

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

**Darryl Dunsmore, et al. v. San Diego County Sheriff's Department, et
al.**

Dunsmore · No. 20-cv-406-AJB-DDL · Decided May 14, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DARRYL DUNSMORE, et al., Case No.: 20-cv-406-AJB-DDL 12
Plaintiffs, SUPPLEMENTAL ORDER RE 13 v. PLAINTIFFS' MOTION TO FILE
DOCUMENTS UNDER SEAL 14 SAN DIEGO COUNTY SHERIFF'S DEPARTMENT, et al.,
15 Dkt. No. 797 Defendants. 16 17 18 I. 19 INTRODUCTION 20 On February 25, 2025, District
Judge Anthony J. Battaglia issued an Order 21 [Dkt.

No. 823] granting in part and denying in part Plaintiffs' motion to file under 22 seal certain
documents submitted with their opposition to the Defendants' 23 ("County") motion for partial
summary judgment. In relevant part, Plaintiffs sought 24 to file under seal four expert reports
containing information taken from Critical 25 Incident Review Board ("CIRB") Reports generated
by the San Diego County 26 Sheriff's Department.

Judge Battaglia directed the parties to submit the CIRB 27 Reports at issue to the undersigned for
an in camera review to determine whether 28 the information taken from the CIRB Reports and
included in the expert reports is 1 subject to the attorney-client privilege under Greer v. Cnty. of
San Diego, 127 F.4th 2 1216 (9th Cir. 2025). See Dkt. No. 823 at 5-6.

3 Plaintiffs submitted the portions of the four expert reports containing 4 information from CIRB
Reports. Separately, Defendants provided the 5 corresponding CIRB Reports. Having reviewed
the four expert reports and the 6 CIRB Reports, the Court concludes that three of the expert
reports contain 7 information from CIRB Reports that is privileged under Greer.

However, the 8 current record is insufficient for the Court to assess whether the fourth report 9
contains information from a privileged CIRB Report. 10 II. 11 BACKGROUND 12 On December
13, 2023, the Court granted Plaintiffs' motion to compel the 13 production of 25 CIRB Reports
pertaining to inmates who died in Sheriff's 14 Department custody. Dkt. No. 468 (the "CIRB
Order").

In relevant part, the Court 15 found the County had not carried its burden to show the Reports
were subject to 16 the attorney-client privilege in their entirety. After providing the County an 17
opportunity to demonstrate that specific portions of the CIRB Reports should be 18 redacted, the

Court ordered the production of the CIRB Reports with redactions 19 that were “limited to communications between Chief Legal Advisor Michael Faigin 20 and other CIRB members.” Dkt. No. 507 at 2. 21 The County produced the redacted CIRB Reports subject to the operative 22 Protective Order. On December 18, 2024, the Court ordered that the CIRB 23 Reports would remain subject to the Protective Order, and therefore not subject to 24 public dissemination, pending the Ninth Circuit’s decision in Greer. Dkt. No. 785. 25 On December 16, 2024, Defendants moved for partial summary judgment 26 on multiple causes of action.

Plaintiffs’ opposition to the motion included four 27 expert reports that contain information taken from five separate CIRB Reports. As 28 required by the Protective Order, Plaintiffs moved to seal “information in the expert 1 reports derived from the CIRB reports.” Dkt. No. 797 at 6. 2 On February 10, 2025, the Ninth Circuit issued its opinion in Greer, holding 3 the attorney-client privilege applied to certain CIRB Reports concerning in-custody 4 deaths.

Greer, 127 F.4th at 1227. The Ninth Circuit remanded “with instructions 5 to require the return and/or destruction of the disputed documents, which are 6 privileged.” Id. 7 Thereafter, Judge Battaglia directed the undersigned to “conduct an in 8 camera review of the CIRB reports at issue to determine whether the attorney- 9 client privilege applies, following Greer.” Dkt.

No. 823 at 6. 10 III. 11 DISCUSSION 12 A. The CIRB Order 13 The County has consistently maintained that the attorney-client privilege 14 applies to the CIRB Reports in their entirety. In ordering the County to produce 15 the CIRB Reports to Plaintiffs, this Court concluded the County had not met its 16 burden to “show that the primary purpose of the communications in each Report 17 was to seek or give legal advice.” CIRB Order at 9.

After considering the Sheriff’s 18 Department Policy and Procedure Manual, the CIRB Reports at issue and the 19 testimony of Chief Legal Advisor Michael Baranic¹, the undersigned found “the 20 CIRB could fulfill its duties under [the Policy and Procedure Manual] to vote on 21 policy violations and address training or policy issues absent any legal advice from 22 the Chief Legal Advisor.” Id. at 11.

Moreover, although the CIRB Reports need 23 not contain legal advice for the attorney-client privilege to apply, the CIRB Reports 24 at issue did not contain any readily identifiable legal advice provided by the Chief 25 26 27 1 Baranic testified regarding the CIRB process and functions in another case involving the production of CIRB Reports. See *Morton v. Cnty. of San Diego*, et 28 1 Legal Advisor, which weighed against a finding that entirety of each CIRB Report 2 was subject to the attorney-client privilege.

Id. Thus, the Court “conclude[d] the 3 attorney-client privilege does not apply to the entirety of each CIRB Report at 4 issue” and ultimately ordered production of the Reports with redactions to specific 5 communications with the Chief Legal Advisor. Id. at 13.

The County complied with 6 the CIRB Order. 7 B. Greer 8 In Greer, the district court ordered the County to produce in discovery 9 redacted CIRB Reports pertaining to twelve in-custody deaths. Greer, 127 F.4th 10 at 1221.

The plaintiff filed portions of the CIRB Reports “conditionally under seal” 11 in opposition to the County’s motion for summary judgment. Id. After the case 12 settled, the district court granted a motion by news organizations to “unseal the 13 CIRB documents for ‘public inspection.’” Id. at 1222. 14 On appeal, the Ninth Circuit reversed the order unsealing the CIRB 15 documents.

The Ninth Circuit noted the CIRB’s stated purpose is “to consult with 16 department legal counsel when an incident occurs which may give rise to litigation” 17 and that “the County’s current and former Chief Legal Advisors both averred that 18 consulting with counsel is the primary purpose of the CIRB.” Id. at 1226.

The 19 Ninth Circuit concluded: 20 Here, the CIRB reports contained in the record meet the criteria for 21 attorney-client privilege. Department Policy required the Chief Legal 22 Advisor to be part of the CIRB, and there is no contention that the Chief 23 Legal Advisor was absent from any of the meetings memorialized in 24 the reports.

In each instance, areas of potential liability for the inmate’s 25 death were discussed. In most instances, counsel participated actively 26 by asking questions designed to understand and, where appropriate, 27 by highlighting areas of potential liability. 28 / / / 1 In short, both the participants in the CIRB and its critics consistently 2 viewed the primary purpose of the CIRB as assessing legal liability for 3 a past event and avoiding legal liability for future similar events.

The 4 district court’s ruling to the contrary was erroneous. 5 Id. Significantly, Greer concluded the attorney-client privilege applied to the twelve 6 CIRB reports in their entirety and directed “the return and/or destruction of the 7 disputed documents, which are privileged.” Id. at 1227. 8 C. Expert Reports 9 The four expert reports at issue were prepared by Gary Raney, Kelly 10 Ramsey, Pablo Stewart and Jeffrey Keller.

Each report contains information from 11 one or more CIRB Reports pertaining to in-custody deaths: 12 Gary Raney report – deaths of Louis Gomez and Robert Moniger 13 Kelly Ramsey report – death of Lazaro Alvarez 14 Pablo Stewart report – death of Joseph Morton 15 Jeffrey Keller report – death of Raymond Dix 16 The CIRB documents reviewed in camera indicate the Sheriff’s Department’s 17 Chief Legal Advisor was present at the CIRB meetings pertaining to the deaths of 18 Louis Gomez, Robert Moniger, Lazaro Alvarez and Joseph Morton.

The Chief 19 Legal Advisor asked questions in the meetings pertaining to Gomez, Alvarez and 20 Morton. In the meeting pertaining to Moniger, the Chief Legal Advisor did not ask 21 any questions but answered a question.

However, the Chief Legal Advisor's level 22 of participation in the meeting does not affect the analysis because the Greer 23 majority found the privilege applicable to the entirety of every CIRB Report at issue 24 in that case. Greer, 127 F.4th at 1226.

The majority did not adopt the dissent's 25 position that "swaths of the CIRB reports are plainly not privileged," id. at 1238, 26 and that "the proper remedy was to redact, not withhold, the reports." Id. at 1239. 27 Accordingly, the Court reads Greer to hold the Chief Legal Advisor's presence at 28 a CIRB meeting renders the ensuing CIRB Report privileged in its entirety 1 ||regardless of whether the Chief Legal Advisor actively participates in the meeting.

2 The CIRB documents reflect that neither the Chief Legal Advisor nor the 3 || Deputy Chief Legal Advisor attended the CIRB meeting on September 20, 2023, 4 || pertaining to the death of Raymond Dix that is referenced in Jeffrey Keller's report. 5 ||Rather, the attendance sheet indicates that Heidi Williams from "CIRB BOARD 6 ||LEGAL" attended the CIRB meeting.

The present record does not include 7 ||information about Ms. Williams, including her job title, role or responsibilities. And 8 ||the Court has no information about "CIRB BOARD LEGAL" or why Ms. Williams 9 || attended the CIRB meeting in the absence of the Chief Legal Advisor. 10 IV. 11 CONCLUSION 12 For the foregoing reasons, the Court ORDERS as follows: 13 1.

Under Greer, the attorney-client privilege applies to the CIRB Report 14 ||information contained in the expert reports of Gary Raney, Kelly Ramsey and 15 ||Pablo Stewart. 16 2. The present record is insufficient to determine whether the privilege 17 ||applies to the CIRB Report information contained in the expert report of Jeffrey 18 ||Keller. By not later than May 21, 2025, the County must file a supplemental brief 19 ||not to exceed three pages explaining why the CIRB Report pertaining to the in- 20 ||custody death of Raymond Dix is privileged.

21 22 ||IT IS SO ORDERED. 23 || Dated: May 14, 2025 == 24 Tb lho 25 'Hon. DavidD.Leshner
□□□ 26 United States Magistrate Judge 27 28