



Grand Jurors' Journal

All the CGJA news
that fits in print.

Volume 2 No. 3

An Association of Grand Jurors

June, 2001

Summary of Grand Jury Reform Proposals

Issued for Public Comment by the Capital Center for
Government Law & Policy,
University of the Pacific, McGeorge School of Law.

The proposals are the work of two groups led by
Professors Clark Kelso and Michael Vitiello of the
McGeorge School of Law.

The proposals are in two forms.

First, a "Grand Jury Background Study" pro-
vides the rationale for undertaking broad grand jury
reform and discusses three broad areas of possible
reform. They are: Training, Right to Counsel in the
Grand Jury Room and Juror Diversity.

Second, a "Tentative Recommendation Reform
of Grand Jury Statutes" contains numerous specific
statutory recommendations to implement the au-
thors' views for reform. As part of the proposed
reform many statutory changes would be made and
all grand jury statutes would be moved to the Gov-
ernment Code.

Both of the proposals are based in part on a six-
hour "Roundtable" discussion in which the two
authors and twelve other attendees participated. The
two proposals and the Roundtable transcript are
available at < www.mcgeorge.edu/capitalcenter.htm >
and at < www.cgja.org. > in Adobe PDF format. To-
gether they aggregate 201 pages. They are also
available in hard copy on request from Professor
Kelso's office (916.739.7104).


This summary is intended as a neutral synopsis of
primary aspects of the proposals. The CGJA has
taken no position with respect to the merits of the
proposals. We invite comment from any interested
persons and will formulate a CGJA position in the
coming months.

1. The Background Study. The Study addresses three
main broad areas for potential reform.

a) Training. It is proposed that the McGeorge
Institute for Administrative Justice (IAJ) develop a
pilot project to train regular (i.e., civil) grand jurors
to conduct interviews, examine witnesses and write
reports utilizing simulation programs and hands-on
experience as the teaching methodology. The pilot
project would be funded by the State Legislature at
an approximate cost of \$300,000. The organization
conducting the one-week pilot program would train
only 250 regular grand jurors in selected counties,
and at the end of the year would determine if grand
jurors so trained "performed more effectively" than
did those without such training.

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Presidents' Corner



The big news this month, and perhaps for
many months to come, is the McGeorge
School of Law's proposed grand jury re-
form package. The proposals total 115
pages and are summarized beginning in the
adjoining column. We became aware of them in
late April and after a fairly hectic period of initial
review, concluded that they warranted a longer
public comment period than their authors had
initially contemplated. On March 14 we faxed a
letter, which is also set forth elsewhere in this
issue, requesting an extension to the comment
period. We are pleased and grateful to report
that Professor Kelso promptly responded and
agreed to extend the comment period deadline
from July 1 to November 1, 2001. We were
acutely aware of the difficulty almost all sitting
grand jurors would have had in trying to review
the proposals while finishing their Final Reports.
We hope that, with this extended deadline, many
sitting jurors whose terms will end in June will
take an opportunity to bring their experiences
and thoughts to bear on the reform process as it
unfolds later this year. We have also requested
that the California Judicial Council, the Consti-
tutionally created policy making body for the
state's judicial system, convene a Task Force
under its auspices to consider whether, and what,
grand jury reforms are appropriate for legisla-
tive consideration.

We have notified our Chapters, and the
independent associations of former grand jurors
with which we have relationships, as well as all 58
sitting grand juries and various interested indi-
viduals, of the pendency of the proposals and the
November 1st comment deadline. We are now
actively in the process of developing our own
internal task forces to deal with the proposals.
By this letter we are inviting all CGJA members
to join in this endeavor. I want to extend as well,
to all that read this, an invitation to contact us to
share your views, to offer your support and to
help us if you are so inclined. We hope that you
will keep us informed as to where you, and those
with whom you may be working on this subject,
are headed as you refine your analyses and
prepare your responses. We will be happy to
serve as a coordination point for those who
would like us to do so.

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CGJA Officers

President
Fredric "Jack" Zepp
Tel (415) 395-8129
Jack.zepp@LW.com

Vice President: Programs
Elwood Moger
Tel (916) 933-3230
el_moger@email.msn.com
note underline symbol in address

Vice President: Membership
Michael Miller
Tel (650) 344-1074
okmiller@pacbell.net

Secretary
Jane Naify
Tel (916) 961-9220
crossroads@osb.net

Treasurer
Janet Praria
Tel (831) 633-0759
jpraria@aol.com

Standing Committees

Financial Development:
Janet Praria, Chair
Tel (831) 633-0759
jpraria@aol.com

Government Relations:
Les Daye, Chair
Tel/Fax (530) 778-3368
bearpaws@sunset.net

Membership & Chapter Relations:
Dian Picone, Chair
Tel (831) 636-4959
dwpesq@hollinet.com

Operations: Elwood Moger, Chair
Tel (916)933-3230
el_moger@email.msn.com

Training: Sherry Chesny, Chair
Tel/Fax (530)878-8248
sherryc@jps.net

Summary

(Continued from page 1)

At the end of the pilot project the State Legislature could consider providing training for every regular grand juror statewide at an estimated cost of \$1,000 per juror for a full week of training. It is unclear whether such training would be made available to grand jurors who are impaneled as criminal grand jurors with civil oversight powers. See item 2(b) below.

b) New Criminal Grand Juries, and the Right to Counsel Present during Grand Jury Investigations. The proposal recommends the adoption, with one significant change, of AB 527, a bill vetoed by Governor Davis in October 1999. AB 527 provided that "subjects" of a grand jury investigation would have the right to have an attorney present during their testimony and proscribed limitations on the attorney's conduct while in the grand jury room. (Currently a subject has a right to counsel but the counsel cannot be present in the jury room and the witness must consult counsel outside the presence of the grand jury.) The proposal adds the requirement that the court appoint counsel for the witness if the witness cannot afford counsel. It is possible that the authors had in mind limiting this right to counsel to persons who were the subject of a criminal grand jury pre-indictment inquiry, but there is no such limitation in the proposals. Indeed, they expressly provide the right to counsel if the witness may be the subject of an accusation, a power reserved to the regular grand jury.

c) Diversity. The study urges that counties engage in aggressive outreach programs, in part, to increase minority representation on their grand juries." The Study notes, however, that such efforts may be illegal in light of Proposition 209, the California Civil Rights Initiative, and suggests that "counties would be advised to engage in 'neutral' outreach programs".

2. The "Tentative Recommendation Reform of Grand Jury Statutes". This proposal contains numerous specific proposed revisions to the California statutes pertaining to grand juries. In general they consist of the following.

a) A proposal that all grand jury statutory provisions, criminal and civil, be moved from the Penal Code to the Government Code so that the change will "highlight the grand jury's important civil oversight and watchdog role and will establish the grand jury in the Government Code as a local governmental entity."

b) A proposal that two grand juries be provided for. One, a grand jury composed of jurors selected as representative of their community in the manner that trial juries are selected (the "criminal" grand jury). The other would be the existing form of regular grand jury. The criminal grand jurors "shall" be selected each year but can be dismissed at any time by the Presiding Judge. The regular grand jury would be the same as at present but would be denied the right to indict. The criminal grand jury would be given the power to indict and also all of the civil powers currently enjoyed by the regular grand jury. Criminal grand jurors will serve for one year. Regular grand also jurors serve for one year, but if the superior court so desires staggered terms may be implemented so that one-half serve from January to January and one-half serve from July to July. If a county does not want two grand juries it must retain the representative grand jury with the criminal and civil powers and forego the regular grand jury. Provisions relating to criminal and civil investigations, now intermixed in the Penal Code, would be segregated.

c) Grand Jurors would receive daily fees of \$40 and \$0.29 per mile one-way, mileage reimbursement.

d) The proposed statutes would, where applicable, adopt the provisions of the Lockyer-Isenberg Trial Court funding Act of 1997 that make grand juries a county, not court, expense.

e) The proposed statutes would implement the pilot training program discussed in the Background Study.

f) The right to counsel would be implemented and provided to "any witness before a grand jury who is or becomes the subject of a grand jury investigation that may result in an indictment, or in an accusation...." Limitations are placed on the conduct of counsel.

CGJA 20th Annual Conference
September 14, 15, 2001
Costa Mesa Hilton Hotel, 1. 800. HILTONS
Registration/Details : Rose Moreno
/fax 714.846.3219
21 Los Patos, Huntington Beach,
Ca. 92649.

President's Corner

(Continued from page 1)

Our Annual Conference will be held in Costa Mesa on September 14 and 15 this year. We are in the process of adjusting the schedule so as to permit ample time for discussion of the implications of the proposed reforms. This is certain to be a very interesting Conference and we hope you will make every effort to attend.

Many Final Reports will be coming out soon. May we remind sitting jurors to file one copy with their county clerk and advise him/her to send a true copy to the State Archivist, as provided for in Penal Code section 933 (b)?

We request that the juries advise me of the report's URL if the report is posted on the Internet, and, whether it is or not, send at least one hard copy to CGJA, c/o Dan Taranto, 890 Cloudswood Rd., Fieldbrook, CA 95519.

Thank you.

Jack Zepp, President



Committee Reports

Government Relations

The CGJA Government Relations Committee reports that as of May 15, 2001, AB 1161 (Papan), Grand Juries: Compensation, has been assigned to the Senate Judiciary Committee. Our letter of support for this legislation remains on file. We will continue to monitor this important legislation.

Meanwhile, please continue to check our Association web site at < www.cgja.org > for important information and updates on McGeorge grand jury reform proposals (summary contained elsewhere in the Grand Jurors' Journal).

Les Daye, Chair

Operations

The Operations committee has completed its review of printing and distribution costs for the Association's Journal. With approval granted by the April Board of Directors meeting, the Grand Jurors' Journal will be printed and mailed from Dixon, California under direction of the Journal's Editor Ourania Riddle. We are currently applying for a US Postal Service Bulk Mail Permit to reduce our operating costs. Under the leadership of Don Enneking, the Solano Chapter will assist Ourania with final assembly and mailing of the Journal. Bob DeQuattro will continue to lead the Journal's design and layout effort. We recently received a request by the Santa Clara District Attorney's Office to subscribe to the Grand Jurors' Journal. Upon review, the Operations Committee recommended and the Board of Directors approved an annual subscription rate of \$20 for those outside the Association's membership who have an interest in receiving our Association's Journal. Subscriptions can be arranged by contacting our Journal Editor, Ourania Riddle.

The Operations Committee is missing Jodie Harrod, 2001 Annual Conference Chair, who is now convalescing at home following a recent surgery. We all look forward to Jodie's speedy recovery and return to her leadership role for our Annual Conference in Costa Mesa, California. Rose Moreno, Conference Registration Chair, will be mailing conference announcements to sitting Grand Juries in May and to all members in June. Please mark your calendars now for our Annual Conference on September 14th and 15th. An exciting list of speakers has been arranged for this year's

conference.

I am please to report that Jeanne Forbes and Clif Poole will be joining the Operations Committee and Roger Loper will be serving as the Committee's Vice Chair. Clif will be working on our data base management project while Jeanne will be contributing with her experience in public relations.

Your Operations Committee continues to seek members with an interest in working on its many functions.

Elwood Moger, Chair

Training

Mark your Calendar!!!

Three grand juror training seminars in August, 2001.



Clip and Save

Sacramento, August 6-7
at the American River College

Bakersfield, August 9-10
at the Holiday Inn Select

Concord, August 13-14
at the Concord Hilton

The registration fee is \$75.00 for the 2-day seminar and includes a copy of the Grand Jurors' Training Seminar Manual.

The basic core program will consist of five workshops:

- Grand Jury Investigations
- Grand Juries and the Law
- Grand Jury Interviewing
- Grand Jury Organization and Continuity
- Writing Final Reports.

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Committee Reports -Training (Cont. from page 3)

Panel discussions and expert guest speakers will give presentations on such topics as:

- Untangling the Maze of Local Governments
- Building Consensus
- Public Management Accountability:
or, How Do You Know They Are Doing a Good Job?
- How to Investigate a Law Enforcement Agency
- A Financial Presentation for Non-Financial People
- The Grand Jury / News Media Relationship
- Grand Jury Pitfalls and How to Avoid Them
- Panel discussion for Forepersons and Pro Tems

The presentations will vary somewhat for each seminar due to the availability of speakers. Information and registration packets will be to the new grand juries July 1. For further information please contact:

Sherry Chesny, Chair
530-878-8248
< sherryc@jps.net >

Chapter News

Marin County Chapter

Building and supporting an effective Grand Jury

By John Montgomery and Sue Haas

A well-functioning Grand Jury can make an important contribution toward assuring accountability and enhancing the efficiency of county governments. Inherent institutional tensions, however, between a Grand Jury, the Board of Supervisors and county agencies may seriously undermine success. Far too often, the well-researched findings of grand jurors (who have devoted substantial time and effort, and brought a wealth of varied experience and basic common sense into the jury room) are ignored, even in instances where prompt remedial action might have brought significant benefits to the citizens of the County.

That is why the Marin County Chapter of the Cal-

ifornia Grand Jurors' Association has been hard at work developing procedures and drafting guidelines designed to improve the effectiveness of its grand jury system and operations. Much of what is being done in Marin could prove to be worthwhile and effective elsewhere.

There are several reasons why the Marin Chapter, currently comprised of 63 former grand jurors, has become such a valuable resource to the sitting grand jury, and been experiencing such promising success. Above all, it has been focusing on the importance of overcoming institutional tensions through building long-term and mutually respectful relationships between the grand jury and those officials who should be its natural allies, particularly the Board of Supervisors, Presiding Judge, County Counsel and Court Executive Officer.

In developing those relationships, the Chapter recognizes that the Penal Code assigns specific roles to local officials in supporting the work of the grand jury (PC sections 904 through 939).

While the Board of Supervisors is expected to provide sufficient financial and direct administrative support for grand jury operations through the regular budget process, the Presiding Judge is charged with directing, supervising and 'protecting' (from inappropriate interference, conflicts or pressures) the grand jury in examining the operations of county government.

Obviously, County Counsel serves as the Grand Jury's lawyer, but can also help in educating Board members concerning the legal basis for unique grand jury requirements or expenditures, such as the occasional need to engage experts (auditors, appraisers or other technical specialists).

The Court Executive Officer, working closely with the foreperson and Presiding Judge, acts primarily as a facilitator to ensure that the work of the sitting grand jury is conducted as smoothly as possible, helps foster communications with other agencies of county government, serves as a liaison with the Chapter and provides direct support in important aspects of grand jury operations, such as coordinating training programs and developing manuals to standardize practices. In Marin County, the Presiding Judge and Court Executive Officer have demonstrated their strong support for the Chapter by working with its membership in developing and maintaining the Grand Jury Manual. Utilizing the excellent manual initially published by the 1998 Grand Jury and working with the training chairman of the Chapter, this document has undergone several revisions and is currently being used both as a general procedures manual and the core curriculum for the orientation/training program conducted annually for incoming grand jurors.

Prior to 1998, new jurors were basically offered a

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Marin County Chapter (Cont. from page 4)

one-day briefing session – as opposed to a formal training program - by the outgoing grand jury. With the enactment into law in 1997 of Penal Code section 914, however, the Court assumed responsibility for providing such training. In 2000, the training sessions were conducted by the Court utilizing a training program developed and coordinated by the Marin Chapter's Training Committee. Training sessions are currently scheduled at the commencement of the grand jury term (fiscal year term) and do not conflict with the CGJA's training efforts.

The Chapter also helps the Marin County Grand Jury each year by conducting a review of responses to the prior year reports. While the Chapter does not evaluate the content of any specific agency response, it does ensure that all responses have been submitted in the manner required by law. The incoming grand jury can make those evaluations, but since those responses are received at the beginning of the term, the new grand jurors have found this service to be invaluable.

The Chapter also provides a public relations service designed to promote the work of the grand jury in California and recruit a representative, diverse cross-section of Marin County citizens to volunteer their time and energies. Toward that end, the Chapter has established a speaker's bureau of 18 members who have addressed 37 civic organizations in the past two years. Later this spring, Chapter representatives will make an appearance on local television to encourage community support for and participation in the grand jury system. The Marin Chapter also has a web site < <http://grandjury.marin.org> > developed by one of its more computer-literate members.

Through the efforts of the Archiving Committee, the Chapter has documented and catalogued all past reports of the Marin County Grand Jury. This organizational work should be especially helpful to each the new grand jury in determining what areas of local government might bear examination.

Both the Marin County Superior Court and Board of Supervisors have helped the Chapter grow by providing a supportive membership for each sitting grand juror. The Chapter has an annual membership drive where it usually gains a few recruits from year's past, but the basic source for new participants is the outgoing Grand Jury. The Chapter sponsors two social events annually for both active and supportive members. In expanding the membership, the real challenge each year is to convince as many of the retiring 19 members that they can help the Chapter – and continue to serve the Marin community – by joining our organization.

Finally, it is important to emphasize that the fundamental purpose of any association chapter is to provide support for each sitting grand jury as its members carry out their duties and legal responsibilities on behalf of their communities. As illustrated in this brief

overview, association members can provide such support by: imparting sound advice based on prior experience; offering direct assistance when requested either by the Presiding Judge or Board of Supervisors; monitoring the implementation of published recommendations contained in Grand Jury Reports; helping the Superior Court Judges in conducting training/orientation programs; working with the CGJA to support legislation strengthening the Grand Jury system in California; and promoting the long term vitality of the grand jury as a community watchdog by helping to encourage county residents to serve as grand jurors.

Monterey County Chapter

The Monterey County Chapter at the present, meets quarterly, with the board of directors meeting more often when required. One of our members, Carol Church, has compiled a matrix showing the areas of investigation by the regular grand jury for Monterey County for the last twenty-four years. This has been very well received and will be of immense assistance to subsequent grand juries.

Other members of our Chapter continue to speak at civic and fraternal organizations regarding the focus and benefits of the grand jury system. Those members are Charles Page, Roger Loper and Wolfgang Haas. Their knowledge and dedication is immeasurable.

We are planning to have a booth at the Monterey County Fair in August. Nomination/election of directors and officers will be held in July. October marks the start of the third year for the Monterey County Chapter. With the advent of summer, we are looking forward to renewed enthusiasm of members and their participation in Chapter activities.

Janet Praria, Chapter Secretary

Sutter Buttes Chapter

The Sutter Buttes Chapter was organized in January 1999. This chapter includes former grand jury members from four Northern California counties; Butte, Colusa, Sutter and Yuba Counties.

Our first objective was to inform the citizens of our counties as to the Grand Juries' functions and responsibilities. In so doing, two of our members Jack Hager and Al Amaro, both of Sutter County, created a video. This video was shown on our local television channel with a question and answer format including a moderator from the television channel. This discussion included how grand jurors were selected, their term of office as well as to their duties as a 'watchdog' and an investigative body of their respective county and city government. This video was shared during the 2000 CGJA's Conference in Sacramento. (Cont. on Page 6)

Sutter Buttes Chapter

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In working with a Sutter County judge, a questionnaire has been composed and distributed in the community in hopes of attracting citizens to step forward to serve on the 2001-2002 Grand Juries.

Several members have visited local active Grand Jury monthly meetings after making appointments with the chair.

Plans are being made to place ads in the local newspapers requesting interested citizens to call a phone number for more information as to serving on their respective county Grand Juries.

Ruth Stremer



Your tax deductible gift is greatly appreciated

April 15, 2001 is tax history. As you plan for April 15, 2002 and beyond please consult with your tax advisor and consider all or some of the following ideas as a method to provide tax deductible gifts to the California Grand Jurors' Association. Your lifetime or estate planned donation will enable your association more effectively to provide training, publications, advocacy and public relations material to members, sitting grand jurors and the public.

Outright Gifts:

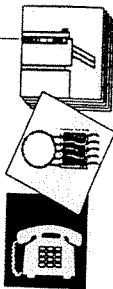
- Gifts of Cash
- Gift of Stock or Security
- Personal or real Property

Life Income Gifts:

- Charitable Gift Annuity
- Charitable Remainder Trust
- Pooled Income Fund

The CGJA thanks you for your tax deductible philanthropic efforts!

Janet Praria, Treasurer



From the mailbox

Dear Editor,

As a current foreman I would like to respond to the issue of carry-over grand jurors.

This year we had 4 carry-overs and coming from a Grand Jury with 10 carry-overs, I for one would take the 10 carry-overs any time. Carry-over jurors bring experience and understanding of the process. Carry-overs do in fact have the Grand Jury organized faster and initial projects started sooner. A knowledgeable carry-over foreperson with leadership experience will be a most effective facilitator. The majority of new jurors start out at a little better than dead zero knowledge of law, investigating, government operations, finance, etc. Even with the outstanding training provided by CGJA these new jurors come out enthusiastic and dangerous but not very effective. It is the carry-overs who get these folks up to speed and keep them on the right track. The importance of the New Grand Jury being totally independent from the Old Grand Jury is way overstated. The new Grand Jury with a maximum of 10 to 9 ratio of old to new will only remotely look and act like the old Grand Jury and will quite rapidly develop it's own personality. To say the carry-overs bring their own agendas and bias overlooks the fact that the new jurors also have strong feelings with agendas and biases of their own. Yes it is possible that a group of individuals could hijack the Grand Jury for their own reasons and purposes. This could happen in any case. It is interesting to note that during the 2000 CGJA Training in Concord I had the opportunity to speak with a foreperson from a county where the courts do not permit any carry-overs. First, he was the only person at training. Second, the lack of carry-overs significantly reduced the time available to investigate and the effectiveness of the investigations started. It seems the courts most likely with the tacit approval of the supervisors intend to control or limit the Grand Jury. Some of the major problems

that develop when you have less than one carry-over for each committee can be stated as follows: "We have no complaints, therefore we have nothing to investigate" "Why can't a few of us write a minority report on this subject?" "Why are we investigating this agency, we have no complaints about it?" "Their response to last year's report was unsatisfactory, we must blast them for it." In review, the more carry-overs the more productive the Grand Jury term will be and likewise with fewer carry-overs there is more opportunity for wasted or unproductive time.

John Woods, Foreman Solano Cty.

Dear Editor,

I'd certainly agree with Jack Zepp (From the mailbox, April 2001, Journal) that early disclosure of recommendations to the agency or department being investigated is not a good idea. A grand jury that's done its work properly, has investigated carefully, has looked at pertinent statutes and budgets, and has thought carefully about what it suggests as a remedy for problems is not apt to make a foolish recommendation. If it does, those investigated have the right (indeed, the legal duty) to respond as to why they are not going to implement such a recommendation. If the jury meets with those investigated and passes on the recommendations early, the inevitable result will be a weakening of the jury role. Any recommendation the ones investigated don't agree with will be labeled as "foolish" or "impossible." And they won't be going on the record with why. Before the passage of Penal Code § 933.05(b) that mandates a specific response to each recommendation as to whether or not it will be implemented, and if not, why not, the jury sometimes might well have looked foolish since responses could be as vague as "no comment," or equally vague and downputting phrases. If a jury makes foolish recommendations now, perhaps it deserves the scorn of being told why such recommendations were foolish.

Mickey Strang

Letter to Professors Kelso and Vitiello

Dear Professors Kelso and Vitiello:

The California Grand Jurors' Association ("CGJA") and many former grand jurors and their independent associations have begun their analyses of the wide-ranging proposals for grand jury reform that you released for public comment in late April. This is, as you no doubt are aware, very probably the most complex, all-encompassing attempt to change the statutory underpinnings of the California grand jury system and many of its practical aspects since California adopted its first Constitution. At this time the CGJA has no position with respect to the proposals other than to observe that a comment deadline of July 1 is wholly unrealistic if considered, reflective comment from all interested parties is sought. If that date is not extended we fear that you will receive no comment from many whose voices should be heard, and many hasty reactions from those who will not have had the time for considered analysis and commentary.

In any event, our initial review indicates that at least the following nine areas of possible concern are implicated by the proposals. Each is important and complex in its own right; collectively they present a daunting task of analysis. The task is one we are committed to undertake and we wish to do so thoroughly and thoughtfully. For that reason this letter concludes with a request that you extend the time for interested persons to comment. The nine areas of immediate concern are as follows.

1. The proposal that grand jury functions be moved to the Government Code will offend those who believe that the grand jury is not an agency of government but a means by which citizens can assert their retained powers *over* government. Absent a compelling reason to relocate the grand jury statutes from their historic locus it can be expected that this proposal will encounter opposition. In any event, however symbolic you may

consider this change, the potential legal and practical implications are sufficiently complex as to require careful, deliberative and detailed study. There are also some troubling tensions relating to the separation of powers created by your inclusion in section 77950 of a court's power to treat failure of compliance as "contempt".

2. The proposal that the regular grand jury be stripped of its power to indict in any and all instances is sure to be controversial. As you know, our primary focus is on civil oversight activities. We will therefore need time to obtain and familiarize ourselves with whatever data exist about current and historical indictment practices of regular grand juries, with and without District Attorney direction, before we can comment meaningfully on the likely impact the loss of the power of indictment would have on regular grand juries engaged in the governmental oversight function.

3. The concept that counties will be required to impanel a criminal grand jury, composed of a randomly selected "broadly representative" panel, whether the county uses a grand jury to indict or not, requires considerable analysis. The fact that such a grand jury would possess all of the "civil" powers historically available to a regular grand jury significantly complicates that analysis, as does what seems to be some confusion in the proposals over the future role of the accusation. That counties would be permitted to drop their traditional regular grand juries to save double grand jury expenses has constitutional implications that cannot be researched and resolved in a short time.

4. At a time when the Papan bill (AB 1161) providing for increased grand jury per diems and mileage, which CGJA supported, has passed the Assembly unanimously it is confusing to be confronted with a proposal to provide higher per diems and lower mileage than AB 1161 would provide. We would, at a minimum, need to obtain and review the Blue Ribbon Commission analysis

relating to trial juries to which you refer and any data available to you that leads you to make this proposal before we could determine whether to change our support of AB 1161.

5. Whether it is wise to accept the limitations of the Trial Court Funding Act on courts' abilities to perform their duties under Penal Code sections 914 and 938.4 or, instead, to try to amend the Trial Court Funding Act so that courts can continue their traditional role of preserving grand jury independence is clearly a subject worthy of much consideration.

6. Providing a witness the right to have counsel, including court-appointed counsel, present in the grand jury room during testimony in any investigation that *might* result in an indictment or an accusation obviously affects grand juries in both their criminal and civil functions and requires a good deal of analysis to permit constructive commentary.

7. Permitting individual courts to require that grand jurors serve staggered terms is sure to be controversial. Anecdotal evidence available to us indicates that strong and contrary opinions exist regarding the wisdom of mixing "experienced" and "inexperienced" grand jurors on a panel that must reach consensual decisions. Prohibiting anyone from ever serving more than one term on a grand jury unless appointed by the Presiding Judge as a carryover will be equally controversial.

8. The provisions relating to funded grand juror training are difficult to understand. Unfortunately the proposal is silent in critical respects. At a minimum interested persons will need to consider, and advance, suggestions to insure that the results of the proposed pilot program are "evaluated" with reference to meaningful standards, that any government program not displace local training by experienced grand jurors and that there be adequate safeguards to prevent subversion of grand juror independence.

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Letter to Professors Kelso and Vitiello (Continued from page 8)

9. Lastly, we note your suggestion that grand juries need to increase their diversity, and your concern whether efforts to do so would run afoul of the anti-affirmative action provisions of proposition 209. Such concerns justify input from all interested counties as to their diversity practices and legal opinions. Many grand jurors and people in county government and the court system have thought about the diversity issue and there is a wealth of experience to draw upon. We are concerned that you will be unlikely to be able to avail yourself of that information if you limit the comment period to July 1. Certainly we will be unable to gather the information in time to permit us to analyze it and shape our comments accordingly.

Because of these complexities, and no doubt many others that we have not yet had time to identify, the CGJA respectfully requests that the public comment period with respect to your proposals be extended to not earlier than October 1. In addition to the extreme difficulties we would have in attempting to respond by the current deadline, we note that in 56 of the 58 counties in California the regular grand juries are just entering their busiest period, as they prepare to finalize and release their Final Reports before the end of June. The almost 1100 members of those grand juries will have little or no time to comment on your proposals before they are discharged as jurors at the end of June. In our experience, many of those who serve as regular grand jurors come to revere and cherish the grand jury system as it now exists. For those now serving, a July 1 deadline is tantamount to exclusion from the comment process.

We appreciate your inclusion of the CGJA in the June 1 and 2, 2000 Roundtable and our subsequent opportunities to provide background information to your research assistants. The CGJA represents the largest body of sitting and former grand jurors within the

state of California and we urgently request a meeting with you at your earliest convenience to discuss your proposals, rationale and timing. Representatives of CGJA will make themselves available in Sacramento at a time convenient to you for that purpose. Thank you in advance for providing us with this courtesy.

Sincerely,
Fredric J. Zepp, President

CREDIBILITY

By Mickey Strang

During the year that a grand jury functions, its members talk with a wide range of people. These include government officials, members of the public, professionals in various fields carrying out various functions. In each of these contacts, wise grand jurors tend to be a bit wary about the information they are being given. The individual may be dishonest, trying to lie to cover up information, or to tell just part of the truth in such a way as to obfuscate facts. Or, indeed, the individual may believe his words, but not actually have facts in hand and be unwilling or unable to admit that he knows not. Admitting not knowing is hard on the ego, especially if it's to members of an investigating grand jury. In any case, any information that a grand jury receives needs to be checked out, preferably from at least two other sources. Or from hard copy in the records. And jurors know this. But where they sometimes have a problem is if they are given information by one of their advisors - county counsel or the district attorney or representatives from these - and don't subject that information to equal test of credibility. (Best test: check and see what the Penal Code, Government Code and court rulings say.) For instance, since many counties now have both a regular grand jury and a criminal grand jury, some "advisors" have told the regular grand jurors they cannot investigate criminal activity and that only a criminal jury can do a 919(c)

investigation. (P.C. §919(c): The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county.) No place in the Penal Code or in any court rulings is there a dictum specifying that the regular grand jury can't investigate corruption of an official or employee of any of the organizations and departments the jury is authorized to look. If told they can't, unfortunately, some juries haven't checked further by looking at laws, but have automatically accepted the word of whichever advisor instructed them. The advisor may be in ignorance of the law or may have his own agenda for wishing to keep the grand jury out of such an investigation, but he certainly cannot keep them from going ahead. The only possible legitimate reason to prevent a regular grand jury from investigating corruption would be if there were an on-going investigation that would be compromised by another investigation of the same person-taking place. And there, the advisor, to maintain his own credibility, must tell the jury not that they can't, but he'd rather they didn't at this time and why. For years I worked for a government agency that held the refreshing point of view that anything they weren't by law forbidden to do, they could. As long as they carried on with this point of view, the organization was viable and terrifically productive in serving the interests of the people of the United States. When the courage to question faltered, so did their productivity. I think the regular grand jury could profit by holding the same point of view: unless the law specifically forbids an investigation, regardless of what a jury advisor may say, the jury can go ahead. But each jury must have the courage and the smarts to check for itself that, indeed, something the jurors are told they can't do is actually forbidden by statute.

Editor's note: Mickey Strang, a retired federal civil servant, served on the Humboldt County Grand Jury from 1990-1992.

Grand juries in the news

Solano County Grand Jury lambastes PR tactics

By Jason Massad/Reporter Staff

A county public relations document has raised the ire of the Solano County grand jury, which has described its content as "disturbing or even insulting." In a letter addressed to the five members of the Solano County Board of Supervisors, the grand jury foreman wrote that the County's yearly "Report to Citizens" stereotyped county residents.

"On one page you have a group of all white males in casual attire shooting guns; the next page an old stereotyped drawing of farmers, the following page a picture of all blacks next to a welfare statement," the letter of criticism states.

"It would be difficult to offend more people, more easily, if you tried," the letter adds. "As you know, we are a mixed group of professionals which represents all parts and many ethnic groups of Solano County," the letter, signed by foreman John P. Woods, explains. "We wondered why this publication was published, at what cost, and what the county hoped to accomplish." One official in the county administrator's office, which created the report, said he was surprised by the strong reaction from the county government's watchdog. "People of various ethnic backgrounds are portrayed by the report," said Darby Hayes, assistant county administrator. "I'm not sure why the grand jury took offense to this." A photo of young black mothers is used in the report to illustrate one of the county's health programs, adjacent to bold text that states "(to) help welfare recipients obtain and sustain long-term employment and to enhance the quality of life to children."

"I think it sends a very loud message that when we put things like this together we need to be more careful," said Supervisor Duane Kromm. "But I don't think that in any way, shape, or form that they were

accusing anybody of racism." The county distributed the report to local newspapers and libraries at the beginning of the year in limited numbers. About 1,000 copies were printed, said Hayes. It highlights and summarizes some of the services provided by the county, like health and law enforcement. Marilyn Brown, the equal employment officer in the county administrator's office, said the report sends the wrong message. "Frankly, I don't like it either," she said. "In this limited space, the message you're getting is that all the service givers are white and all the people receiving the services are minority." "The drawing of guns is not a good message: we're trying to promote the idea of community policing, not that we shoot at things." The county grand jury is a collection of 19 people that have oversight, among other matters, in regard to government operations in the county. Notably, it issued a scathing report on a county juvenile facility in Fairfield, built in 1959, saying roof leaks and bad lighting made it a liability. Supervisor John Silva said that he has shown the public relations document to several people, including a class at Hogan High School, and they haven't had negative reaction to it.

"You could read anything you want into it, I suppose. It's a matter of what's important," he said. "I wouldn't value the grand jury's opinion over any of my other constituents."

From Here and There

Independent Associations of former grand jurors such as those in Orange County (Grand Jurors Association of Orange County) and Riverside (The Grand Jurors' Association of Riverside County) meet regularly promoting and supporting the Grand Jury system. The Association of Orange County is sponsoring the 20th conference of the California Grand Jurors' Association (CGJA). The conference will be convening in September at the Costa Mesa

Hilton. Currently the program for September 14 and 15 has Orange County Supervisor Cynthia Coad, Presiding Judge Wayne Peterson of the Superior Court of San Diego, Jose Guillen, CEO of the Riverside County Superior Courts, Ron Overholt, Chief Deputy Director of the Administrative Office of the Courts, former Assemblywoman Marilyn Brewer and Ruben Lopez, Legislative Representative, Administration of Justice, California State Association of Counties among the dignitaries that will address the attendees.

The Grand Jurors' Association of Riverside County meets on the second Thursday of every month at Cask'n Cleaver Restaurant in Riverside. Election of Officers was scheduled in May. The Association is looking for ways to increase its membership and improve attendance at its meetings.

Editor's note: Information for this writing was provided by members of these Associations.

Another term ?

It pays to consider being a Grand Juror again. One of the things that critics of the Grand Jury panels always expound upon is the lack of age and/or social diversity inhabiting each group. In an effort to correct these problems, the Board of Supervisors voted to increase the per diem from \$25.00 per day to \$50.00 per day. Orange County is the only county in the state to pay at this rate. As a matter of fact, very few counties pay the \$25.00 rate.

First indications are that this change will make a difference. Almost immediately after the increase was announced in the papers, Alan Slater's office started receiving calls from people eager to serve as jurors.

Our membership Vice President Sheldon Singer, who led the group which urged the Board of Supervisors to consider this highly significant development deserves congratulations.

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