



Grand Jurors' Journal

All the CGJA news
that fits in print.

Volume 2 No. 6

An Association of Grand Jurors

October, 2001

CGJAs' 20th Annual Conference Postponed until November 2-3, 2001



Because of the the September 11th National Emergency, the CGJAs' 20th Annual Conference and Membership Meeting was re-scheduled for November 2 and 3.

Rose Moreno, Conference Registration Chair and Jodie Harrod, Conference Chair contacted those people that had registered and advised them of the new dates. The program as previously scheduled will be maintained with the same speakers participating.

As time is of the essence, anyone who has not registered and is interested in attending the conference should call or fax Rose Moreno as soon as possible at 714.846.3219.

Little Hoover Commissions' August Letter to all Grand Juries in State

In the September issue of the Journal we made reference to a letter that the Little Hoover Commission sent to all California Grand Juries. The letter was accompanied by a report titled, *Special Districts: Relics of the Past or Resources for the Future*. While the report is too large to print in the Journal, we have decided to print the letter, as several readers showed interest in follow-on coverage of the topic.

The Little Hoover Commissions' website is < www.lhc.ca.gov > for further information on the subject. Here is the letter as written.

August 9, 2001

Dear Grand Jury Members:

In May 2000 the Little Hoover Commission released a report titled: *Special Districts: Relics of the Past or Resources for the Future*. The report was the culmination of a yearlong study of the operations of California's more than 2,200 independent special districts.

The Commission's central conclusion was that special districts, because of their numbers and typically narrow focus, often lack the kind of oversight and citizen involvement necessary to promote their efficient operation and evolution. The Commission made recommendations that would enhance the accountability of special districts by making their activities and finances more visible and easily understood by policy-makers and the public.

(Continued on Page 2)

Presidents' Message



As you probably know, the events of September 11 forced us to reschedule our Annual Conference and Membership Meeting to November 2 and 3. That, in turn, meant we could not get membership comment on our response to the McGeorge

Grand Jury reform proposals before the then deadline of November 1. McGeorge has kindly continued our deadline to December 3, which means we will be able to have the benefit of members' input before we take a final position.

Others have been actively responding and I thought you might enjoy a summary of their views. We at CGJA do not know, of course, whether we see everyone's comments, but to date we have received them from two sitting Grand Juries, one Chapter, one Past Grand Jurors' Association, a County Administrative Officer, a County Counsel, a District Attorney, and an individual who is a past grand jury member.

Taken as a group, the responses all have some common features, noted below. None agree with the view that the two instances cited by McGeorge as examples of grand jury "abuse" justify a review of the regular grand jury.

Most either used the words, or expressed the thought in different words, that "it ain't broke, don't fix it!"

None support the "relocation" of the grand jury statutes from the Penal Code to the Government Code.

None support the McGeorge concept of an overriding "criminal" grand jury.

Most strongly opposed the proposal for a state administered grand jury training pilot project, implied to be run by the McGeorge School of Law. One thought the suggested plan was good but wondered whether it would be mandatory or optional and noted the existence of "Organization/Format issues."

None supported staggered terms for grand jurors. Most opposed a right to counsel in the jury room, although one thought it would be OK for "targets" but not "witnesses."

There was a fair amount of concern expressed over the fact that the grand jury lacks adequate statutory authority to engage independent legal counsel.

Some focused on the inconsistencies in the statutes as to the roles of, and costs to be born by the Courts and the Counties.

(Continued on page 3)

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Letter (from page 1)

It made recommendations that would provide Local Agency Formation Commissions, other policy-makers and the public with the tools to effectively scrutinize and guide the evolution of districts.

A copy of the Commission's report is enclosed. After reviewing the Commission's report, the Sacramento County Grand Jury investigated the finances of Sacramento County's 17 independent special districts. Its conclusions were included in its 2000-01 final report and are enclosed for your review.

The Little Hoover Commission commends the Sacramento County Grand Jury for conducting this examination. By focusing on this issue, it has raised the visibility of special districts in the eyes of the public and policy-makers. It made specific recommendations designed to increase public understanding of districts' needs and plans for reserves. It also encouraged integrating special district resources into countywide infrastructure planning, as recommended by the Little Hoover Commission.

I encourage your jury to review the reports of the Commission and the Sacramento County Grand Jury. The information they contain may help you identify opportunities in your county to review and enhance the performance of independent special districts.

Should you decide to review special district finances, we want you to be aware of issues you may encounter in identifying and describing fund balances. Subsequent to the release of the Commission's report, some districts reported that in addition to monetary funds, the retained earnings identified in the Commission's report included the value of some of their infrastructure. Others said that the figures

accurately reflected their cash assets. Many said that there was confusion about what to report and how to report it.

Since that time we have worked with Senator Joseph Dunn, the State Controller and special districts to craft legislation (**SB 282, Dunn**) that would require the Controller to electronically publish detailed financial information for the 250 districts with the largest revenues. The bill requires a breakdown of fund balances designed to clearly illustrate the assets, liabilities and equity of districts. Should you assess and recommend improvements to special district financial reporting, I suggest you consider the fund balance categories proposed in SB 282. A copy of the bill is enclosed.

Special districts are the most numerous of all local governments and provide essential services like fire protection, water, sanitation, and parks and recreation to virtually every California community. Because many of them are obscure, the mechanisms designed to hold government accountable like public meetings and elections often do not work well for special districts. The grand jury can perform a particularly important oversight function by reviewing the operations of these local governments and making recommendations for improvements.

Thank you for your consideration of this issue. If you have questions or if I can be of assistance to you, please contact me at (916) 445-2125 or by e-mail at <jim.mayer@lhc.ca.gov.>

Sincerely,

James P. Mayer

Executive Director

Committee Reports

Financial Development

California Grand Jurors' Association Contributions received from July 1st through September 15th, 2001.
(* member of the Board of Directors)

\$20 - 24

Brenda Frederick; J. Russell Fury

\$25 - 50

Serena Bardell; Sherry Chesney* Celebration Fund in honor of Ourania Riddle's speedy recovery. Clif Poole*; Norma Richardson; Jodie Harrod*; Patricia Yoemans (former Director).

\$100 - 499

Marianne Jameson (former Director); Roger Loper*; Audrey Lynberg (former Director).

\$500+

Grand Jurors' Association - Orange County

Congratulations! 100% of the CGJA Board of Directors have supported the association in the fiscal 2000 - 01 year.

Janet Pravia, Treasurer

Government Relations



The CGJA Government Relations Committee reports that as of October 4, 2001, **AB 1161 (Papan), Grand Juries: Compensation**, was signed into law by the Governor on August 30, 2001 and its provisions (as amended) become effective on July 1, 2002.

Also, **SB 262 (Dunn), Controller: Special Districts**, was signed into law by the Governor on September 10, 2001 and amends **Section 12463.1** of the Government Code. No further action has been taken on **AB 363 (Steinberg), Public Attorneys**.

The Government Relations Committee is encouraged by the responses received and discussion generated on Grand Jury Reform proposals (McGeorge). Thanks to Chapters and Independent Associations for your insightful and factual comments (letters).

The Special Committee (reform proposals) is continuing to assemble background materials and active discussion is anticipated during the upcoming 20th Annual Conference and Membership Meeting in Costa Mesa on November 2-3.

We are anticipating the final document this month on the California Grand Jury System (12th grade lesson plan). The project is scheduled for implementation, after approval, in the classrooms of Tulare County.

Board Member Jeanne Forbes and the supportive Tulare County Chapter as well as CGJA Committee members can truly be proud of this achievement; the Grand Jury institution recognized properly in the historical development of California.

Finally, responses to Grand Jury Final Reports should have been approved and filed, as required, in all counties. We urge each current Grand Jury to review these responses and please have the CGJA included on the official list of recipients.

Les Daye, Chair

President *(Continued from page 1)*

Some noted, with displeasure, the proposed prohibition of a grand juror serving a consecutive term.

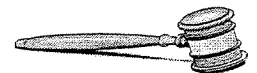
Many noted continued annoyance with statutory anomalies such as the continued confusion as to the meaning of "public prisons" in Penal Code 919.

These are brief, and condensed summaries, but I believe they capture the general positions on the main points. There were, of course, numerous suggestions for change in existing statutory language or the creation of new statutes, but they are too detailed to summarize here.

Elsewhere in this issue there is a condensed summary of the responses CGJA got to its very comprehensive survey of Grand Jury Practices. I think you will find them very interesting. The detailed survey itself was the work of many; the compilation of responses is being done by Elwood Moger. It is a huge job (there are over 350 pages of data) and I thank him for the special effort.

I don't know when this will reach you, but assuming that it will be before November 2, I extend my encouragement to you to attend the 20th Annual Conference and Membership Meeting in Costa Mesa November 2 and 3. In addition to the more usual events we will be discussing CGJAs' proposed comments to the McGeorge proposals and what lessons we can learn from the more detailed presentation and analysis of our survey results which will then be available. I hope to see you there.

Jack Zepp, President



Report on the CGJAs' 2001 California Grand Jury Practices Survey

In June, our Association surveyed the current and immediate prior Foreperson of California's 58 County Grand Juries relative to approximately 100 Grand Jury Practices. To date, 44 or 76% of California's Counties have responded to our survey. Our 2001 Grand Jury Practices Survey represents the first comprehensive look at California's Grand Juries in recent times.

We are currently missing Alameda, Alpine, Butte, Colusa, Del Norte, Imperial, Inyo, Lassen, Mariposa, Riverside, San Bernardino, Sierra, Solano, and Sonoma Counties. CGJA members, with Grand Jury contacts in any of these counties, are invited to encourage the current or prior Foreperson to participate in our 2001 survey. Please call or email me with the name, address, and telephone number of a Foreperson willing to participate and our eight page survey form will be mailed immediately.

Some 352 pages of raw data have now been compiled into a 20-page statistical report of current Grand Jury Practices. A summary of findings and the supporting statistical report will be presented to our Board of Directors at their November Board Retreat and will be available for membership review at our 20th Annual Conference and Membership Meeting on November 2 and 3.

In this Journal report, I will attempt to highlight some of the more interesting findings developed by our 2001 survey under the five sections that make up our statistical report. Please keep in mind, all percentage references noted in this report are based on the 44 counties responding to the survey.

Grand Jury Types and Selection Processes

An additional Grand Jury dedicated to hearing criminal matters supplements the regular Grand Jury in 48% of California's counties. Criminal Grand Juries are used frequently in four populated counties while rural counties may use a criminal Grand Jury one or two times a year. Indictment activity by regular Grand Juries is rare with only five counties reporting indictments in the last two years.

Volunteers are the only source of candidates for the regular Grand Jury in 55% of the counties; while 18% of the counties use Petit Jury Roles; and 9% use Nominees of Court, government, or community leaders as their source of candidates.

Remaining counties use split sources of candidates. It is interesting to note that six counties reported difficulty in finding sufficient candidates to impanel their Grand Jury and in each case additional

volunteers resolved the problem.

Juror carryovers from one jury to the next are very common and found in 86% of the counties. The number of carryovers ranged from one to eight.

Grand Jury Orientation and/or Training

Orientation and/or training for a new Grand Jury are almost universal and found in 98% of the counties reporting. The one county reporting no training does allow the Foreperson to attend CGJA training.

Training is conducted during the first eight weeks of a new jury term in 52% of the counties while 16% conduct training immediately prior to the jury's term. The remaining counties report a combination of training times.

Former Grand Jurors in the form of CGJA, Local Juror Associations, and as individuals are involved in 90% of the training conducted. County Counsel is involved in 59%, District Attorney in 50%, and outside professional paid trainers are reported in 30% of the county programs.

Our survey questioned respondents on 12 training components. Common components used in 55% of the counties were Grand Jury Authority & Law, Juror Conduct, Investigations, and Interviewing.

Another 16% used at least three of the common components identified by our survey results. Hours spent on individual training components varied from 30 minutes to six hours with investigations and interviewing typically receiving higher amounts of time. Foreperson training was significantly lacking with less than 10% reporting any training of their forepersons. All but one county reported issuance of a Jury Handbook annually with most updates done by the sitting Grand Jury.

Grand Jury Resources

Annual Grand Jury Budgets varied widely from \$5,200 in a rural county to \$1,233,000 in California's largest county with a median of \$55,328 for the 36 counties submitting budget information. Less populated rural counties, 33%, reported budgets of less than \$35,000; while California's more populated counties, 33%, reported budgets in the range of \$100,000 to \$432,592; excluding the Los Angeles County budget.

The survey showed that 66% of the counties have dedicated and secure Grand Jury rooms usually within Court or County buildings. Grand Juries without dedicated rooms meet in a wide variety of locations such as public libraries, spare court jury rooms, hospitals, city council chambers, agricultural offices, etc. The size of meeting rooms varied from 128 square

(Continued on Page 5)

Survey (Continued from page 3)

feet to a complex of meeting rooms and offices covering 4,000 square feet.

We found that 57% of the Grand Juries receive some form of staff support from either Court or County personnel. The amount of support usually has a direct relationship to the county's population and ranges from 30 minutes a week to a full-time administrator or secretary.

Equipment resources for Grand Juries vary widely with 64% having at least a computer, telephone, and copier. Unfortunately, seven counties, 15%, report not even having a telephone while a large number report no computer or copier available.

Grand Jury use of outside personnel resources was very limited with 11% using independent counsel, 18% using auditors, and 27% using outside experts.

Grand Jury Advisors & Guidance

Our survey asked respondents to identify, by ranking, their primary legal advisors. 51% ranked their Judge as primary, 42% ranked County Counsel as primary, and 7% listed their District Attorney as primary advisor to the Grand Jury. 32% of the counties reported having a legal advisor recused for a conflict of interest. Only 23% reported their Court having a policy on recusals.

Court instructions to the Grand Jury varied significantly with 68% receiving instruction that jury deliberations are restricted only to Grand Jurors; 43% receiving instruction, mainly in the form of a Jurors Handbook, on how to handle accusations; 36% receiving instruction on use of independent counsel; and 27% receiving instruction on how to handle responses to a final report.

Legal advisor response time to Grand Jury requests varied from immediate to a disheartening 90 days. Of those responding, 64% reported response time of one week or less and 25% reported an immediate response.

Our survey contained seven questions on legal advisor involvement in Grand Jury activities. Most responses revealed limited involvement except County Counsel previewing final reports in approximately 40% of the counties and a few isolated practices of court personnel opening mail without authority or suggesting topics.

Specific Grand Jury Practices

Issuance of accusations was rare with only five counties reporting accusations in recent years. One accusation was reported as sustained.

Admonishment of witnesses was common and reported by 80% of the counties but no one reported any Court action for a witness violating an admonishment.

We found that 64% of the Grand Juries issued final reports during their terms. Grand Jury final report actions revealed 82% issue Penal Code Section 933 instructions and 91% use a transmittal letter, sent usually by the Foreperson. Named respondents are directed to send their responses to the Court in 77% of the counties while Grand Juries are left to determine legality of a response in 52% of the counties.

In 48% of the counties, the Court issues a letter or order when a respondent fails to respond to a Grand Jury's final report.

While 64% of the Grand Juries publish their final reports on the Internet, some 39% also publish responses to a final report.

CGJA's 2001 Grand Jury Practices Survey provides valuable insight into the workings of the California Grand Jury and reveals the need for future comprehensive research. The findings of our 2001 survey will be taken into consideration as we formulate our position on Grand Jury Reform.

Elwood Moger
2001 Survey Coordinator
916-933-3230 <el_moger@email.msn.com >



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Grand Jury Potpourri



The following articles are some thoughtful essays written by some of our more dedicated Journal contributors. It is obvious that they enjoy their subject; the California Grand Jury system. However, if any reader would care to comment concerning the interpretation of, or the accuracy of any statement concerning California Grand Jury activities stated here please feel free to write the Journal.

You will be provided an opportunity to state your views, unedited, as you have presented them,

Range of Civil Subpoena

by Jack Zepp

Recently I was asked what the range of a grand jury "civil" subpoena is. I didn't know and did a little checking. Such subpoenas are apparently treated as trial subpoenas, not civil discovery subpoenas.

As such they can compel attendance of any witness in the state, there being no mileage limitation on trial subpoenas.

The 58 California Grand Juries

by Mickey Strang



To the amazement of many of the jurors attending the three training seminars that the CGJA held recently, their county's way of conducting grand jury business wasn't the way any other county operated. In fact, there is

no one way for regular grand juries to function.

Some elements, of course, are the same: confidentiality is inviolate, all investigations are conducted by two or more jurors, and penal and government codes relating to grand juries must be followed. However, each county has developed operational quirks of its own. And why not? After all, each grand jury can set up its own methods of procedure.

When you consider the range of size, population density, and terrain of the 58 California counties, there could be no one size fits all. In some of the more populated (and richer) counties, county staff assistance to the grand jury is provided. Staff might be an attorney, or an executive assistant, or maybe a secretary.

Most now do have a room in which the grand jury regularly meets and most counties provide an office for that jury. Some grand juries in the more financially troubled counties, however, have neither a meeting room nor even a secure place for grand jury files. As for staff, the over-whelming majority of grand juries do all their own clerical work; many on their own personal computers.

Report drafts, etc., are honed and refined as they bounce between committee members and, then, finally between the investigating committee and the editorial committee or the grand jury as a whole.

No more need for retyping, thank goodness.

Besides the physical arrangements, however, there are other differences created as much by the personality quirks and ideas of county officials as by financial

realities. For example, some county counsels are of enormous and unfailing help because they welcome and applaud the grand jury's citizen oversight functions. Others are more protective of the departments to which they provide legal assistance and feel any assistance to the grand jury puts them into a conflict of interest.

While most judges are extremely helpful, some are extremely busy and pretty much have to leave their juries to their own devices.

In short, it's best for a grand jury to realize it must count on its own members to do the work and to rely on its own judgment about how to accomplish its goals.

The goals, regardless of county size, population, or degree of financial prosperity, are the same: to make the government function better for the benefit of all citizens.



Government Code 6253

by Les Daye

How many times grand juries have been told that local agencies did not provide the information they requested because the agency didn't understand what documents the Grand Jury wanted.

An act to amend Section 6253 of, and to add Section 6253.1 to, the Government Code, relating to public records was signed into law by Governor Gray Davis.

Local agencies will assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

Describe the information technology and physical location in which the records exist.

Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(Continued on page 7)

Government Code 6253*(Continued from page 6)*

Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover costs.



This bill would require, when a member of the public requests to inspect or to obtain a copy of a public record, the following will take place.

That, in order to assist the individual to make a focused and effective request that reasonably describes an identifiable record, the agency shall assist the member of the public:

- a. to identify records and information that may be responsive to a request.
- b. describe the information technology and physical location in which the records exist, and,
- c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

The bill would specify that these requirements to assist a member of the public do not apply if the agency makes available the requested records, determines that the request should be denied based solely on an express exemption listed in the act, or makes available an index of its records.

Free Membership to Sitting and Outgoing Forepersons!

At the July 30, 2001, CGJA Board meeting the Board of Directors authorized a free 2 year membership for all sitting Forepersons and a 1 year free membership for all recent out-going Forepersons.

Submit your
membership application!

Chapters news**Current CGJA Chapters**

Los Angeles County Chapter
Maycie Herrington, President
Tel/Fax 562.498.1761.

Marin County Chapter
Cal Kurzman, President,
email < calkurz@aol.com >

Mendocino County Chapter
James Kenney, President
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Monterey County Chapter
Roger Loper, President,
email
gennieandroger@email.msn.com >

Napa County Chapter
Ed Scarboro, Chairperson
email < emscarbo@napanet.net >

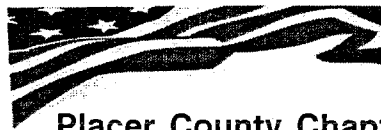
Placer County Chapter
Dwight Brown, President
email < diatsuncity@netscape.net >

San Mateo County Chapter
Angelo Carmassi, President
email < alcarmassi@aol.com >

Solano County Chapter
Don Enneking, President
email < dbenneking@aol.com >

Sutter-Buttes Counties Chapter
Diane Westmoreland, President
email < diane@yuba.net >

Tulare County Chapter
Jack Mann, President
email < jacnorma@earthlink.net >

**Placer County Chapter**

Our last Chapter meeting was September 11th up in Tahoe City. As we all know, it was a very tragic day in all our lives. We decided to still meet and all be together. We could not let terrorism stop the important things that we do in this free country that we live in. It was a somber meeting for all, but wonderful being in such a

beautiful setting overlooking the Lake with friends that we have met by being on the Placer County Grand Jury.

We look forward to our October 9th meeting to cover the Kelso Report with some continued good discussions on what is best for the changes in the California Grand Jury.

Dwight Brown,
President

San Mateo Chapter

The Fall General Meeting of the San Mateo Chapter was held at Nick's Seashore Restaurant in Pacifica on October 2.

The Speaker for the meeting was the recently discharged foreperson of the year 2000-2001 Grand Jury, Herman Christensen, Jr.

He spoke on the theme "Lessons from the 2000-2001 Grand Jury."

There were many innovations in that Grand Jury whose Presiding Judge was Quentin Kopp. Christensen spoke of the new approach to training; organization of committees; adoption of an agenda for investigations; investigations; and reporting.

He was enthusiastic in discussing their successes and candid in discussing their mistakes. Our Chapter looks forward to more of our grand juries adopting those improvements and making others.

Christensen stayed to answer questions from the audience, which was composed largely of our Board Members and their guests as well as other Chapter members.

President Angelo Carmassi, gave an inspirational challenge to all former grand jurors to continue to be "watchdogs" of the county, and not to be "lapdogs."

The next General Meeting of our Chapter is the Annual Election Meeting in January, 2002 at the Villa Hotel in San Mateo.

Visitors are always welcome.

Angelo Carmassi,
President



Grand juries in the news

Solano County Grand Jury Rips Dixon Family Services

In a scathing, multi-page condemnation of Dixon Family Services Executive Director Patricia Davis and the Board of this organization, the Grand Jury detailed its findings of corruption, lies, and collusion reaching into the County level, specifically Solano County Health and Social Services. The Grand Jury's recommendations included suggesting that the County and the DFS Board both call for the resignation of Davis.

According to the Grand Jury, Davis holding the position of School Board trustee precludes her holding the positions of DFS Executive Director and Solano County Community Action Agency (SCCAA) Program Manager as this violates Non-Profit Organization 501 (c) (3) code and is also a violation of DFS bylaws.

The Grand Jury also castigated the Board for not following their own bylaws in instances such as controlling the responsibility for setting Davis' salary.

In January 2001 the Grand Jury interviewed members of Solano County Health and Social Services (SCHSS). When queried as to whether citizen complaints had been filed with their agency, the Substance Abuse Director stated that the County Auditor had asked this question and the answer was an emphatic "No!". During the Grand Jury's investigation, copies of complaint letters were received that were addressed to the Substance Abuse Director.

SCHSS has a contract with DFS to provide "prevention services to 4500 clients within the Dixon community participating in Sober Grad Night 2001." According to the report, no audits were conducted and there were no procedures in place to measure performance. The County also objected to

being charged for this while DFS was charging students for attending the function.

Also on the County level, the County employs Davis as the SCCAA Program Manager who is provided with a full time paid Administrative Assistant. Both are paid for full time positions even though the work is designated as part time. In addition, both hold other full time positions, Davis at DFS and the Administrative Assistant with the County.

As to the inner workings of DFS, findings were made that "Board members who questioned the President (of the Board) and the Executive Director regarding operational procedures were forced to resign." Further it was found that the Board knew little of the budgetary realities of this organization as this was being hidden from them by the Executive Director and the Board Member who serves as its Treasurer.

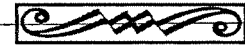
Lisa Seifert, the DFS Treasurer, was unable to answer when asked why she signed large checks written by Davis to Davis and Board President, Valerie Skinner. Seifert also did not know how many bank accounts DFS had and "forgot, or did not know, key information that someone in her position should know".

During her interview, Seifert was asked whether she had discussed her interview answers with Davis and replied, "No". Stating that the last time she had spoken with Davis was in April, she later admitted that she had spoken with her the day before her interview in May. The GJ stated that "the perception was she was coached before the interview."

The Grand Jury also pointed out that "the DFS tax-exempt ID number was routinely shared with other organizations. Sharing a Tax ID number is abuse of the Tax Identification System. This action may subject DFS to IRS investigation and penalties under the IRS Code." The Executive Director and the Board President confirmed this action as only happening twice

and being appropriate.

The Grand Jury in its findings and recommendations left the burden for resolving this financial, moral, and ethical morass on the DFS Board and Solano County bureaucracy. In addition, in the comments section it was their strong recommendation that a follow up investigation be conducted by next year's Grand Jury.



From the KCRA Channel 3 - Sacramento Online

The Stanislaus County civil grand jury reached its decision behind closed doors Thursday night and alerted Anne Marie Smith's lawyer, James Robinson, by mail who disclosed the letter's contents Monday.

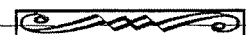
Panel foreman Robert E. Johnson said in the letter that the jury voted to take no action because the panel determined the complaint was filed in the wrong jurisdiction.

In her complaint, Smith claimed that Condit, his chief of staff Mike Lynch, and Don Thornton, an investigator who worked for one of Condit's lawyers, conspired to obstruct justice by encouraging her to commit perjury.

Smith, 40, said she and Condit had a 10-month romance and that his intermediaries tried to get her to sign a false affidavit denying the affair.

Condit, D-Calif., has denied asking anybody to lie, and said he did not have a relationship with Smith. His attorney, Abbe Lowell, said Smith and the congressman apparently have different definitions of the word "relationship."

The news about the grand jury is the first positive news in four months for the congressman, who has been battered by a scandal following the disappearance of federal intern Chandra Levy, a 24-year-old woman he told police he had an affair with.



(Journal Note: Dr. Jameson is a current member of CGJA and a former Director and Secretary of the Association. We have excerpted a portion of her paper because of its length, but it is complete as originally written. We will attempt to print a portion in the Journal periodically as space allows).

The Grand Jury

A Brief Historical Overview

By Marianne Jameson, Ph.D. Political Science
California Grand Jurors' Association
Contra Costa County Grand Jury Member: 1989-90
Foreperson: 1990-91, Member, 1996-97

CALIFORNIA GRAND JURIES

Rules regarding the makeup, organization, powers and duties may be found in the California Penal Code. All of California's 58 counties are required to have grand juries, and recent changes in Section 904.6 of the Penal Code (1991) permit any county to have an additional grand jury at the discretion of the presiding judge of the superior court. (See next section on criminal indictments.)

Statutes permit some variation in the manner and time of selection of jurors. In Contra Costa County, each grand jury begins July 1 and ends its service June 30 of the following year. Nineteen individuals are chosen through a lengthy process that includes application, screening by the jury commissioner or by initial interviews by the current and past grand jury foremen, final interviews by several judges of the Superior Court, pairing the list to approximately 30 names followed by a drawing in Superior Court. Since some members of the existing grand jury may be carried over, the number of names drawn will equal those needed to provide a grand jury of 19 members.

It has been the practice in Contra Costa County to advertise widely and to encourage many people to apply for the grand jury. Because grand jury service requires an average of about twenty hours per week for a period of one year, and because the pay is only token, the grand jury tends to be dominated by people who have retired or whose business permits them to devote a large amount of time to community service.

CRIMINAL INDICTMENTS

The California Constitution permits criminal trial on the basis of indictment by a grand jury or by information after examination and commitment by a magistrate. Under Section 917 of the Penal Code, "the grand jury may inquire into all public offenses committed or triable within the county, and present

them to the court by indictment." In actual practice, grand juries seldom initiate such inquiries; rather, such offenses are generally brought to the grand jury by the district attorney who asks for and generally receives an indictment. Much more frequently, the district attorney bypasses the grand jury and uses the process known as a preliminary hearing. Studies undertaken at various times during the past 40 years have found that only a very small percentage of all felony prosecutions were initiated by indictment.

A 1954 survey of California district attorneys listed the following factors as influential in the decision to seek a grand jury indictment rather than using the preliminary hearing: (1) high public interest in the case, (2) the fact that a preliminary hearing would take more time than a grand jury hearing, (3) the necessity for calling children or timid witnesses who would be subject to cross-examination at a preliminary hearing, (4) the existence of a weak or doubtful case which the district attorney wishes to test, (5) cases involving malfeasance in office, and (6) the fact that witnesses are in a state prison.

A more recent study adds the following reasons for using the grand jury: (1) cases where the defendant cannot be located and the time limit under the statute of limitations is about to expire, (2) where the secrecy of the grand jury may allow defendants to be charged and taken into custody before they can pose potential danger to a witness's safety or flee from the jurisdiction, (3) the need to protect the identity of undercover agents, (4) the ability to test a witness before a jury and (5) the opportunity to involve the community in case screening.

In some cases the prosecutor may prefer a preliminary or probable-cause hearing so that testimony can be preserved for use at the trial, especially when a witness is considered to be in danger.

From 1978 until 1990, grand juries were seldom used for indictments. A California Supreme Court ruling required holding preliminary hearings even if grand jury indictments were obtained. In 1990, a constitutional amendment made significant alterations in California criminal law and court procedures, including a provision that defendants were not entitled to preliminary hearings if indicted by a grand jury. As noted above, recent statutes (Section 904.6) give county district attorneys the option of utilizing special grand juries chosen from the regular Jury pool to handle criminal cases and thus ensure indictment by those who represent a cross section of the community.

In Contra Costa County, the civil grand jury no longer handles criminal indictments. However, in some counties, such as Los Angeles, the regular grand jury continues to have both criminal and civil duties.

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The statutory language requiring that those chosen for the additional grand jury, "shall be chosen at random" from the list of those qualified to serve as trial jurors in civil and criminal cases, and emphasis that it is the "Intent of the Legislature" that all individuals qualified for jury service have an equal opportunity to be considered for service as criminal grand jurors would indicate a legislative recognition of the desirability of separating criminal indictments from citizen oversight of government.

ACCUSATION

Section 919 (c) of the Penal Code requires the grand jury to inquire into the willful or corrupt misconduct in office of public officers of every description within the county. Where misconduct is found, the grand jury may file an accusation leading to a trial. If the official is convicted, he is thereby removed from office. Very few accusations are filed. Frequently, if there is misconduct in office, it is of a criminal nature, and an indictment rather than an accusation would be issued. It is also possible that an official would resign rather than face an accusation. As reviewed by Frank Dougherty and Dennis Myers, misconduct in office could include any of the following:

Nonfeasance:

- (1) The failure to act where duty requires an act; or
- (2) Neglect or refusal, without sufficient cause or excuse, to do that which is the officer's legal duty to do, whether willfully or through malice; or
- (3) Willful neglect of duty.

Misfeasance:

- (1) The improper of doing of an act that a person might lawfully do; or (2) The performance of a duty or act that one ought to do or has a right to do, but in a manner such as to infringe upon the rights of others.

Malfeasance:

- (1) The doing of an act that is positively unlawful or wrong; or (2) The performance of a wrongful act that the person has no legal right to do.

THE WATCHDOG FUNCTION OF GRAND JURIES

While the primary function of the inquest in early England was as a means of apprehending and punishing criminals, records from the early days of the grand inquest indicate that

"The inquest was required to present those whose duty it was to keep in repair bridges, causeways and highways, for neglect of duty; to inquire into defects of gaols and the nature thereof, who ought to repair them and who was responsible for any escapes which had occurred; if any sheriff had kept in gaol those whom he should have brought before the justices. . .".

In some states, early grand juries developed quasi-legislative functions. In New York, the grand jury assumed direct ordinance-making powers. In the Carolinas in 1862, legislation was promptly considered if it was suggested by a majority of county grand juries.

Early in this century, statutes of many states required grand jurors to examine the condition of jails, asylums and other public institutions; to examine the books and accounts of the various public officials in the county, to fix the tax rate and to have general supervision over public improvements. "A town could be prosecuted on a presentment, and matters that were complained of, such as failure to repair streets and roads, were sometimes corrected after a grand jury report."

A Pennsylvania statute of the late 1890's provided that no public buildings and no bridges could be built within the county unless approved by two successive grand juries. Similar statutes of the period required Georgia grand juries to act as boards of revision of taxes and to fix tax rates. Mississippi grand juries were required to examine tax collectors' accounts. Alabama and Tennessee grand juries were charged with investigating the sufficiency of the bonds of all county officers. Vermont grand juries had the responsibility of arresting persons having liquor for sale contrary to law.

In 1890, San Francisco grand jurors issued a report denouncing extravagance and fraud in municipal government, calling attention to personal profits made by city officials on railway franchises, graft in street widening projects, padding payrolls and exorbitant prices paid for land to be used for public buildings.

During the latter half of the twentieth century, the watchdog function of grand juries of most states have been weakened or discontinued. A 1974 review of the California system found that "...only seven other states provide for any investigation of county government by ay grand jury beyond cases alleging willful misconduct by public officials...and only California and Nevada mandate that grand juries be impaneled annually to specifically function as a 'watchdog' over county government. . .".

(To be Continued in future issues of the Journal)

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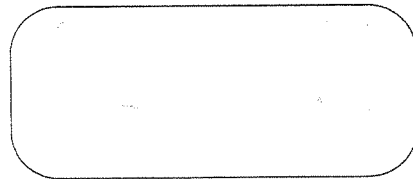
The mission of the California Grand Jurors' Association is to promote government accountability by improving the training and resources available to California's 58 regular grand juries and educating the public about the substantial local government oversight and reporting powers these grand juries have.

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