

VIRGINIA:

IN THE CIRCUIT COURT OF HENRY COUNTY

CM10000046-00

IN RE: REPORT OF SPECIAL GRAND JURY
EMPANELLED ON SEPTEMBER 19, 2007

ORDER

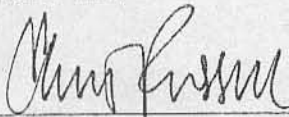
THIS day came the Special Prosecutor and moved that the Report of the special grand jury dated January 22, 2010 be made available to the public. In accordance with Virginia Code § 19.2-213, it is so ordered.

Entered this 1st day of February, 2010.



The Honorable David V. Williams
Judge

I ask for this:



Christopher B. Russell
Special Prosecutor
Commonwealth's Attorney
P.O. Box 150
Buena Vista, VA 24416
(540) 261-8700; (540) 261-5333 fax

Copy to
Sp. Pros.
VSP, HCSO,
Admin

VIRGINIA:

IN THE CIRCUIT COURT OF HENRY COUNTY

IN RE: **REPORT OF SPECIAL GRAND JURY**

By Order entered by the Circuit Court of Henry County, Virginia on September 19, 2007, this Special Grand Jury was empanelled to investigate and report upon conditions that involve or tend to promote criminal activity and consider bills of indictment pursuant to Virginia Code § 19.2-206(A)(iii).

Pursuant to law and based on reports from the Grand Jurors that the Grand Jury was making progress in its investigation and desired to continue its work beyond the time period initially authorized, the term of the Special Grand Jury was extended numerous times by Order of the Court. In one such Order, entered March 5, 2009, the Court further found that Robert L. Bushnell, Henry County Commonwealth's Attorney and counsel to the Special Grand Jury, was so situated with respect to certain matters being investigated by the Special Grand Jury so as to render it improper for him to continue to act as counsel for the Special Grand Jury. Accordingly, pursuant to Virginia Code § 19.2-155, Christopher B. Russell, Commonwealth's Attorney for the City of Buena Vista, Virginia, was appointed to act in place of and otherwise perform the duties and exercise the powers of the Commonwealth's Attorney of Henry County in regard to these proceedings. The term of the Special Grand Jury was extended most recently by Order of the Court entered November 24, 2009.

The following individuals were appointed and duly sworn as Special Grand

Jurors: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

██████████, ██████████, ██████████, and ██████████. Mr. ██████████ was appointed foreman.

DESCRIPTION OF PROCEEDINGS

Pursuant to § 19.2-206 of the Code of Virginia and the directives of this Court, the Special Grand Jury conducted an investigation of the matters referred and, pursuant to § 19.2-213, files this Report.

SUMMARY OF PROCEEDINGS

The Special Grand Jury convened many times, including the following dates: March 19, 2008, May 29, 2008, July 10, 2008, August 26, 2008, September 12, 2008, October 30, 2008, November 14, 2008, May 11, 2009, August 4, 2009, September 15, 2009, November 23, 2009, and January 22, 2010. Evidence was heard in the form of oral testimony, physical examination of evidence, and the review and examination of documentary evidence. Among the witnesses were current and former members of the Henry County Sheriff's Department, investigators and agents of the Virginia State Police, and current and former inmates of the Henry County jail. Witnesses were given broad access to the Special Grand Jury and were given the opportunity to identify other witnesses that may provide relevant information for purposes of the Special Grand Jury's consideration.

Each witness was individually sworn to tell the truth, the whole truth, and nothing but the truth and the witnesses were individually instructed that they did not have to answer any question or produce any document that would or might tend to incriminate them, that they had the right to counsel of their own choice present during testimony, and that they may be called upon to testify in any case that may grow out of the investigation

and report of the Special Grand Jury. All witnesses that chose to have legal counsel testified in the presence of that counsel.

LEGAL BACKGROUND

The Special Grand Jury considered a number of legal authorities during its deliberations. Among these authorities are §§ 15.2-1627, 18.2-64.2, 18.2-434, 18.2-474, 18.2-474.1 and 53.1-203 of the Code of Virginia (1950) as amended, which are reprinted here in relevant part:

§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants

...

B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part of the department of law enforcement of the county or city in which he is elected or appointed, and shall have the duties and powers imposed upon him by general law, including the duty of prosecuting all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of \$ 500 or more, or both such confinement and fine. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126.

§ 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty

An accused shall be guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender if he or she is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, ...; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial defendant or posttrial offender; knows that the inmate, probationer, parolee, detainee, or pretrial defendant or posttrial offender is under the jurisdiction of the state or local correctional facility, a regional jail, ...; and carnally knows, without the use of force, threat or intimidation (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, ..., a local or regional jail for

the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program or agency. Such offense is a Class 6 felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration.

§ 18.2-434. What deemed perjury; punishment and penalty

If any person to whom an oath is lawfully administered on any occasion willfully swears falsely on such occasion touching any material matter or thing, ..., he is guilty of perjury, punishable as a Class 5 felony. Upon the conviction of any person for perjury, such person thereby shall be adjudged forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia, or of serving as a juror.

§ 18.2-474. Delivery of articles to prisoners

No person shall willfully in any manner deliver, or attempt to deliver, to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, any article of any nature whatsoever, without first securing the permission of the person in whose charge such prisoner is, and who may in his discretion grant or refuse permission. Any person violating this section shall be guilty of a Class 1 misdemeanor.

§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 of Title 54.1 or marijuana, shall be guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner, firearms, ammunitions, or explosives of any nature shall be guilty of a Class 3 felony.

§ 53.1-203. Felonies by prisoners; penalties

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

1. Escape from a correctional facility or from any person in charge of such prisoner;
2. Willfully break, cut or damage any building, furniture, fixture or fastening of such facility or any part thereof for the purpose of escaping, aiding any other

prisoner to escape therefrom or rendering such facility less secure as a place of confinement;

3. Make, procure, secrete or have in his possession any instrument, tool or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;

4. Make, procure, secrete or have in his possession a knife, instrument, tool or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;

5. Procure, sell, secrete or have in his possession any chemical compound which he has not lawfully received;

6. Procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana;

7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;

8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility;

9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system, equipment, or sprinklers within any correctional facility; or

10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.

For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be guilty of a Class 6 felony. For a violation of subdivision 6, he shall be guilty of a Class 5 felony. If the violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a mandatory minimum term of confinement of one year, which shall be served consecutively with any other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape shall be credited for the purpose of parole toward the sentence or sentences, the service of which is interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other sentence.

PURPOSE

The work of the Special Grand Jury is to investigate and report upon conditions in Henry County that involve or tend to promote criminal activity and consider bills of indictment.

FINDINGS

The grand jury finds that during the last five years there have been repeated instances of unprofessional and criminal conduct by certain members of the Henry County Sheriff's Department with regards to the Henry County jail. This conduct falls into five general categories. The categories identified in the following list will be discussed in detail.

1. Correctional officers inappropriately passing messages and materials between inmates in different cell blocks.
2. Correctional officers illegally smuggling prohibited materials such as cigarettes into the jail.
3. Correctional officers illegally smuggling or facilitating the smuggling of drugs into the jail.
4. Male correctional officers having inappropriate sexual and sexually charged contact with female inmates ranging from casual flirtation to carnal knowledge to behavior so perverse as to be outside the scope of the criminal law.
5. Failure of Sheriff's Department supervisors and administrators to take adequate steps to prevent and eliminate the foregoing behavior, including general deficiencies in basic training of officers and correctional officers and specific deficiencies related to internal investigations and communication with the Office of the Commonwealth's Attorney.

With regard to category (1): passing materials between inmates by correctional officers, the grand jury finds substantial direct evidence of this behavior in the Henry

County Jail on numerous occasions. The grand jury believes that this conduct could have serious adverse consequences if the materials included contraband or communication concerning testimony in pending trials, future criminal conduct or matters that could lead to violence amongst inmates. However, delivering an item from one inmate to another is not criminal if the guard had no idea what he or she was delivering. The grand jury feels that a correctional officer who is given an item by one inmate with a request that it be delivered to another inmate should take possession of the item and promptly turn it over to a supervisor so that its nature can be determined and the item and the inmate who sought to have it delivered can be appropriately handled. Any delivery of unknown materials between inmates is a serious dereliction of duty and compromises the security of inmates and correctional officers.

With regard to category (2): smuggling of cigarettes and other prohibited materials into the jail, the grand jury finds that on numerous occasions between 2004 and 2007, Deputy Lois Markland provided cigarettes to at least half a dozen inmates, in defiance of the Sheriff's prohibition of tobacco products in the jail. The grand jury believes that each of these transactions is a misdemeanor crime under Virginia law. However, since each transaction occurred more than one year prior to its discovery, the grand jury concludes that any indictment for the act of delivering the prohibited material into the jail is time-barred by the applicable Virginia statute of limitations. Lois Markland testified under oath to the grand jury that she never delivered even a single cigarette to any inmate. The grand jury concludes that her testimony in this regard included willfully false statements of material facts; therefore, after deliberation the grand jury has returned a true bill of indictment against her alleging perjury.

Deputy Brian Gilley admitted to the grand jury that he delivered cigarettes and alcohol to female inmates on several occasions more than one year prior to his admission. The grand jury believes that each of these transactions is a misdemeanor crime under Virginia law. However, since each transaction occurred more than one year prior to its discovery, the grand jury concludes that any indictment for the act of delivering the prohibited material into the jail is time-barred by the applicable Virginia statute of limitations.

With regard to category (3) involving the illegal smuggling of drugs into the Henry County Jail, the grand jury finds that this activity did occur in 2004. Because of uncertainties involving the preservation and/or identification of evidence necessary to pursue criminal convictions resulting from this conduct, upon deliberation the grand jury concludes it is unable to return any true bills of indictment.

With regard to category (4) and sexual contacts between male correctional officers and female inmates, the grand jury heard testimony that instances of carnal knowledge as defined in Virginia Code § 18.2-64.2 have occurred in the jail during the past five years. After mature deliberation, the grand jury concludes that the weight of this evidence does not justify returning any true bills of indictment under § 18.2-64.2. Nevertheless, the sexual and sexually charged contact is a grave concern. In addition to reports of carnal knowledge, the grand jury heard evidence that female inmates danced provocatively in the presence of male officers. The grand jury heard evidence that female inmates intentionally and indecently exposed their private parts to male officers. Most disturbing, a male officer testified to the grand jury that he photographed his penis

while on duty in the jail, that he displayed the photograph to at least one female inmate, and that he delivered to a female inmate a receptacle containing his semen. The grand jury and State Police Agents learned for the first time about this particular incident many months after it occurred and long after any physical evidence of this disgusting behavior, perhaps thankfully, disappeared. Accordingly, successful prosecution is not possible. Additionally, aspects of this behavior appear to be outside the scope of the criminal law.

During its investigation of the matters related to sexual contacts, Deputy Glenn Stokes testified under oath to the grand jury regarding a certain individual who was an inmate at the Henry County jail during the time Stokes worked there. The grand jury concludes that Stokes' testimony in this regard included willfully false statements of material facts; therefore, after deliberation the grand jury has returned a true bill of indictment against him alleging perjury.

The grand jury finds that the presence of drugs and contraband and sexually charged conduct in the jail reflects glaring failures on the part of Sheriff's Office supervisors and administrators to take adequate steps prevent and eliminate this behavior. Specifically, these supervisory failures as outlined in category (5) above include the following: (i) an internal practice of giving far too much deference to correctional officers suspected of inappropriate or illegal conduct; (ii) the failure of the Henry County Sheriff's Administration to consult with the Commonwealth's Attorney or pursue any criminal charges related to these activities in the Fall of 2004; (iii) ignoring or minimizing complaints about specific correctional officers from inmates and from other officers; (iv) the inappropriate administrative response to a letter from the

Commonwealth's Attorney in March 2006 regarding many of the concerns outlined in this report; (v) inadequate internal investigations of illegal behavior by correctional officers; (vi) the apparent effort by the Sheriff's Department administration to halt a pending internal investigation of contraband smuggling by a correctional officer; (vii) a general administrative failure to ensure adequate basic training of correctional officers.

CONCLUSIONS AND RECOMMENDATIONS

The grand jury finds that in addition to the deplorable, irresponsible actions of correctional officers with regard to incidents involving drugs in the jail, other contributing factors include a deeply flawed jail trustee system. Jail trustees – inmates with special privileges who are permitted to move around the jail much more freely than the jail population at large – have too much privilege. For example, trustees have liberal access to the jail's control room. Insufficient supervision of trustees in and around the control room contributed to the presence of illegal drugs and contraband inside the jail. The grand jury believes that the trustee program requires thorough examination and reform including markedly increased supervision of trustees in order to ensure the safety of the jail population and the lawful and orderly operation of the jail.

In addition to the flawed trustee system, the grand jury finds that the system involving inmate financial accounts, known as "canteen" funds, requires thorough examination and reform. Inmates are permitted to keep too much money in individual jail accounts. Excessive balances do not serve any legitimate purpose in the operation of the jail. The grand jury heard evidence of numerous individual canteen balances that were excessive, including at least one balance that exceeded \$1,000.00. The grand jury

finds that insufficient regulation of these accounts contributed to the illegal smuggling of drugs and other contraband into the jail, as well as the illegal, unsafe circulation of drugs and contraband inside the jail. The grand jury suggests a strict cap on an inmate's canteen balance as an example of a policy change.

The grand jury finds that during the past several years Sheriff Perry has made commendable reforms, not the least of which is recognition that serious problems have existed in the Henry County jail related to the safety of inmates and officers and the integrity of this vital component of our local justice system. Other noted reforms and good faith actions by Sheriff Perry include: video cameras in the jail; cooperation with this grand jury investigation; the creation of new positions of Lieutenant of Professional Standards and Internal Affairs Sergeant.

Much more is needed in the way of reform. The Sheriff's Office must examine any written or unwritten policy or practice that involves discouraging contact with the Commonwealth's Attorney. The Commonwealth's Attorney is part of the department of law enforcement in this county. Conducting successful prosecutions, achieving public safety, securing accountability for offenders, and meeting other goals of the justice system demands effective and open communication and dialogue within the department of law enforcement.

In addition, the Sheriff's Office must reach out to other agencies and resources for training as to internal affairs investigations. Specifically, training is needed regarding the subtleties and challenges inherent in effectively interviewing an officer under suspicion or a probably biased individual making a complaint against an officer. The officers need

more education of the subtleties of internal and criminal investigations involving officers as illuminated in the United States Supreme Court's decision in *Garrity, et al. v. New Jersey*. To achieve these imperatives, the Sheriff's Office should seek a closer working relationship with the Virginia State Police, the Virginia Department of Criminal Justice Services, the Virginia Sheriffs' Association, and specialized law enforcement training providers such as John Reid and Associates.

The Sheriff's Office should also make concerted efforts to work with State and Federal law enforcement agencies to review information obtained by these agencies in criminal investigations related to the Henry County Sheriff's Department and its personnel. Even if such information did not meet statutory criteria to result in criminal charges, it may nevertheless be very useful to administrators in seeking to address the concerns, problems and issues outlined in this report.

In conclusion, during the past five years serious problems have continued to exist in the Henry County jail related to the safety of inmates and officers and the integrity of this vital component of our local justice system. These problems have included criminal behavior in the jail, failures of supervision and training, inadequate operating procedures, and inadequate administrative responses to the discovery of problems. In addition to the safety concerns outlined herein, the grand jury believes that these problems reflect a larger, pervasive drug problem in this county that cannot be overemphasized. Drug enforcement must be vigilant. More generally, the problems in the jail revealed during the course of this special grand jury investigation reflect poorly on our fine community and require immediate action. Sheriff Perry is commended for several accomplished reforms. Much more is needed. Henry County citizens deserve an outstanding,

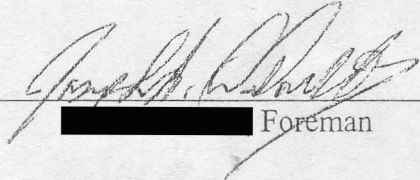
professionally trained law enforcement team of which they can be confident and proud.
Above all, our citizens deserve the safest community possible.

EXPRESSION OF GRATITUDE AND RESPECT

The Special Grand Jury expresses its sincere appreciation to Henry County Commonwealth's Attorney Robert L. Bushnell and Special Prosecutor Christopher B. Russell for their counsel and assistance and to the Virginia State Police for the outstanding work of the special agents assigned hereto.

SUBMISSION

This, the unanimous Report of the Special Grand Jury, is respectfully submitted
this 22nd day of January, 2010.


[Redacted] Foreman