

Grand Jurors' Journal

July 2003

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CGJA President's Report

Since the last issue of the Journal, many of our Association Committees have been hard at work in preparing for important upcoming CGJA events and responding to our internal developments.

Sherry Chesny, Chair of Training, with our Training Committee and 10 new trainers, all former Grand Jurors, are preparing for three 2003 Training Seminars to be held in Visalia, Sacramento, and Concord. I am pleased to report advance registrations are showing positive numbers from new Grand Juries throughout the state.

Our two day seminars provide valuable insight into performing as a California Grand Juror and we encourage all County Grand Juries with their Court administration to consider sending new jurors. One county has already signed up their entire Grand Jury to attend. Dates and a contact for registering are shown elsewhere in this issue.

Clif Poole, Chair of Membership Relations, is hard at work with our 2003 membership renewals. Renewal checks are being sent directly to our Treasurer, Marilyn Maxner, who reports heavy volume of renewals and new membership. We invite all CGJA Members, former Grand Jurors, and current Grand Jurors to mail in their membership application to CGJA's official address at 395 Del Monte Center, Box 138, Monterey, CA 93940. Chapter Members may remit their CGJA dues directly to their local chapter for processing.

Richard Ruth, as our Director in charge of Chapter Relations, has initiated a program of informing current and former Grand Jurors throughout the state about the benefits of forming local CGJA Chapters to address specific issues of their local counties. As a reader, if you have an interest in establishing a local chapter, please contact Richard, who is listed under our Board of Directors.

Jerry Lewi, Chair of Operations has been active with his committee working their multiple functions with increasing attention being given to our Annual Conference scheduled for Ventura on October 17 and 18. You will see the advance program for this year's conference and we encourage members to reserve rooms and register early.

Our Operations Committee was recently authorized to undertake a study of a major revamp to our website. The study has long range implications for greater service to Grand Juries, Court Staff, Members of the Association and the general public. Watch for reports on some possible significant changes, which are dependent on outside donations or grants.

Kent Foster and Jack Friesen of our Finance Committee have been hard at work with CGJA's Treasurer Marilyn Maxner in reconstructing our internal accounting system on a new software program. The efforts of these three dedicated Directors have been commendable under very trying circumstances and their efforts are most appreciated.

In view of individual state legislators taking up specific aspects of Grand Jury Law for change, Jack Zepp, Chair of Legal and his talented committee are in the process of evaluating sources for an objective review of Grand Jury Law. The Legal Committee has completed an update of CGJA's 2003 Compendium of Grand Jury Law, which should be available at our training seminars for a \$15 purchase.

I am very pleased to announce that Michael Casey, a highly distinguished Bay Area litigator, will be joining our Legal Committee in July. It is rewarding to see highly professional talent, such as Mike joining our expanding Legal team. We continue to monitor California SB 307 and AB 312, which are currently deferred to 2004.

As we continue to evolve with the addition of many valued professionals to our numerous functions, we face and work to resolve internal challenges. More change is ahead and I expect it to be positive for the long term development of CGJA.

We continue to invite and welcome new member resources to actively serve our expanding efforts. If you have some time available, please contact our Vice President Roger Loper to review current opportunities that you are sure to find rewarding.

As always, if you have suggestions for improving CGJA or questions about our Association, I encourage you to contact any of our Officers, Directors, or Committee Chairs and always feel free to contact me directly.

Elwood Moger

Attorney General Opinion

The Attorney General of the State of California, on June 10, 2003, issued Opinion No. 02-1108 dated June 6, and concluded that: 1. A grand jury, sitting in its civil "watchdog" capacity, has the authority to admonish a witness not to disclose what the witness learns in the grand jury room regarding the subject of the grand jury's inquiry; 2. A violation of the admonition may constitute contempt of court and 3. The following admonition would be legally sufficient: "You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by the grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court."

A few items of particular interest:

1. The Attorney General expressly relies on Section 1209 of the Code of Civil Procedure for the contempt remedy, stating that "For purposes of Code of Civil Procedure section 1209, we find that a grand jury is a component part of the superior court, a 'judicial body', 'an instrumentality of the courts of this state', and 'an arm of the court and part of the judicial system.'" Essentially, he applies to "watchdog" grand juries the reasoning of his 1983 Opinion on secrecy admonitions given by a grand jury in its criminal indictment role.

2. In footnote 3, the Attorney General states: "We recognize that in a different context, the courts have declined to approve the exercise of a grand jury's 'inherent' or 'implied' powers. Here, in contrast, we believe 'the Legislature has deemed appropriate' preserving the secrecy of civil watchdog proceedings which a grand jury may accomplish by issuing a secrecy admonition to a witness."

3. In footnote 4, the Attorney General states: "We are aware that in a different context, the courts have recently described a superior court's authority over a grand jury as limited to preventing the grand jury from violating the law. Here, on the other hand, we have a grand jury's admonition entitled to court enforcement to effectuate the Legislature's policy of preserving the secrecy of grand jury proceedings and to promote the grand jury's effective operation." This decision should effectively put to an end the question of whether "watchdog" grand juries have the power to impose confidentiality obligations upon witnesses who appear before them.

Richard W. Nichols

E-Mail: hmonrdick@directcon.net

2003 Conference Planning Well Under Way

The 2003 Annual Conference planning is well under way. Confirmed speakers are Ventura County Supervisor Linda Parks, Assemblywoman Hannah-Beth Jackson, former Ventura District Attorney Michael Bradbury, and Little Hoover Commission Executive Director Jim Mayer. Invited speakers include a representative of the Judicial Community and a prominent news anchor. We will have a panel discussion on legislative activity and will reinstate the popular Open Forum.

The theme of this year's event is: *Today's Challenges to the California Grand Jury System.*

The conference is being held at the ocean front Pierpont Inn in the city of San Juan Buenventura (Ventura to most everyone) on October 17 and 18. Registration forms will be sent out soon. Costs will be comparable to last year, with a guaranteed conference room rate of \$100.

The complete conference packet can be downloaded from our website, www.cgja.org.

The location is convenient to rail stations and local pickup will be provided for those who advise us in advance of their intentions to travel by rail.

Director Biographies

Jack Friesen_

Jack grew up in Western Washington, served four year in the US Army before attending and graduating from San Jose State University with a major in finance and accounting. After completing his college career he became a Certified Public Accountant and was a partner with Deloitte & Touche for 31 years until his retirement in 1997. He was responsible for providing professional services to many large public companies in the greater San Francisco Bay Area. He was the foreperson of the 2000-2001 Marin County Grand Jury and has been active in the local chapter of the CGJA. He also has been involved as an instructor and panel member in local and state training programs as well as the last two annual CGJA conferences.

During his professional career he was active as a volunteer in many nonprofit organizations including Chairman of the Board of Directors of the YMCA of the East Bay for five years and Treasurer of the Oakland Chamber of Commerce for several years. He and his wife, Pat, have lived in Marin County for 25 years and currently reside in San Rafael. They have four adult children and six grandchildren. Jack is an avid fisherman and also enjoys golf and gardening.

Joann Landi

I have been a member of CGJA for 2 years and in March, 2003 I was elected to the Board of Directors and serve as its' Secretary. I am a member of the San Mateo County Chapter and currently serve on its' Board of Directors.

I served two terms on the San Mateo County Grand Jury from January, 2000 through June, 2002. In addition to committee work, I served as Grand Jury Secretary during my second term. My interest and support of CGJA was fueled by the very positive experience I had as a participant in two separate training sessions held in Concord.

In addition to my volunteerism on the San Mateo County Grand Jury, I serve as the community representative on the Palomar Park Design Review Committee, past Director and Secretary of Palomar Property Owners and an eighteen year volunteer at my local elementary school.

I am an Independent Clerk for the Bayshore Sanitary District; a single purpose government entity. Also, I am co-owner and Administrator of Collection Systems Maintenance Service, a multi-disciplined firm providing wastewater environmental services to engineers, contractors, cities and special districts in Northern California.

Clif Poole

Clif served on the 1998-99 Solano County Grand Jury and the following year, 1999-2000 he served as Foreman. Clif spent almost thirty years in management for a large grocery chain working in warehousing and distribution. He was an Operations Manager for a multi-million dollar recycling firm, a real estate salesman, and a private contractor, building and remodeling homes.

He has worked with various government agencies as a community activist during the last 19 years.

He currently serves on the Board of Directors for CGJA and is the Membership Relations Committee chair. He is an active member of the Solano County Chapter of CGJA. He is also Past President and current Director with the Solano County Citizens Land Alliance (SCCLA).

Richard Ruth

This odyssey began in 1932 at the Coney Island Hospital, Brooklyn New York. Along this road path there were many points of interest, the Air force during the Korean action, then marriage to Patricia and college under the GI Bill. College finished with a Bachelor Science in Mechanical Engineering.

First real job was with FMC Corporation, builders of food machinery and ground vehicles of war and peace. I designed armored personnel carriers and boats that fly on underwater wings called hydrofoils.

Retiring in 1995 after 27 years at Lockheed and a career as a Research Specialist, designing high-speed off-road combat vehicles and Real Estate Guru, buying, selling and leasing real estate; certainly a diverse career change.

I served on the 2000-2001 Santa Clara County civil grand jury and was appointed Foreman two months into the term after the resignation of the starting foreman. When I found there was no CGJA chapter in Santa Clara County I decided it was time to get one in place. It took about a year to get the chapter off and running. Celebrating our first anniversary this month I look forward to another year of new opportunities as a result of being nominated and approved as CGJA Board Member serving on the membership committee as Director, Chapter-Relations.

Nominations & Election of Officers

On July 1st we start a new year. How fast time flies after we pass the age of 21.

With the advent of the new year it is time to prepare for the election of Directors. Our bylaws require that every year we hold election for half of our Board of Directors, or 12 directors. We also balance these Directors from each of our three regions (North, Central and South), with 4 from each region.

If you would like to have your name placed on the nomination list, please let us know. If you would like to nominate someone who is willing to serve, please let us know that too.

Ballots for the election must be mailed in August. In order to be eligible to be on the ballot, or to vote, you must be a voting member in good standing with your annual dues paid.

Just a brief outline of the commitment needed:

- NO PAY
- Board meeting once a month (1-2 hour teleconference)

- Serve on two committees – each meeting once a month (1-2 hour teleconference)
- Other time as needed to prepare for each meeting
- No appreciation
- Why do it? Same reason you served on a County Grand Jury – for the betterment of your community and the state.

You can contact anyone listed below or CGJA directly with your request for further information.

Clif Poole
 CGJA Nominations
 7219 Stieger Hill Road
 Vacaville, CA 95688
Jcswimm@aol.com

Sherry Chesny
 CGJA
 P.O. Box 431
 Meadow Vista, CA 95722-0431
sherryc@jps.net

Jerry Lewi
 CGJA Nominations
 2717 Rocky Point Court
 Thousand Oaks, CA 91362
Jerrylewi@adelphia.net

Joann Landi
 CGJA
 178 S. Palomar Drive
 Redwood City, CA 94062
joannelandi@aol.com

Talley Wade
 CGJA
 12432 Alta Mesa Drive
 Auburn, CA 95603-3536
Talley@jps.net

Al Armand
 CGJA
 361 Conmur Street
 So. San Francisco, CA 94080-5648
alarmand@aol.com

From the Mailbox

The following mail wasn't really a letter to our editor; it was an email from one of our CGJA Directors to members of our Legal committee requesting advice on grand jury procedures. The replies indicate the depth of knowledge that resides within the members of the CGJA.

With their permission, let's read on.

Jerry Lewi wrote:

Dear Committee,

Earlier today I was interviewed by a local reporter doing a story for this year's Ventura County final Grand Jury report. From previous discussions, he knew I was a former Grand Juror.

The main topic of our discussion was the need for a Grand Jury to interview all parties on all sides of a controversial subject. I take it as an article of faith as reinforced in our training (and the training I was subjected to when selected as a Grand Juror). But the question is: Is there anything in the Penal Code or any other supporting documentation such as Attorney General opinions that make this a legal requirement? I could not find anything in the code sections as reprinted in the new Training Manual.

Do any of you have a thought on this question?

Thank you for you help,

Jerry Lewi

< Jerry Lewi@adelphia.net >

Richard Nichols answered:

Jerry:

I am unaware of anything in the Penal Code (all references herein are to that Code) that directly addresses your question as phrased. There are some provisions in that Code, however, that may touch upon it:

1. As to GJs investigating for criminal prosecution purposes, Section 939.7 provides that, while a GJ is not required to hear evidence for the defendant, "when it has reason to believe that other evidence [other than that presented by the prosecution] within its reach will explain away the charge, it SHALL order the evidence to be produced ..."
2. Section 933.05(e) provides that "during an investigation, the grand jury SHALL meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental." Section 933.05 applies to "watchdog" grand juries; it is the statute that, among other things, specifies the form of responses to grand jury reports.
3. Similarly, Section 933.05(d) provides that "a grand jury MAY request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release."
4. Section 914 provides that, when the grand jury is empaneled and sworn, it shall be charged by the court. "In doing so, the court SHALL give the grand jurors such information as it deems proper, or as is required by law, as to their duties, ..." Each individual court may, or may not, instruct on the "interviewing of both sides to a controversial subject," as part of its charge pursuant to Section 914.
5. Section 916 provides that "each grand jury ... SHALL determine its rules of proceeding." Again, those rules may (or may not) require "interviewing of both sides to a controversial subject."

I hope that this is of at least minimum help to you as a response to your inquiry.

Richard W. Nichols
< hmonrdick@directcon.net >

Barry Newman answered:

I can add nothing to Dick's excellent response.

The most dramatic non Code justification/requirement/rationale for such "360 interviewing" (particularly with the GJ wearing its "civil" hat) is the legitimacy of the process. If a GJ does not do it, there is a substantial risk that some included "fact" supporting its findings and recommendations, would have been shown to be false (or at worst questionable) had they interviewed parties on "the other side". When, post issuance, that one fact is now publicly challenged, the credibility of the entire Report stands at issue in the dock of public opinion.

Example: In San Diego County, the 1998-99 GJ issued an Accusation against the Mayor of San Diego. One of several major foundations for that Accusation was that she had failed to appoint a required Oversight Committee.

In Court, her counsel waved the actual appointment Resolution in front of the Judge who then declared her "Innocent" (Note my legal colleagues, that he did not find that she was "not guilty", but that she was "innocent"). The Judge used this one failure to challenge the integrity of the entire process

An interview with the Mayor and a simple question relating to the Oversight Committee would have provided the appropriate knowledge to the GJ which then would have allowed it to issue a Report (without that one error) which could not be so quickly disposed of or so scorned by the Public and Press.

Clearly this is not a legal answer; but an enormously practical approach.

Barry I. Newman

Chapter Relations

Appointment to the Membership Committee as my first assignment and then called on to steer the Chapter Relations effort was scary. I wasn't too sure of what was being asked of me. Well, I soon found out by just looking around. There are 58 counties in California and only 10 county chapters of the CGJA. I saw a need there and I started to fill it.

I think a part of chapter relations is to have chapters to relate to. I found a recent address list of the county grand jury's and figured it would be helpful to make contact with them.

I sent a letter to each grand jury foreperson outlining the procedure for forming chapters hoping for a response. Two counties responded and a start-up kit is being assembled to mail to them.

This will be a process that will take some time and the plan is to have a CGJA chapter representing each county. Each county has a unique contribution to make to the growth and success of the CGJA.

For all CGJA members I send out a call...it's personal contact that will make the difference, so talk up the CGJA and have former grand jurors that you know from counties without chapters send me an e-mail requesting a start-up kit. I will spend whatever time is required to guide them through the process.

By Richard Ruth, Chapter Relations
<Rruth8592@aol.com>