by the hiring, promotion, and transfer policies of San Diego County, and that any disadvantage to minorities and women which may have resulted from past discrimination is remedied so that equal employment opportunities will be provided to all." (Consent Decree, pg. 5.) In order to achieve its purpose, the Consent Decree established two types of hiring goals for the County workforce: "ultimate goals" and "interim goals." Each of these goals is discussed below.

A. ULTIMATE GOALS

The Consent Decree established as long range or "ultimate" goals the recruitment, hiring and promotion of females and minorities in sufficient numbers to approximate in the County workforce their respective proportions in the civilian labor

force, as reflected in the 1970 Census. (Consent Decree, pg. 5, para. 4.) In 1983, the Consent Decree was modified to substitute the 1980 Census civilian labor force statistics as the benchmark for the Consent Decree's ultimate goals. (Modified Consent Decree (6/6/83), pg. 6, para. 4.)¹³

The Consent Decree allowed for adjustments to the ultimate goals whenever necessary to reflect the available applicant pool in classifications that require a professional license or certificate. (Consent Decree, pg. 5, para. 4.) Furthermore, the County was not required to hire, transfer or promote individuals who cannot qualify on the basis of objective job-related criteria. (Consent Decree, pg. 11, para. 18.)

Given these criteria, one could only gauge County Counsel compliance with the Consent Decree's ultimate goals by referring to the 1980 Census figures for the qualified civilian labor force, as adjusted to reflect the available applicant pool; i.e. attorneys licensed to practice in the State of California. One also would have to take into account the applicant's qualifications based on "objective job-related criteria." The Grand Jury's assertion that the Juvenile Dependency Division must be "ethically balanced" to reflect the minority status of children in dependency proceedings also miss the mark.

¹³ References to the Consent Decree are to the original provisions which were not changed by the 1983 modification. Otherwise, references are to the relevant paragraphs in the 1983 order modifying the Consent Decree. Terminology is that used in the Consent Decree and modifying order. Copies of the Consent Decree, and modifying orders are attached hereto as "Attachment D."

Compliance with the Consent Decree is not measured on the basis of a "client population." Thus, a statistical comparison between a "client population" and the composition of an employer's or department's workforce is totally unrelated to compliance with the Consent Decree or any other legal requirement relating to equal employment opportunity.

The 1980 Census established the relevant ethnic and gender compositions for San Diego's entire civilian labor force as 4.6% Black, 13.4% Mexican-American/Latino, 4.1% Asian, 0.8% other, 43.6% female and 77% white.¹⁴ It is important to note that these percentages pertain to the overall labor force, but bear no relationship to the percentages of females or minorities who are members of the California State Bar ("State Bar") and, therefore, within the qualified labor pool for an attorney position in the Office of County Counsel. A recent study by the State Bar determined that, as of mid-July 1991, the statewide composition of the State of the State Bar on a statewide basis was 2% Black, 3% Hispanic, 3% Asian and 26% female. The State Bar study concluded that State Bar membership is predominantly caucasian (91%) and vastly male (74%). Thus, these are the figures which would gauge compliance by any County law office with the Consent Decree's ultimate goals.

Currently, the Office of County Counsel employs attorneys in the following proportions: 3% Blacks, 3% Hispanics, 3% Asians

¹⁴ The 1990 Census has revised these civilian labor force statistics.

and 44% females. Based on the State Bar's study, these numbers meet or exceed the percentages available in the qualified labor pool on a statewide basis. Consequently, the Office of County Counsel would be in current compliance with the Consent Decree's ultimate goals.

There are a few other observations that bear noting. The State Bar study stated that the vast majority of female and ethnic minority members have been in practice less than 10 years. This fact impacts the availability of females or ethnic minority candidates to fill upper level positions; i.e. a candidate for a senior attorney position necessarily will have been practicing law for a number of years. Notwithstanding these statistics, two of the three (67%) of the Chief Deputies within the Office of County Counsel are filled by females.

Also, the Report includes a chart entitled, "County of San Diego Minority Employment Statistics May, 1992", which it claims demonstrates the vastly greater number of attorneys belonging to ethnic minorities employed in other local government law offices. However, the alleged comparison is not meaningful for several reasons. First, the figure representing the percent of ethnic minorities in San Diego County lacks any relationship to the employment practices of any of the public law offices mentioned. In fact, ethnic minorities comprise only eight percent (8%) of the total State Bar membership. County Counsel statistics are in line with this percentage. Second, the Grand Jury did not analyze the specific hiring decisions made by County Counsel in

light of the candidates certified for employment consideration. Third, the Grand Jury, apparently by design, completely ignored the fact that County Counsel has hired and promoted numerous women into available attorney positions. Women are subject to the Consent Decree and now constitute approximately twenty-six percent (26%) of the State Bar membership. Fourth, if a large percentage of a limited labor force is employed in another office or firm, they necessarily are not available to other offices as candidates. The Report simply ignores the fact that fifty-four (54%) of the attorney staff in the Office of County Counsel are either females or members of minority groups.¹⁵

B. INTERIM GOALS

In addition to the ultimate goals identified in the Consent Decree, the decree established as "interim hiring goals" specific percentages of females and/or minorities who were to be hired into numerous specific job classifications within the County workforce. Other than Deputy District Attorney I, the Consent Decree did not establish an interim goal for any attorney classification within the County workforce.¹⁶

¹⁵ For whatever reason, the statistics for the Attorney General's Office in San Diego reflect only a part of that Office's minority representation.

¹⁶ The Consent Decree established as an interim goal for Deputy District Attorney I the filling of at least 50% of all vacancies with Mexican/Latino or female applicants. (Consent Decree, para. 10.) The 1983 modification deleted females from the target, leaving only Mexican/Latinos as the specific underutilized group in that job classification. (Modified Consent Decree (dated 6/6/83), pg. 3, para. 10.)

All County job classifications in which minorities or females were underutilized but which were not specifically identified in the Consent Decree became part of what was called the "composite group" for purposes of measuring the County's hiring, transfer and promotional goals. (Consent Decree, pg. 11, para. 16.) As to the "composite group," the Consent Decree established an interim hiring goal of filling at least 33% of the total of all vacancies with Asian, Mexican-American/Latino, Blacks or females. (Ibid.)¹⁷

Given the numerous and varied job classifications within the composite group, as well as the criteria governing attainment of interim goals, measurement of Consent Decree compliance within the composite group is very fluid. It is measured on an ongoing basis according to a program established and monitored by the Equal Opportunity Management Office. Current interim goals for the composite group are communicated to each County department whenever the department requisitions a hiring or promotional list for a job classification within the composite group. For a job classification within the composite group, such as a Deputy County Counsel at any grade, the computer identifies on the list of applicants those categories within the composite group (ethnic minorities or females) who are underutilized at the time, as well as the percentage to be achieved and the candidates who would

¹⁷ Interim hiring goals for the composite group remained unchanged in the 1983 modification. However, the Consent Decree also requires that any interim goal be adjusted downward when the ultimate goal for the identified female or minority group is achieved. (Consent Decree, pg. 7, para.6.)

satisfy these goals. Where the appointing authority determines that the position cannot be filled with a candidate within an underutilized group, a procedure has been established whereby the appointing authority may seek a waiver from the Equal Opportunity Management Office (EOMO).¹⁸ (County of San Diego Administrative Manual, Item No. 0800-03-1 ["Attachment E"].)

As mentioned above, the Report included a chart which purportedly compared minority hiring practices of the Office of County Counsel with other local government law offices. However, the Grand Jury's chart did not address this or any other County law office's compliance with the Consent Decree. The attached chart outlines the record of the Office of County Counsel regarding Consent Decree compliance. ("Attachment F".) It factually illustrates that in all hiring or promotional decisions over the period referred to in the Report, this office has met or exceeded Consent Decree goals in all but three (3) cases. It further illustrates that in each of those cases, the Equal Opportunity Management Office granted a waiver, thereby concurring in the non-selection of the underutilized candidate(s). In other words, the Office of County Counsel at all times has complied fully with Consent Decree goals or the

¹⁸ An appointing authority may select a candidate who does not meet a consent decree goal even absent EOMO concurrence. (Administrative Manual, Item No. 0080-03-1.) To conclude otherwise (i.e. to consider Consent Decree goals as mandatory), would undermine the principle enunciated in the Consent Decree and caselaw which requires that affirmative action may be employed only where candidates are equivalent.

provisions of the Administrative Manual which require that an appointing authority request concurrence of the Equal Opportunity Management Office in all instances where an underutilized minority candidate is not selected.

County Counsel has made significant efforts to attract qualified female and minority candidates for attorney positions. An example of this effort involved the steps undertaken in 1989 when County Counsel assumed the Juvenile Dependency function and recruited attorneys with dependency expertise or interest to staff this division. Statewide recruitment and advertisement of the openings was undertaken. Letters were sent from both County Counsel and the Director of the Department of Human Resources to all known minority legal associations and groups, as well as all County Counsel offices statewide. Display advertisements were placed in several major newspapers and legal publications. Job announcements were sent to a legal mailing list of 370 law offices/agencies, law schools and associations. In addition, personalized letters and applications were mailed to a list of 90 attorneys identified as having special Juvenile Dependency expertise. Minority panel members at the department head and assistant department head level were involved in the selection process for these attorney positions. These efforts far exceeded normal recruitment efforts. This recruitment effort resulted in the hiring of two Asians, two blacks and 14 females attorneys out of a total of 21 hirings. In other words, twenty-four percent (24%) of the appointments were members of minority

groups; sixty-seven percent (67%) of the appointments were females.

The employment policy and practices of the County Counsel are based on job-related qualifications, merit and equal opportunity without regard, among other things, to color, national origin, race, sex, or any other non-job-related factor. The true facts support this. The conclusions of the Grand Jury are simply incorrect. County Counsel will continue its diligent efforts to recruit and retain qualified attorneys from all sources.

RESPONSE TO RECOMMENDATION NO. 92/119: DIRECT COUNTY COUNSEL TO DEVELOP A PLAN TO REMEDY THE PROBLEMS IDENTIFIED IN THE FINDINGS OF THIS REPORT.

The Report ignores the many positive contributions and efforts of the Office of County Counsel in the very areas examined by the Grand Jury. In Juvenile Dependency, the attorneys and staff, as a unit, have competently performed their duties notwithstanding heavy caseloads, inadequate physical facilities, and being located miles from the Juvenile Court facility. County Counsel has been instrumental in the improvement of the juvenile dependency system by instituting the "meet and confer" process and by its active participation in the design and implementation of the Negotiation Conference. County Counsel has urged for several years that the Department of Social Services develop a pre-petition mediation program designed to keep cases out of the Juvenile Court system. County Counsel is now involved in the development of a proposal for a post-petition

mediation program. These activities are consistent with the ongoing goal of County Counsel to humanize and streamline the Juvenile Court system. In fact, the San Diego County Juvenile Court system (and the role of County Counsel in that system) is recognized throughout California for its creative attempts to improve the juvenile dependency system.

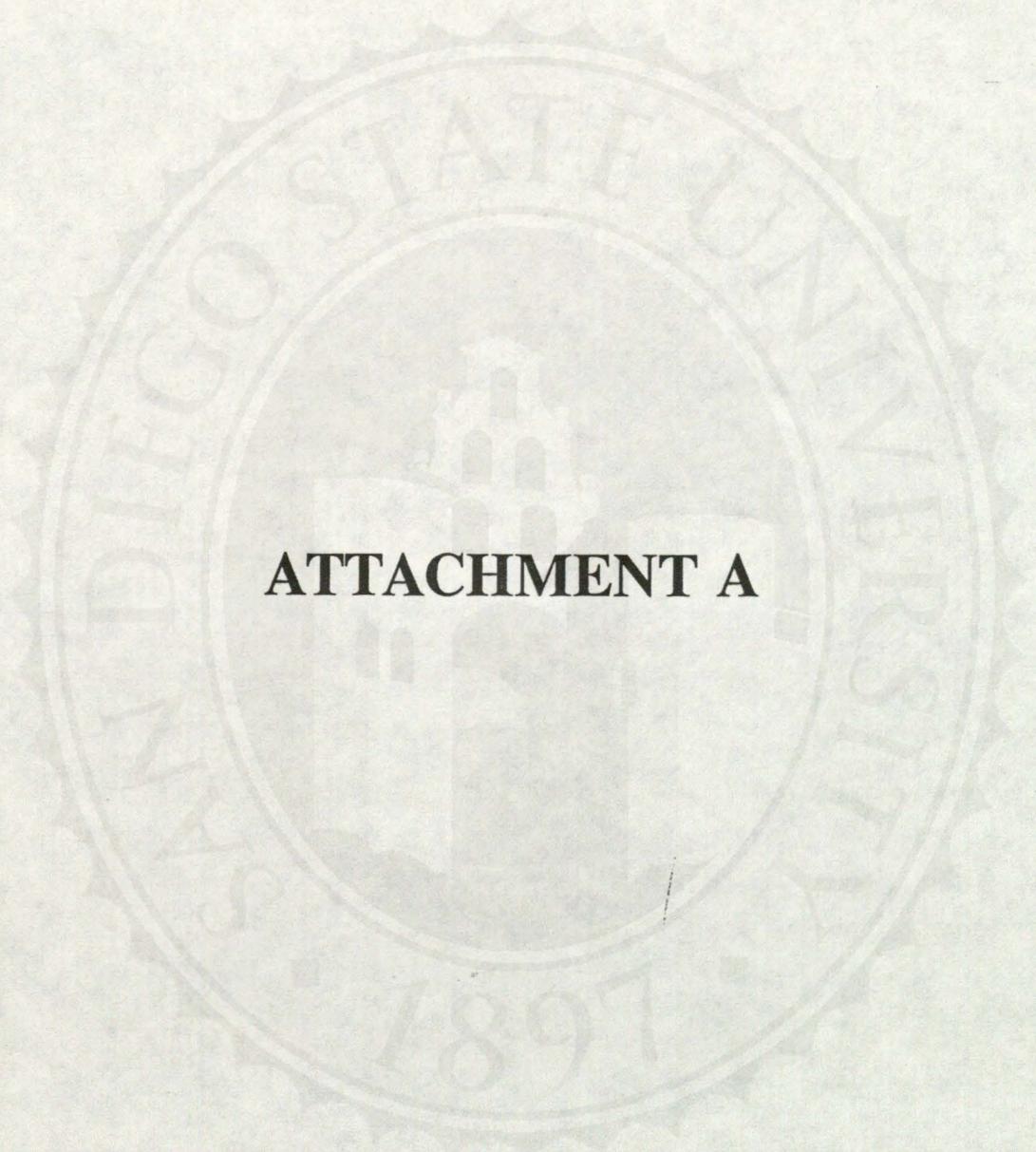
County Counsel has participated in significant discussions in areas related to legal representation and the providing of reasonable services to families and children. County Counsel was a leader in the establishment of the joint training forum for juvenile dependency attorneys that covers issues such as cultural competency, family preservation and medical evidence. County Counsel is working directly with the Juvenile Justice Commission to help ensure success in their expanded role in the juvenile dependency system.

The Report minimizes the fact that there are many neglected and abused children who need the protection of the juvenile dependency system. Unfortunately, family preservation or reunification services may not have any impact for many of these children. County Counsel will continue to insist that each case brought to its attention be evaluated on its own merits in light of all the known evidence and the provisions of the Juvenile Court Law, and be handled in a timely and professional manner.

Attorneys and staff handling civil litigation have an outstanding record. County Counsel has developed a highly qualified in-house litigation unit, using more expensive outside

attorneys in only a limited number of situations. This record has been established in spite of a cut back in staff positions and a freeze in hiring new attorneys to fill existing attorney vacancies.

For the future, as in the past, County Counsel is committed to providing the best possible services to its clients, including the Grand Jury. County Counsel is currently engaged in an evaluation and planning process to improve client services and strengthen the management and operation of the Office of County Counsel. This has been and will be an on-going effort. We welcome discussions with the Grand Jury on our plans.



ATTACHMENT A

F I L E D
KENNETH E. MARTONE
Clerk of the Superior Court

DEC - 2 1991

By: J. PETERSON, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

IN RE MATTER PENDING) Superior Court No. 91/92-113
BEFORE THE 1991-1992)
SAN DIEGO COUNTY) ORDER ON STIPULATION RE:
GRAND JURY) RELEASE OF RECORDS

The parties to the above-entitled civil proceeding have reached a stipulation concerning records held by County of San Diego, Department of Social Services, Child Protective Services, and all other agencies within the County charged with caring for Alicia Wade, the court finds these records and information are subject to the confidentiality provisions of the law and the constitutional right to privacy.

FOR GOOD CAUSE SHOWN, the court makes the following order:

IT IS HEREBY ORDERED that the records and information regarding the minor Alicia Wade are to be released to counsel for the grand jury in Investigation No. 91/92-113 and are released subject the following restrictions:

1 1. All records and information obtained under this order, and
2 any copies made thereof, shall be in the constructive possession and
3 custody of the juvenile court and shall be returned to the juvenile
4 court at the conclusion of the investigation;

5 2. Use of records and information obtained under this order is
6 limited to the above-referenced proceedings only;

7 3. The grand Jury may make such copies of the records and
8 information obtained under this order as are necessary for the
9 preparation and presentation of their investigation. Records shall be
10 kept of the making of all such copies and such records and any such
11 copies shall be delivered to the juvenile court at the conclusion of
12 the Investigation No. 91/92-113;

13 4. Said records and information may be reviewed by counsel for
14 the parties and any investigator or expert for counsel for parties.
15 Any such person reviewing the records or information shall sign a
16 declaration acknowledging that said person is familiar with the terms
17 of this order. Such declaration shall be delivered to the juvenile
18 court at the conclusion of investigation 91/92-113;

19 5. The records and information obtained under this order are to
20 be kept in a confidential manner and shall not be released directly ^{JMA} to _{or indirectly}
21 members of the media or other individuals not directly connected with
22 the proceedings;

23 6. Materials to be returned to court or declaration of
24 destruction filed; and

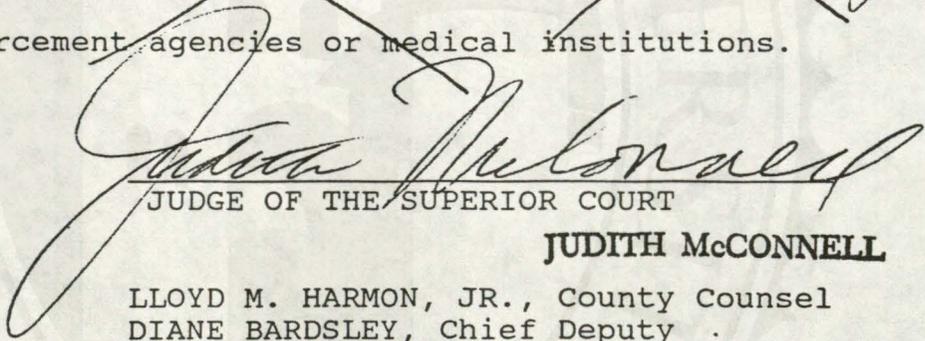
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1 7. All reasonable expenses incurred in the production of these
2 records and information shall be the responsibility of the party
3 seeking the production. Payment is required at time of production.

4 THE COURT FURTHER FINDS there is good cause to permit the
5 inspection of evidence and the release of copies of documentary
6 evidence held by the district attorney, law enforcement agencies, or
7 medical institutions relative to the Grand Jury Investigation No.
8 91/92-113 and that any records or documentary evidence so held which
9 may also be subject to the confidentiality provisions of the law and
10 the constitutional right to privacy shall be released provided that
11 all limiting orders with regard to the County's juvenile records
12 described above also apply to those documents held by the district
13 attorney, law enforcement agencies or medical institutions. JM

14
15 DATED: 12-2-91


JUDGE OF THE SUPERIOR COURT

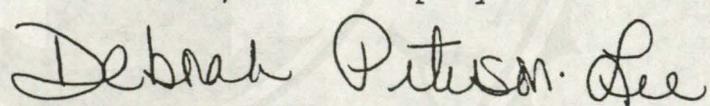
JUDITH McCONNELL

16
17 DATED:

LLOYD M. HARMON, JR., County Counsel
DIANE BARDSLEY, Chief Deputy

18 12/2/91

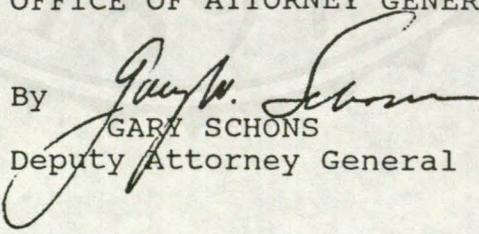
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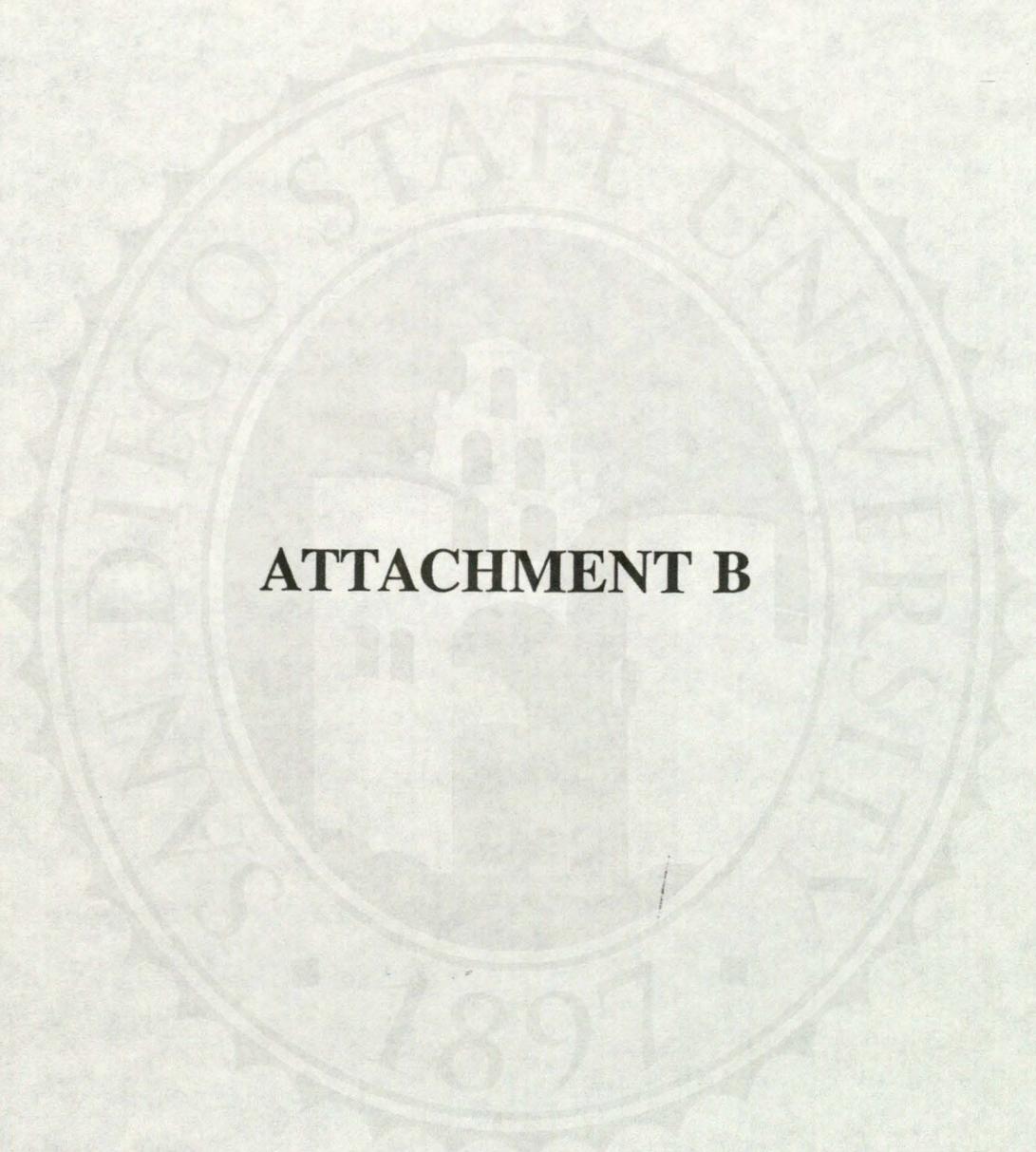

DEBORAH PETERSON-LEE, Deputy
Attorneys for County of San Diego

20
21 DATED: 12-2-91

OFFICE OF ATTORNEY GENERAL

22
23 By


GARY SCHONS
Deputy Attorney General



ATTACHMENT B

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
JUVENILE DIVISION

In the Matter of Records of)
the San Diego County Department))
of Social Services Relating to)
Minors Who Are Dependents of)
the Court or on Whose Behalf)
Are Conducted Investigations)
Regarding Abuse)

SPECIAL MATTER ORDER
No. 08-06-92

Pursuant to its authority under Welfare and Institutions Code
Section 827, subdivision (a), and the decisions in T.N.G. v. Superior
Court (1972) 4 Cal.3d 767 and Westcott v. Yuba City (1980) 104
Cal.App.3d 103; and in order to properly carry out its function to
supervise the officers and adjuncts of this Court and to promote the
welfare and the best interests of minors who are subject to the
jurisdiction of this Court; THIS COURT ACCORDINGLY HEREBY ORDERS THAT:

Social workers employed by the San Diego County Department of
Social Services Childrens Services Bureau may disclose information in
their records and disseminate their records to the San Diego County
Grand Jury.

1 Release of information contained in Childrens Services Bureau
2 records shall be subject to the following protective order:

3 1. All records and information obtained under this order shall be in
4 the constructive possession and custody of the juvenile court and
5 shall be returned to the juvenile court at the conclusion of the
6 investigation;

7 2. Use of these records is limited to confidential Grand Jury
8 proceedings. These records, and the information contained in these
9 records, may not be used for any other purpose absent further court
10 order;

11 3. All records, including videotapes and photographs, shall remain
12 in the physical custody of the Grand Jury. No records shall be
13 duplicated, copied, or disseminated in any manner without further
14 court order;

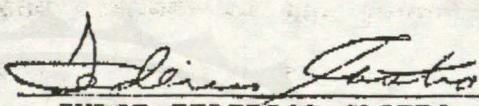
15 4. Members of the Grand Jury shall not discuss the information
16 contained in Childrens Services Bureau records with any person not
17 also serving contemporaneously on the Grand Jury;

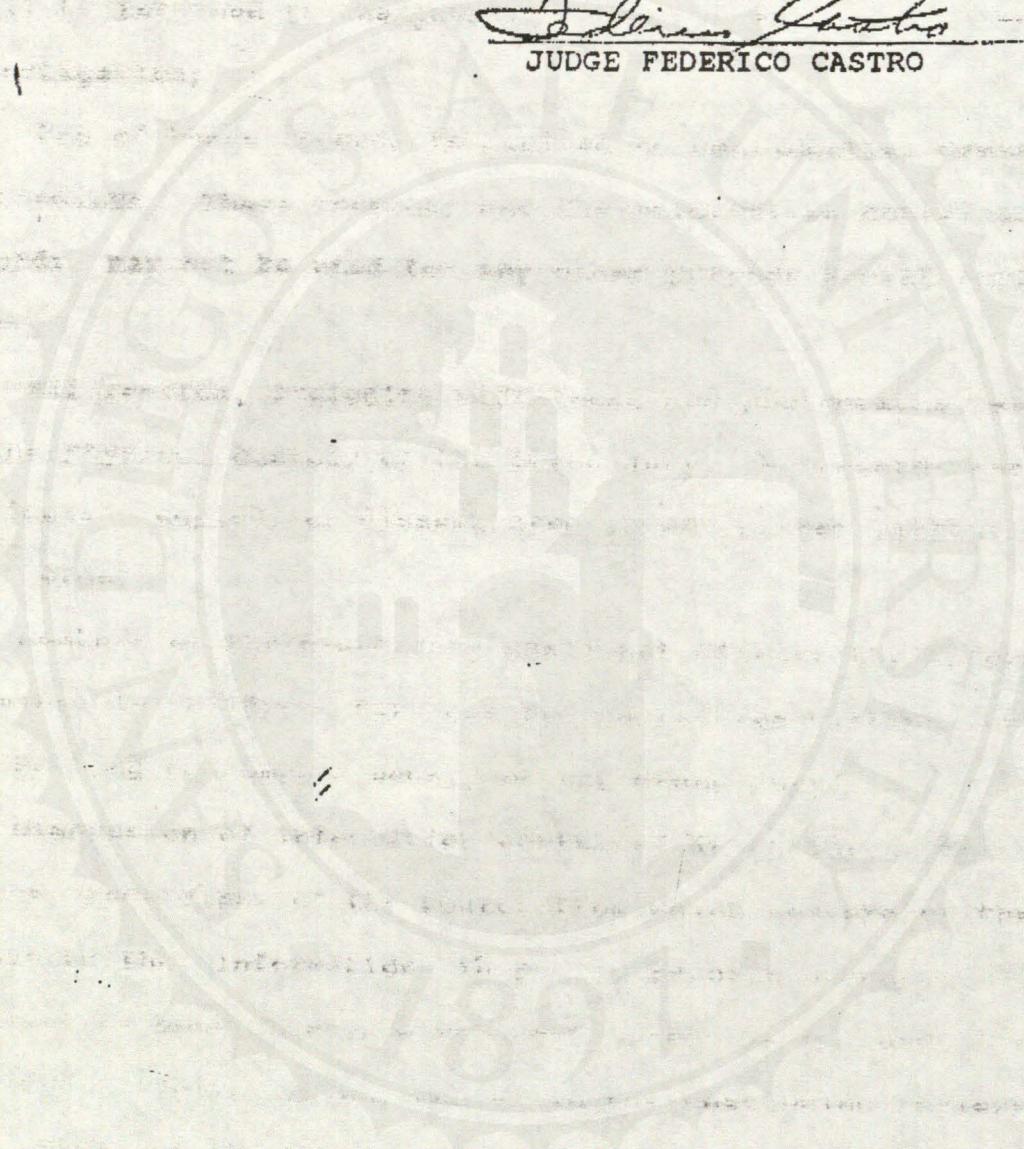
18 5. Discussion of information contained in Childrens Services Bureau
19 records, regardless of the source from which members of the Grand Jury
20 discovered that information, in public reports prepared by the Grand
21 Jury must be done in such a way as to preserve the anonymity of any
22 individual involved in any manner in the case being reviewed;

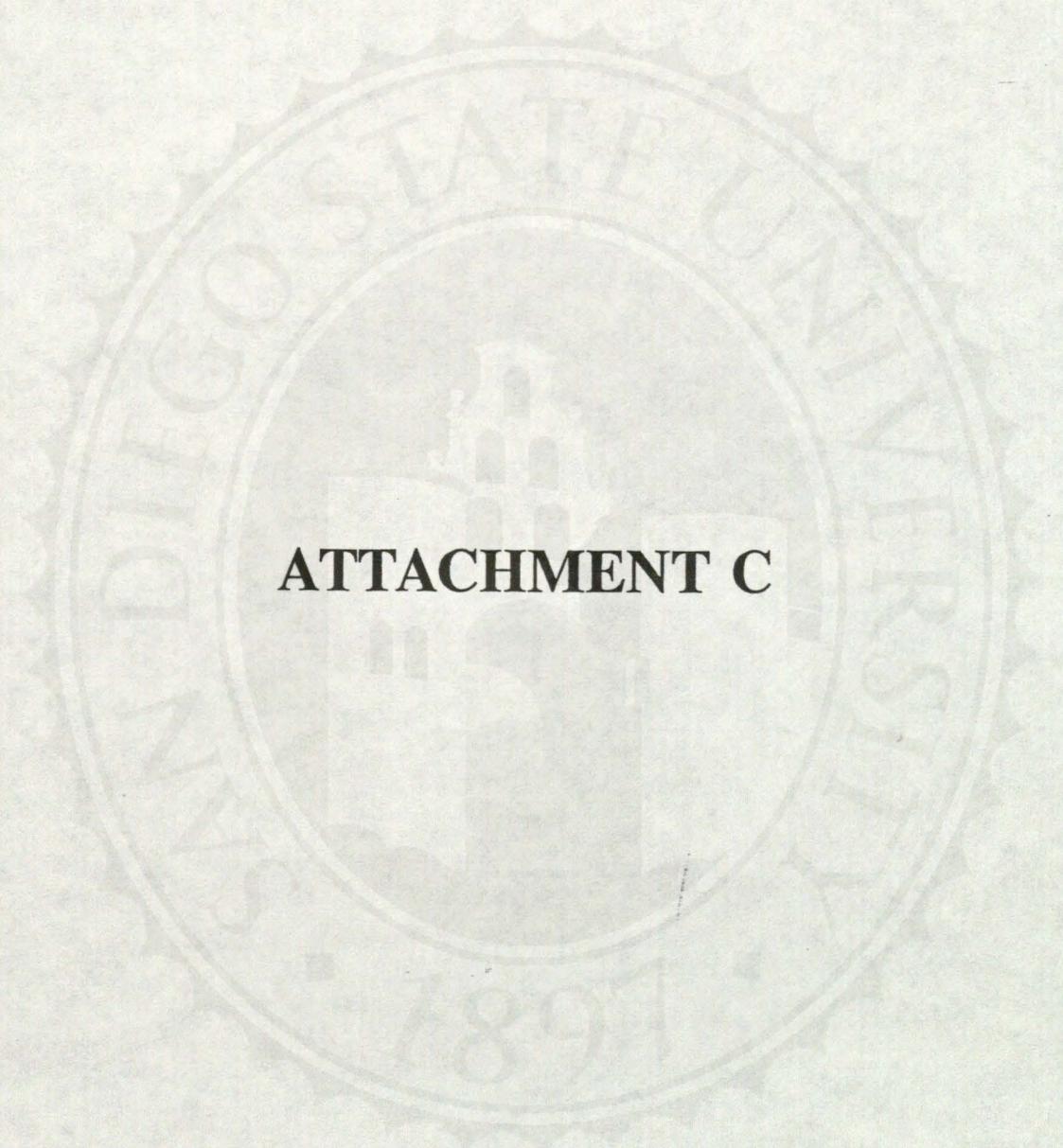
23 6. Members of the Grand Jury shall not discuss any information
24 contained in Childrens Services Bureau records, regardless of the
25 source from which members of the Grand Jury received the information,
26 with any representative of the media in any manner. Neither general

1 nor specific information shall be conveyed to members of the media,
2 directly or indirectly, by any member of the Grand Jury or their
3 staff.

4 DATED: 8-6-92

5 
6 JUDGE FEDERICO CASTRO





ATTACHMENT C

OFFICE OF COUNTY COUNSEL
RESULTS IN SIGNIFICANT LITIGATION MATTERS FOR
THE PERIOD JULY 1, 1990 THROUGH JUNE 1, 1992

TRIALS AND SUMMARY ADJUDICATION

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Wilson v. County [Negligent driving deputy sheriff]	D. Froman	\$34,000 - 65% attributable to plaintiff; 35% to County
Grantham v. County [Contract action by disposal company]	D. Froman	Verdict for County
Moreno v. County [Employment discrimination]	D. Hill	Verdict for County
Flynn v. County [Employment discrimination]	D. Hill	Verdict for County
Rupp v. County [Civil rights/search warrant]	D. Hill	Verdict for County
Rudy v. County [Dangerous condition of roadway]	A. Swaney	Hung Jury (Dec. 1990) Verdict for County (June 1991)
Missey/Booze v. County [False arrest/Civil rights]	D. Hill	Jury Verdict: Missey \$1,000.00/ Booze \$12,500.00
El Badrawy v. County [Negligent driving by deputy sheriff - issue as to course and scope of employment]	G. Brewster	Verdict for County/affirmed on appeal
Ernst v. County [Dangerous condition of intersection]	G. Brewster	Verdict for County
Fields v. County [Dangerous condition/ negligent maintenance]	G. Brewster	Verdict for County
Weaver v. Henderson [Excessive force]	J. Stern	Plaintiff Verdict \$1,000

TRIALS AND SUMMARY ADJUDICATION (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Cajero v. County [Road liability]	J. Stern	Verdict for County
Ramirez-Guizar v. Co. [Excessive force]	D. Florance	Hung Jury 7-5 in favor of County
Ramirez-Guizar v. Co. [Excessive force]	D. Florance	Verdict for County
Butler v. Bishop [Excessive force]	D. Florance	Verdict for Plaintiff; on appeal
Brotten v. County [Excessive force]	D. Florance	Verdict for County
Mesecher v. County [Excessive force]	D. Florance	Verdict for Plaintiff; on appeal
Friscia v. County [Jail negligence]	D. Florance	Verdict for County
Reeser v. Palm Springs [False arrest]	D. Florance	Motion for nonsuit granted in favor of County
Johnson v. Garza [Road liability]	J. Stern	Verdict for plaintiff/ on appeal
County v. Unruh [Mental Health Allocation]	M. Poynor T. Dutton B. MacLeish	1. Statutory Phase - Judgment for County: Statutory violations by State of California 2. Constitutional Phase - Judgment for County: State's Allocation System Unconstitutional
Murphy v. Bilbray [Mt. Helix cross]	M. Poynor	Trial court decision for Plaintiff; on appeal
Sanchez v. Temple- ton [Excessive force]	D. Florance	Verdict for County

TRIALS AND SUMMARY ADJUDICATION (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Longo v. County [Child abuse investigation]	D. Froman	Verdict for County/affirmed on appeal
Ellery v. County [Wrongful termination]	D. Froman	Verdict for County
Scanlon v. County [Jail-negligence]	M. Hill	Verdict for County
Anderson v. County [Employment discrimination]	R. Sanchez	Judgment for County
Leonard v. County [Excessive force]	R. Sanchez	Verdict for County
Hausotter v. County [Employment discrimination; medical examiner]	R. Sanchez	Verdict for Plaintiff
Bryant v. County [Excessive force/ illegal search]	R. Sanchez	Plaintiff Verdict; on appeal
Olaveson v. County [Excessive force]	R. Sanchez	Plaintiff Verdict
Elam v. County [Medical malpractice jail]	D. Peterson-Lee	Settled during trial for \$5,000
Friel v. County [Lost property in impounded vehicle]	M. Brewster	Plaintiff Verdict of \$15,000 (85% against County)
County v. Rancho Vista Del Mar [Condemnation - Otay Mesa]	L. Zollinger	Verdict for property owner \$55 million; on appeal
Steinberg v. County [Inverse condemnation]	L. Zollinger	Verdict for Plaintiff; on appeal
Stanley v. County [Excessive force]	M. Hill	Judgment for all defendants
Quinn v. County [Employment discrimination]	R. Sanchez	Summary judgment for County; on appeal

TRIALS AND SUMMARY ADJUDICATION (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
De Angelis v. County [Civil rights/employment]	C. Geyerman	Verdict for Plaintiff; on appeal
USA v. City of S.D. [City Sewage Case]	M. Mead	County and Intervenors prevailed on request that entry of Consent Decree be deferred pending study of alternative sewage treatment methods
Cook Family Foods v. County [Challenge to State Weights & Measures standards]	M. Beesley	Judgment for Plaintiff; State paid 90% of attorneys' fees awarded to plaintiff; County paid 5%
Childers v. County [Challenge to subdivision permitted uses]	M. Beesley	Judgment for County; affirmed on appeal
G & S Properties v. County [Contract dispute-low income housing project]	M. Beesley	Verdict for Plaintiff; on appeal
Callahan v. County [Employment Discrimination]	M. Beesley	Verdict for County
Shaw v. County [Employment discrimination]	R. Sanchez	Judgment for County
Bellezzo v. County [Excessive force; battery]	M. Hill	Verdict for County
Zuniga v. County [Dangerous condition/sidewalk]	G. Brewster	Verdict for County

TRIALS AND SUMMARY ADJUDICATION (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Rider v. County [Prop. A sales tax]	Freeman\MacLeish	Judgment for plaintiffs in trial court; reversed on appeal; Supreme Court ruled in favor of plaintiffs; Court of Appeal's disposition of funds pending
Rasmussen v. County [Excessive force]	M. Hill	Court dismissed on day of trial; Judgment for County
Moore v. County [Dangerous condition/ roadway shoulder]	G. Brewster	Verdict for County
Morgan v. County [Dangerous condition; inadequate shoulder]	G. Brewster	Verdict for County
Garabay-Contreras v. County [False arrest]	D. Hill	Verdict of \$8,000 for two plaintiffs
Bedrosian v. County [Negligent discharge of firearm]	R. Sanchez	Arbitration award \$70,000. Jury Verdict at \$65,000; on appeal
Kamper v. County [Civil rights - arrest of school principal]	D. Froman	Verdict for County; Attorneys' fees awarded to County
Durazo v. County [Slip and fall]	J. Stern	Verdict for County
Rubin v. County [Negligent maintenance of County swing]	D. Froman	Verdict for County
County v. Bakonyi [CMS Program]	Bardsley/Tehan	Judgment for County (\$22 million) and requiring State to fully fund program in future
County v. Cory [State's challenge of property tax allocation scheme]	M. Poynor/Dutton MacLeish	Judgment for County (State ordered to implement new property tax allocation scheme)

TRIALS AND SUMMARY ADJUDICATION (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
County v. University Mechanical [Cogeneration facilities]	L. Pollard	Verdict for Defendant
Conklin v. County [Dangerous condition/ roadway]	G. Brewster	Verdict for County
Weisberg v. County [Medical malpractice]	J. Stern	Verdict for County
Castro v. County [Civil rights; excessive force]	M. Hill	Verdict for County
Keith G. v. Bilbray [Juvenile Hall Conditions]	N. Northup	Decision Pending
Bua/Rios v. County [Employment Discrimination]	R. Sanchez	Judgment for plaintiffs <u>Reversed</u> on appeal. Remanded to trial court for reconsideration in light of appellate decision
Bejarano v. County [Jail medical malpractice/wrongful death]	N. Northup	Verdict for County
Helmer v. Miller [Convict's right to possess weapon]	M. Brewster	Motion for judgment on the pleadings granted
San Diego House of Hope v. Oksana Smith and County [Immunity of social worker for license revocation]	Bardsley/Beesley	Summary judgment granted as to County. Immunity motion as to social worker denied by trial court; <u>reversed</u> on appeal with judgment to be entered for social worker
United States of America v. County [Challenge to tax on federal property - General Atomics]	Bardsley/ M. Brewster	Summary judgment for County; affirmed by Court of Appeals

TRIALS AND SUMMARY ADJUDICATION (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Kirchnavy v. West Coast Gen.; County [Construction contract dispute - Sweetwater Regional Park]	L. Zollinger	Contractor's claim denied (favorable to County); on appeal
Guy F. Atkinson v. Cardiff Sanitation District [Construction contract dispute]	L. Pollard	Contractor's Claim denied (favorable to District)/ cost granted
P.K. Construction (Turner) v. County [Construction contract dispute - South Bay detention facility]	L. Zollinger	Judgment for Plaintiff; affirmed on appeal
Service America v. County [Assessment appeals]	L. Zollinger	Tax refund granted; on appeal
County v. Doris B. Pauley Lyman [Eminent domain]	L. Zollinger	Eminent domain action - Jury awarded excessive goodwill to property owner; reversed on appeal; retrial ordered; pending
SEIU v. County [FLSA Litigation]	I. Fan/T. Stevenson/M. Milich	Trial court granted summary judgment for employees; will be appealed
Henderson v. Municipal Court [Employment Discrimination]	I. Fan	Dismissal in favor of Court/County
Escondido Redevelopment Agency v. County [Dispute re tax sharing agreement]	T. Stevenson	Summary judgment granted in favor of County; appeal filed
Davis v. County [Jail medical malpractice]	D. Peterson-Lee	Verdict for County

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
United Enterprise v. County [Property tax refund]	L. Pollard	Judgment for County; on appeal
United Enterprise v. County [Writ assessment]	L. Pollard	Judgment for Plaintiff; on appeal
Northwest Financial v. County [Challenge to Prop 13]	L. Pollard	Judgment for County; on appeal
Circle R. Assoc. v. County [Writ - Planning & Land Use]	P. Jones	Petition Granted
Jonna v. County [Writ - Planning & Land Use]	P. Jones	Motion to Dismiss Granted; Judgment for Court
City of Encinitas v. S.D. Co. Planning Commission [Writ - Planning & Land Use]	P. Jones	Petition Denied; Judgment for Court
People v. Muni. Ct. (Sumrow) [Writ - Court]	P. Jones	Petition Denied; Judgment for Court
Stevenson v. Clerk Muni. Court [Writ - Muni. Ct. Clerk]	P. Jones	Petition Denied; Judgment for Court
City of San Marcos v. County [Writ - Planning & Land Use]	P. Jones	Petition Denied; Judgment for County

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Alpine Homes v. S.D. County Planning Commission [Writ - Planning & Land Use]	P. Jones	Petition Denied; Judgment for County
Klein v. Muni. Court [Writ - Court]	P. Jones	Petition Denied; Judgment for Court
Sotier v. Muni. Court [Writ - Court]	P. Jones	Petition Denied; Judgment for Court
Traner-Taft Partner- ship v. County [Writ - Land Use]	V. Tehan	Petition Denied; Judgment for County
Taylor v. County [Writ - Land Use]	V. Tehan	Petition Granted
United Airlines v. County [Assessibility of landing rights]	A. Freeman	Trial court judgment for taxpayer. Court of Appeal reversed with judgment for County. Supreme Court denied review
In Re Challenge to Judge Milliken	L. Zollinger	Request to Disqualify Denied [Favorable to Court]
Deputy Sheriff Assn. v. County [Writ challenging CLERB]	V. Tehan	Petition denied (re enjoining ordinance establishing CLERB); Petition Granted re meet and confer on rules and regulations; pending
People ex rel. Deputy Sheriff's Assn. v. County [Quo Warranto challenge to ballot measure establishing CLERB]	V. Tehan	Application in Quo Warranto - Denied [Favorable to County]

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Dibb v. County [Taxpayers suit on legality of CLERB]	V. Tehan	Taxpayer challenge to CLERB's establishment and subpoena power. Judgment for County; on Appeal
County v. Biggs [Water course violation]	V. Tehan	Code Violation Enjoined and corrected
County v. Buckner [Water course violation]	V. Tehan	Code Violation Enjoined and corrected
County v. Eisenhart [Water course violation]	V. Tehan	Code Violation Enjoined and corrected
Martin D. v. Board of Supervisors [CHDPTR Program challenge]	V. Tehan	Petition Denied; judgment for County
Cyrus Zal v. Superior Court [Writs re contempt]	D. Florance	Writs of Habeas corpus Denied [Favorable to Court]
Borbon v. Superior Court [Inmate housing]	M. Brewster	Writ denied
McPhatter v. Superior Court [Juvenile's right to speedy trial]	M. Brewster	Writ Granted
Mueller v. Lande [Request for payment by Court appointed attorney]	M. Brewster	Petition Denied [Favorable to County]
County v. Gribble [Workers' Compensation/ exclusive remedy]	M. Brewster	Writ Granted in favor of County
Moore v. Lande [Request for payment by Court appointed attorney]	M. Brewster	Petition Denied [Favorable to County]
Doshi v. Board of Planning & Land Use [Challenge to land use]	M. Brewster	Petition Granted

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
People v. Muni. Court [Writ - Court]	M. Brewster	Petition Denied [Favorable to Court]
Foreman v. Bd. of Retirement [Retirement/Disability]	M. Brewster	Petition Denied [Favorable to Board]
Franklin v. County [Legal services to indigent defendants]	M. Brewster	Petition Granted in part
Conley v. S.D. Co. [Writ - Land use]	M. Mead	Petition Granted
SDG&E/SCE Merger Calif. Public Utilities Commission [Utilities Merger]	M. Mead	Merger Denied [Favorable to APCD's position]
City of Santee v. County [EIR challenge - Las Colinas]	M. Mead	Petition re revised EIR Dismissed
Blakeslee v. County [Writ challenging building permit]	M. Mead	Writ Denied
Johnson v. Assessor [Writ - Property Assessment]	L. Pollard	Petition Granted
City of Encinitas, Carlsbad, Escondido v. County [Competitive bidding challenge to trash burner]	L. Pollard	Petition Denied; Judgment for County; cities appealed; appeal withdrawn
Zaden v. County [Writ - Medical services]	A. Freeman	Petition Dismissed; Judgment for County
Midwife v. County State [Writ - Re denial of General Relief]	A. Freeman	Petition Denied; Judgment for County; affirmed by Court of Appeal
UAPD v. County [Labor Union challenge re bargaining unit for professionals]	M. Beesley	Petition Denied; Judgment for County; affirmed on appeal

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
County v. Duffy [Asset forfeiture litigation]	Bardsley/ Freeman	TRO granted; favorable resolution mediated
Peek v. County [Writ - Employment discrimination]	A. Freeman	Petition Denied; Judgment for County; Court of Appeal affirmed
Ruby Mae Brown v. Co. [Challenge to Animal Control enforcement]	A. Freeman	Court of Appeal Affirmed Trial Court's Decision in favor of County
Adam v. County [FLSA Overtime - DHS/DSS]	I. Fan/T. Stevenson	Summary judgment granted for plaintiff
County of San Diego v. Flores [Revenue & Recovery - hospital bill]	L. Pollard	Judgment for County
American Newland v. County [Writ - Property assessment]	A. Freeman	Petition Granted
U.S. Cellular v. SBE and County [Property tax challenge]	A. Freeman	Judgment for County and SBE; on appeal
Hochstein v. County [Damages action against Recorder]	A. Freeman	Judgment for Plaintiff (\$12,000)
Froleigh v. County [Writ - Animal Control]	A. Freeman	Petition Denied; Judgment for County
County v. AAB, Real Party in Interest, La Costa Hotel & SPA [Appraisal of La Costa Property]	A. Freeman	County's Petition Denied

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Presenting Jamul v. Board of Supervisors [Writ - Land Use]	L. Zollinger	Petition Denied; Judgment for County
Robinson v. Muni. Ct. [Writ - Court]	L. Zollinger	Petition Denied [Favorable to Court]
Robinson v. Muni. Ct. [Writ - Court]	L. Zollinger	Petition Denied [Favorable to Court]
Copley Press, Inc. v. Superior Court [Writ - Court]	L. Zollinger	Petition Granted
Copley Press, Inc. v. Superior Court [Writ - Court]	L. Zollinger	Petition Denied [Favorable to Court]
Copley Press v. Superior Court [Writ - Court]	I. Fan	Petition Granted
County v. Ghassemi [Revenue & Recovery - hospital bill]	L. Pollard	Judgment for County
Boyle v. Retirement Bd. [Writ - retirement benefits]	L. Zollinger	Petition Granted
Migdal v. Muni. Ct.	M. Beesley	Petition Denied [Favorable to Court] affirmed on appeal
Carlin v. Muni. Ct. [Writ - Court sanction]	M. Beesley	Petition Denied
Marinkovic v. Municipal Court [Writ - Court]	M. Beesley	Petition Granted
County v. Wiener (State court action) [Zoning enforcement Fantasyland]	M. Mead/ V. Tehan	Permanent injunction granted in favor of County; on appeal

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Paul Stein v. Sup. Court [Disqualification of Judge Peterson]	M. Poynor	Petition Denied [Favorable to Court]
Phoenix Commerce Venture v. Sup.Ct. [Disqualification of Judge Hayes]	M. Poynor	Petition Denied [Favorable to Court]
Brooks v. Rodriguez [Challenge re Housing assistance]	M. Brewster	Petition Denied [Favorable to client]
Murray v. Superior Court [Writ - Court]	M. Brewster	Petition Granted
Norcross v. County [Challenge to Animal Control enforcement]	M. Brewster	Petition Denied [Favorable to County]
Winter v. Muni Court [Writ - Court]	M. Brewster	Petition withdrawn after briefs filed
Romero v. Muni Court [Writ - Court]	M. Brewster	Petition Withdrawn
Alexander v. County [Challenge to Housing Assistance]	T. Stevenson	Petition Denied; Judgment for County
Hunter v. County (General Relief for Students)	T. Stevenson	Injunction Denied; [Favorable to County]; trial pending
Washington v. County (General Relief-90-day limitation)	I. Fan/T. Stevenson	TRO Granted Injunction Denied; Overruled on Appeal; trial pending
Candido v. County Office of Education [School District]	T. Stevenson	Injunction denied; dismissal in favor of County Office of Education

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

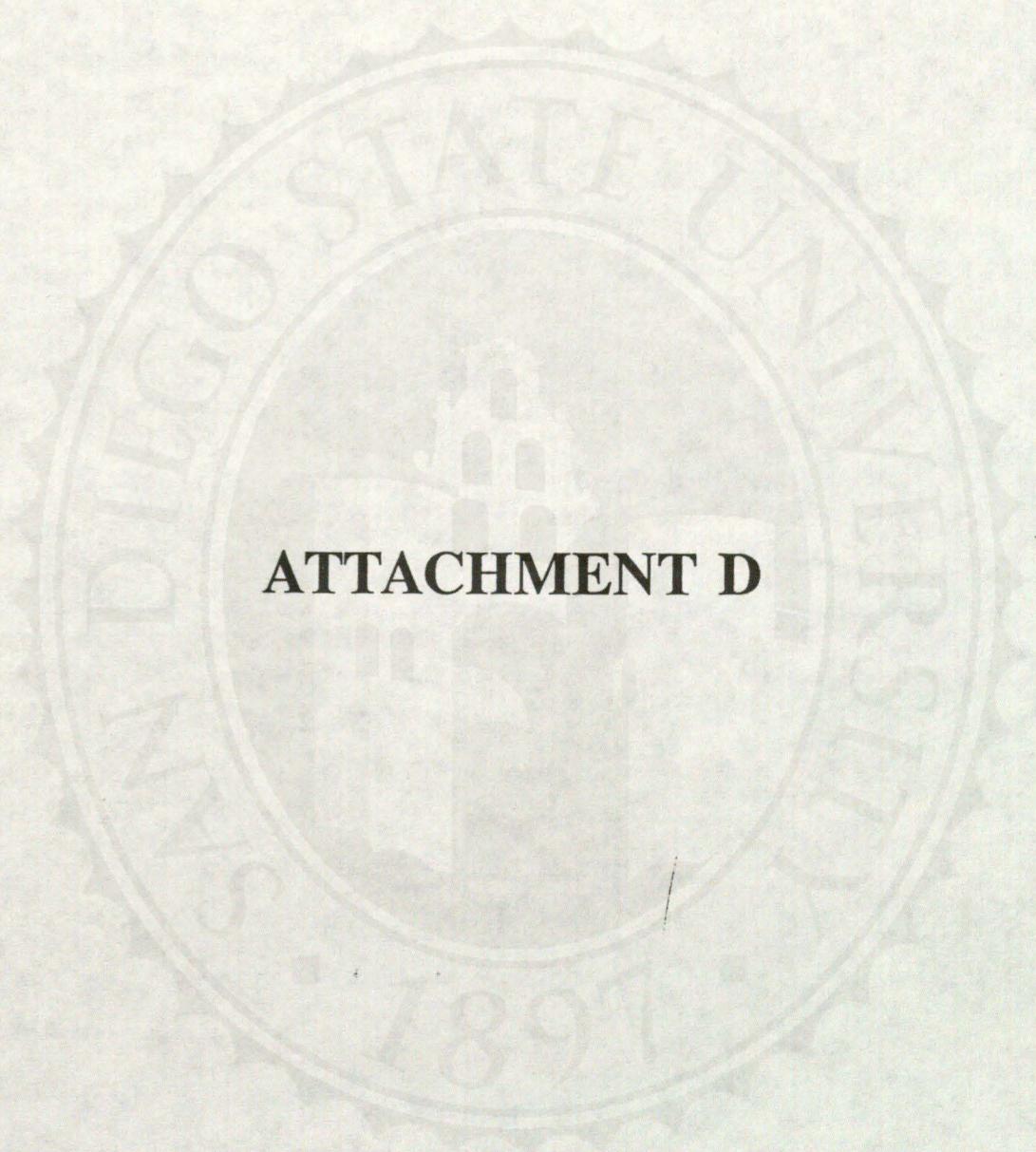
<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Sycuan v. County [Gaming devices on reservation]	M. Beesley	- Sheriff & DA enjoined from enforcing state gaming laws on the reservations; appeal pending - Summary judgment in favor of Sheriff/DA re illegality of machines
Servcon v. County [Challenge to the EIR for Vista transfer station]	M. Mead	Writ Denied; Judgment for County
Christward Ministry v. City of San Marcos and County [EIR challenge to recycling facility]	M. Mead	Writ Denied [Favorable to County]; appeal pending
Christward Ministry v. City of San Marcos [SEIR challenge to recycling facility]	M. Mead	Writ denied
Christward Ministry v. County [EIR challenge to landfill expansion]	M. Mead	Writ granted on water impacts only; Court denied Christward's motion for \$17,000 attorneys' fees; on appeal
DeBaca v. County of San Diego [Challenge to Redistricting]	I. Fan	Summary judgment granted as to County of San Diego; Appeal filed
Salisbury v. Sgobba [Writ - Marshal's auction]	T. Stevenson	Writ denied [Favorable to County]
Templeton Grading v. Superior Court [Writ - Court]	P. Jones	Petition Granted/ Opinion Depublished
Gaines v. Superior Court [Writ - Court]	P. Jones	Petition Granted in Part and Denied in Part

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
Armster v. Registrar of Voters [Writ - Registrar of Voters]	P. Jones	Petition Granted
Gomez v. Superior Court [Writ - Court]	P. Jones	Petition Denied
Silva-Martinez v. Registrar of Voters [Writ - Registrar of Voters]	P. Jones	Petition Granted
Strobl v. Registrar of Voters [Writ - Registrar of Voters]	P. Jones	Petition Granted
Wickersham v. Registrar of Voters [Writ - Registrar of Voters]	P. Jones	Petition Granted
Wilburn v. Registrar of Voters [Writ - Registrar of Voters]	P. Jones	Petition Granted
S.B. 2557 Litigation: 1. Redevelopment Agency v. Calvao [Property tax fees] 2. City of Carlsbad v. County [Booking fees] 3. California School Boards v. Davis [Property tax fees]	M. Brewster	Summary Judgment Granted in Favor of County on all cases; matters pending on other issues
APCD v. General Dynamics [Enforcement]	M. Brewster	APCD recovered civil penalties of \$110,000.00
APCD v. USA [Enforcement]	M. Brewster	APCD recovered civil penalties of \$70,000.00
APCD v. Rohr [Enforcement]	M. Brewster	APCD recovered civil penalties of \$65,000.00

WRITS, INJUNCTIONS AND OTHER RESOLUTIONS (CONTINUED)

<u>Case</u>	<u>Atty</u>	<u>Verdict</u>
APCD v. V.R. Dennis, et al., [Enforcement]	M. Brewster	APCD recovered civil penalties of \$82,500.00
Rankin v. County of San Diego [Writ - employment rights of Municipal Court reporters]	M. Beesley	Writ denied [Favorable to Court]
Castellano v. Gabriel Rodrigues [Writ re housing benefits]	M. Beesley	Writ denied [Favorable to client]
County v. Beaumont [Unlawful detainer]	M. Beesley	Judgment for plaintiff County
County v. Costanzo [Unlawful detainer]	M. Beesley	Judgment for County
Dorfman v. County [Collection re road repairs]	M. Beesley	Judgment for County
County v. Lusk [Unlawful detainer]	M. Beesley	Judgment for County
Wampler v. County [Writ - Land use]	M. Beesley	Writ denied [Favorable to County]



ATTACHMENT D

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SOUTHERN DISTRICT OF CALIF.

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Attorneys for Plaintiff Chicano Federation
of San Diego County, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA; CHICANO)
FEDERATION OF SAN DIEGO COUNTY,)
INC.; UNION OF PAN ASIAN)
COMMUNITIES; and COUNCIL OF)
PILIPINO AMERICAN ORGANIZATIONS,)
Plaintiffs,)
v.)
SAN DIEGO COUNTY, (a public cor-)
poration); DAVID R. SPEER, Chief)
Administrative Officer of San Diego)
County; WILLIAM D. WINTERBURN,)
Director of the Department of Civil)
Service and Personnel for San Diego)
County; C. HUGH FRIEDMAN, TROY M.)

CIVIL ACTION NO.
76-1094-S

CONSENT DECREE

1 MCORE, VERYL J. MORTENSON, KING O.)
2 TAYLOR, TIMOTHY M. CONSIDINE,)
3 Members, San Diego County Civil)
4 Service Commission; JOHN P.)
5 WILLIAMSON, Acting Marshal, San)
6 Diego County Marshal's Office; SAN)
7 DIEGO COUNTY MARSHAL'S OFFICE,)
8)
9 Defendants.)
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27 This action was brought by the Attorney General against
28 San Diego County to enforce the provisions of Title VII of the
29 Civil Right Act of 1964, as amended by the Equal Employment
30 Opportunity Act of 1972, the State and Local Fiscal Assistance
31 Act of 1972, as amended, 31 U.S.C. 1221 et seq., the Omnibus
32 Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C.
33 3766(c) (1), and the Fourteenth Amendment to the Constitution
34 of the United States. In the Complaint the United States alleges
35 that San Diego County has engaged in a pattern or practice of
36 discrimination based on national origin, sex and race with
37 respect to hiring, assignment and promotion opportunities within
38 all departments. On May 5, 1977 Chicano Federation of San
39 Diego County, Inc., Union of Pan Asian Communities; and
40 Council of Filipino American Organizations were permitted to
41 intervene under the provisions of Rule 24(b) of the Federal
42 Rules of Civil Procedure and filed complaints alleging dis-
43 crimination in employment in violation of federal civil rights
44 statutes. This consent decree resolves all issues raised by
45 the complaints except as to any issue regarding attorneys
46 fees.

1 San Diego County denies it has engaged in any pattern or
2 practice of discrimination in hiring, assignment or promotion
3 on the basis of race, sex or national origin in any of its depart-
4 ments but realizes that certain past practices of San Diego County
5 may have given rise to an inference that such practices may have
6 occurred. San Diego County states that it has made good faith
7 efforts to correct the exclusion of minorities and females in
8 County employment. Additionally, for the purpose of avoiding
9 any continuing inference of discrimination, San Diego County
10 agrees to take affirmative steps to increase the availability of
11 qualified minority and female employees by transfer and promotion,
12 training programs, and career ladder programs in County employment.

13 For the same purpose and with the same intent San Diego
14 County is now willing to agree to the entry of this Consent Decree
15 providing for supplemental corrective action measures. The
16 parties wish to avoid the delay and expense of contested
17 litigation and desire to insure that any disadvantage to
18 minorities and females that may have resulted from past
19 discrimination in obtaining employment and advancement
20 is remedied so that equal employment opportunity will be
21 provided to all.

22 The parties, by agreeing to the issuance of this order,
23 waive a hearing and findings of fact and conclusions of law
24 on all issues raised by the Complaints and the parties have
25 mutually agreed to the entry of this Consent Decree, which
26 shall not constitute an adjudication or admission by San

1 Diego County of any violation of law or findings on the
2 merits of this case.

3 It is hereby ORDERED, ADJUDGED and DECREED:

4 I. GENERAL

5 1. The defendant San Diego County and its officers
6 (elected and appointed), agents, employees, successors and
7 all persons acting in concert with them or any of them in the
8 performance of their official functions are subject to the
9 terms of this Consent Decree and are hereby enjoined from engaging
10 in any act or practice which has the purpose or effect of unlawfully
11 discriminating against any employee of, or any applicant or
12 potential applicant for employment with, San Diego County because
13 of such individual's race, sex or national origin. Remedial
14 actions and practices required by the terms or permitted to
15 effectuate and carry out the purposes of this Consent Decree
16 shall not be deemed discriminatory within the meaning of 42
17 U.S.C. 2000e-2(j). The defendant San Diego County and its
18 officers (elected and appointed), agents, employees, successors
19 and all persons acting in concert with them or any of them in the
20 performance of their official functions shall not discriminate
21 on the basis of race, sex, or national origin in hiring, promotion,
22 upgrading, training, assignment or discharge or otherwise dis-
23 criminate against an individual employee or applicant for employment
24 with respect to compensation, terms and conditions or privileges
25 of employment because of such individual's race, sex or national
26 origin.

1 in the civilian labor force within the County of San Diego
2 as reflected by the 1970 U.S. Bureau of Census statistics.
3 These ultimate goals shall be appropriately modified to
4 reflect changes in the 1980 civilian labor force census
5 figures if this Consent Decree is still in effect when such
6 figures become available. The parties shall make whatever
7 adjustments are appropriate to these ultimate goals for job
8 classifications which require, as a pre-condition of employment,
9 a professional license or certificate. In any such job
10 classification, the parties shall consider the percentage
11 representation of minorities and women in the pool of potential
12 applicants possessing such licenses or certificates for
13 purpose of determining the relevant ultimate goal.

14 5. In paragraphs 5a, 7-16, infra, goals are set for
15 purposes of filling vacancies in the permanent workforce of
16 the County (except as provided in paragraph 15, infra). In
17 any job classification subject to the requirements of paragraphs
18 5a, 7-16, infra, that is traditionally filled by promotion
19 from within San Diego County's workforce, the goals shall in
20 no event exceed twice any underutilized group's percentage
21 representation in the job classifications from which the
22 promotional candidates are drawn. For purposes of this
23 paragraph "traditionally filled by promotion from within"
24 shall mean that at least 75% of the vacancies occurring
25 within such job classification during the last 2 years have
26 been awarded to candidates who were incumbent San Diego
27 County employees.

1 . 5a. In the following job classifications qualified Asians,
2 as defined in paragraph 35, infra, shall be hired or promoted
3 on an interim basis at the rate of 4% until such time as Asians
4 shall be represented in such job classifications in numbers
5 approximating their representation in the civilian labor force
6 of San Diego County:

7 Deputy Probation Officer I	Senior Clerk Typist
8 Equipment Operator I	Administrative Assistant I
9 Eligibility Supervisor	Associate Systems Analyst
10 Senior Probation Officer	Supervising Probation Officer
11 Supervising Clerk	Deputy Sheriff
12 Guard	

13 6. In paragraph 7-16, infra, whenever the ultimate goal
14 for any one group is achieved, the interim goal for that job
15 classification shall be made consistent with the interim goals
16 set out in this decree for the remaining underutilized groups.
17 For example, paragraph 12 contains a 60% interim goal for Mexican-
18 American/Latino or black or female applicants for the position
19 of Booking Clerk; in the event females reach ultimate goal for
20 this position, then the interim goal, consistent with paragraph 11
21 shall drop to 40% for Mexican-American/Latino or black applicants.
22 Where only blacks are underutilized in any job classification the
23 interim goal shall be 10%.

24 7. In the following job classifications San Diego County
25 shall seek to achieve the interim goal of filling at least
26 33% of all vacancies with Mexican-American/Latino applicants:

1	Assistant Personnel Analyst	Probation Assistant II
2	Correctional Facility Nurse II	Senior Account Clerk
3	Data Entry Operator	Senior Social Worker MSW
4	Deputy Probation Officer I	Senior Social Worker Supervisor
5	Eligibility Control Worker	Senior Stenographer
6	Investigative Assistant I	Social Worker MSW
7	Nurses Aide	Welfare Administrator II
8	Probation Assistant I	

8. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 20% of all vacancies with female applicants:

12	Public Works Trainee	Gardener II
13	Custodian II	Security Guard
14	Equipment Operator I	

9. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 50% of all vacancies with female applicants:

Associate Accountant

10. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 50% of all vacancies with Mexican-American/Latino or female applicants:

22	Animal Regulation Officer II	Equipment Operator II
23	Building Maintenance Engineer	Mail Clerk Driver
24	Chef	Physician II
25	Clinical Psychologist	Probation Director I
26	Cook I	Sanitarian

1	Appraiser I	Investigator I
2	Appraiser III	Junior Civil Engineer
3	Audit Appraiser I	Park Ranger
4	Assistant Civil Engineer	Physician II
5	Associate Civil Engineer	Psychiatrist II
6	Associate Planner	Revenue & Recovery Officer
7	Junior Real Property Agent	Senior Civil Engineer
8	Associate Systems Analyst	Senior Planner
9	Booking Clerk	Senior Systems Analyst
10	Building Inspector	Supervising Probation Offi
11	Drafting Technician II	Welfare Administrator III
12	Engineering Technician I	

13. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 60% of all vacancies with Mexican-American/Latino or black or female applicants:

17	Deputy Marshal	Deputy Sheriff
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18 In the event that women become the only underutilized group for
19 either of these positions then the interim goal for women shall
20 be 30%.

14. In the following job classifications San Diego County shall seek to achieve the interim goal of promoting Mexican-American/Latino, blacks and females to vacancies at twice their percentage representation in the job classifications from which promotional candidates are traditionally recruited:

26	Sheriff Lieutenant	Sheriff Sergeant
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1 15. For the following temporary or seasonal positions the
2 interim goals are:

3 Student Worker I - 33% Mexican-American/Latino
4 Student Worker II - 33% Mexican-American/Latino
5 Library Substitute - 40% Asian, Mexican-American/Latino
6 or black
7 Student Worker III - 40% Mexican-American/Latino or black
8 Lifeguard I - 60% Mexican-American/Latino or black
9 or female

10 16. All other job classifications within the San Diego
11 County in which Asians, Mexican-American/Latino, blacks or females
12 are underutilized shall be considered as a composite group for
13 which San Diego County shall seek to achieve the interim goal of
14 filling at least 33% of the total of all vacancies with Asian,
15 Mexican-American/Latino or blacks or females.

16 17. In filling any vacancies covered by paragraphs 5a, 7-16,
17 supra, the appointment of a minority female shall count toward
18 both minority and female interim goals.

19 18. Nothing herein shall be interpreted as requiring San
20 Diego County to hire unnecessary personnel, or to hire, transfer
21 or promote a person who cannot qualify on the basis of objective
22 job-related criteria.

23 19. Compliance with the interim goals established pursuant
24 to this Consent Decree shall be measured on a semi-annual basis.

25 III. SPECIFIC RELIEF

26 20. Female deputy sheriffs employed by San Diego County at
the time this Consent Decree is entered shall be entitled to

1 transfer, consistent with the staffing requirements for female
2 deputy sheriffs at female correctional facilities under the
3 control of the Sheriff, to available vacancies outside the jail.
4 Assignments to which female deputy sheriffs shall be allowed to
5 transfer include, but are not limited to, patrol duty, homicide,
6 narcotics and warrant service. Thereafter, the assignment or
7 rotation of female deputy sheriffs shall be according to the
8 same criteria or policies established by the Sheriff for the
9 assignment or rotation of male deputy sheriffs.

10 21. The United States and San Diego County shall also attempt
11 to resolve all EEOC charges that may be pending as of the date
12 of this Consent Decree against San Diego County within six
13 months of the date of entry of this Consent Decree.

14 22. In the job classifications which are set out in
15 paragraph 5a, 7-15, supra, in which Asians, Mexican-American/Latino
16 blacks and women were underutilized as of January 1, 1977, as
17 defined in paragraph 4, supra, San Diego County shall review all
18 certifications to such positions since January 1, 1975. From such
19 review, San Diego County shall identify all previously self-
20 identified and presently qualified Asians, Mexican-American/
21 Latinos, blacks and women who were not selected for such positions
22 within three months of the original certification when a person
23 not a member of one of these underutilized groups was selected.
24 These individuals shall be an affected class of persons who
25 shall be the initial pool of applicants from which the County
26 shall recruit in attempting to meet the goals set out in

1 paragraphs 5a, 7-15, supra. Certifications to any job classifica
2 set out in paragraphs 5a, 7-15, supra, shall be made pursuant to
3 existing provisions of the San Diego County Charter and the rules
4 of the Civil Service Commission of San Diego County except that
5 for any such job classification for which a pool member is
6 eligible, such pool member shall be included in that certification.
7 It is the intent of the parties that pool members shall be
8 entitled to priority placement. An affected class member shall
9 be entitled to only one priority offer of hire or promotion
10 for each job classification for which such person was classified
11 pursuant to this paragraph. These identifiable individuals shall
12 be an affected class of persons who shall be entitled to be
13 offered hire or promotion to the relevant job classification
14 and shall be the initial pool of applicants from which San Diego
15 County shall recruit in attempting to meet the goals set out,
16 supra.

17 23. Members of the affected class referred to in paragraph
18 22, supra, shall be entitled to a lump sum payment of \$350.00
19 to be tendered within 90 days of the date of the decree. In
20 addition, each such affected class member who has not received
21 an offer of hire or promotion within 2 years of the date of
22 entry of this decree shall receive an additional lump sum payment
23 of \$100.00. Additional sums may be paid out in settlement of
24 claims arising pursuant to paragraph 21, supra. It is the intent
25 of the parties that the County shall pay out \$100,000 in the
26 settlement of various claims under this Consent Decree but in no

1 event shall the County's liability for monetary payments
2 under this decree exceed that amount.

3 24. As a condition of payment to an affected class member
4 under paragraph 23, supra, San Diego County shall require an
5 appropriate release and waiver, in a form approved by the court,
6 of any employment discrimination claims such person may have
7 against San Diego County.

8 IV. TESTS

9 25. Pending the development of selection procedures
10 which have been shown to have no adverse impact or have
11 been validated in accordance with the Department of Justice
12 Guidelines, San Diego County may continue to use all written
13 examinations, selection criteria and other job qualifications
14 presently used for hire or promotion in all job classifications.
15 However, no such written examination, selection criterion or
16 other job qualification shall be a basis or defense for
17 failure to meet any of the goals set out in paragraphs 5-16,
18 supra.

19 26. San Diego County shall make appropriate modifica-
20 tions to such written examinations, selection criteria, job
21 qualifications, certification procedures and selection pro-
22 cedures to insure that the goals set out in paragraphs 5-16,
23 supra, are achieved. Modification to the certification
24 procedure shall include the following: When a regular
25 certification is being made to a vacancy in a classification
26 in which underutilization exists for Asians, blacks, Mexican-Ame

1 Latino or females and there are no pool members certified
2 pursuant to paragraph 22 supra, the certification shall be
3 augmented by (1) the names of the next three qualified persons
4 on the list who are members of the appropriate underutilized
5 groups; and (2) by the names of persons who are members of the
6 appropriate underutilized group and who were on a list of
7 eligibles for such job classification between January 1,
8 1975 and January 1, 1977.

9 V. TRAINING AND APPRENTICESHIP

10 27. San Diego County shall within one year of the date
11 of this decree provide training for the job classifications
12 of equipment mechanic, drafting technician, all intermediate
13 level clerical positions, building inspector, eligibility
14 worker, social worker and first level supervisory positions
15 designed to enable Asians, Mexican-American/Latino, female
16 and black employees to move into such positions. San Diego
17 County shall, in addition to the report provided in paragraph
18 30(g) below, provide the United States with a description of
19 the size and content of each such training program at least
20 sixty (60) days prior to its implementation, the anticipated
21 size of the program to be determined by the nature of the
22 program, the number of anticipated vacancies in the job
23 classification and the requirement for meeting the interim
24 goals for Asians, Mexican-American/ Latino, female and black
25 employment established for these positions by this Consent
26 Decree.

1 . 28. San Diego County will engage in affirmative recruit-
2 ment activities consistent with their obligation to take all
3 reasonable steps to reach the goals set forth in this Decree,
4 and to insure that San Diego County's policy of non-discrimination
5 in hiring is emphasized to Asians, blacks, Mexican-American/
6 Latino and women. Where appropriate, advertising of employment
7 opportunities shall be placed in mass media primarily directed to
8 Asians, black, Mexican-American/Latino and female audiences.

9 VI. RECORDS

10 29. San Diego County shall retain during the period of
11 this Consent Decree necessary records to support the implementation
12 of this Consent Decree. Such records shall be made available
13 to the attorneys of record of all parties to this Consent Decree
14 for inspection and copying upon written request. In addition, San
15 Diego County shall provide the Department of Justice with copies of
16 records and written reports upon written request by the Department,
17 provided that such requests shall not be made so frequently as
18 to be burdensome and that a copy of such written request shall
19 be sent to each attorney of record of any party to this Consent
20 Decree.

21 30. San Diego County shall maintain the following records
22 which shall be provided semi-annually to the attorneys of record
23 of all parties to this Consent Decree.

24 (a) A chart indicating by department the total
25 number of employees by EEO-4 job function and
26 race, sex and national origin. For each depart-

1 ment, the chart shall show San Diego County job
2 classifications included within each EEO-4 job
3 job function and the pay ranges for each
4 classification.

5 (b) A list of all organizations and schools
6 which are contacted pursuant to paragraph 28,
7 showing the date that any notice of job
8 opportunity was mailed to them, the position
9 and number of positions to be filled from that
10 notice and the date through which applications
11 could be received for the job which was advertised.

12 (c) A detailed report setting out the identification
13 of any payments to members of the affected class
14 and other persons referred to in paragraphs 21, 22
15 and 23, supra.

16 (d) A list of all newly hired employees by classification
17 indicating the name, race, sex, national origin and
18 job classification of each since the last report
19 was filed by job.

20 (e) A list of all persons, by job classification, to
21 whom hire or promotion has been offered under paragraph
22 22, supra, of this Decree and whether or not that
23 offer has been accepted.

24 (f) A breakdown of the applicant flow of San Diego
25 County by race, sex and national origin which
26 indicates the number of applicants hired, rejected

1 and pending by race, sex and national origin for
2 each job classification. A person is considered an
3 applicant for this purpose upon filing a formal
4 applicant when a job is posted and upon meeting
5 the minimum qualifications for the position.

6 (g) A list of all promotions to vacancies, name, race,
7 sex, national origin and date of hire of the employee
8 promoted and the date of the promotion for each
9 job classification.

10 (h) A report covering the training provided for in
11 paragraph 27, supra, listing the name, race, sex
12 and national origin of each person in the program
13 during that reporting period, the dates of promotion
14 for each person who having completed the training
15 program was promoted during the reporting period into
16 a vacancy in the positions covered by the training.

17 31. Copies of this Consent Decree shall be posted in
18 conspicuous locations within each department. Further, the
19 County Equal Opportunity Management Director's duties shall
20 include:

- 21 (a) To advise Asians, black, Mexican-American/Latino and
22 female employees of the terms of this Decree;
- 23 (b) To receive, investigate complaints of discrimination
24 on the basis of race, sex and national origin,
25 conciliate such charges when appropriate and not-
26 withstanding any other provisions of law, establish

1 a written procedure which shall govern such complaints;
2 and

3 (c) To maintain a complete record of all actions
4 taken in pursuit of the duties outlined above,
5 including all correspondence directed to San
6 Diego County or any investigatory files; and

7 (d) To review and concur in reasons submitted by
8 appointing authorities for failure to select
9 minority or women applicants in occupational
10 categories where they are underutilized prior
11 to final selection.

12 32. Within 30 days of the date of entry of this Consent
13 Decree San Diego County shall provide to the attorneys of record
14 of all parties to this Consent Decree with a computer printout
15 showing the most recent data available for the total number of
16 San Diego County employees, by race, sex and national origin
17 for each job classification within San Diego County.

18 33. If any provisions of this decree causes a result
19 unintended by the parties, an undue hardship on any party, or
20 an ambiguous interpretation, the aggrieved party shall notify
21 the other party by mail of the unintended result, undue hardship
22 or ambiguous interpretation. The parties shall have 30 days
23 after the date of such letter to resolve the problem. If the
24 parties are unable to reach agreement within 30 days, the issue
25 may be submitted to the Court for resolution.

26 / / /

1 . 34. It is the intent of the parties to achieve the
2 objectives of paragraph 4 within five years of the date of
3 entry of this decree. San Diego County may move the Court upon
4 45 days notice to the attorneys of record of all parties to
5 this Consent Decree for dissolution of this Consent Decree.
6 In considering whether the Consent Decree should be dissolved,
7 the Court will take into account whether the basic objectives
8 of this decree have been achieved.

9 VII. DEFINITIONS

10 35. The following definitions shall govern the construction
11 of this Consent Decree:

- 12 (a) The term "San Diego County" shall be deemed to include
13 the San Diego County Marshal's Office and its officers,
14 employees, agents, successors and all persons acting
15 in concert with them or any of them in the performance
16 of their official functions.
- 17 (b) The term "officers" includes any person who is either
18 (i) an appointing authority as that term is used in
19 the Charter of the County of San Diego or the Rules
20 of the Civil Service Commission of the County of
21 San Diego; or (ii) whose salary or budget is establish-
22 ed or paid by San Diego County.
- 23 (c) The term "vacancy" or "vacant position" shall mean any
24 position authorized by the Board of Supervisors of San
25 Diego County or by state law which is included in the
26 salary budget, for which there is no incumbent employee.

1 and which is approved by the appointing authority
2 to be filled.

3 (d) The term "Mexican-American/Latino" shall mean any
4 person of Mexican, Puerto Rican, Cuban, Central or
5 South American, or other Spanish origin or ancestry.

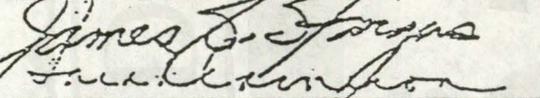
6 (e) The term "Asian" shall mean any person having origins
7 in any of the original peoples of the Far East,
8 south Asia, the Indian subcontinent or the Pacific
9 Islands.

10 DATED: 2:45 P.M. 1977

11 EDWARD J. SCHWALL

12 UNITED STATES DISTRICT COURT JUDGE

13 APPROVED:

14 

15 DAVID L. ROSE

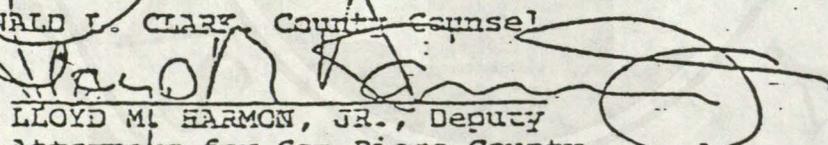
16 JAMES S. ANGUS

17 SARAH T. CAMERON

18 Attorneys for Plaintiff United States

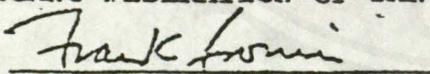
19 DONALD L. CLARK, County Counsel

20 BY

21 
22 LLOYD M. HARMON, JR., Deputy
23 Attorneys for San Diego County, et al.

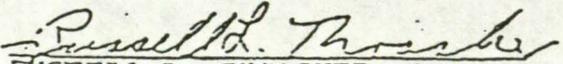
24 CHICANO FEDERATION OF SAN DIEGO COUNTY, INC.

25 BY

26 
FRANK CRONEN, Attorney

UNION OF PAN ASIAN COMMUNITIES
COUNCIL OF FILIPINO AMERICAN ORGANIZATIONS

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUT

IN THE UNITED DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 SAN DIEGO COUNTY, et al.,)
)
 Defendants.)

CIVIL ACTION NO.
76-1094-S
ORDER

San Diego County reclassified some of its employees in late 1979. The reclassification affected 26 of the 96 job classes for which interim goals were set in paragraphs 5a, 7 through 15 of the consent decree entered on May 6, 1977. The parties have discussed the affect on the consent decree of the reclassification and have agreed to the entry of this Order to modify the consent decree.

IT IS HEREBY ORDERED:

1. The following job titles shall be deleted from the consent decree:

Paragraph 5a: Deputy Probation Officer I
Senior Clerk Typist

Paragraph 7: Assistant Personnel Analyst
Correctional Facility Nurse II
Deputy Probation Officer I
Investigative Assistant I
Probation Assistant I
Probation Assistant II
Senior Stenographer

Paragraph 8: Custodian II

Paragraph 10: Animal Regulation Officer II
Chef
Cook I
Custodian III
Physician II
Probation Director I
Sanitarian

Paragraph 11: Branch Library Assistant
Intermediate Stenographer
Legal Procedures Clerk I
Psychiatric Nurse
Psychiatric Social Worker I
Registered Nurse
Secretary II
Senior Clerk Typist
Telephone Operator and Information Clerk

Paragraph 12: Investigator I
Physician II
Psychiatrist II

2. The following job titles shall be added to the consent decree:

Paragraph 5a: Deputy Probation Officer
Senior Clerk

Paragraph 7: Administrative Secretary II
Corrections and Services Officer I
Corrections and Services Officer II
Deputy Probation Officer
Investigative Specialist I
Staff Nurse II

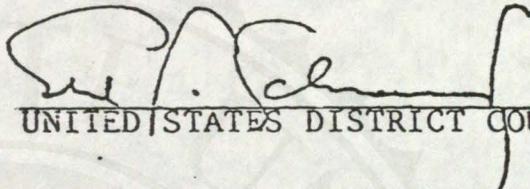
Paragraph 8: Custodian

Paragraph 10: Animal Control Officer II
Cook
Environmental Health Inspector
Food Services Supervisor
Probation Administrator I
Senior Custodian

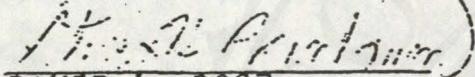
Paragraph 11: Administrative Secretary III
Legal Procedure Clerk II
Library Technician III
Psychiatric Social Worker
Senior Clerk
Stenographer
Telephone Switchboard Operator

Paragraph 12: District Attorney Investigator I
Physician
Staff Psychiatrist

DATED: AUGUST 14, 1980.


UNITED STATES DISTRICT COURT JUDGE

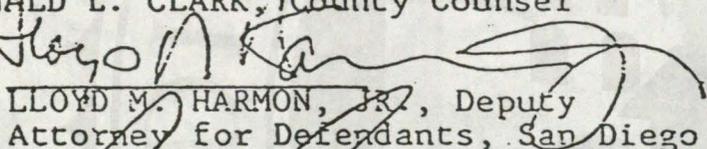
APPROVED:

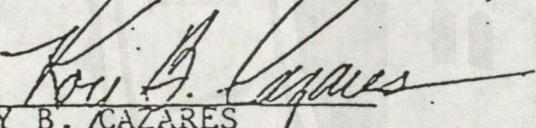


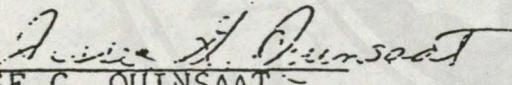
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By


LLOYD M. HARMON, JR., Deputy
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of San Diego County, Inc.


JESSE G. QUINSAAT

Attorney for Union of Pan Asian Communities
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5 Attorneys for Defendants
6 County of San Diego, et al.

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SOUTHERN DISTRICT OF CALIFORNIA
BY

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

9 Civil Action No. 76-1094-S

10 UNITED STATES OF AMERICA; CHICANO)
11 FEDERATION OF SAN DIEGO COUNTY,)
12 INC.; UNION OF PAN ASIAN)
13 COMMUNITIES; and COUNCIL OF)
14 PILIPINO AMERICAN ORGANIZATIONS,)
15 Plaintiffs,)

SECOND ORDER MODIFYING
CONSENT DECREE

16 v.)

17 SAN DIEGO COUNTY, (a public)
18 corporation); DAVID K. SPEER,)
19 Chief Administrative Officer of)
20 San Diego County; WILLIAM D.)
21 WINTERBOURNE, Director of the)
22 Department of Civil Service and)
23 Personnel for San Diego County;)
24 C. HUGH FRIEDMAN, TROY M. MOORE,)
25 VERYL J. MORTENSON, KING O. TAYLOR,)
26 TIMOTHY M. CONSIDINE, Members,)
San Diego County Civil Service)
Commission; JOHN P. WILLIAMSON,)
Acting Marshal, San Diego County)
Marshal's Office; SAN DIEGO)
COUNTY MARSHAL'S OFFICE,)
Defendants.)

27 The Motion to Dissolve Consent Decree and Dismiss Complaint
28 filed on behalf of defendants came on for hearing before the
29 Honorable Edward J. Schwartz, United States District Court Judge,

1 on March 7, 1983. Lloyd M. Harmon, Jr., County Counsel, appeared
2 on behalf of defendants; Cynthia Drabek, Attorney, Department of
3 Justice, appeared on behalf of Plaintiff United States of
4 America; Richard R. Castillo, Attorney, appeared on behalf of
5 Plaintiff Chicano Federation of San Diego County, Inc.; and
6 Jesse G. Quinsaas, Attorney, appeared on behalf of Plaintiffs
7 Union of Pan Asian Communities and Council of PHILIPINO American
8 Organizations. The Court after hearing testimony, both oral and
9 documentary, and the arguments presented by all parties and
10 good cause appearing;

11 IT IS HEREBY ORDERED:

12 1. That the following paragraphs of the Consent Decree
13 are modified to read as follows:

14 "5a. In the following job classifications qualified
15 Asians, as defined in paragraph 35, infra, shall or pro-
16 moted on an interim basis at the rate of 4% until such
17 time as Asians shall be represented in such job classifi-
18 cations in numbers approximating their representation in
19 the civilian labor force of San Diego County:

20 Deputy Probation Officer

21 Equipment Operator I

22 Eligibility Supervisor"

23 "7. In the following job classifications San Diego
24 County shall seek to achieve the interim goal of filling at
25 least 33% of all vacancies with Mexican-American/Latino
26 applicants:

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Staff Nurse II
Data Entry Operator
Senior Social Worker
Supervisor
Social Worker MSW

Senior Account Clerk
Deputy Probation Officer
Administrative Secretary I

"8. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 20% of all vacancies with female applicants:

Custodian
Equipment Operator I
Gardener II
Security Guard

"9. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 50% of all vacancies with female applicants:

NONE

"10. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 50% of all vacancies with Mexican-American/Latino (M) or female (F) applicants:

Building Maintenance Engineer (F only)
Food Services Supervisor
Probation Administrator I (M only)
Senior Custodian
Deputy District Attorney I (M only)
Equipment Operator II (F only)
Physician
Environmental Health Sanitarian

"11. In the following job classifications San Diego County shall seek to achieve the interim goal of filling at least 40%

1 of all vacancies with Mexican-American/Latino (M) or black (B)
2 applicants as indicated:

3	Stenographer (M only)	Eligibility Supervisor (M only)
4	Intermediate Account Clerk (M only)	Occupational Therapist II (M only)
5		
6	Program Assistant	Superior Court Clerk (M only)
7	Senior Probation Officer (M only)	Supervising Clerk
8		

9 "12. In the following classifications San Diego County
10 shall seek to achieve the interim goal of filling at least
11 60% of all vacancies with Mexican-American/Latino (M) or
12 black (B) or female (F) applicants as indicated:

13	Administrative Assistant III (F only)	Engineering Technician II
14		
15	Agricultural Biologist	Engineering Technician II (B and F only)
16		
17	Equipment Mechanic (M and F only)	Appraiser III (M and F only)
18		
19	Assistant Civil Engineer (M and F only)	Park Ranger (F Only)
20		
21	Associate Civil Engineer	Physician (M and F only)
22		
23	Associate Planner	Revenue & Recovery Officer III (B and M only)
24		
25	Associate Systems Analyst (M and F only)	Senior Civil Engineer
26		

1	Building Inspector (M and F only)	Senior Planner
2	Drafting Technician II (F only)	Senior Systems Analyst (M only)
3	Staff Psychiatrist	
4	Engineering Technician I (B only)	Supervising Probation Officer (M and F only)

6 "13. In the following job classifications San Diego County
7 shall seek to achieve the interim goal of filling at least 60%
8 of all vacancies with Mexican-American/Latino (M) or black (B)
9 or female (F) applicants as indicated:

10	Deputy Marshal (M and F only)	Deputy Sheriff (F only)
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12 In the event that women become the only underutilized group for
13 either of these positions then the interim goal for women shall
14 be 30%.

15 "14. In the following job classifications San Diego County
16 shall seek to achieve the interim goal of promoting Mexican-
17 American/Latino (M), blacks (B), and females (F) to vacancies
18 at twice their percentage representation in the job classifi-
19 cations from which promotional candidates are traditionally
20 recruited as indicated:

21	Sheriff Lieutenant (M and F only)	Sheriff Sergeant (M and F only)
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23 ///
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1 "15. For the following temporary position the interim goal
2 is:

3 Library Substitute 40% Mexican-American/Latino Only"

4 2. This Order supersedes the above-referenced paragraphs
5 of the Consent Decree entered May 6, 1977, and the Order entered
6 August 14, 1980, modifying the Consent Decree, as it relates to
7 the above-referenced paragraphs.

8 3. The Motion to Dissolve the Consent Decree and Dismiss
9 Complaint is denied.

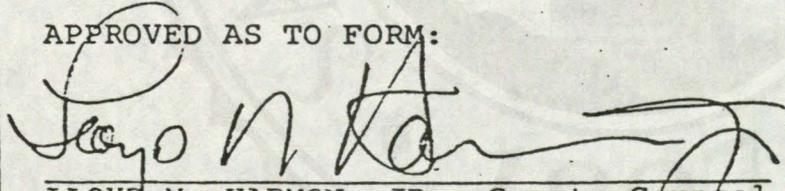
10 4. United States Bureau of the Census civilian labor force
11 statistics based upon the 1980 Census shall apply in future
12 proceedings before this Court relating to the Consent Decree.

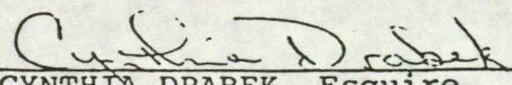
13
14 DATED: JUN 6 1983

15
16
17 EDWARD J. SCHWARTZ

18 UNITED STATES DISTRICT COURT JUDGE

19 APPROVED AS TO FORM:

20
21 
22 LLOYD M. HARMON, JR., County Counsel
23 Attorney for Defendants County of
24 San Diego, et al.

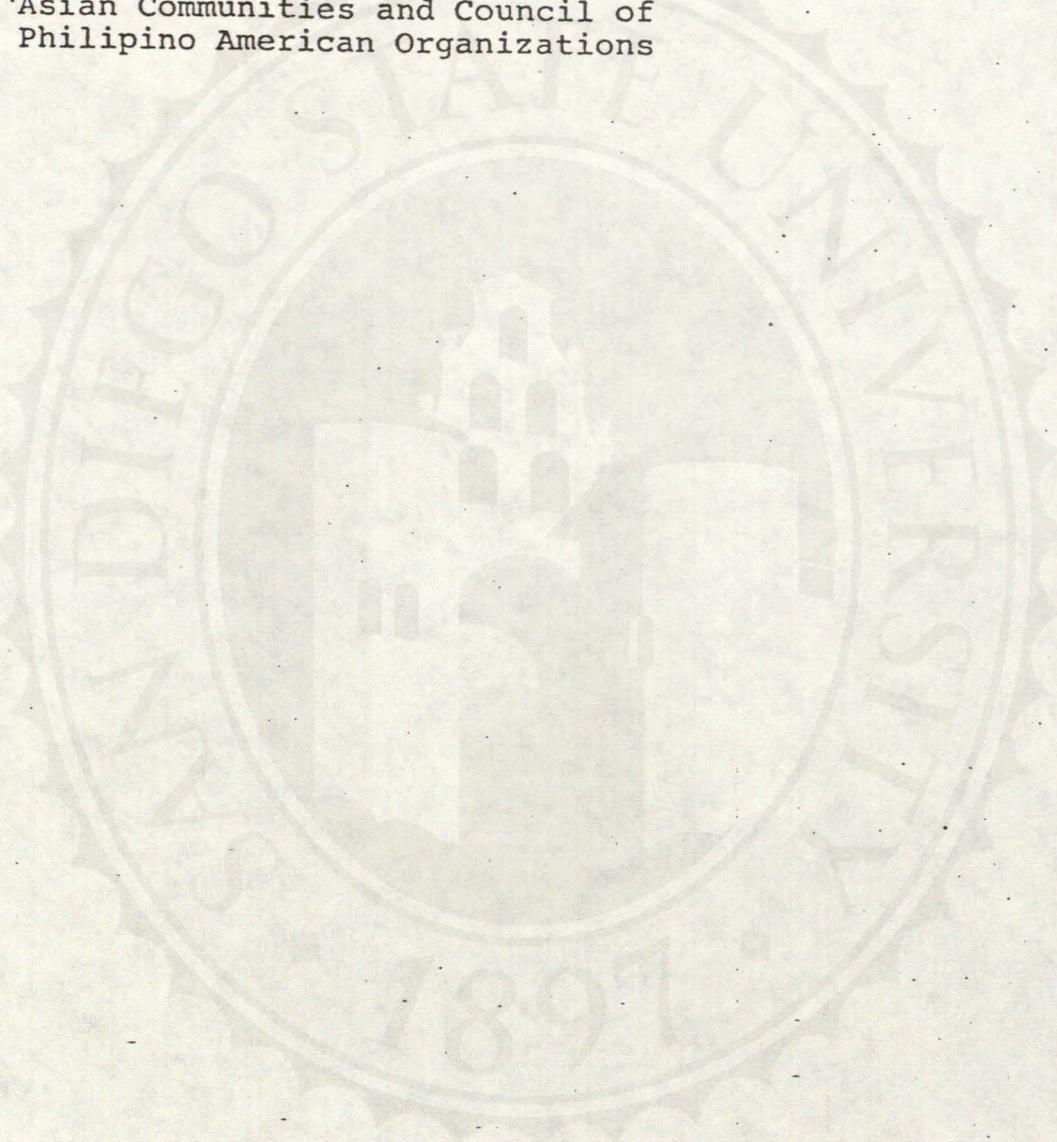
25 
26 CYNTHIA DRABEK, Esquire
27 Attorney for Plaintiff-United States
28 of America

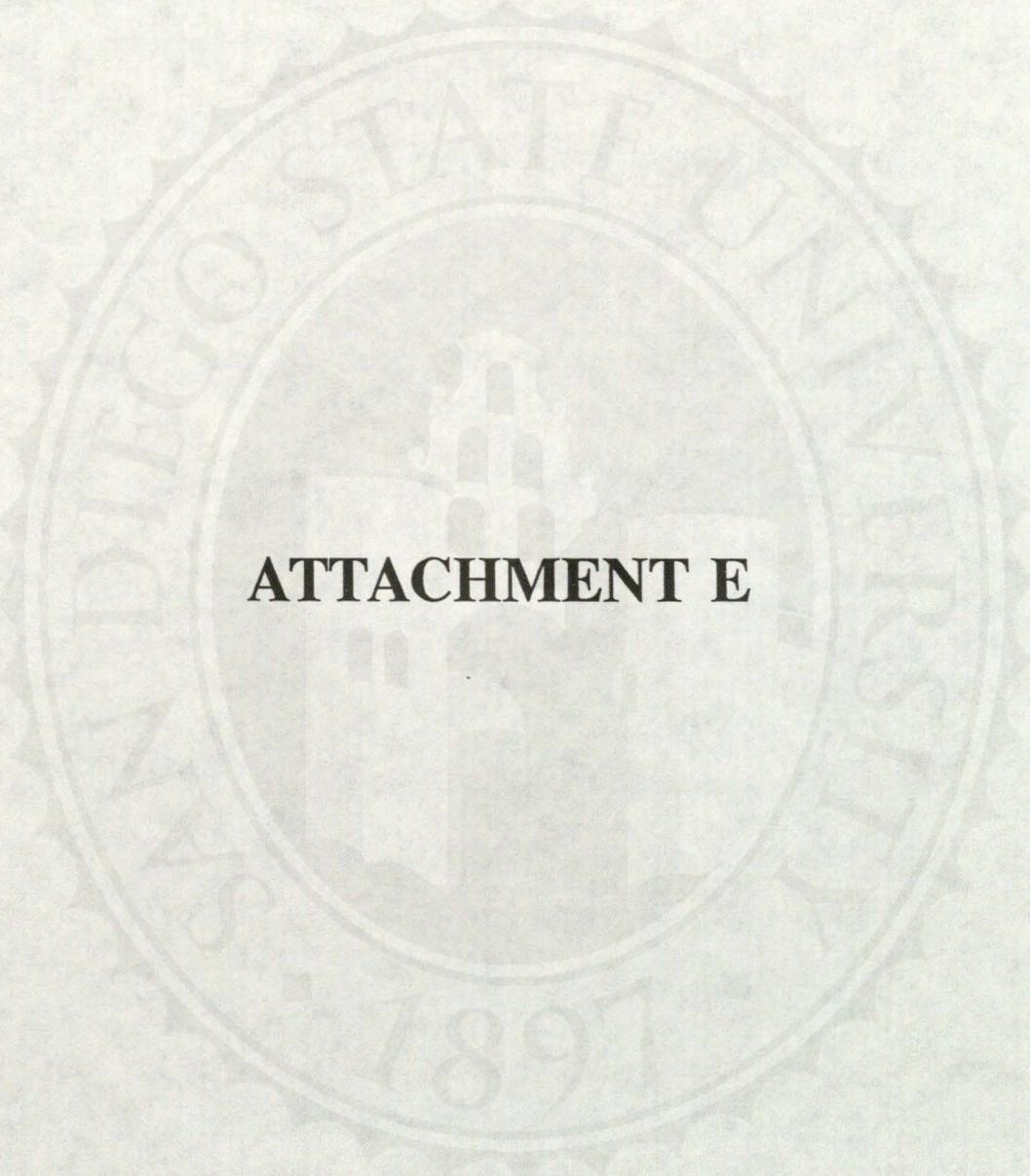
1 Richard R. Castillo

2 RICHARD R. CASTILLO, Esquire
3 Attorney for Plaintiff Chicano
4 Federation of San Diego County, Inc.

5 Jesse G. Quinsa

6 JESSE G. QUINSAAT, Esquire
7 Attorney for Plaintiffs Union of Pan
8 Asian Communities and Council of
9 Philipino American Organizations
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ATTACHMENT E

COUNTY OF SAN DIEGO
ADMINISTRATIVE MANUAL

Subject:	EMPLOYEE APPOINTMENT PROCEDURE	Item Number	Page
Effective Date:	April 1, 1985	0080-03-1	1 of 4

Purpose

1. To establish a system for monitoring employee appointments that will ensure compliance with the goals of the negotiated Consent Decree.
2. To develop a process to implement the Consent Decree provision that requires the Equal Opportunity Management Office Director or designee "to review and concur in reasons submitted by appointing authorities for failure to select minority or women applicants in occupational categories where they are underutilized prior to final selection".
3. To encourage all County employees to vigorously support this procedure which is designed to assist in achieving equal opportunity within San Diego County employment.

Background

By the terms of the Consent Decree, Civil Action No. 76-1094-S, signed May 6, 1977 and modified June 6, 1983, the County is committed to achieving specific hiring goals in all County occupational categories/job classifications. Additionally, the Board of Supervisors Policy C-17 (1-25-77 (122)) commits the County to increase the percentages of women, racial, and ethnic minority persons, in all levels of the County work force.

Therefore, all appointing authorities are directed to adhere to the following procedures when making employee appointments.

I. Prior Review Not Required

Appointing authorities may offer employment to applicant(s) and process appointment(s) without the Equal Opportunity Management Office (EOMO) Director's review when any of the following situations exists:

1. An appointment is to be made of a member of an underutilized group(s) consistent with the Consent Decree and the data printed on certification sheets.
2. The certification sheet does not include any member of an underutilized group(s);

JUN 12 1985

COUNTY OF SAN DIEGO
ADMINISTRATIVE MANUAL

Subject:	EMPLOYEE APPOINTMENT PROCEDURE	Item Number	Page
Effective Date:	April 1, 1985	0080-03-1	2 of 4

I. Prior Review Not Required (cont'd)

3. When protected group members have failed to respond to their certification notices or have waived their right to an interview for that positions.
4. An appointment is for a "seasonal" position, with the exception of Library Page and Lifeguard I;
5. The composition of appointments to fill multiple vacancies is consistent with the percentage hiring goals for underutilized group(s) as specified in the modified Consent Decree of June 6, 1983.

On the above appointments, forward the completed certifications and necessary attachments to the Personnel Department via EOMO. These certifications will be signed and forwarded to the Personnel Department for processing without delay.

II. Review Required for Employee Appointments

Review and concurrence by the EOMO Director must be obtained prior to the final selection of an employee when the following situations exist:

1. An appointing authority fails to select a certified ethnic minority or a woman applicant in a job class or occupational category when the data printed on the certification sheet indicates they are underutilized on that particular class or category;
2. The composition of appointments to fill multiple vacancies is not consistent with the percentage hiring goals specified in the Consent Decree, and spelled out on the certification sheet, and members of underutilized groups were rejected.

When the above situation exists, concurrence may be obtained by submitting a written "Report of Reasons for Non-Selection," (Attachment I, exhibit A). The Director or his designee may also request sufficient information which would indicate that your selection was made for job-related reasons, i.e., the person selected possessed the requisite knowledges and skills for the position, consistent with your selections in the past, interview questions, applications, etc. The Report is to be

COUNTY OF SAN DIEGO
ADMINISTRATIVE MANUAL

Subject: EMPLOYEE APPOINTMENT PROCEDURE	Item Number	Page
Effective Date: April 1, 1985	0080-03-1	3 of 4

attached to the original certification indicating tentative results and forwarded to EOMO. EOMO staff will promptly review the Report and make every effort to evaluate and concur with your reasons for non-selection within five (5) working days of receipt. If the non-selection affects an EOMO appointment, the "Report of Reasons for Non-Selection" shall be reviewed by the Chief Administrative Officer.

III. Review of Transfer & Re-employment Appointment

Regular certification lists used in conjunction with transfer and/or re-employment lists will be processed in accordance with this procedure and with Consent Decree Paragraph 31(d) in which one of the Equal Opportunity Management Director's duties is:

To review and concur in reasons submitted by appointing authorities for failure to select minority or women applicants in occupational categories where they are under-utilized prior to final selection.

For example, if a department requisitions for a regular certification and a re-employment list and/or a transfer list, the department will interview all interested persons who are certified and submit written reasons for non-selection to EOMO prior to appointment if the appointment does not meet these guidelines.

If the department requisitions the transfer list only, without the certification and/or re-employment lists, EOMO review prior to appointment is not necessary.

IV. Non-Concurrence by EOMO Director

If EOMO does not concur with the report, the basis for non-concurrence will be immediately discussed with the appointing authority via the telephone. If the differences regarding the employee appointment cannot be resolved in this manner, a meeting between the EOMO Director and appointing authority will be promptly set to facilitate resolution. The appointing authority will be requested to present additional data at the meeting to support his/her selection at that time.

COUNTY OF SAN DIEGO

ADMINISTRATIVE MANUAL

Subject: EMPLOYEE APPOINTMENT PROCEDURE	Item Number	Page
Effective Date: April 1, 1985	0080-03-1	4 of 4

Pending the review and concurrence of Report of Reasons for Non-Selection, appointing authorities should not proceed with an offer of employment to an applicant(s) or prepare a Personnel Action Notice(s). If an appointment is made without the EOMO Director's concurrence, a letter will be mailed by EOMO Director to the CAO and the Board of Supervisors to inform them of the agency/department's action. This should not be interpreted to suggest that the appointing authority can not make the final decision on employee selections. However, this procedure has been established as a monitoring mechanism to assure compliance with those provisions mandated by the Consent Decree.

V. Provisional Appointments

The only exception to this procedure will be when processing provisional appointments. When a provisional appointment is submitted to EOMO, the following steps will be taken:

- A. If the appointing authority fails to select a member of an underutilized group as defined in the Consent Decree, the appointment will not be processed and the department will be sent EEO Form Letter No. 003, as well as the original paperwork.
- B. If the differences regarding the appointment are not resolved after this action by EOMO and the department wishes to pursue the appointment, the department must resolve matters following the steps established beginning with IV.C, of the EOMO Procedures Manual; copies of which may be obtained from EOMO by telephone or written request.

References: Consent Decree (Civil Action No. 76-1094-S, (May 6, 1977, modified June 6, 1983))

Board of Supervisors Policy C-17

APPROVED:

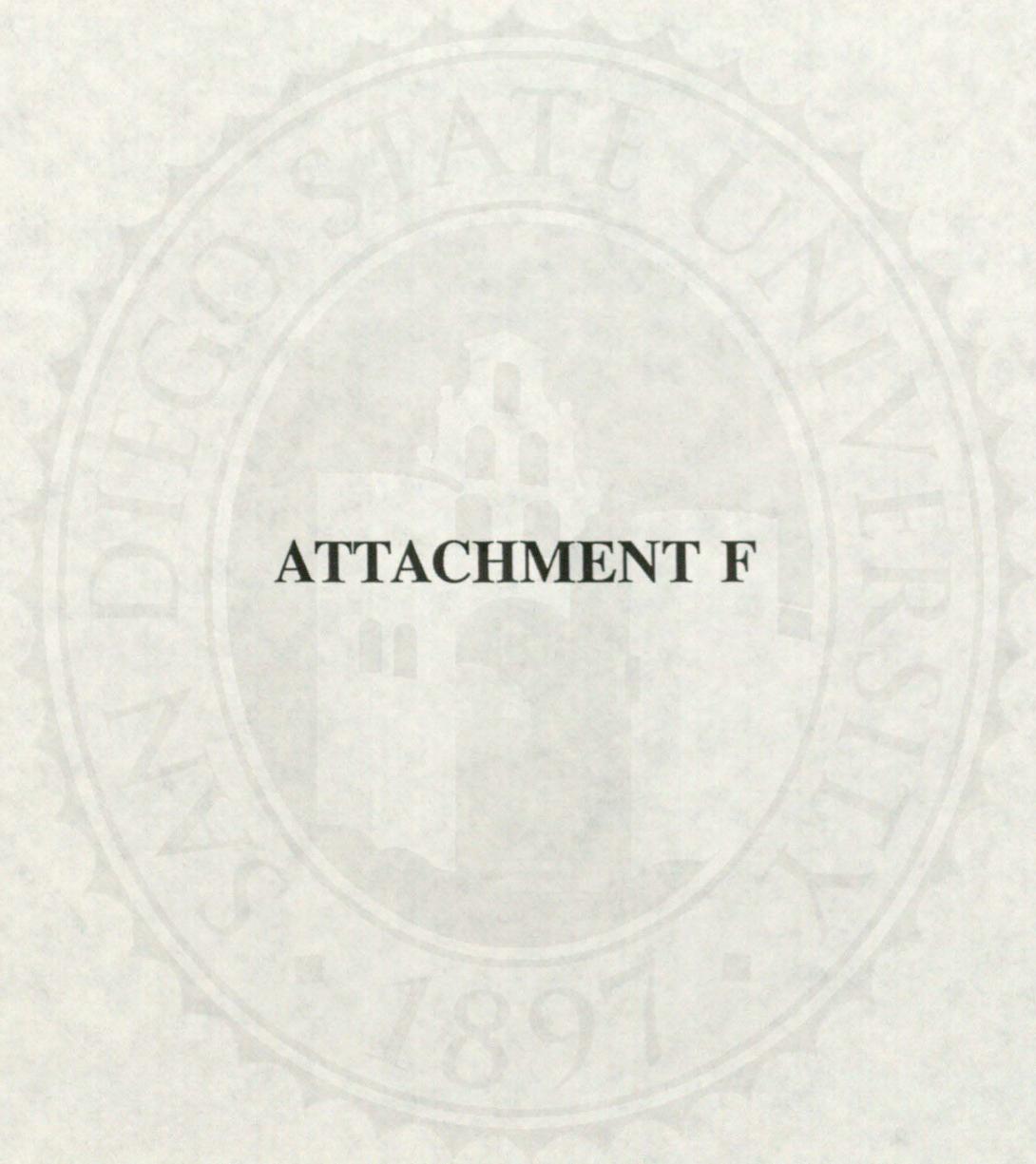


Chief Administrative Officer

Responsible Department:

Equal Opportunity Management Office

Attachment:



ATTACHMENT F

CHIEF DEPUTY COUNTY COUNSEL - CLASS 3901

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
04809	08/02/90	1	1 Female (C)	Mex-Am Asian 33%	None certified from under-utilized group	1	1
04389	06/26/90	10	1 Female (C)	Mex-Am Asian 33%	None certified from under-utilized group	1	1
01045	08/28/89	7	1 Male (C)	Female Mex-Am Asian 33%	No Mex-Am or Asians certified; EOMO granted Administrative waiver as to Females.	1	None (EOMO granted Administrative waiver)

A - Asian
 B - Black
 C - Caucasian
 M - Mexican-American

DEPUTY COUNTY COUNSEL V - CLASS 3905

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
01101	08/30/89	10	1 Female (C)	Mex-Am → 33%	None certified from under-utilized group	1	1

A - Asian
 B - Black
 C - Caucasian
 M - Mexican-American

DEPUTY COUNTY COUNSEL IV - CLASS 3906

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED/PROMOTED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
01218	05/24/91	8	1 Male (C)	Female Black Mex-Am Asian ↳ 33%	No Blacks, Mex-Am or Asians certified; EOMO granted Administrative waiver as to Females.	4	None (EOMO granted Administrative waiver)
00767	04/01/91	20	1 Male (A)	Female Mex-Am Asian ↳ 33%	Met goal	9	None
06007	11/30/90	12	1 Female (B) 2 Females (C) 1 Male (C)	Female Black Mex-Am Asian ↳ 33%	Exceeded goal	5	3
05288	09/18/90	12	1 Male (C) 1 Female (C)	Mex-Am → 33%	None certified from under-utilized group	5	1
02130	11/30/89	8	None (list canceled)#	No hiring goal	Not applicable (list canceled)#	4	Not applicable (list canceled)#
02177	11/30/89	2	1 Female (C)	No hiring goal	Not applicable	2	1
01187	09/06/89	12	1 Male (C); 1 Female (C) previously appointed	Mex-Am → 33%	None certified from under-utilized group	4	None (1 Female (C) previously appointed)
01100	08/30/89	11	1 Female (C) 2 Males (C)	Mex-Am → 33%	None certified from under-utilized group	5	1

Certified in error

- A - Asian
- B - Black
- C - Caucasian
- M - Mexican-American

DEPUTY COUNTY COUNSEL III - CLASS 3907 (Continued)

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED/ PROMOTED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
04514	07/06/90	14	None (list canceled)#	Mex-Am → 33%	Not applicable (list canceled)#	2	Not applicable (list canceled)#
03710	04/19/90; 05/17/90	6	3 Males (C); 1 Male (C), 1 Female (C) previously appointed	Mex-Am → 33%	None certified from under-utilized group	2	None (1 Female (C) previously appointed)
03542	04/04/90; 04/05/90	28	2 Females (C) 1 Female (M); 1 Male (C) previously appointed	Mex-Am → 33%	Met goal	10	3
02885	02/08/90	4	1 Male (C); 1 Male (C), 1 Female (C) previously appointed	Mex-Am → 33%	None certified from under-utilized group	2	None (1 Female (C) previously appointed)
01313	09/15/89	13	1 Female (B) 1 Female (C) 2 Males (C); 1 Female (C) previously appointed	Female Mex-Am Asian 33%	Exceeded goal	7	2 (1 Female (C) previously appointed)
01257	09/13/89	23	1 Female (B) 3 Females (C) 1 Female (M) 1 Male (A); 2 Females (C) previously appointed	Female Mex-Am Asian 33%	Exceeded goal	15	5 (2 Females (C) previously appointed)
01255	09/13/89	2	1 Female (C)	Female Mex-Am Asian 33%	Met goal	2	1
00999	08/23/89	1	1 Male (C)	Female Mex-Am Asian 33%	None certified from under-utilized group	None	None
08909	02/17/89	3	2 Females (C)	Female Mex-Am Asian 33%	Exceeded goal	2	2

Hired off another list

A - Asian

B - Black

C - Caucasian

M - Mexican-American

DEPUTY COUNTY COUNSEL III - CLASS 3907

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED/ PROMOTED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
02128	10/25/91	2	2 Females (C)	Mex-Am Asian 33%	None certified from under-utilized group	2	2
00879	04/12/91	1	1 Female (C)	Mex-Am Asian 33%	None certified from under-utilized group	1	1
06165	12/12/90	4	2 Females (C); 1 Male (B), 1 Female (C) previously appointed	Female Mex-Am Asian 33%	Exceeded goal	3	2 (1 Female (C) previously appointed)
06038	11/30/90; 12/10/90	5	2 Females (C); 1 Male (B), 1 Male (C), 1 Female (C) previously appointed	Female Mex-Am Asian 33%	Exceeded goal	3	2 (1 Female (C) previously appointed)
05975	11/26/90; 01/07/91	3	1 Female (C)	Female Mex-Am Asian 33%	Met goal	1	1
05954	11/21/90	2	None (list canceled)*	Female Mex-Am Asian 33%	Not applicable (list canceled)*	1	Not applicable (list canceled)*
05949	11/21/90	13	3 Females (C); 1 Female (C) previously appointed	Female Mex-Am Asian 33%	Exceeded goal	10	3 (1 Female (C) previously appointed)
05289	09/18/90	23	2 Males (C); 1 Male (B), 1 Male (C), 1 Female (C) previously appointed	Mex-Am → 33%	None certified from under-utilized group	10	None (1 Female (C) previously appointed)
05261	09/14/90	19	1 Male (C)	Mex-Am → 33%	EOMO granted Administrative waiver	5	None

* Certified part-time in error

Continued....

DEPUTY COUNTY COUNSEL II - CLASS 3908

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED/PROMOTED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
05976	11/26/90	3	1 Male (C)	Black Mex-Am 33% Asian	None certified from under-utilized group	1	None
05955	11/21/90	3	None (list canceled)*	Black Mex-Am 33% Asian	Not applicable (list canceled)*	1	Not applicable (list canceled)*
04513	07/06/90	15	Not applicable (list canceled)#	Black Mex-Am 33% Asian	Not applicable (list canceled)#	2	Not applicable (list canceled)#
01708	10/19/89; 10/20/89	5	1 Male (B) 3 Females (C); 1 Female (C) previously appointed	Mex-Am → 33%	None certified from under-utilized group	4	3 (1 Female (C) previously appointed)
01258	09/13/89	14	3 Females (C) 1 Male (C) 1 Male (A)	Mex-Am 33% Asian	Met goal	5	3
00718	07/31/89	3	1 Male (C); 2 Females (C) previously appointed	Mex-Am 33% Asian	None certified from under-utilized group	2	None (2 Females (C) previously appointed)
00323	06/29/89	2	1 Male (C) 1 Female (C)	No hiring goal	Not applicable	1	1
09942	05/23/89	26	4 Females (C) 2 Males (C)	No hiring goal	Not applicable	10	4
09479	04/10/89; 04/12/89; 04/20/89	5	3 Females (C) 1 Male (C)	Mex-Am → 33%	None certified from under-utilized group	4	3

* Certified part-time in error
Hired off another list

A - Asian
B - Black
C - Caucasian
M - Mexican-American

DEPUTY COUNTY COUNSEL I - CLASS 3909

REQ. No.	DATE	TOTAL CERTIFIED	TOTAL HIRED/PROMOTED	CONSENT DECREE COMPOSITE GROUP	CONSENT DECREE OUTCOME	TOTAL FEMALES CERTIFIED	No. OF FEMALES HIRED/PROMOTED
00730	03/26/91	13	1 Female (C)	Mex-Am → 33%	EOMO granted Administrative waiver	9	1
00198	01/18/91	12	1 Female (M)	Mex-Am → 33%	Met goal	7	1
02857	02/07/90	16	1 Female (C)	No hiring goal	Not applicable	10	1
00627	07/26/89; 09/06/89	18	1 Male (B) 1 Male (C) 4 Females (C)	No hiring goal	Not applicable	13	4
08616	01/24/89	17	4 Males (C) 1 Female (C)	Mex-Am → 33%	None certified from under-utilized group	8	1

A - Asian
 B - Black
 C - Caucasian
 M - Mexican-American