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LACK OF COMMON SENSE OR NEGLIGENCE?

BACKGROUND

On May 8, 2009, the Visalia Times-Delta, a local newspaper serving Tulare County since 1959, published an article titled, *Officials: Zapalac impeded probe*. Some of the excerpts within the article, state the following; “Woodlake’s police chief and some of his officers hampered an investigation into whether a stray bullet that struck a man east of Exeter was fired by Woodlake police at a shooting range, according to Tulare County Sheriff’s Department and District Attorney’s Office records. At times the officers refused to speak with sheriff’s detectives investigating the case, claiming they were directed to do so by superiors, according to reports on the Jan. 16 shooting of Leland Perryman. Police Chief John Zapalac refused to release range-training records, the reports say”....Tomas Alvarado, who said he had been in the plum orchard repairing an irrigation valve less than three hours before Perryman was shot, told sheriff’s Detective Robert Fernandez that he’d heard gunfire from the shooting range southeast of the orchard. ‘Tomas stated he had returned to his pickup truck to retrieve a wrench, and while walking back into the orchard he heard a bullet pass by in front of him.’ Fearing for his safety, he left the orchard, the report states. Although the District Attorney’s Office believes Perryman was wounded by one of the Woodlake officers, ‘we are unable to show which officer fired the bullet that struck the victim,’ states a report by Assistant Attorney, Don Gallian. Prosecutors did conclude that none of the officers’ actions constituted a crime. They had no reasonable expectation that firing at a shooting range might endanger anyone, Gallian’s report states.”

REASONS FOR INVESTIGATION

The 2009 - 2010 Tulare County Grand Jury received a citizen’s complaint relative to some of the issues published by the Times-Delta, and other serious matters that warranted an investigation.

PROCEDURES FOLLOWED

1. Examined relevant documents.
2. Interviewed relevant witnesses.
3. Visited Exeter Gun Range and surrounding area.

FINDINGS

1. On January 16, 2009, ten sworn police officers from the Woodlake Police Department were scheduled for quarterly qualifications at the Exeter gun range (Range). The training was scheduled to commence at 11:30 AM and end at 5:00 PM.

2. On the date of training the officers were required to bring all of their department issued firearms and equipment to the range.
3. The shooting scenarios were set up by the Woodlake Police Department’s Range Master on January 16, 2009, at approximately 9:30 AM for the training.
4. The shooting scenarios were teams of two officers shooting at the same time, one from a kneeling or squatting position using their handgun and the other officer from a standing position using a rifle.
5. There were more officers shooting at the Range than those scheduled for training that day.

6. Some of the duties of a Range Master include the following:
 - a. Plan, schedule and conduct firearms training activities.
 - b. Firearms instructor training.
 - c. Qualifications and weapons maintenance.
 - d. Train officers in gun use and safety.
 - e. Provide firearms qualification testing.
7. The Range sits at a higher elevation than nearby orchards. Adjacent to the west-side of the Range is the Friant-Kern Canal with residential homes on the opposite side, within half a mile of the Range.
8. The Range was built with a cement pad that is 50 feet wide by 150 feet in length, which contains several shooting lanes with markings to identify the distance of the lanes.
9. The lanes run from southwest to northeast, with a dirt berm directly northeast of the shooting lanes that is used as a buffer to keep the bullets from exiting the Range. There are two lower wing berms that taper down from the main berm on each side.
10. Law enforcement firearm safety rules include the following:
 - a. Always keep your firearm pointed in a safe direction,
 - b. Always be certain that your target and the surrounding area are safe before firing.
11. There were no safety rules posted at the Range.
12. Evidence revealed that some of the targets were set up in such a manner

that shooting at them from a kneeling position may have caused the bullets to go over the lower dirt berm in the direction of the nearby populated areas.

13. It was reported in local newspaper that aside from the victim who was shot on that day, another individual heard bullets passing near them during the time frame the Range was being used by the Woodlake Police Department.
14. The Woodlake Police Chief refused to provide documents requested by the Tulare County Sheriff's investigation team regarding the January 16, 2009 shooting at the Range.
15. Penal Code section 246.3 entitled, Discharge of Firearm or BB Device in Grossly Negligent Manner That Could Result in Injury or Death of Person reads in part as follows:

“ (a) Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.”

CONCLUSIONS

Safety rules were not followed by the Woodlake Police Officers at the Range on January 16, 2009, in violation of Penal Code section 246.3.

RECOMMENDATIONS

1. Tulare County District Attorney re-open and re-examine the accidental shooting of January 16, 2009 at the Range.

2. City of Exeter make the following improvements to the Range:
 - a. Raise height of wing berms to match that of the main impact berm.
 - b. Permanently post Range Rules at the Range.
 - c. Include in Range Rules the direction of shooting.
 - d. Install a Hot Range Flag to be used during target practice.
3. All law enforcement agencies cooperate and work together.
4. All Range users follow all Range rules.

REQUIRED RESPONSES

City of Exeter
City of Woodlake
Woodlake Chief of Police, John Zapalac
Exeter Chief of Police, Clifton Bush
Tulare County District Attorney