

Special Grand Jury

Final Report

2019/2020



April 9, 2020

As reviewed by the Honorable Judge Nathan Tod Young

This 2019/2020 Special Grand Jury report provides an in-depth view of the events leading to Douglas County Board of Commissioners' formal written request to the District Judge for the Ninth Judicial District of the State of Nevada, the Honorable Nathan Tod Young, to "impanel a grand jury for the limited and specific purpose of investigating the theft and misuse of Douglas County assets."¹

After reviewing the timeline, our final report consists of six sections designed to capture all aspects of our work: Introduction, Acknowledgements, The Process, Investigative Findings, Conclusion, and Recommendations.

TIMELINE LEADING TO IMPANELING SPECIAL GRAND JURY

On Wednesday, January 25, 2017, a 17-member Douglas County Grand Jury was impaneled by District Judges for the Ninth Judicial District of the State of Nevada, the Honorable Nathan Tod Young and the Honorable Thomas Gregory. This autonomous group of citizens was empowered by the District Court and the State of Nevada to investigate the workings of county government operations and to make recommendations for corrective actions when warranted.²

During the course of their investigations, Constable Paul Gilbert provided the Grand Jury information regarding possible embezzlement and theft of county property in the Department of Public Works, Vehicle Maintenance Division. The following timeline was presented by District Attorney Mark Jackson during testimony to the Special Grand Jury December 12, 2019:³

- March 20, 2017: Douglas County Manager Larry Werner received information regarding possible thefts of tires and county property.
- March 21, 2017: County Manager informed Undersheriff Paul Howell of the information and the Undersheriff initiated a criminal investigation that day.
- March 24, 2017:
 - County Manager Larry Werner informed Douglas County District Attorney (DA) Mark Jackson of possible thefts of tires and county property.
 - The DA, County Manager, and Human Resources Director Wendy Lang discussed legal issues and Constitutional and statutory limitations on the DA conducting an internal investigation vs. a criminal investigation. The immediate

¹ Douglas County District Attorney Mark Jackson's PowerPoint timeline

² 2017/2018 Grand Jury Final Report, Introduction i

³ Douglas County District Attorney Mark Jackson's PowerPoint timeline

concern was to protect county assets and stop theft/embezzlement. The decision was made that the DA's Office would conduct an internal investigation. This meant that a special prosecutor/Attorney General would be required if the parallel criminal investigation resulted in the filing of criminal charges.

- March 27, 2017: Douglas County DA and DA Chief Investigator Michael Marty met with the County Manager and Human Resources Director. The County Manager signed a memo authorizing an internal investigation and commissioned the DA Chief Investigator to investigate the allegations of misconduct.
- March 30, 2017:
 - As a result of the internal investigation that began March 27, 2017, two employees within the Public Works Department, Christopher Oakden and David Forsyth, were placed on Administrative Leave with pay pending further investigation.
 - Douglas County Sheriff's Office (DCSO) initiated an internal inquiry not requiring special notices or memos.
- April 6, 2017:
 - DCSO requested the Nevada Division of Investigation (NDI) take over the criminal investigation.
 - The County began performing a physical audit of all tires stored/located at the Fleet Services yard.
- April 17, 2017: Christopher Oakden's discharge from county employment was finalized.
- April 24, 2017: David Forsyth's discharge from county employment was finalized.
- August 8, 2017: Fleet Services Technician Mario Hernandez resigned prior to meeting with DA Investigator.
- October 6, 2017: Public Works Director Carl Ruschmeyer resigned during pending internal investigation.
- March 29, 2018: Chief Financial Officer Vicki Moore resigned during pending internal investigation.

The 2017-2018 Grand Jury final report was completed March 21, 2018, prior to NDI completing the criminal investigation August 31, 2018.

INTRODUCTION

On August 31, 2018, NDI submitted the Case Summary Report and supporting documentation of the criminal investigation into possible embezzlement, to the Nevada Attorney General's Office for review for prosecution. The Nevada Attorney General's Office completed the review of the NDI investigation December 21, 2018 and sent a letter to NDI declining criminal prosecution.

“The Attorney General’s Office reached the conclusion that there was not sufficient evidence to prosecute anyone other than Oakden and due to his death, the Attorney General’s Office will be taking no further action and considers the matter closed.”⁴

In March 2019, the Board of County Commissioners (BOCC) made a formal written request to the Honorable Nathan Tod Young, District Judge for the Ninth Judicial District of the State of Nevada, to “impanel a grand jury for the limited and specific purpose of investigating the theft and misuse of Douglas County assets.”⁵ The process of recruiting citizens to serve on a special grand jury commenced soon after.

On Wednesday, November 6, 2019, a 17 member Douglas County Special Grand Jury was impaneled by the Honorable Nathan Tod Young, District Judge for the Ninth Judicial District of the State of Nevada. Five alternates were also selected.

The Special Grand Jury was impaneled for a specific limited purpose to act impartially, without prejudice or preconceived opinion, to review the embezzlement of more than one million dollars (\$1,000,000) in tires and unknown fuel, tools, and supplies from Douglas County taxpayers in a scheme, later termed “Tire-gate” to:

- Take an in-depth look at all principals (to crimes) who may have been complicit in Douglas County employee Christopher Oakden’s effort to defraud Douglas County of more than one million dollars (\$1,000,000) over a period of at least six years.
- Review previous Grand Jury recommendations and resulting changes since the March 2018 Grand Jury report. (e.g. new policies, audit procedures, timelines, training, employee culture).
- Determine possible criminal recourse to prosecute: Oakden family members: Jane, Jacque, Shawn, Matt, and James Towers; former Douglas County Chief Financial Officer Vicki Moore; former Fleet Service Technicians Dave Forsyth and Mario Hernandez; and Vasile Carpa, Christopher Oakden’s frequent tire customer, residing in Newcastle, California at the time.
- Provide “closure” for Douglas County taxpayers documenting proper legal and ethical steps were taken to accomplish the best possible outcome for Douglas County taxpayers.

⁴ Sgt. Guerra memo detailing status of Attorney General’s Office conclusion dated January 9

⁵ Douglas County District Attorney Mark Jackson’s PowerPoint timeline

ACKNOWLEDGEMENTS

The members of the 2019/2020 Special Grand Jury considered it an honor and privilege to have served to lay to rest an unprecedented theft of tires and possible unknown fuel, parts, and supplies in excess of one million dollars (\$1,000,000) over at least a six year period.

The Honorable Judge Nathan Tod Young for his clear instructions, support document titled “Manual of Procedure for Grand Jurors”, checking in with us periodically, and his patience while answering our questions and concerns. COVID-19 altered how we accomplished our business in the closing weeks of our investigation. Judge Young and Constable Gilbert accommodated our requests.

Constable Paul Gilbert for his humor; arranging our requested county employee educators’ testimony and requests for policies; follow up answers for clarification; acting upon our requests for subpoenas; helping us move our investigations along by providing space for individual jurors to read testimony during the day, in between scheduled Special Grand Jury meetings; and nourishment provided at our scheduled meetings.

Raymond E. Oster, Esq., outside attorney hired to provide legal expertise and question our witnesses (volunteer or subpoena). His legal expertise and advice were invaluable. Portions of his detailed legal opinions expressed in his summary PowerPoint are directly quoted in this report. Those opinions can be found within text boxes providing legal definitions, educating the reader, and validating the Special Grand Jury’s investigation and *independent conclusions*.

Testimony from the following department managers and elected officials helped the Special Grand Jury learn of positive changes implemented resulting from the 2017/2018 Grand Jury Report dated March 21, 2018: Douglas County Commission Chair Barry Penzel; County Manager Patrick Cates; Chief Financial Officer Terri Willoughby; and Human Resources Director Wendy Lang.

Douglas County District Attorney Mark B. Jackson’s comprehensive overview timeline including legal rights of Douglas County employees and details distinguishing between an inquiry and investigation.

Public Works, Fleet and Facilities Manager Glen Radtke’s facility tour and clarification differentiating between a typical auto shop business and Douglas County’s not-for-profit shop (e.g. dollar amounts charged for labor, standard automotive industry guidelines, clocking in and out for each repair).

Patrick Conmay, Chief NDI, Author of NDI case summary report for providing the tape of NDI interviews.

Reno Vulcanizing employee, Sales Associate Joe St. John, testimony clarifying the relationship between him and Christopher Oakden, Oakden's wife and sons, his knowledge of Oakden's activities and explanation of any monetary benefit resulting from the massive tire sales.

THE PROCESS

The 2019/2020 Special Grand Jury began by reading a "Manual of Procedure for Grand Jurors" authored by Honorable Judge Nathan Tod Young; inviting two former grand jurors (Foreman and Report writer) to share their experience, offer guidance, and answer our questions. Both of these activities helped us understand protocols, our role as a "special" Grand Jury, and the education needed prior to determining a Foreman, Vice Foreman and Secretary; requesting presentations from Douglas County employees; and possible testimony resulting from subpoenas.

Raymond E. Oster, Esq. met with the Special Grand Jurors providing education and definitions on Nevada Law: possession of stolen property, crimes, statutes of limitation, evidence and limitations of what is successfully prosecutable.

After initial meetings this Special Grand Jury felt comfortable selecting a Foreman, Vice-Foreman and Secretary. Constable Paul Gilbert served as Sergeant-at-Arms and his deputies served as security during meetings. Meeting times were scheduled weekly or more as needed.

The Special Grand Jurors reviewed two final reports:

- The first was the Final 2017/2018 Grand Jury Report specific to fraud and theft in the Department of Public Works Vehicle Maintenance Division. The Special Grand Jury scrutinized twenty-four (24) recommendations identified in the 2017/2018 Grand Jury Final Report dated March 21, 2018. It was not the intent of the Special Grand Jury to repeat the excellent work of the previous Grand Jury.
- The second was the NDI Summary Report dated January 24, 2019. This report contained testimony and conclusions. The Nevada Attorney General's letter declining to prosecute was dated December 21, 2018,⁶ but the declination opinion letter was not reported to Douglas County until January 2019.

The Special Grand Jurors visited the Fleet Services yard for a tour to learn: 1) changes implemented since 2017/2018, 2) inventory controls, 3) status of internal audits, 4) use of Square Rigger software, and 5) allocation of costs for not-for-profit shop.

⁶ Provided by District Attorney Mark B. Jackson in his PowerPoint presentation during testimony

Jury members then divided into three committees to expedite and target areas of importance to our investigation:

- Fiscal to review budgets, audits, policy and process relating to finance:
 - Internal and External Audits: Schedule and priority of internal audits, internal auditor responsibilities; procedures in place for Risk Management and Fraud Prevention relating to inventory controls and separation of duties.
- Human Resources to review employee and elected official training, hiring and promotion practices, and employee performance evaluations:
 - Training specific to the Board of County Commissioners (BOCC), Department Managers, Supervisors, and training mandated for all employees.
 - Supervisory oversight procedure for employees whose evaluation is rated very high or very low.
- Recommendations of 2017/2018 Grand Jury and investigation of the status of those recommendations:
 - Whether Douglas County followed any or all recommendations and the roles of the County Manager, Finance and Human Resources Departments.
 - New or revised policies resulting from recommendations.

INVESTIGATIVE FINDINGS

Positive Fiscal: Internal and External Audits Investigative Findings:

- Moss Adams LLP is contracted to serve as Douglas County's internal auditor: Duties can include support creating draft policies, draft policy reviews, and selection of internal audits. Some policies and procedures (e.g. purchasing and accounts payable) have been drafted and reviewed by Moss Adams LLP. The timetable for submission to the BOCC is June 30, 2020.

Positive Fiscal: Oversight of Departments Findings:

- **The recommendation of 2017/2018 Grand Jury to establish Internal Audit Committee (IAC) has been accomplished.** IAC is comprised of five members. One commissioner and four citizens appointed by the BOCC for four year term. Meetings are held quarterly and subject to Open Meeting Law. The IAC is to maintain oversight of the auditing function, for both internal and external audits. The four primary characteristics of the IAC are: independence, communication, accountability, and oversight.
- **The Internal Review Committee (IRC) established by former County Manager, Larry Werner in 2016, provides enhanced financial oversight.** IRC is comprised of Douglas County management staff: County Manager, Human Resources Director, Chief

Financial Officer, Chief Deputy District Attorney and in the case of a building/facility modification, the Superintendent of Maintenance and Operations. IRC meets weekly to “establish a standard internal review practice to ensure financial accountability with personnel requisitions, budget modifications, grant management, capital project management, building/facilities modification and other items that may require fiscal oversight and require County Manager approval”⁷.

Findings on progress noted by successful changes (Most were recommendations of the 2017/2018 Grand Jury):

- **Financial records are now being reconciled monthly.** CFO reviews all purchase orders. CFO runs procurement reports and spot checks some accounts each month.
- **Policies and procedures specific for Procurement-cards (P-cards) have been written, reviewed and approved.**
- **A New Accounting/Purchasing Specialist position was approved and filled** in July 2019. This individual sets up new vendors and reviews monthly P-card reports, among other unspecified duties, but cannot issue checks.
- **Major issues regarding separation of duties have been resolved.** Some policies drafted will be submitted to BOCC by June 30, 2020. 1) Persons approving invoices cannot receive goods. 2) CFO reviews all purchase orders. Invoices greater than ten thousand dollars (\$10,000) are reviewed for correct approval and backup documentation.
- **Information Technology (IT) has fixed a system issue regarding computer access.** The CFO now runs computer system “access reports” and advises IT of any necessary changes in personnel authorizations. This is to assure that computer access remains segregated to appropriate personnel.
- **Segregation of duties has been accomplished at Public Works Vehicle Maintenance Department.** Fiscal inventories are done by finance staff.
- **Finance Department purchased an asset management system, “New World Systems”, a suggested recommendation of the 2017/2018 Grand Jury.** This database program allows inquiries and customized reporting on invoice and purchase orders which have been entered into the system, as well as handling depreciation of capital assets. CFO Willoughby stated that presently some software options are under-utilized.
- **Fleet & Facilities uses Square Rigger for asset management.**

Fiscal Areas of Concern:

- *Other policies and procedures have yet to be drafted* (e.g. A/R & Billing, Cash Handling, Inventory).

⁷ Internal Review Committee Procedure section provided by County Manager Patrick Cates

- ***Only Fleet Services has been inventoried following the embezzlement.*** Only partial “spot” inventories are conducted quarterly, with a full inventory annually. Other areas have been (or are now being) identified requiring a physical inventory, ***no inventories have been completed and no plans for future inventories have been noted.***
- **A recommendation of the 2017/2018 Grand Jury was to “reinstate internal audits”.** Progress appears to be slow. There are numerous steps to undertake while doing one’s day to day job. Moss Adams LLP will conduct two or three “audit programs” annually. The three current audit programs are: writing policies, cash handling and improving the permitting process. Timelines for actual audits are vague or non-existent. ***When pressed, CFO Willoughby admitted that no department had been subjected to an actual internal audit.***
- ***It is not clear what positions are users of New World Systems, who provides input of the data, and what, if any, employee training is provided.***

Human Resources Investigative Findings:

Positive Training Findings:

- **Employee internet training options improved by joining the NEOGOV platform** in September 2017. The Employment Liability and Health & Safety catalogues were purchased totaling 430 courses.
- Resulting from the 2017/2018 Grand Jury recommendations, policies in bold type have been written or improved upon and are currently mandatory training topics: **Fraud, Waste and Abuse training (May 2018); Whistle Blower including confidential phone line (April 2018) and revised policy (March 2019); Ethics; Sexual Harassment; Moonlighting (policy reviewed March 2018).**
- Employees must “acknowledge” completion of training.
- Former County Manager Larry Werner established a Douglas County Supervisory Management Program. The program continues under the current County Manager.
- BOCC training includes Open Meeting Law, Ethics in Government and annual rotating department presentations during budget review process. Training is offered depending on interest. The County Manager provided training in January 2020 on land use, planning and development, and the role of Community Development

Human Resources Training Areas of Concern:

- ***New hire orientation is weak and training calendars are vague. Human Resources provides minimal employee orientation on first day*** (e.g. withholding forms, signing job description); leaving general information and checklist topics to each department supervisor to address. At future unspecified dates, new hires take training on whistle

blower, ethics, sexual harassment, fraud, waste and abuse program and multiple county policies.

- ***Human Resources tracks only training required by law***, not training authorized and completed within individual departments or training topics of interest to an employee. Not all training acknowledgements are retained in the official personnel file housed at Human Resources.
- ***BOCC has no specific county government budget training*** unless one or more commissioners request it.

Positive Employee Evaluation Findings:

- **In 2017, employee evaluation criteria were revised.** All employees are evaluated on six core values: Integrity, Accountability, Customer Service, Leadership, Communication, and Teamwork on a scale of 0 (below standard) – 3 (above standard).
- New software provides automated employee evaluation notifications.
- The 2017/2018 Grand Jury emphasized “Accurate appraisal of every employee is paramount.” The **addition of second level manager approval when ratings are a one (below standard) or a three (above standard), reduces the likelihood of high appraisals without sufficient back-up.**

2017-18 Grand Jury Investigative Findings not previously addressed by Fiscal and Human Resources findings:

Summary: All twenty-four recommendations were divided among the Special Grand Jurors and summaries were provided during weekly meetings. Some recommendation findings have been answered in the fiscal and human resources sections in this report. The Special Grand Jury response to those findings not mentioned in other sections are noted here with progress labeled “*Not legal*”, “*Not applicable*”, “*Vague*”, and “*Clarified*”.

- ***Not legal:*** “Place an advisory question on the 2020 general election ballot to consolidate the elected Recorder/Auditor position. CFO would be eliminated.” NRS 244.1507 limits the power of the BOCC to combine two county offices into one county office to only those counties whose population is less than 45,000.
- ***Not Applicable:*** “BOCC develop a policy for improved level of management including more involvement in the budget process.” BOCC’s role is not to develop policy but to approve policies drafted by staff, reviewed by Moss Adams LLP and the Internal Review Board prior to BOCC approval vote.
- ***Vague:*** “Improved leadership role by elected officers in county government.” Our investigation concluded that this recommendation may have been directed at the BOCC.

Witness testimony clarified the separate roles of the BOCC and Douglas County employees, including those serving elected positions. Leadership occurs in both our “legislative branch” (BOCC) and our “executive branch” (e.g. County Manager, District Attorney), each role is defined by NRS and Douglas County ordinances.

- ***Clarified:*** “Clarify and justify dollar amounts charged for labor and standard automotive industry guides used when billing labor for vehicle repair.” Douglas County current hourly labor rate is \$108.21. This is *not* the standard automotive industry guide for billing labor. **Motor Pool/Vehicle Maintenance is an internal service fund, operating as a not-for-profit shop and per governmental accounting standards, it is expected that all of the costs will be recovered from the user fees.** During the budget process each year, the hourly labor rate is calculated for vehicle maintenance (e.g. salaries, employee benefits, overhead service and supply costs). This total is then divided by the total Fleet Service Technicians available billable hours.
- ***Clarified:*** “Technicians should clock in and out when doing repairs that are not in the standard labor rate so the correct time for labor is being billed. A clock in and out policy on labor fees should be developed.” **Fleet Service Technicians keep track of their time and report it on each individual vehicle work order.** As previously mentioned, the standard labor guides have profit factors built in which are not appropriate for this internal service fund.

Other Investigative Findings:

- **Case against Christopher Oakden.**
Evidence: Had Christopher Oakden lived, there was documentary evidence and potential independent witness testimony to indict, prosecute and possibly convict him of crimes including but not limited to: theft, embezzlement, grand larceny and/or possession of stolen property as a result of his numerous tire purchases using his Douglas County employee status under false pretenses.

Attorney Raymond E. Oster opinion agrees with Special Grand Jury conclusions

Note: Information included in text boxes and reduced font size are quoted directly from the Special Grand Jury outside attorney, Raymond E. Oster’s PowerPoint summation, after our draft report was written. This detail is included to provide Douglas County taxpayers the benefit of his legal expertise.

Possible conviction: Mr. Oakden could be convicted of these crimes because the sum of investigation reveals:

- Douglas County entrusted him with the ability to make vehicle-related purchases on its behalf, in his official capacity as a County Vehicle Maintenance Supervisor;
- He did, in fact, make numerous vehicle-related purchases under the guise of Douglas County Authority, including copious amounts of tires over a period of years;
- He operated a personal, side business where he sold those tires and vehicle parts for cash, thereby permanently depriving Douglas County of its property; and then
- He intentionally converted the property purchased on Douglas County's behalf to his own personal use, knowing he did not have authority to do so, by selling the items on the side at reduced rates and then pocketing the proceeds.

• **Prosecution challenges resulting from Christopher Oakden's death.**

The Special Grand Jury focused on determining subpoena and possible indictment potential for individuals who may have had direct knowledge of the abnormal volume of tire purchases or parties to the crime: Jane Oakden, Oakden children, Fleet Service Technicians Dave Forsyth and Mario Hernandez, Vasile Carpa, and Joe St. John.

Attorney Raymond E. Oster provided the following education and legal definition of **three types of "parties" that supported our actions and results: Principals, Accessories and Conspirators.**

Parties to a Crime

- In Nevada, and in the criminal context, for a court to have jurisdiction over a person (to make decisions affecting that person's rights), that person must be classified as a "party" to a crime.
- When a crime is committed, often there are multiple people who play a role either in the actual wrongful acts or in covering up those wrongful acts. These people are considered parties to the crime.
- NRS Chapter 195 is the section of Nevada law which details who exactly is considered a party to a crime and is potentially subject to punishment as a result of it.

"Principals" to a Crime

- NRS 195.020 provides a lengthy definition of what a "principal" is and how it relates to alleged commission of a crime.
- At a basic level, and when it concerns the commission of a felony, gross misdemeanor, or misdemeanor, a "principal" is a person who: Directly committed the act constituting a criminal offense; **or** aids or abets in its commission, and whether present or absent, directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor, or misdemeanor.
- Nevada does not distinguish between an aider or abettor to a crime and an actual perpetrator of a crime when it comes to being charged with a crime, convicted, and subsequently punished. *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002). "One who aids or abets in the commission of the crime faces the *same* consequences as the one who actually performed the criminal act. Both are equally culpable."

“Accessories” to a Crime

- NRS 195.030 provides a lengthy definition of what an “accessory” is and how it relates to alleged commission of a felony or gross misdemeanor crime.
- When it concerns the commission of a felony, an "accessory" is a person who:
 - After the commission of the crime by the offender, destroys, conceals, or aids in the destruction or concealment of, material evidence, or harbors or conceals the offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, and has knowledge that the offender has committed a felony or is liable to arrest.
 - An accessory to a felony crime cannot be the spouse or domestic partner of the offender.
- When it concerns the commission of a **gross misdemeanor**, an "accessory" is a person who:
 - After the commission of the crime by the offender, destroys, conceals, or aids in the destruction or concealment of, material evidence, or harbors or conceals the offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, and has knowledge that the offender has committed a gross misdemeanor or is liable to arrest.
 - An accessory to a gross misdemeanor crime cannot be the spouse, domestic partner, brother or sister, parent or grandparent, child or grandchild of the offender.

A simple way to distinguish between a “principal” and an "accessory” is that a principal commits the alleged criminal act, whereas the accessory helps the principal conceal or get away with the act after the criminal act occurs.

Conspirator to a crime

- The Nevada Supreme Court has consistently defined a “conspiracy” as "an agreement between two or more persons for an unlawful purpose." Bolden v. State, 121 Nev. 908, 912, 124 P.3d 191, 194 (2005): If there is no “express” agreement, evidence of a coordinated series of acts furthering the underlying criminal offense is sufficient to infer the existence of an agreement and support a conspiracy conviction.
- Simply agreeing with another person, or persons, to commit a crime is the illegal act, regardless if the crime is actually committed later.
- A person who knowingly does any act to further the object of a conspiracy, or otherwise participates in it, is criminally liable as a “conspirator.”
- “Absent an agreement to cooperate in achieving the purpose of a conspiracy, mere knowledge of, acquiescence in, or approval of that purpose, does not make one a party to conspiracy.
- Also, a person's mere association with a participant in a conspiracy is insufficient to support a charge of conspiracy. Peterson v. Sheriff, Clark Cty., 95 Nev. 522, 525, 598 P.2d 623, 625 (1979).

Action: Subpoenaed Jane Oakden. Ms. Oakden was also served with a “Target Letter” informing her that she was the target of an investigation, and as such, may face prosecution. Upon appearing, Jane Oakden invoked her constitutional right (Fifth Amendment, protection against self-incrimination).

Result: No possible indictment of Jane Oakden based upon lack of admissible evidence contained in the NDI Summary Report interviews and Ms. Oakden invoking her constitutional right.

No Action: The Special Grand Jury recognized the futility of issuing subpoenas to any of the Oakden children (Shawn, Matt, Jacque and James Towers), evident that the Oakden children would take the same path as their mother, invoking their constitutional right (Fifth Amendment, protection against self-incrimination). In addition, the NDI Summary Report interviews did not establish evidence of specific crimes to indict.

Attorney Raymond E. Oster opinion agrees with Special Grand Jury conclusions.

Jane Oakden and the Oakden family are not principals to Mr. Oakden's crimes because:

- It is my belief that the evidence obtained during the course of the investigation does not establish that they directly committed the acts constituting a criminal offense of Theft, Embezzlement, Grand Larceny, and/or Possession of Stolen Property:
 - They were not employees of Douglas County, entrusted with authority to make purchases on its behalf;
 - It does not appear that anyone of them actually entered any of the establishments where the tire sales took place and participated in their sale, according to multiple independent witnesses;
 - Most of them never touched the tires, controlled them, or dictated what happened to the tires, according to multiple independent witnesses;
 - Even if one or more of them did touch the tires, or exert dominion and control over them, no evidence suggests they had actual knowledge of the stolen and/or embezzled nature of the tires at the time they possessed them; and
 - A reasonable person in Jane and the children's position would not have known Mr. Oakden's specific duties, obligations, or the extent of his authority to act on Douglas County's behalf, such as to make purchases and/or sell the tires. Thus, under the facts as we know them to date, it is my belief that a reasonable person in their position would not have known that the property was stolen or embezzled.

Conclusion: It is my opinion that an indictment should not be pursued against Jane and children, as there is insufficient evidence to prove beyond a reasonable doubt that they were principals to his crimes.

Jane and the children's "**mere presence**" at the scene(s) of Mr. Oakden's tire purchases and/or sales, even if they had knowledge that a crime was being committed, does not establish that they aided and abetted in the commission of the crime.

- The wealth of evidence relating to Jane and the children suggests they believed Mr. Oakden had authority to act as he did, were merely present while Mr. Oakden committed his crimes, did not actively participate in his crimes, and were not *knowing* and *willing* participants.

No Action: Former Fleet Service Technicians Dave Forsyth and Mario Hernandez. The Special Grand Jury's decision not to subpoena Dave Forsyth or Mario Hernandez was based on 1) the unlikely result of useful testimony (invoking constitutional right, Fifth Amendment, protection against self-incrimination), 2) NDI Summary Report interviews did not point to a specific criminal offense, and 3) the cost to Douglas County taxpayers including extending the length of the Special Grand Jury investigations of these individuals. Dave Forsyth was terminated from Douglas County employment and Mario Hernandez resigned prior to being terminated.

Attorney Raymond E. Oster opinion agrees with Special Grand Jury conclusion.

Dave Forsyth and Mario Hernandez are not a principal to Mr. Oakden's crimes because:

The totality of evidence obtained during the course of the investigation does not establish that they directly committed the acts constituting a criminal offense of Theft, Embezzlement, Grand Larceny, and/or

Possession of Stolen Property:

- Although employees of Douglas County, and entrusted with authority to act on its behalf, it was Mr. Oakden who placed orders with vendors, sold the tires and later converted them to his personal use and purpose. No evidence suggests Mr. Forsyth and Mr. Hernandez acted in this manner.
- Mr. Forsyth did appear to have the ability to possess the tires, control them, and dictate what occurred with them, but such activity seemed to have been done at the behest of Mr. Oakden. There is no credible evidence that Mr. Forsyth had actual knowledge of the stolen and/or embezzled nature of the tires at the time they were possessed;
- Mr. Hernandez admits having purchased tires from Mr. Oakden, or possess the tires for other purposes, but he also did not have actual knowledge of the stolen and/or embezzled nature of the tires at the time they were purchased or possessed;
- Notably, when Mr. Forsyth had concerns about a certain set of tires found in a shed where they were not supposed to be, he began to question Mr. Oakden about the nature of said tires. This would suggest Mr. Forsyth did not have a true understanding of the scope of Mr. Oakden's illegal conduct. This also creates an inference that Mr. Forsyth did not even consider that a long-standing illegal scheme had been occurring.

There is insufficient evidence to suggest Mr. Forsyth and Mr. Hernandez aided and abetted Mr. Oakden in the commission of his crimes. Though they may have developed suspicions over a period of time, purchasing the tires from Mr. Oakden or delivering them to various locations, do not establish that they were knowingly, intelligently, and willingly participating in Mr. Oakden's illegal scheme.

- No independent evidence, such as text messages, e-mails, and witness testimony, create a reasonable inference that Mr. Forsyth and Mr. Hernandez knew or should have known of the illegal nature of the scheme and encouraged, instigated, or aided Mr. Oakden in the commission of his crimes. They believed Mr. Oakden's acts were under color of authority of Douglas County.

Conclusion: Based upon the evidence presented, I recommend that an indictment should not be pursued against Mr. Forsyth or Mr. Hernandez, as there is insufficient evidence to prove beyond a reasonable doubt that he was principal to his crimes.

Action: Special Grand Jury considered feasibility of subpoena to out of state “customer”, Vasile Carpa, who took delivery of tires numerous times in Cabela’s parking lot.

Result: No subpoena was issued. Out of state subpoenas are fraught with challenges: 1) locating Mr. Carpa, 2) following legal process of out of state subpoenas, 3) the unlikely result of useful testimony (invoking his constitutional right, Fifth Amendment, protection against self-incrimination) and 4) prolonging the Special Grand Jury timeframe and subsequent financial burden to Douglas County taxpayers.

Action: Subpoenaed Joe St. John, Sales Associate at Reno Vulcanizing, for information regarding his relationship with Christopher Oakden, Jane Oakden and any of his children, and financial reward, if any, for sales volume to Douglas County via Christopher Oakden.

Result: His testimony did not provide any new information on any member of the Oakden family. A lack of admissible evidence to prosecute Oakden family members.

- **Clarification of differences between the 2012 “tip” and 2017 inquiries: Could 2012 “tip” have led to discovering employee theft?**
 - In 2012 Human Resources Director Darcy Worms initiated an administrative inquiry in response to a “tip”.⁸ An administrative inquiry (e.g. informal investigation) is a method of acquiring information. Information is then reviewed by a department head, elected official, or county manager to determine whether the information requires departmental follow-up or whether to commission a formal administrative investigation.
 - In 2012, the County Manager Steve Mokrohisky chose to handle the inquiry issue “in house” with an informal investigation within the department rather than commissioning a formal investigation further involving the District Attorney’s Office. When that decision is made, the DA is no longer involved.
 - In contrast, the 2017 inquiry by the DA’s office rapidly became an internal investigation that lead to a formal administrative investigation. Simultaneously, DCSO began an internal inquiry, then referred the matter to NDI. A criminal investigation followed, to determine whether Christopher Oakden and others were responsible for the theft of more than one million dollars (\$1,000,000) in tires and possible unknown fuel, parts, and supplies between 2012 and 2017. NDI filed a

⁸ Douglas District Attorney Mark Jackson’s written response to Special Grand Jury concern regarding 2012 “tip” and 2017 Formal Administrative Investigation, Douglas County Sheriff’s Office criminal investigation and NDI criminal investigation

Case Summary Report and forwarded it to an independent prosecutor, in this case, the Nevada Attorney General's office.

CONCLUSION

Witnesses subpoenaed to testify before the 2019/2020 Special Grand Jury did not provide any admissible evidence to proceed with criminal investigations that might have led to prosecution of any of Oakden's family members. Our findings concur with the NDI Case Summary Report: 1) Douglas County employee Christopher Oakden used his position to embezzle more than one million dollars (\$1,000,000) over a six year period from Douglas County; and 2) Oakden's wife and several grown children (Matt, Christopher and Jacque) accompanied him when he purchased tires and resold them.

The Special Grand Jury found weaknesses in the report findings that may have led to a different outcome.

- Christopher Oakden's accident causing his death could have been avoided if NDI had provided an "escort" to his appointment to meet with investigators.
- Summary Report was not thorough, lacking details of evidence to specific crimes, and specific behaviors relating to actual crimes, leading to speculation.

Our investigation verified that for many years Douglas County managers and supervisors failed their duties to provide oversight of Fleet Services budget inconsistencies. A combination of the Chief Financial Officer's incompetence, blind trust, and lack of follow-up; coupled with the finance department deferring an internal audit and regular tire inventories; created the perfect environment for employee fraud. Poor management decisions constitute negligence but are not necessarily prosecutable criminal offenses.

Among those who did not fail their duties:

- DA Mark B. Jackson. The Special Grand Jury is comprised of lay people with minimal understanding of the legal details that both limit and authorize the procedures determining personnel misconduct and how it can be used in criminal investigations. Throughout, the DA provided detailed information on how his office proceeded according to NRS and county ordinances in two instances, 2012 and 2017.
- Fleet Services & Facilities Manager Glen Radke. The epicenter of embezzlement of Douglas County funds may now be the "lighthouse" department. Positive changes include an inventory system and parts scanning capabilities, improved separation of powers between the Department Manager and the Lead Service Technician, annual audit with quarterly spot checks, and new building key card entry. Mr. Radtke's leadership has promoted more accountability and a new supportive, positive culture moving the department in the right direction.

The Special Grand Jury's expectation is that the culture will spread among other departments as more policies are created, revised and followed and hiring practices no longer reflect individual promotions to jobs for which they are not qualified.

New policies, separation of duties, an internal auditor, intense DA investigations followed by personnel resignations and terminations have put to rest "Tire-gate", but *a reminder to everyone, a determined thief will find a way to steal.*

RECOMMENDATIONS: Several of the 2019/2020 Special Grand Jury recommendations require monetary investment and may have been considered at one time and cast aside due to budget shortfalls. Our expectation is that each will be considered carefully. Our recommendations reflect actions by leadership to reduce the opportunities for future embezzlement, theft or fraud by Douglas County employees.

1. **Set timelines:** Across the board, the Special Grand Jury found no evidence of goal timelines indicating priorities, milestones, and expected completion dates. (e.g. new policies, current policy and procedure reviews and revisions, internal audits, inventories completed). *It is the county managers responsibility to ensure the timelines are met and completed and disseminated to all accountable departments.*
2. **Reinstate internal audits:** Internal auditor establish a timeline prioritizing, calendaring and completing at least three internal audits per year for Internal Audit Committee and eventual BOCC approval. Those departments selected for internal audit should be given minimal notice.
3. **Outstanding Receivables:** Put a system in place to know the status of outstanding receivables in all departments, review them, and report to the BOCC annually, stipulating as to which outstanding receivables are noncollectable.
4. **Internal Review Committee training:** If the Internal Review Committee is making decisions involving budgeting and human resources, all members should be properly trained in these areas.
5. **BOCC budget training:** BOCC should be provided training in budgeting, and the Commissioners continue to hear every budget and make sure they are fully aware of how the County is spending funds. In the past, the Nevada Association of Counties (NACO) has provided training on budgeting and can be a good resource for the Commissioners.
6. **Staff budget training:** The County should assure that all department heads, elected officials and staff involved in the budget process be adequately trained to understand

planning, building, tracking, the augmentation process and what entails effective or ineffective documentation for approval.

7. **Tracking employee training:** Douglas County needs to establish a mechanism of tracking training for ALL employees.
8. **Inventory:** Prioritize reviewing and updating the policy and procedures for inventory controls. The current fiscal program the county uses is capable of keeping track of inventory and should be utilized by ALL departments. There should be a dollar limit on what, by policy, is to be inventoried annually.
9. **Public Works, Fleet Services & Facilities inventory:** Prevent small but costly theft of current un-inventoried items on county service vehicles. An inventory checklist of county owned parts and tools should be maintained on all county maintenance vehicles.
10. **Security measures:** Prioritize investment and develop a timeline to implement security measures (e.g. lighting, video cameras, and key card entry to track usage) on all county facilities, especially in and around facilities that have inventories of equipment, parts, supplies, tools, and fuel.
11. **Orientation:** Human Resources needs to improve the new hire orientation. Identify a formal orientation process with topics and timelines for completion by new hires: Essential policies should be read and acknowledged (e.g. whistleblower, smoking/vaping, safety, moonlighting) as part of the new hire orientation.
12. **Recruit quality people:** Avoid losing county employees to other counties or states for higher salaries and avoid hiring underqualified people for all positions.
 - Conduct a salary study of like entities to determine whether Douglas County compensation is competitive and capable of attracting top talent to county positions.
 - Accept only excellence. Establish a process that assures high levels of expertise, experience, and acumen.
13. **Do not become complacent.** Avert the potential for future theft or misdirection of county property by applying the same or newly developed appropriate policies, training, cash handling, employee evaluation, and improved inventory procedures in **ALL COUNTY DEPARTMENTS.**