

GRAND JURORS' JOURNAL

September 2002

PRESIDENT'S MESSAGE

I am pleased to welcome to the CGJA board of directors Professor Joseph Probst of West Covina, California. Professor Probst is also a director of the Los Angeles Chapter of the CGJA and participated in its response to the McGeorge Law School Grand Jury Reform proposals last year.

Please note that the election of new directors will be held at the Annual Meeting of CGJA members on November 15. The Nominating Committee is seeking input from the membership on potential new directors. If you, or anyone you know, are interested in being a CGJA director please advise the Nominating Committee by contacting Jeanne Forbes, Nominating Committee Chair, at ggenie@earthlink.net; tel. 559.625.0960. It is possible that there will be no vacancy from your region at the next election but your name or that of your nominee will be added to the committee's records for future consideration if a vacancy occurs.

I am pleased to call to your attention the recent publication of the CGJA's 2001-2002 Subject Index of Grand Jury Reports, an update to the earlier Indexes generated by the "GRIP" project. The latest update is 67 pages long and contains subject matter index references for the 42 county grand jury Reports that were available to the authors. There are over 1600 references indexed to approximately 130 different subject categories. Special thanks are due to Les Daye, Dan Taranto and Sally Goetz for bringing the latest update of this valuable resource and research tool to fruition. Copies are available from Les Daye or Dan Taranto, both of whose contact information is in the listing of directors elsewhere in this Journal.

In the June 2002 edition of the Journal I mentioned the efforts of the California First Amendment Coalition to encourage citizens to test their local governments' compliance with California's Public Records Act. Citizens, including former grand jurors, recently did so in Solano County. The methods they employed, and the rather disheartening results they reported, are the subject of extensive coverage in the Vacaville Reporter for Sunday, July 21 2002. The reports can be found at <http://www.thereporter.com/Specials/Record/index.html>. I think you will find them quite interesting.

As a result of an inquiry from the Little Hoover Commission I recently undertook to find the most current web sites containing California county grand jury Reports and the Responses thereto. The results were, I think, interesting and I pass them along for your information. The sites themselves soon will be on CGJA's Links page on its web site "www.CGJA.org". I can summarize the information I located as follows:

Of the 58 counties, all but two have websites. The 56 county websites are not standardized and vary widely in their comprehensiveness and usability. Some of the best have search functions built into the site and make finding whether or not grand jury information is included easy. Others will access grand jury information, but it is difficult to do so. For example, one (but fortunately only one) lists the grand jury under the heading "County Departments." In another, grand jury Reports can only be found by linking through the county library site. Occasionally grand jury Reports are linked to the web site of the court, not the county. More often than not, if the grand jury site is contained within the court's site the county site will not link to, or reference, the court site. The reverse is also usually the case. In other words, if one is looking for a grand jury's Report and finds no reference in the county site, one must separately check the court site, or if one starts with the court site and finds nothing one must also try the county site.. It is also possible that the grand jury Reports are contained on the grand jury's own site or such sites as the County Clerk or a library or library consortium site. For these reasons I found it easiest to search for a Report by using a general search engine such as Google or Yahoo and simply asking for [name of county] AND "grand jury." Please note that if you don't use the quotes around "grand jury" you will get much unrelated information.

There are 15 counties, surprisingly including one of the most populated in the state, for which *no* grand jury Reports can be found on the web. The good news is that in the other 46 counties with sites the county or the court is using the web to make Reports widely available. I wonder if any of the counties whose grand jury's Reports are not easily available are among those who question the value of the grand jury. It would indeed be ironic if that were so, inasmuch as much of the value of any grand jury depends on the wide dissemination of its Reports.

There are a few county sites, of which Shasta is the best in this regard, that prominently show a link to the grand jury right on the home page.

Some counties have an individual site (URL) for each grand jury Report. Others list, and link, all recent Reports at on one URL. Some have only Reports. Others have additional information such as grand jury history, descriptions of the role of the grand jury, application forms and the like.

Very few of the sites that contain grand jury Reports also contain the Responses to those Reports. At least one otherwise comprehensive site states that Responses can be viewed in the public law library but are not available electronically. I suspect that the grand jury there has not insisted on receiving Responses on disk as well as on paper and/or does not have access to an OCR. The Riverside grand jury took the trouble to re-type a Response into electronic format so that it might be made available on the web. The Santa Barbara grand jury's site (which is its own site, not a part of the county site) contains a convenient list of links to Responses.

Some sites contain only outdated Reports. Others have only have Reports for the 2001-2002 term. Some, such as Marin, Sacramento and Santa Barbara, contain indexes with links to six or more years' prior Reports.

What does all of this mean? Well, to me it indicates broad recognition of the new information era and the role of the web in disseminating information so as to better inform the citizenry. Indeed, a couple of the county web sites, typically those that contain such information as the county codes, minutes of the Board of Supervisors meetings, calendars, etc., use the term "electronic government" and seem to be using the internet to enhance their provision of information and services. Two separate ideas occur to me as a result of this expanding trend.

First, each grand jury should take all steps it can to insure that its Reports, and the Responses to them, are placed on a web site and prominently linked to, at least, the county's web site. This seems to be the logical place for an inquirer to go when looking for a grand jury Report. Having the information also linked to the court's web site would be an added benefit. Second, grand juries might consider it worthwhile to investigate the quality of their county's web site. Perhaps some recommendations based upon best practices observed on other county's web sites could be implemented in your county. Anyone wishing the electronic list of sites I found can obtain it by emailing jack.zepp@LW.com if the list is not yet on the CGJA site.

Jack Zepp
August 16, 2002

FROM THE MAIL BOX

A FOLLOW-UP ON "EARLY" REPORTS (JULY JOURNAL)

Dear CGJA President:

I am the new Foreperson of a Grand Jury. Just yesterday, after a month of information overload, I was finally able to get to the July issue of the Grand Jurors' Journal. It was filled with helpful information, an excellent piece of work. I would like to pursue a subject mentioned in the Journal "Early" Final Reports. This seems to be a powerful tool for getting out Grand Jury findings to the public in a timely way. (One of the first defensive reactions of our School Board to last year's report, issued in late June, was that some of the recommendations were "old news.") I brought the subject to our Follow-up Committee last night, and they like the idea, but asked some practical questions: --Was an "early" report taken all the way through the process, including presenting to the Board of Supervisors, before it was made public? (Obviously, I assume it would go through the legal reviews and the judge's

clearance.) --Was an "early" report printed at the time of release, then collected with all the other reports for the Final at the end of the fiscal year, and printed again? There was concern about a lot of extra expense, and we are already on a very tight budget. Or, were alternate methods used, such as putting it on a web-site, writing an open letter to the affected agency (with a copy to the newspaper), etc.? --How have "early" reports been timed for release to the public (media) so as to make maximum impact? The concern was that release of too many reports might begin to bore the public ("Oh, jeez, has that Grand Jury gotten itself in the paper AGAIN?"), and dilute the impact. --Could you put me in contact with a jury or two that has used this process successfully?

A Foreman

Dear Foreman:

First, thank you for your kind comments about the Journal; Second, thank you for your diligent effort to create the maximum beneficial impact from the grand jury of which you are foreperson. I am personally convinced that, county by county and year by year grand juries are getting "better" and are having increasingly beneficial impacts in their counties.

As to your specific question: With the caveat that every grand jury is different and may well follow different procedures, I suspect that most: - comply with Penal Code 933 and have their early reports reviewed by the Presiding Judge or his/her designee before releasing them - do not submit any report to the board of supervisors prior to release except as required by 933.05(f) which does not contemplate comment by the affected agency or officer, but merely gives them notice (and prohibits them from releasing the contents), unless for some reason the grand jury decides it wants to do so pursuant to 933.05 (d) (which relates only to findings, NOT recommendations), or believes it somehow beneficial to disclose the contents of the report in connection with a meeting pursuant to 933.05(e) (which invites trouble since the affected agency or officer is not, having seen the report, subject to confidentiality) How early reports are disseminated will vary by county and budget. My informed speculation is that most early reports are provided, in hard copy, to the affected agency or official, with perhaps a few record copies given to the county clerk, county library, etc. and to the media accompanied by a press release and executive summary. In other words, the cost is limited to the cost of a few "Xerox" copies; I doubt any are "printed" in the formal sense. Few, if any, grand juries presently post early reports on a web site. (I am looking into web site use right now and when my current research is done I will report on it in the next Journal.) A letter to the affected agency or officer would probably be a waste of time since the obligation to respond pursuant to 933 and 933.05 is triggered only by a "final report". Indeed, it is for this reason that we stress that an early report be called a "final report" lest the agency or official take the position that an "early" or "interim" report is not a "final report". CGJA regularly communicates with media representatives and I have never heard them express any concerns those frequent early reports dilutes interest. To the contrary, they seem to appreciate them very much because a) it makes it easier to report on because they don't have to wade through a multiple-subject final report all at once and b) news is news; the more the better. The grand jury with which I am most familiar, Marin, meets with media representatives at the beginning of its term and discusses how best to insure maximum media coverage. There are days of the week that are light news days and an early report will get the best coverage then. There is a need to provide a press release and summary so the reporter doesn't have to wade through a lengthy report. 2. Three grand juries, no doubt out of many, that I know have successfully used early reports are Marin, San Mateo and San Luis Obispo.

Jack Zepp,
CGJA President

ROLE OF FOREPERSONS

Dear Editor:

Dan Taranto's article "The Role of the Foreperson" (April issue of the CGJA Journal) contains excellent admonitions to overzealous Forepersons. His point that the grand jury is "collegial rather than hierarchical" is well taken. That should certainly be the starting point for a definition of the Foreperson's role. But it would be an error to end the definition there. There is room, even with that as the base, for a Foreperson to provide acceptable positive leadership. At least that is the conclusion I come to after more than a year's contact with the six past Forepersons of the Marin grand jury each of whom has responded to the request of the Marin Chapter, CGJA to write a letter based on his/her experiences containing suggestions to incoming Forepersons. I am impressed with the sensitivity and insight they show. (Perhaps we have just been blessed with outstanding people). These letters have now been included as a supplement to the Marin County Grand Jury Manual. Thank you Dan for opening the subject, and I hope that Forepersons will find ways to pass along suggestions, and will add to a wider understanding of their role.

Wes Huss
Marin County

E-MAILING INFORMATION?

I'm presently a member of a County Grand Jury, and would like any information you have on Grand Jurors and the "oath of confidentiality" as it may apply to jurors emailing information within the group. Also would appreciate if you can point me in the right direction to find information on "conflict of interest."

A Juror

Dear Juror:

The bottom line is that each grand jury decides for itself whether email is or is not secure enough to satisfy the confidentiality obligation. They do so pursuant to the requirement of Penal Code 916 that each grand jury establish its own rules of procedure. I served on a grand jury that used email. My guess is that a plurality do not. The July issue of the CGJA Journal (which just came out and which, if you do not have your foreperson should) has an article discussing the security risks of email and cell phones. It is not an official CGJA position (we do not have one) but I personally think it is sound. Unrelated to the issue of confidentiality, I will also express my personal view that email is a horrible way to communicate with respect to matters that are in dispute such as whether or not to do an investigation, what to investigate, what findings are appropriate, etc. Because so much nuance is lost and the opportunity to reach accommodation in real time is not present, email seems to have a tendency to make small disagreements big and escalate misunderstandings.

I am not sure what you mean by "conflicts of interest." Do you mean those of officials which might be subject to investigation or do you mean those that a grand juror might have? As a general proposition, if you mean the former the rules are found primarily in the Government Code; if you mean the latter, the grand jury ultimately decides what is a conflict and what should be done about it although hopefully the affected juror will have had the sense to disclose the conflict and recuse him/her self from participating, and certainly from voting, on the issue. The only actual law on the subject is in Penal Code Section 939.5 which provides (presumably in the context of a criminal investigation) that the foreman states to those present the matter to be considered and the person to be charged and directs any juror with a prejudice or conflict to retire.(which I personally think means direct the jurors that if they or the grand jury think they have a conflict, they should retire; not decide if they have a conflict and if so direct them to retire).

I probably haven't answered your questions as clearly as you would have liked, but grand jurors don't have much guidance from the law and must operate on the basis of common sense and consensus.

Jack Zepp

CALIFORNIA GRAND JURORS' ASSOCIATION
CONTRIBUTIONS FOR THE MONTH OF JULY 2002

* denotes member of the Board of Directors.

\$0- 24.00
Peter Cresci

\$25.00-49.00
Otto Schmidlen
Catherine Telford

\$50.00-99.00
Dian Picone *
Roger Loper *

\$100.00-199.00
Jerry Lewi *
Marin County

\$200.00-499.00
Solano County Chapter
Santa Barbara 2001-2002 Grand Jury (A special expression of gratitude for this contribution for the memberships for the current 2002-2003 Santa Barbara County Grand Jury)

To all of our many contributors, we extend our heartfelt gratitude!
Janet Praria, Treasurer

CHAPTER NEWS

Marin County Chapter

The Marin County Chapter is having a good year. Plans for the Annual State Conference in Marin on November 15-16 are going well. Under the leadership of Bob Abeling and a large number of able assistants an outstanding program is being put together. The Conference keynote speaker will be Geanne S. Woodford, the warden of San Quentin State Prison. We are hoping for a big turnout from Chapters statewide and state-long. (Application forms are available in this *Journal*.)

New chapter officers have been elected. Lowell Smith coming off his term as Foreman of the 2001-02 Grand Jury was elected president. Karen Wold, his pro-tem, will serve as vice president, Dan Campbell as treasurer, again and Ted Freeman as secretary. We also have made and are making some changes in our by-laws to adjust the original document to our everyday needs and practices.

Nine members of the chapter devoted time during the second and fourth weeks of July to our regular training of the incoming grand jurors. Three days each week were devoted to this task. The new grand jurors were not only exposed to the information from and the wisdom of former jurors but they also heard many county officials and local political figures. The County Administrator, the County Counsel, the District Attorney and a member of the Board of Supervisors, among others, appeared. The new grand jurors also have the excellent, chapter-prepared *Grand Jury Manual* available to them.

An 18-page high school teaching unit entitled "*The California Grand Jury System as Practiced in Marin County*" has been completed and will be made available as an email attachment (twfreeman@ix.netcom.com), in September to any chapters that might be interested. Copies will also be available at the Annual Conference. Most of the material would apply to all 58 counties, although in some ways the unit is tailored specifically to Marin County. It is expected that many senior students in the county will be exposed to these lessons on the California grand jury system this up-coming school year.

Ted Freeman

Solano County Chapter

The Solano County Chapter of the California Grand Juror's Association (CGJA) recently held their election of officers for the 2002-2003 year. Newly elected officers are as follow: President - Wanda Kiger-Tucker; Vice-President - Norma Richardson; Secretary - Don Enneking; Treasurer - Ourania Riddle; Membership Chairman - Clif Poole.

The Chapter co-sponsored the training seminar at the Hilton Hotel in Concord. Some 150 new and carry over grand jurors attended the seminar from 20 different California counties. Chapter members were responsible for assembling the training manuals, preparing name tags and certificates of completion as well as staffing the registration table during the seminar.

I wish to thank Solano Chapter members who worked so hard to make this a successful training experience for grand jurors. These members include: Don Enneking, Caron Meleski, Clif Poole, Norma Richardson, Ourania Riddle, Joe Roberson, and John Woods.

The Solano County Chapter meets the fourth Wednesday of each month at Marie Calender's Restaurant in Fairfield at 10:00 AM. Past or current jurors are welcome to attend. For more information call Wanda at 707 678-4059.

Wanda Kiger-Tucker,
SCC President

COMMITTEE REPORTS

Government Relations Committee

The CGJA Government Relations Committee met on July 1st and August 5th. The Loyola Law Review article with our Association response to potential Grand Jury reform is now published and will soon appear on their website. Many public schools are back in session, operating against the backdrop of no state budget bill passed by the Assembly (as of this writing). Other legislation being monitored has moved more briskly. **AB363 (Steinberg)** has been amended twice in August and been diminished to the point of negating most action by attorneys representing governmental organizations. The Attorney General remains opposed to the bill.

SB1316 (Escutia) has completed its journey through the Assembly and the California Law Revision Commission agreed that policies remaining to be resolved (court unification statutory cleanup) can be handled on an ongoing basis. Finally, **SCA7 (Burton)** remains in the status reported from late June. Until the end of September, your best source for late-breaking developments is the Association web site at www.cgja.org.

One goal of the Government Relations Committee is to further membership involvement in issues related to Grand Jury recruitment and selection, reform proposals, role of the foreperson, etc. Our hope is that you will offer feedback in the Grand Jurors' Journal, by communicating with your elected Board of Directors and especially, by attending and participating at the November 15-16, 2002 Annual Membership Conference in San Rafael (Marin County).

Les Daye, Chair

MEMBERSHIP & CHAPTER RELATIONS COMMITTEE

It's that time again to send in your dues to renew your membership, or to join for the first time. Most of you have received a letter and application form reminding you of that. Many have already renewed or joined, but for those of you who have set the application off to the side, please pick it up and send it in today.

The CGJA has made great strides this past year in streamlining and strengthening itself. New bylaws were adopted making our operation more flexible and able to respond faster to changes. We adopted new rules for becoming or maintaining CGJA Chapter status, which should help strengthen the CGJA base. While some of these changes may have created controversy, the board has adopted them looking at the long-range benefits to the organization's ability to promote and strengthen the Grand Jury System of California.

Some people ask what has the CGJA done to benefit the Grand Jury System of California this year. I believe this has been a banner year for the CGJA and may be hard to top in the future.

- The CGJA conducted its annual training sessions for over 400 new Grand Jurors. Training can be done by many people although I believe our program is the best. What most other programs lack is the ability of different counties to compare notes with one another and improve their particular county's grand jury.
- The CGJA alerted grand juries and former grand juror groups, the courts and others in the State regarding the Kelso proposals to reform the Grand Jury System and with the help of our Chapters and sister associations, helped to point out many items we felt may be harmful to the system. These proposals have been set aside for now and may resurface as is or modified at a later time
- The CGJA has been monitoring other legislation throughout the year and has suggested changes where it believes the interests of the grand jury system may be adversely affected.

Without the CGJA's watchful eye and broad-based support, the above items may have become law changing the Grand Jury System as we know it today, so we could all sit back and "remember when".

We welcome two new chapters; Bud Pichetto and his chapter from Contra Costa along with Richard Ruth and his chapter from Santa Clara. Welcome aboard.

Remember, if you haven't joined or renewed, do so now.

Clif Poole
Chair
(JCSwimm@AOL.com)