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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its January 12, 2016 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Request for Reconsideration:** Pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report.
- 14-072 / Giles
 - 14-075 / James
- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
- 14-074 / Foster (Sustained – Deputy 3)
 - 14-075 / James (Sustained – Deputy 6 & the Sheriff's Department)
 - 14-114 / Morales (Sustained – Deputy)
- c) **Evaluation of Executive Officer:** Notice pursuant to Government Code 54957

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (7)

ALLEGATIONS, FINDINGS & RATIONALE

14-005

1. Death Investigation/Medical - Deputy 1 discovered Dennis Lane unresponsive in his cell on January 28, 2014.

Board Finding: Action Justified

Rationale: There was no complaint of wrongdoing for this incident; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required. The 62-year old decedent had been incarcerated since December 28, 2013, in mainline psychiatric housing, with a number of medical issues to include bipolar disorder, alcohol and drug abuse, hepatitis, and kidney stones. The day before his death, Lane attempted to assault a deputy and was forcibly restrained; medical staff evaluated Lane and there were no injuries or adverse effects noted. Additionally, the night prior to his death, Lane had a skirmish with his cellmate. Then, while delivering lunch, Deputy 1 discovered the decedent unresponsive and initiated emergency procedures. The medical examiner determined the complainant died from natural causes - acute gastrointestinal hemorrhage due to hepatitis C, with hypertensive cardiovascular disease listed as contributing - and that there were no recent injuries. Detentions staff monitored and supervised the decedent's activities according to Department policy and procedure, and the evidence showed that the actions of the deputies were lawful, justified and proper.

14-121

1. False Arrest – Deputy 2 arrested the complainant.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 2 arrested him for allegedly making threats. Deputies responded to multiple reports that the complainant brandished a baton and a firearm, and threatened the apartment leasing consultant and maintenance personnel. The leasing consultant signed a Citizens Declaration to effect the complainant's arrest. Deputy 2 reviewed video evidence provided by security personnel, went to the complainant's residence, and arrested him for violation of Penal Code § 22210, Possession of a Billy Club. A search warrant was served for the complainant's apartment, and deputies recovered a number of firearms, ammunition and other weapons, and the complainant was charged with multiple violations of Penal Code §§ 22210, Sap and Similar Weapons; Prohibition Against Manufacture, Importation, Sale or Possession, 417(a)(1) Brandishing a Weapon other than a Firearm, and 417(a)(2) Brandishing a Firearm. The evidence showed that the complainant was arrested, and the arrest was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to provide an interpreter for the complainant.

Board Finding: Action Justified

Rationale: The complainant said he requested a German interpreter during his interview, and when none was provided, he spoke only in German. Deputy 2 reported that he attempted to provide the complainant with Miranda advisements in English prior to interrogation, and the complainant responded only in German. Although Deputy 2 did not understand German, he stated that the complainant did not request an interpreter. At no time during the recorded interview was Deputy 2 heard to deny the complainant an interpreter. Case law, with respect to Miranda advisements, indicates that everyone about to undergo custodial interrogation is entitled to Miranda advisements, and the courts consider the "totality of the circumstances," including the suspect's age, background, intelligence, experience, and conduct, in determining whether the waiver was valid. Further, when dealing with a suspect who does not speak English, the warnings are to be provided in a language the suspect understands. Similarly, a suspect's difficulty in understanding the language in which the warnings are given impact whether a Miranda waiver was knowing and intelligent. Video and audio evidence obtained by Sheriff's detectives prior to the complainant's arrest showed that the complainant, a U.S. military veteran, understood the English language. Deputy 2 was aware of the complainant's English-speaking abilities prior to the interview, and was under no obligation to provide the uncooperative complainant with an interpreter. Because of the complainant's failure to cooperate, Deputy 2 terminated the interview and the complainant was processed into jail. Deputy 2's conduct was lawful, justified and proper.

3. Misconduct/Discourtesy – Deputy 2 mocked the complainant for wearing fingernail polish.

Board Finding: Not Sustained

Rationale: The complainant stated he was mocked for wearing fingernail polish, because of some items found in his apartment. Deputy 2 reported that he noticed all of the complainant's fingernails were painted black, and asked if the women's apparel found in the residence belonged to the complainant. Deputy 2 denied that the complainant was mocked during the conversation. There was no audio recording of this encounter and therefore, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 3 played an internet video of “Adolf Hitler” hate speeches.

Board Finding: Sustained

Rationale: The complainant stated that Deputy 3 played video and audio of speeches from Adolf Hitler talking about killing Jews, and other non-Germans, while he was being processed for booking. Deputy 3 reported that the complainant was very agitated and yelling loudly in German while at the Patrol Station, so he elected to play a YouTube video of Adolf Hitler speaking to a large crowd. Deputy 3 said he did not understand German, and therefore did not know the content of the speeches. The act, which served no legitimate purpose, was in violation of Sheriff's Policies and Procedures 2.4, Unbecoming Conduct; 2.22, Courtesy; 2.30, Failure to Meet Standards; 2.36, Use of Department Equipment; 2.48, Treatment of Persons in Custody; and 2.53, Discrimination. The act did occur and was not justified.

5. Misconduct/Discourtesy – Deputy 4 called the complainant a “Fucker” and a “Faggot.”

Board Finding: Not Sustained

Rationale: The complainant said that Deputy 4 called him a “Fucker” and a “Faggot.” All deputies involved in the complainant's apprehension denied that they made, or heard, any such statements. No evidence directly linked any deputy to the alleged statements, but it was plausible that one or more of those deputies present used the purported language. There were no audio/video recordings available or independent witnesses; therefore, there was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 1 dissuaded the complainant from filing a complaint.

Board Finding: Not Sustained

Rationale: The complainant stated that he attempted to file a complaint about the Hitler and Nazi audio/video, and a female deputy dissuaded him from making the complaint. Deputy 1 acknowledged that the complainant had requested to file a complaint, and that he was subjected to a pat down search because of his prior history with weapons. Deputy 1 denied that she attempted to dissuade the complainant from filing a complaint, but did not recall if she provided the complainant with a complaint form. After the pat down search Deputy 1 said she would take the complaint, but the complainant reportedly was no longer comfortable with the situation and departed. There were no independent witnesses or audio recordings of this encounter; therefore, there was insufficient evidence to prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 2 failed to comply with court orders to release property.

Board Finding: Action Justified

Rationale: The complainant stated that Deputy 2 failed to release his military identification card and \$121 dollars in cash when requested, in accordance with a court order. The complainant reported to the Station with a court order and requested that the property identified in the court order be released. The property in question was not physically located at the station and needed to be requested from central evidence/property, with delivery expected the following week. On the following day, the complainant sent a friend to the Patrol Station with a note authorizing the pick-up of his property, but the property could not be released at that time. Deputy 2 did not immediately release the complainant's property when presented with court orders, because the property was not physically located at the Patrol Station. One week later, Deputy 2 facilitated the release of the complainant's property after it was received from central evidence/property. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

14-141

1. Misconduct/Procedure – Deputy 1 designated the complainant an improper housing classification, despite a doctor’s order for medical housing.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 improperly classified him and assigned him to general population housing, despite a doctor’s order for medical housing. The purpose of the Inmate Classification System is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates, while assisting detention managers and staff in making sound decisions regarding inmate population management. During intake, the complainant underwent a classification evaluation, which included a classification interview, a review of the complainant’s criminal history, and a review of all hazards and instructions related to the complainant, to determine his appropriate security level and housing assignment. Based on this evaluation, the complainant was classified a Level 3-Medium Security inmate and cleared for General Population housing. Contrary to the complainant’s assertion, there existed no medical or psychiatric doctor’s orders directing that he be moved to medical housing. Deputy 1 classified and housed the complainant according to his security level, and this action was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to respond to the complainant’s numerous grievances and inmate requests regarding his housing assignment.

Board Finding: Not Sustained

Rationale: The complainant alleged that he filed numerous grievances regarding his housing assignment, to which Deputy 2 failed to respond. Detentions Policy N.1, Grievance Procedure, requires that when a written grievance is delivered to a deputy or staff, he or she will sign it so that the signature is recorded on both pages of the two-part NCR form, and the second page of the grievance form is to be given back to the inmate as a signed receipt. If the grievance is collected from a grievance box, the deputy will sign it and ensure that the second page of the grievance form is returned to the inmate concerned. The complainant reported that he did not have any grievance receipts in his possession. Moreover, a review of the Jail Information Management System (JIMS) showed that the only grievances on file related to medical issues and jail conditions – issues outside the purview of sworn staff - and none were found related to the complainant’s housing assignment. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 2 failed to mail out the complainant’s letters to his attorney and Veteran Justice Outreach personnel.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 failed to mail out his letters to his attorney and Veteran Justice Outreach personnel. During the course of the investigation, however, the complainant subsequently reported that his attorney and Veteran Justice Outreach personnel had received his letters, but they were delayed 2-3 weeks from the time they were sent. The length of the delay of the complainant’s mail cannot be determined, nor whether the delay was caused by detentions staff or by the U.S. Postal Service. That withstanding, the complainant acknowledged that mail sent was received, showing that the actions of Deputy 2 were lawful, justified and proper.

15-017

1. Excessive Force – Deputies 2 and 3 “attacked” and threw the complainant to the ground, causing serious injuries.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputies 2 and 3 “attacked” and threw him to the ground during an incident involving the use of force. The complainant was observed purposely exposing his genitalia to the entire module during laundry exchange. Deputies 1 and 2 instructed the complainant multiple times to cover himself

with his blanket, but he ignored their instructions in violation of the facilities' rules and regulations. Deputies 2 and 3 attempted to handcuff the complainant in order to escort him from the module, when the complainant grabbed the upper tier railing and actively resisted the deputies' efforts to control him. Deputies 2 and 3 used their combined body weight to take the complainant to the ground, and applied several knee strikes to his ribcage area, until the complainant surrendered his hands and was controlled. The complainant was seen by medical following this incident, and x-rays taken later did not show any fractures or serious injuries. Detentions Policy I.89, Use of Force, allows detentions deputies to use any physical force necessary and objectively reasonable in the defense of self or others, and to overcome resistance. Deputies 2 and 3 utilized department approved Use of Force control compliance techniques, and their actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 placed the complainant in a cell with no clothing or bedding.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 placed him in a cell while naked, and did not provide clothing or bedding for over 24 hours. Following a force incident, the complainant was escorted to the Medical Dispensary for treatment of his injuries and then to Disciplinary Isolation, pending a Disciplinary Hearing for his rules violation. During a use of force involving deputies, the complainant's blanket fell off, and because of his aggressive behavior, it was not safe to remove the handcuffs to allow the complainant to dress prior to moving him. Furthermore, when the complainant was placed in the Disciplinary Isolation cell, deputies were unable to open his cell door to provide clothing because the complainant acted violently, spat on the cell door window, and informed deputies that he had MRSA and AIDS, threatening to infect them with these diseases. Deputy 1 reported that the cell door was not opened due to the complainant's aggressive behavior and to prevent any further use of force. Deputy 1 further reported that it would have been the responsibility of deputies assigned to the complainant's new temporary housing to provide clothing and bedding, and she was unaware as to when these items were provided. Deputy 1 acted properly in placing the complainant, while naked, into a cell because of significant safety issues, and this action was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 4 failed to provide the complainant clothing and bedding for over 24 hours.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to provide him with clothing and bedding for over 24 hours after he was placed in a Disciplinary Isolation cell. The complainant was placed in Disciplinary Isolation following an incident in which force was used. The complainant was aggressive and acted violently during this placement, informing deputies that he had MRSA and AIDS, and threatened to spit on deputies to infect them with these diseases. Sheriff's records do not document how long the complainant's aggressive behaviors persisted, or when the situation had settled sufficiently so that housing deputies could provide clothing and bedding. Absent this documentation, there is insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 4 failed to respond to the complainant's grievances regarding a use of force incident, and the "cruel and unusual treatment" he allegedly received.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 4 failed to respond to multiple grievances filed regarding a force incident, and other "cruel and unusual treatment" by deputies. The complainant reported being in possession of grievance receipts filed against these deputies, but failed to provide this documentation for CLERB's investigation when requested. The grievances filed by the complainant that are documented in sheriff's records, related only to medical issues, over which CLERB has no jurisdiction. Absent documentation of filed grievances against subject deputies, there was insufficient evidence to either prove or disprove the allegation.

15-021

1. Misconduct/Procedure – Deputy 1 failed to investigate a crime and apprehend a criminal after the complainant supplied investigative leads.

Board Finding: Action Justified

Rationale: The complainant reported that the Sheriff's department had a total lack of interest for investigating this case, identifying what happened and why, and apprehending the criminal. Witnesses provided information concerning a female and unknown male who reportedly fled out of state immediately following this incident. Deputy 1 reported that he pursued this information and attempted to locate and/or interview the female, who was uncooperative. He also contacted out of state police detectives for information on the suspect's whereabouts, but was unsuccessful in developing any leads. An arrest is valid only if supported by probable cause. The involved deputies were in compliance with Sheriff's Policy & Procedure, and the ongoing investigation was re-assigned when Deputy 1 transferred to a different station.

15-062

1. Misconduct/Discourtesy – Deputy 1 “scolded” and “berated” the complainant for interfering during a contact involving his neighbor.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that Deputy 1 “scolded” and “berated” him in front of his family during a contact involving a hallucinating neighbor. The complainant contacted sheriff's dispatch after a neighbor was observed outside wielding a machete, while stating that “people” were attempting to rob him and others in the neighborhood. Deputies arrived on scene, and while attempting to control the troubled neighbor, instructed the complainant to “stop talking and leave” when the complainant attempted to assist deputies with the neighbor. The complainant complied, but felt that later in the contact, Deputy 1 spoke to him discourteously, and demonstrated an “attitude” and “tone” that he felt to be unprofessional and unnecessary. The complainant confirmed that Deputy 1 did not yell at him nor use any expletives during this contact. The complainant's subjective feelings about the deputy's “attitude” and “tone” are acknowledged; however, the complaint lacked a prima facie showing of misconduct. Such complaints are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

15-105

1. Misconduct/Discourtesy – Deputy 1 sent “hate mail” correspondence to the complainant.

Board Finding: Sustained

Rationale: The correspondence sent by Deputy 1 did not target a protected class associated with race, religion, ethnicity/national origin, sexual orientation, disability, or gender, and therefore, could not be legally termed as “hate mail.” However, the written comments expressed by Deputy 1, violated Sheriff's Policy & Procedure 2.4, Unbecoming Conduct and 2.22, Courtesy, in that no member shall use coarse, profane or insolent language in the performance of his or her duties. The evidence supported the allegation and the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 1 misused departmental equipment.

Board Finding: Sustained

Rationale: Sheriff's deputies are prohibited from utilizing departmental computers for anything other than business related matters. Deputy 1 violated Sheriff's Policy & Procedures 2.36, Use of Department Equipment, and 6.21, Automation: Departmental Systems, when he used Sheriff's department equipment to send electronic correspondence to the complainant, which expressed his personal opinion(s). The evidence supported the allegation and the act or conduct was not justified.

End of report