

CALIFORNIA GRAND JURORS' ASSOCIATION



PROCEEDINGS
18th ANNUAL CONFERENCE
September 17,18,19, 1999
Wyndham Hotel
San Jose, California

Preface

This transcript has been prepared several years after the conference and is incomplete. However, we feel that the information here is worth preserving and have therefore included it for historical and reference purposes.

California Grand Jurors' Association
May 8, 2003

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Program

California Grand Jurors Association

18th Annual Conference
September 17, 18, & 19
Wyndham Hotel, San Jose, California

“WORKING TOGETHER FOR A BETTER GRAND JURY”

Friday, September 17, 1999

12:00 - 5:00 CONFERENCE REGISTRATION Main Lobby Outside San Jose Ballroom

1:00 - 5:00 GRAND JURORS' OPEN FORUM - San Jose Ballroom

Welcome & Conference Events - Elwood Moger, Conference Program Chair

CGJA Panel: Ron Miguel, Steve Phipps, Barbara Ceizler Silver, Dan Taranto, Moderator

Attendees are invited to raise questions, advance positions, and participate in open discussion of any technical, legal and philosophical grand jury related issues. Cards will be provided to reduce topics to writing for panel review. Attendees making verbal comments from the floor should use microphone, since this proceeding is being recorded for distribution to all Association members and outside interested parties.

5:30 - 6:30 Informal Conference Reception Salons L & M Wine & Cheese Tasting

Saturday, September 18, 1999
Second Floor Ballroom - Salons F - J

8:15 - 8:30 a.m. CGJA Welcome - Les Daye, President

Program Prospective - “CALIFORNIA ASSOCIATIONS & SUPPORT OF THE CALIFORNIA GRAND JURY” - El Moger, Program Chair

8:30 - 10:00 a.m. ASSOCIATION OVERVIEWS:

8:30 - 8:45 a.m. California Judges Association The Honorable Leslie Nichols,
Santa Clara Superior Court

8:45 - 9:00 a.m. California County Counsels Association Thomas F. Casey III, President
San Mateo County Counsel

9:00 - 9:15 a.m. California District Attorneys Association Dave La Bahn

Deputy Executive Director

- 9:15 - 9:30 a.m. California Association of Trial Court Administrators
Terry McNally, President
Court Executive Officer, Kern
County
- 9:30 - 10:00 a.m. OVERVIEW QUESTIONS & ANSWERS
- 10:00 - 10:20 a.m. BREAK
- 10:20 - 12:00 a.m. PANEL REVIEW - "HOW ASSOCIATIONS CAN WORK TOGETHER FOR
QUALITY GRAND JUROR TRAINING"
Moderator: Dean Clark Kelso
McGeorge School of Law
Sacramento, California
Association Speakers & CGJA
President
- 12:00 - 1:15 p.m. LUNCH at Pool Side off Main Lobby
- 1:25 - 1:30 p.m. Program Prospective - "VIEWS OF TODAY'S CALIFORNIA GRAND JURY,"
El Moger, Program Chair
- 1:30 - 2:15 p.m. "Adding Bite to the Watchdog's Bark!"
Stephanie Doria
Attorney, Paul, Hastings, Janofsky, &
Walker
Author of "Adding Bite to the Watchdog's
Bark: Reforming The California Civil Grand
Jury System" Pacific Law Journal, Summer
1997
- 2:15 - 3:00 p.m. California's Fair Political Practices Commission and Grand Juries
Mark Morodomi, Senior Counsel
California Fair Political Practices
Commission
Enforcement Division
- 3:00- 3:15 p.m. BREAK

3:15 - 4:00 p.m. Panel Discussion -Investigative Reporting - Local News Media and the Civil
Grand Jury

Marcy Bachman, Writer and Former Grand
Juror
Barry Witt, San Jose Mercury News
Dan Borenstein, Political Editor of Contra
Costa Times

4:00 - 4:15 p.m. BREAK

4:15 - 5:00 p.m. “What Have We Learned and Where Do We Go From Here?”

Dan Taranto, Moderator

Attendee reactions and comments on Speaker Presentations and Positions.

6:30 - 9:30 p.m. RECEPTION AND CONFERENCE BANQUET - 2nd Floor Ballroom Salon A

Banquet Speaker - California Attorney General William Lockyer

ANGELO ROLANDO AWARD - Audrey Lynberg, Presenter

Friday, September 17, 1999

Grand Jurors' Open Forum

PRESIDENT LES DAYE. As relative to Constitution Day and a few other things which may come up in the later discussions today, I will leave that in the appropriate place -- I am not sure which table in the back that will be -- but I will leave it back there and you can just thumb through it. If you want more information about Constitution Day -- it's something they're spending taxpayer dollars on, so you may be interested in it. What I'd like to do is to wait until exactly five minutes after 1:00 because this is a national bell-ringing ceremony. But it's three minutes after, and my cohort in the back of the room will help me at this moment. We are going to remember for 30 seconds the framers' signing of the constitution with the bell-ringing here to correspond to all 50 states and governors who are doing this at exactly 1:05 our time today. Next year, I think they're going to give it a little more oomph. Last year, they only had about 17 states involved. So this year, they do have all 50, and we'll proceed right now. Let your imagination go, pretend you've got one of those quill pens, and we will remember our national signing of the Constitution of the United States. (Bell-ringing for 30 seconds) O.K., Thank you. (Applause)

ELWOOD MOGER: Thank you, Les. That was a thoughtful remembrance of the signing of our constitution. We have an interesting group today. We have 47 sitting grand jurors that are coming to our conference, and we are split with 48 former grand jurors, so our audience today is split about 50-50 with people who have been on a California grand jury. We also have several associates of our organization with us and some guests. There is a newspaper reporter that will be covering the entire conference and maybe writing a feature article on the California grand jury. So, we welcome you all to our conference. Our organization was founded back in 1982, and this is our 18th time that we've gotten together each year since then, since our founding. Hopefully, you have your program booklet -- when you checked in today. That'll be your guide. It tells you a little bit about our association (particularly the sitting grand jurors) as to what we're all about and explains how we organized with our board of directors and our regions, and it also covers, in the middle section -- which is the ivory section -- the program, and today we have a program devoted to exchanging information and views with an open forum. This has been a very popular part of the program for many years. And we're going to have some former grand jurors who have been around who have a lot of training, sitting up here, and we will expect you to express your views, your questions and get into debate on the issues of the day. Tomorrow we are loaded, as you can see, in looking at the program, with a number of speakers, and they will explore some future avenues for the California Grand Jurors Association and look at where the California Grand Jury is going. And then Sunday, we close our conference with an annual membership meeting. You are all invited to attend that annual membership meeting. You will hear reports from the officers of our Association.

It gives me a lot of pleasure to introduce a person that's really the backbone of this association, that's Dan Taranto who's going to moderate a panel of four of our members, and they're going to take your questions and try to answer them and discuss the issues. Dan has an AA Degree in Business from Contra Costa College. He also has a BA in Botany. He has an MS Degree in Biology from Humboldt State University. He went to Humboldt, and I think he fell in love with that area, because that's where he still resides today. Since 1989 --- He also has teaching credentials, both at the secondary and at the Junior College Level. And since 1989, he's shown his love of teaching by teaching grand jurors. He's been a

workshop presenter at many, many training courses on grand juries around this state, so he's been a very, very dedicated worker. In addition to our organization he is active in the League of Women Voters and is also active in the Farm Bureau. He has had numerous appointments from the Humboldt County Board of Supervisors -- everything from the General Plan to fire safety, so he knows county government very, very well. He relaxes at the Humboldt Yacht Club where he loves to sail. And he's indicated that he's a Port Captain up there at that Yacht Club. He's a very high energy, very significant contributor to our association. I'm very pleased to introduce him. Dan --- the program is yours. (applause).

DAN TARANTO. Thank you Elwood. Thank you for that nice introduction, and with that I would like to launch into a couple of things. First to introduce the panel, we have Jack Zepp who--you might as well all come up -- the panelists should all come up and then I can introduce you. While they're coming up, I'd like to say that in the open forum segments, I would hope that everyone would keep their comments brief; I think that the two minute time limit is a reasonable one to give other people an opportunity to speak on any given topic that should arise and that once everyone else is satisfied, we may go through a second or third spin around the room -- that we don't want to be dominated by any one speaker over too long of a time period, in order to keep things moving along. The other- is that all the topics that come up should be germane to the grand jury system; they should have some relationship to the grand jury process, the system, grand jury law, functions, dysfunctions. They have to, by definition, have some relationship to the California grand jury in order to be appropriate for this particular open forum.

The other thing, I would like to warn sitting jurors not to bring up the intricacies of things you are currently working on in your current jury term. If you have something that you want to ask about with regards to procedure, protocol or the authority of the law, be mindful of how you pose your question and comments and keep it generic and not be revealing of what is going on in your current grand jury room. With that I would like to introduce our panelists. We have Ron Miguel over on the far right here. He's a former grand juror, past foreman, in the city of San Francisco. He's been active on our board for several years and has also been active in training programs at the Yuba County Citizens Alliance as well as more recently, the LaVerne Law School program in Southern California. I'm not sure of any other involvement, specifically in the San Francisco area. Next we have Jack Zepp who, again, also a former grand juror from the county of Marin, and Jack, I know has many more experiences than I am familiar with but we most greatly appreciate him for his astuteness and acute appreciation and understanding of the law having been a practicing attorney for ...

JACK ZEPP. Too long.

TARANTO. On my left we have Barbara Silver who is from Santa Barbara County and a professional university librarian archivist -- very knowledgeable on matters of researching information from repositories and such things and has been very helpful in guiding our association to enhance those kinds of things with regards to preserving grand jury reports and responses to grand jury reports and issues related to that. And then on the far left, we have Steven Phipps who is a colleague from Humboldt County, former grand juror and another one of our legal minds who has been responsible in helping us craft several pieces of the legislation that we've managed to pass under the banner of our association over the past several years, including such things as the archiving of grand jury reports, the more clear definition of the authority of the grand jury to pass on information to subsequent grand juries, provisions for more specific and detailed responses to grand jury reports, to mention a few. So, Steve has been a consistent bulwark of our efforts to advance and improve the grand jury system in California. This will be our panel of respondents. And that doesn't preclude that there are other people in the room here who

have specific expertise to contribute to the discussions as they unfold. So unless any of you have any comments to offer before we get started, or shall we just dive in and basically it's up to you. This agenda is yours. So you can bring to the discussion anything that stirs your interest, curiosity; -- anything from the problems that we've observed, seeking solutions for them or maybe notions of how some systems or processes might be improved upon or you name it. Ifs -- Basically this is the forum for you to bring up whatever seems to be pressing on your mind, seeking answers or feedback from others of kindred spirit. So with that, who would like to be first?

MR. PEYMON. I wanted to ask the permission of the panel, if I may briefly, with the assistance of the panel if they are aware of it--- let them know what happened with the San Diego Grand Jury's accusation of the mayor of corrupt misconduct and how the local officials corruptly obstructed the work of the Grand Jury and seek the comments and feedback and direction of the membership feelings about that issue.

TARANTO: My only concern is, can you articulate that in about two minutes?

PEYMON . I'll do my best. (inaudible) what happened is the San Diego Grand Jury while investigating the usual reports that they do,-- they found out that the Mayor is involved in illegal activity, as far as things clearly prohibited by law. So, toward the end of their term, they accused the mayor of corrupt misconduct of her authority under the law, and the district attorney put these grand jurors through an inquisition and questions which were not authorized by law and challenged their findings and got into some of the insights of the grand jury that he should not have. And the judge and the D.A. and the lawyer for the mayor got together and illegally asked the grand jury (inaudible) accusation removed this and illegally declared without any appropriate law, the judge declared that the mayor is factually innocent even though everything was there. And this grand jury has been subject to a lot of intimidation by the judge, by the D.A. and so forth, and I think the city attorney and as my lawyer friends Bill Putnam and Dave Zippman who used some of these records that they got from the San Diego grand jury -- so that is the real threat to our grand jury system as well as an opportunity if we can seize the moment, and so that will tell you why I want to bring to your attention and see what you guys think and what we want to do about it.

STEVE PHIPPS. I have a comment here. I am also a member of the California Bar as Mr. Zepp is. I don't know any more than what I read in the papers, Mr. Chairman, myself here, but I ran something through the internet the other day in which the D.A. in San Diego quote, said: "The panel misunderstood the mayor's appointment powers. They did not have 12 grand jurors concur with the accusation as required by law." He also said the panel based its accusations on hearsay that would be inadmissible in court. I think he's wrong about that. Because if they had other evidence, it would have been admissible that should have carried it, "...and destroyed the evidence upon which -- and destroyed the evidence upon which jury members based their vote." If they did destroy the evidence, and they didn't have 12 -- sorry, if they did destroy the evidence and they didn't have 12 grand jurors sign off on the accusation, then it seems to me that maybe they didn't follow it procedurally through, and that's my comment at the moment. Accusations have to be -- grand juries have the power to accuse people, but they have to follow a certain set of rules. They have to -- All of the grand jurors have to be there present when the evidence against a person is heard, and all of the people who are voting have to be there present when all of the evidence is heard, as far as I understand it. If (inaudible), correct me. And apparently, at least according to the press, that wasn't done.

PEYMON. We had the opportunity to review the transcript, and the twelve grand jurors did vote on the accusation as required by law. And we also further researched the legal underpinning of the myth that all twelve grand jurors have to hear all the testimony before they can move on the accusation or indictment, and we found that to be a baseless myth that has been perpetuated over the years. The D.A. have a practice of making sure all the grand jurors are there, so that he can get the indictment easily from all the grand jurors, but the grand jurors do have the lawful authority to have no witnesses, and based on the paper that they've seen -- accuse or indict, and that's what they did. So (inaudible phrase) found a way around this whole thing, and the courts are very clear about what the grand jury can do being lawful, and unfortunately they were completely obstructed.

ZEPP: I'd like to agree with you but I'd love to know what the authority is, because I don't -my really shallow admittedly, research is to the effect that there is very little law about accusations by California grand juries as opposed to reports of civil reports or indictments. If you actually have authority that clearly says that the grand jury doesn't have to hear; they can pick a committee, can hear testimony, report to the full panel, which I think is what happened. Isn't it the issue that the full panel didn't hear some or all of the witnesses, but only a committee, like the law and justice committee did?

BOB HEADLAND. Let me speak to it. My name is Bob Headland and I am from San Diego County, and I've been very close to this as a member of our local association. If anything the San Diego County Grand Jury made a bad judgment on how to pursue this. I don't think, when they started, that they realized that they were going to come out with anything as serious as they did. And probably the worst part of their investigation was that the foreman and the assistant foreman set themselves up as a committee to do all the interviewing and investigation. They proceeded to go along and bring the full grand jury up every week at their weekly meetings. They had over 220 pages of documentation that was there for all the grand jurors to read, and they discussed it every week. And when they made the accusation formally, why, they did have, --I think it was -- 15 votes. But it was bad judgment on their part in how they pursued it. And, of course, right away, the news media and the District Attorney and what have you started saying, "Well all this should have been done in front of the full panel." And my understanding is that the law doesn't really require that. It might be better to do it that way, but it doesn't require it.

PHIPPS: And in the case of Bradley vs. Lacy where our association was a friend of the court, and we required the grand jury had at least properly signed the accusation and listed some reasons for their accusation. And we were successful in requiring the District Attorney, finally, to be forced to at least file the accusation with the court, thus making the process amenable to the public and bringing the light of public opinion on it. But the court in Bradley vs. Lacy said that while District attorneys were without power unilaterally to dismiss an accusation, it does not mean that he cannot apply his professional judgment to an evaluation of an accusation and in the exercise of that judgment move the court, in an appropriate case, to dismiss in the furtherance of justice. And of course, it's in Penal Code 1385 It kinda seems to me, unfortunately, that I wish the San Diego Grand Jury had -- had better education in how to formulate an accusation, but I'm afraid -- it looks like to me, that they've got the law on their side.

TARANTO. Yes. This gentleman here.

UNIDENTIFIED MALE SPEAKER #1. Would you discuss please the rule of two -- that says that any evidence gathered by the grand jury has to be gathered by a minimum of two people -- two jurors. And I'm confused now as to the requirement that all the jury hear all of the evidence.

TARANTO. Would you like to take that Jack?

ZEPP. I'll give it a shot. I'd still like to find what the authority is that these gentlemen are relying on, 'cause frankly, I would love that to be the case. My understanding on the issue about what happened in San Diego and the argument that all the grand jurors had to hear the testimony is that the argument was that either a committee or like Bob said or maybe just the Foreman or I guess the foreperson heard the evidence and then reported it to the grand jury, which then voted on it. And absent some authority, I think there is a reasonably good argument that can be made when the grand jury is acting in a quasi-criminal function which an accusation is -- that the grand jurors ought all to hear and evaluate the credibility of the witnesses. I think that was what that was about. The Rule of Two, I think, is a -- just basically a rule designed to make sure that there is some backup for what one grand juror thinks. If you go out and interview the Superintendent of Roads or something and you do it alone, there is no one to verify what you think you heard --no one to indicate that they don't think the person said what you think they said. And I think the Rule of Two is just plain good old common sense, but I don't think it has anything to do with what the people voting to issue an indictment or accusation ought to individually have heard themselves.

PHIPPS: About the Rule of Two. I think (I don't know the Penal Code number. I could find it for you) but that's just a rule for ongoing investigations. So one person is not empowered to go investigate, and we can understand why that would be the case, because he has no witness to substantiate (inaudible) As I understand it, that's just kind of a preliminary investigation. Once you find some facts, then you'll have to bring it back to the full jury and let them hear those facts. And it makes sense. It gives the full jury a chance to interrogate people themselves.

TARANTO. The gentleman here with his hand on his chest -- then the gentleman with the blue tie is next. (inaudible)

UNIDENTIFIED SPEAKER FROM EL DORADO COUNTY. We're trying to identify the corpse (?). Anyway, being novices (I think that most of us are novices) and- maybe some of you have served on grand juries a couple of times, But we discussed, before I came down as a representative of our local that we would like to, and we'll pursue the addresses of each one of you, and we'll send you a letter -- we're concerned that maybe our program or our problems within our county are not single to our county. There may be a tremendous overlap. We ask the CFO for the County if they attend conferences and they said, "Yes, they go to something very similar to this, and they discuss their problems with the grand jury." And I don't know if the grand jury discusses, within the state, similar problems. So at some time in the future if we can get an accurate list, we'll be glad to send out a letter and ask you to consider some subject area such as -- sometimes some areas we're hitting in are touchy as social services, for example, foster care, things like that. No one wants to talk to you.

PHIPPS. We can give you (if we have a copy machine around here) come up to me afterwards, and I'll give you a copy of an opinion I wrote a few years ago that will get you into Social Services.

EI DORADO SPEAKER: (inaudible) I will get in there, it's just a matter that there may be very, very similar circumstances throughout the state that -- we were just curious as to what other people have opinions.

PHIPPS: When I was on the grand jury in 1991-92 in Humboldt county confidentiality, more or less, we had a value -- I'm a proponent of a more open society, and that's not going to harm anybody now

because our Social Services director just got fired for being drunk. twice. But way back then there was trouble getting -- they said, "absolutely, you can't investigate child welfare. You've gotta get an attorney. This is all top-secret. And it's not. But that is a common problem. And county counsels will assure you quite earnestly that it is privileged information and naturally you understand that we cannot have the names of these people being bandied about and so forth and so on. It's simply not true, the organization has developed a standardized thing to send out to people who ask us this question that they can present to their county counsel for evaluation.

EL DORADO SPEAKER: In conclusion -- being novices, as I say, probably most of us are, we are dealing with a program many times that --they've been through the ropes a lot of times --and they have a lot of answers for you. And some may be accurate and some may be quite erroneous.

PHIPPS. Right

RON MIGUEL. You can also access the Association's files and find out reports going back a number of years on particular departments that have been done in other counties and that may give you an idea of where they've been able to go and how they have been able to handle it. That could be helpful to you.

BARBARA SILVER: By access to files, he means that there is an index for grand jury reports, not going back to the beginning of time in every detail, but the kind of thing that will answer the question that you raised.

EL DORADO. And that index is where?

SILVER. Available from the Association.

TARANTO: It's one of the publications that we sell, and we're looking for volunteers to help us expand the Index. Right now the Index only spans about five or six years, and it's not participated in by all counties. But it's currently a document about a hundred pages long, itemizing the broad variety of different agencies and activities that grand juries undertake in various counties across the state. And just by paging through it, it can give a grand juror a notion of how broad the authority is. You really have an incredibly broad authority to investigate local government. And I'll bet you most of the grand jurors couldn't pass a quiz on how many agencies in their own county they have authority over. There's way more of them than you realize. But you might look at the Index.

SILVER. It's also a way of telling you -- in your own county which departments have been investigated previously.

TARANTO. Indexing locally is a good idea. It's one of the things that we propose -- if your county hasn't developed an index on former grand jury reports, it might be one of the things you consider undertaking.

MIGUEL. And as a pitch to the sitting grand jurors that are here, make sure that your reports get in to the Association, so we can expand this index.

TARANTO. Fellow in the blue, then the lady in pink and then back over to Peymon's attorney.

CHARLES MITCHELL. Hi, Charles Mitchell from Orange County. In relation to the San Diego issue, a couple of points. Number 1: Grand juries are made up of committees, and I think, perhaps, they made a mistake in not going through a committee to investigate what they wanted to find out, rather than going on their own. The other point is sometimes there are situations dealing with county officials where you may seek advice from the county counsel, may seek advice from the district attorney's office, but you may not necessarily get the cooperation you really want. Their hands are politically tied. So I wondered if the Association has any referral that could advise the grand jury about proceeding. And I'm saying this in the sense that being grand jurors we look at the way the county spends money, and, of course, we can, at our own discretion, request that private counsel be hired. But again, that's tax payer's money -- we're trying to avoid that. So is there any reference the Association has to help out?

TARANTO. No. I could point out, and the panelists might be able to add to that. I'd like to point out, one of the things the Association is trying to do is to create a body of reference material for you to look up some of these answers for yourself. If you peruse through the publications list and review the variety of topics that have been touched upon by various experts over the past five or six years at these annual conferences, you will find that many of these same topics come up year after year and are addressed by judges, district attorneys, county counsels, former jurors, so that many of these things are discussed in print, but one of the things you're going to find is that there is a lot of divergence on the interpretation of the law, and so depending on if you are someone that would like to restrain the grand jury and constrain it and keep it from getting too far afield, you might interpret the law very restrictively. If you're --on the other hand of the -- leaning toward enhancing the grand jury's ability to do its work, you might be more -- interpreting the law more broadly and to allow the grand jury greater latitude to undertake investigations of certain things, and so from county to county there is a lot of variation in this, and even year to year as bureaucrats and different officials change in your county, you're going to have a varying degree of helpfulness or evasiveness regarding helping the grand jury, in assisting and advising the grand jury in what it is doing. And so it's important, I think, that the jury maintain its independence and pursue information and don't necessarily take the advice that is given to you by any one source as the final word. There may be other interpretations of that same law, and right now there is no alternative counsel, unfortunately. Other than that there are some efforts afoot to see if a pro bono counsel mechanism can be set up statewide. I know the door was open for independent access of grand juries to the attorney general for cursory opinions regarding the law. That was passed last year in AB 1907 but not very widely known, and we really don't know to what extent the attorney general is going to be helpful in that regard. But at least it's on the books now that a grand jury can directly contact the attorney general for legal opinions, but if you don't feel the opinion you got is satisfying, seek out further opinions from as many sources as you might find, and then the jury itself ultimately has to make its own decision as to how it's going to act on the information it has.

(inaudible)

PHIPPS. What you can do also is to when the county counsel says you can't do something or the district attorney says you can't do something is to demand of them that they show you and explain to you precisely in the law why it is so that you can't do it. Make them be precise -- in the law, and have them show you the code section, and if they're interpreting a case, make them give you the case citation. And that may actually slow them down, and if it doesn't slow them down, then you can take that information to somebody else who will provide the counter argument for you.

ZEPP. We are currently working on a project trying to get a university to have its law school make some designated law students available to handle a hotline for California grand jury members. Unfortunately, we just started over again, because the one we had lined up -- the fellow who was going

to head the program left the job. But we are working on that, and I'm hopeful we'll find a university that's willing to do it sometime within the next year.

TARANTO. Another project Jack's been working on that hopefully will be completed soon is a complete compendium of all grand jury law: all the statutes, all the constitutional law, all case law, all attorney general opinions and anything else of relevance in the law that pertains to the grand jury all into one document, so that you don't have to go through the law library, scattered throughout -- trying to find these different pieces. And this will give, I think, the jurors the ability, to some extent, do their own legal research and see how it comports with the advice they're receiving. And if questions arise, then you know you need to pursue a more comprehensive response from another source. A lady here in the front.

UNIDENTIFIED SPEAKER #2. To get back to the San Diego deal there. If I'm correct -the Rule of Two. Say, for instance, the grand jury is looking into an agency. A subcommittee goes out to the agency, talks to the head and other people and comes back to the grand jury. Now, are you saying that information is not germane unless all 19 of the grand jurors go out speaking to every agency and interviewing every head

TARANTO. Anybody have an answer?

ZEPP. I think it depends on whether you are talking about doing a report, an indictment or an accusation. When you're functioning as a civil grand jury, I think it is perfectly acceptable to have two people go out and investigate, interview whoever you're interviewing, look at documents, come back, report to the committee, if you have a committee structure -- which you aren't required to have, but if you do, you have a committee structure to report to the committee. The committee makes a recommendation to the grand jury. You have an open session where all the grand jurors talk about the recommendation and then you vote. And that's fine.

UNIDENTIFIED SPEAKER #3. Can we (bump?) that up to say -- in an investigation, not an indictment, that in an investigation, that want to investigate this, and so the subcommittee of two or four goes out to the agency, maybe more than one time -- goes out to see the general manager, goes out to talk to the troops in the trenches, and everything; comes back, reports to the whole grand jury And with the blessing of the whole grand jury then goes ahead and writes up an investigative report.

ZEPP. Right. An investigative report--an investigative report is just a civil report. There is no special terminology for an investigative report. What happened -- what muddied the waters in San Diego, I think -- I'm not from San Diego -- is that they issued an accusation. And an accusation is a quasi-criminal event -- I think that's what gave the lawyers or the politicians the argument that the grand jury inappropriately issued an accusation based on the hearsay evidence of two members of the grand jury or three or whatever it was.

SILVER. One thing that needs to be clarified is some counties have grand juries that handle both criminal and civil things and other counties have split the function. Some of us, like myself, have only experience from the civil grand jury and no experience with the criminal grand jury, so for our civil grand jury, anything that would have had criminal implications we would have handed over and wouldn't have worked with. So San Diego may not have a split grand jury, and that may be what makes it confusing for some of us who have just worked with the law pertaining to civil grand juries

MIGUEL: -And the dichotomy in the California grand jury system causes these confusions. San Francisco is also split, and you serve either civil or criminal, very, very different functions. The question that arises in a grand jury that serves both functions is whether the investigative process that starts out strictly as a report type process can be carried through into the criminal end, and to my knowledge there is no definitive answer to that one at this point.

PHIPPS. As a matter of fact Penal Code 939.6 states that in the investigation of a charge, the grand jury shall receive (and this would be an accusation or an indictment, in other words), the grand jury -- which is distinct, you see from a civil investigation -- the regular grand jury impaneled once a year in every county is primarily civil. They conduct civil investigations. They also do criminal indictments. In certain counties, the county elects to have a second, criminal grand jury. Once that second criminal grand jury is impaneled, the first criminal grand jury can't do any other indictments, except those that it has already been proceeding upon. So, investigating civil matters is different, but in the investigation of a charge, that is an accusation or an indictment, the grand jury shall receive no other evidence than such is given by witnesses, produced and sworn before the grand jury. And that's Penal Code 939.6. And that, I suspect, is what they relied on too in San Diego.

TARANTO. O.K. We've got lots of hands here -- now the sequence we have --the fellow next to Peymon was next, then Bob Headland, and then we'll work our way toward the front of the room, starting with the fellow in the back with the black jacket.

BILL PUTNAM. I'm Bill Putnam. I'm an attorney of 28 years in Orange County, and I've been involved in the study of grand jury proceedings for some time. I'd like to point out, however, in Government Code, Penal Code rather -- 939.6 that the subsequent paragraph which is paragraph 2 is "...competent evidence is furnished by writings, material objects or other things presented to the senses." And I think this is the point that the grand jury of San Diego relied upon is the writing, because there are some very damning documents that were acknowledged by the mayor and other persons involved in this proceeding. I'd like also to point out that Government Code 3060 specifically states that an accusation may not be presented without the concurrence -- It doesn't say they all have to witness everything. It doesn't say they all have to observe or hear the testimony of all the witnesses --without the concurrence of at least 12 grand jurors. And that was more than adequately served in the grand jury accusation that was rendered by the grand jury against the mayor. I'd like to point out though that there was an unmistakable animosity by Judge Peterson who continued to try to hide the grand jury's report. When the grand jury threatened to take it public, he then wrote them a very chastising letter, calling them a renegade grand jury, because they insisted that the judge make a decision on it. The city attorney wrote some outrageous letters to the grand jury accusing them of slander per se and all kinds of silly accusations, trying to intimidate them into not rendering the report that they thought was appropriate. The district attorney was clearly animosity -- full of animosity against the grand jury also, and really this appeared to be a local political fix.

PHIPPS. I wouldn't say, off hand, from my own point of view, from my own opinion that it wasn't necessarily, but the problem is: what is the remedy? And the remedy is just -- there doesn't appear to be a remedy here except taking them to court through some kind of writ process. Or a far-reaching remedy is to try to attempt to educate grand juries, as we're trying to do, precisely in what their rights and powers are and how to go about it aggressively.

(Remainder inaudible)

Saturday, September 18, 1999

California Associations & Support of the California Grand Jury

LES DAYE. Good morning and welcome to the 18th Annual Conference of the California Grand Jurors' Association. I'm current president Les Daye. I welcome you all here for this full day of information regarding juror training, and we have a distinguished panel here, and I am going to, without further ado, turn the program over to our program chair, Elwood Moger.

ELWOOD MOGER. Welcome, this morning. Hopefully, you all had a good time yesterday in the open forum that we had. I notice some new people here today that are joining us for the first time, and I want to welcome you to the 18th Annual Conference. I'm the program chair, Elwood Moger. So, if you don't like this program today, you can see me and blame me for it. But I think that you're going to be very, very happy with the number of speakers we have for you today. Let me tell you a little bit about our audience. We have about a fifty-fifty split of sitting grand jurors and former grand jurors. We have approximately fifty in each category, and we have several guests and associates of our organizations plus a newspaper reporter in the audience today. So, I welcome you all. Let me tell you a little bit about this morning's program. It's a little different than the afternoon program. I'll be back after lunch to introduce the speakers to you. Today, we going to take our program in three parts, and hopefully, you'll find it very interesting. The first part's going to be an overview from the four associations that support the California grand jury: the Judge's Association, the County Counsel's Association, the Trial Court Administrator's Association and the D.A.'s Association. So, these people are going to give you a short overview of their associations, to educate you a little bit on what they're all about. We're then going into a question and answer period, and we're going to ask you, if you have questions, to raise your hand, and people will come through the audience with cards, and write your questions and comments out. And then our moderator, Clark Kelso -- you can't hear quite well? --needs a little more power, I guess--O.K. Then Clark Kelso, our moderator, is going to conduct the question and answer period with each of the participants. He'll be introducing each of the participants this morning. After that, we'll take a break, and then we're going to get into the real fun part of this morning's program. We're going to have Les Daye join the program. We're going to have the five Associations talk about how can we improve training for grand juries throughout the state of California. We're going to have a judge speaking to that, a county counsel speaking to it, someone from the D.A.'s and from the court executive's organization plus our own. Now this is going to be fun in that we want your participation from the floor for this. We want your comments, so that our guest speakers can hear your comments. Again, we will take them on cards that will be passed out, and they will be passed to the Moderator, Clark Kelso, and then he will insert them into the dialogue. So, it's going to be approximately one and a half hours of getting together as a round table, so to speak. We're all part of that round table to talk about how can we really have better training for grand juries throughout the entire state of California? We have all the powerhouses here today -- presidents of associations and very powerful people to talk with you about that. So, it's going to be a lot of fun. We're going to be here all day in this room, and so, I think you all know now, out the door to your right and then a sharp left is the restrooms. Feel free to get up at any time and leave and come on back in again. We're going to have everything recorded today. Thank you to Mike Miller who's behind me and has been working very hard to make this happen for us. And then the comments that are made are reduced to a proceedings document, and that's published to our membership and sent to a number of law schools around the nation.

A number of inquiries have come in to us. So, I thank Mike and Rick Ostler, who's doing the video for us today. Everything will be video-taped. In your package, you have evaluation forms, and I'd like to have you, as we go through the program, comment on those evaluation forms. To a person like myself, who puts this program on, it's vital to get feedback from you. I want you to be honest with your comments -- things you saw good -- things you saw bad. That helps us improve for the next time around. There'll be a box out at the registration table to leave your evaluation forms when you leave the conference. Later on today, we're going to have a banquet. It's going to be on this level -- just down the other end of the second level of the hotel, and we'll have the Attorney General, Bill Lockyer, as our banquet speaker tonight, so hopefully, you can all join us for that event. Are there any questions about the program before I introduce our moderator today?

It gives me a great deal of pleasure to introduce Professor Clark Kelso. He's a Professor of Law and a Director of the Institute of Legislative Practice, University of Pacific's McGeorge School of Law in Sacramento. He's a graduate of Columbia University School of Law. He clerked for the Honorable Anthony M. Kennedy of the U.S. Court of Appeals, Ninth Circuit. He's a director of the Institute for Legislative Practice where he works closely with the leaders of both the California Senate and the California Assembly. He also works for the California judicial branch and the executive branches of government. He's consulted often on constitutional amendments and legislation of our state and also on rules of court for the Judicial Council. So we have a very distinguished person with us today. He's had numerous credits. Just to name a few: he's been on the Blue Ribbon Commission on Jury System Improvement. He has a real interest in the jury system, and that's why we have him here today. He's done work on the Business Court Study Task Force. He was selected for the Coordination and Implementation Committee, the Court Technology Task Force, the Appellate Process Task Force, the Task Force on Conflicts Litigation. I can go on. This gentleman has really got a lot of credit, and I think we're very fortunate, I know we're very fortunate to have him with us. It's nice that he's here because of the subject we're about to look into. He's been, since 1993, the primary consultant of the Trial Court Unification to the Judicial Council and to the California Law Revision Commission. And in 1998, he was selected for the Bernard Witkin Amicus Curiae Award. This is made once a year in California to people outside the judiciary who have done outstanding service for the judiciary. So, it's a real honor He's often referenced in the legal newspapers as a very thorough analyst. And I can tell you, he's thorough. He was here early this morning setting up all his equipment and making sure that everything is right. He's also known for his computer skills, and he has his laptop here to work with us today. And he's really an outspoken scholar. I'm very, very pleased to introduce him now. Clark Kelso. (Applause)

KELSO: Thank you very much. Can everybody hear me. Let me put that mike down. As a law professor, I'm used to speaking up rather loudly in class. It's a real delight to be here. As you can tell, I'm kinda task force happy, from that introduction. I've done about eight or ten task forces over about the past four or five years. I think right at the moment, I'm actually serving on or am reporter for three task forces, two judicial and one in the executive branch. So I'm used to special projects, and I take it that what we're talking about today is a special project which is one of the reasons that I was very interested in it. It's a special project dealing with supporting the California grand jury through educational programs. Now, we're delighted to have here this morning representatives from some of the major supporters of the civil grand jury and the grand jury process. I'd like to invite our panelists to speak today, not as representatives of the organizations. We're not going to hold these organizations to everything they say today. I'm sure that some of them will appreciate that -- that may free up a little bit some of what they may have to say. And to the reporter who's out there, they are not speaking on

behalf of their organizations. They were invited here today as really experts in their particular organizations and as experts having an interest in the grand jury. We're beginning this morning by having each of our panelists discuss their organization, and at least in one case, I've asked the panelist to discuss more than just the organization on whose behalf he's here but another organization or two that he knows something about. What we're trying to do initially here, is acquaint you all with the various stakeholders who have an interest in this topic and who we'll need to work with if there is to be a significant improvement in grand jury education. So we're going to start with their presentation of their organizations. And then we will have, as indicated, a discussion after a break to see what it would take to build sort of a mutual interest among the various stakeholders in providing standardized quality training for civil grand jurors throughout the state. Let me now introduce our panelists who are here. Three of the four are here. The fourth is on his way. We're going to begin. And now we'll see if all this fancy technology does anything for us. I've gotten used to this stuff, because my students have started doing this to me, and it's embarrassing when your students do better presentations than you do. So, I've started using this sort of material, and actually have had a technical glitch this morning. As you can tell, the far right side of screen is cut off. Well it's not cut off on my screen, I will tell you, but somewhere between here and the projector, we losing the right side of the screen. I've made some adjustments, but we've lost a little bit.

Our first panelist who will be speaking is Judge Leslie Nichols. Judge Nichols received his bachelors from Stanford University and his law degree from the University of California, Hastings College of Law. He practiced law for 17 years before becoming a judge of the Superior Court of California, County of Santa Clara in 1984. His years of public service before becoming a judge included seven years as a council- member, a vice-mayor and mayor of Mountain View, California. He served as president of the board of directors of Santa Clara County Legal Aid Society, Chair of the Santa Clara County Intergovernmental Council, a board member of a hospital in Santa Clara County and the Joint Hospital Facilities District, a board member of the YMCA, and many other similar sorts of public service effort. As a judge he, in addition to being a judge, has served as a member of the California Judicial Council. I've asked him to talk a little bit about what the Judicial Council is, how it fits into the scheme of things. While a member of the Judicial Council, he also was a member of the Presiding Judges Advisory Committee to the Judicial Council. He has been a presiding judge of the Superior Court of California in the County of Santa Clara two terms and has been active in law teaching, including five years at Lincoln University School of Law. In the biographical materials that he sent me, he said the most important thing is that he is married and has two children and two grandchildren. (Laughter and applause)

Our second speaker will be Thomas Casey. Mr. Casey is the County Counsel for the County of San Mateo. He was appointed in 1987 by the Board of Supervisors as the first County Counsel in San Mateo. Perhaps he'll tell us what they did before 1987 when they apparently did not have a County Counsel. Prior to assuming the position of County Counsel, he was the San Mateo County District Attorney. -- Is that right? -- Chief Deputy -- He was in the office of the San Mateo County District Attorney, serving as Deputy District Attorney, Assistant District Attorney and then Chief Civil Deputy. He clerked after graduating from the University of San Francisco Law School for Judge William Swaigert, United States District Court in the Northern District of California. He is the President of the California County Counsels Association and had been, --I think probably last year then, the chair of the Grand Jury Committee -- an inference I drew from this. He has served also on the Commission on Judicial Nominees Evaluation. That's a group that evaluates potential nominees for the California courts and has had significant service in the San Mateo County Bar Association prior to becoming Chief Deputy Attorney.

Now my third speaker is David La Bahn, who is to my immediate right. David is the Deputy Executive Director of the California District Attorneys Association. He's going to describe for us what that association is, what interests they represent. He became the Deputy Executive Director in 1996, and he is responsible for overseeing CDAA's NCLE training -- that's continuing legal aid education training, so he's had a long interest in training programs. He is the Association's legislative advocacy, staff supervision and managing CDAA's grant funding person as well. He has quite a few administrative responsibilities. Before his move to Sacramento in 1996, David and his family lived in Humboldt County where he was a Deputy District Attorney for -- head of the sexual assault and child abuse unit. During that time he formed a multi-discipline child interview center and performed vertical prosecutions of serious sexual assault and child abuse cases. He received his law degree from Western State University in 1986 and a Bachelor of Arts Degree in Business Administration at the California State University at Fullerton in 1984. David indicates in his resume that he enjoys sailing with his wife and son and playing with Legos. And perhaps you can ask him if he has been to Legoland. Have you been to Legoland? He has been to Legoland! Good.

Our fourth speaker whose arrival is very timely is Terry McNally, who is the Court Executive Officer and Jury Commissioner for the Coordinated Courts of Kern County. Mr. McNally "began his duties in October of 1993 having come from the private sector where he was in various managerial capacities in the communications sectors both in the midwest and in Southern California. As Court Executive Officer, Mr. McNally is responsible for the day-to-day operations of the Superior Court, including personnel administration, budgeting, facilities and administrative services. In 1998 he was appointed as the Court Executive Officer for the Coordinated Courts in Kern County and has oversight responsibility for the administrative coordination of the nine Municipal Court locations and the Superior Court. And he is also, I believe, the President of the California Association of Trial Court Administrators. Now, Terry, before you came, I indicated that all the panelists here are here essentially in their personal capacities and that nothing that any of you say really represents the policy of the organizations of which you are president, so that you can (inaudible word) free up the things that you can talk about. (Comment from McNally inaudible) At this point, I think I am going to now turn the session over to Judge Nichols who's our first speaker to talk about the California Judges Association and the Judicial Council. Judge-- (applause)

JUDGE NICHOLS: The first challenge that I have is to deal with the fact that my time has expired. (Comment from Kelso inaudible) I am going to purposely cut my prepared comments in about half, because it's really not fair to Terry to stick him at the end right before your break -- with all that's going on here this morning. So I'll take that into account, and we'll have time later this morning to talk. Actually Clark and El Moger said that I could talk not just about the California Judges Association. I'll make some brief comments about the CJA. The California Judges Association was founded in 1929, and there's a little book on it that tells the story of the California Judges Association, the first sixty years, and Malcolm Lucas, our former Chief Justice, indicated that one of the reasons that the organization came together was to deal with the problem of social isolation, the kind of work that we do can be and is socially isolating. The people that you practice law with are people you have to step away from. That type of thing. So it provided the judges an opportunity -- some in one-judge counties -- to get together periodically, socially and to advance the interests of their work. The main achievements of the California Judges Association have been in two areas. One is the field of judicial ethics where the California Judges Association has worked over the years to formulate the Code of Judicial Ethics and meet periodically and through its various Ethics Committees and so forth to deal with those issues. Of course over the intervening years, now 70 years, we have the California Judicial Performance Commission and very close, and appropriately so, scrutiny of those of us who are

invested, by you, with great power, subject to very careful and multiple levels of review. And so our conduct is carefully scrutinized in that way, but even before the Commission was ever thought of, obviously we're human beings, we thought of how to organize affairs and carry them out and discharge them in a moral and ethical manner. That was one of the initial efforts, and the second was in the field of judicial education. The CJA initially got started with educational classes in how we can do our work responsibly and better both in the areas of substance and procedural law. Over time of course, the California Judicial Council formed, and ultimately the California Judicial Council and the CJA formed the Center for Judicial Education and Research, which became the official educational arm of the courts in California. CJA continues to have educational courses and many of them, but the Center for Judicial Education and Research has carried the laboring, modeling itself on the National Judicial College, but chiefly because of the great size of our great state really surpassing that in many ways. I've gone to the National Judicial College in Reno on a number of occasions. I think it's a mistake for California judges on the basis that well, we're such a big state to refrain from interacting with people from around our great country and other countries. But the bulk of most judges get most of their education through the Center for Judicial Education and Research.. A word about the California Judicial Council. The California Judicial Council is created by our State Constitution. It's a 21 member body that -- Am I right on that -- 21?

KELSO. Maybe 24.

NICHOLS. Twenty-four, now; it's been expanded, I think. But there are judges, lawyers, nonlawyers who get to the Judicial Council through a variety of ways -- legislative delegation, Chief Justice appointment and the like and we serve full terms. I served from 1985 to 1987 on the California Judicial Council. It's the rule making body for the judiciary of California, which is of course, one of the three branches of government. I thought I'd talk to you for -- So that's it in a nutshell. That's the CJA. The CJA does not have a particular grand jury project. The California Judicial Council has standing committees, and it also has special projects -- fairness and access, community outreach, substantive and procedural law, law (inaudible word) and the like, but I won't really invade the time by going into that in great detail, except to say that I believe that we're on very sound footing under the very able leadership of Chief Justice Ronald George and the Judicial Council. I thought I'd talk to you for just a moment about my experience with the grand jury system, not going into any real detail. But before doing that, I would appreciate it if anyone from the Santa Clara Grand Jury past or present might stand and tell us their names.

I'm Bud Alne.

NICHOLS. I defer to all these fine folks about present experience with the Santa Clara Grand Jury. I defer to them 100 percent. As I am no longer the Presiding Judge of the Superior Court for our County. I've just finished and term limited out, after two terms, two elected terms as Presiding Judge of our Superior Court. Just a word about our county and Judge Jack Komar is our presiding judge now, and -why isn't he here? Well, because he had a long scheduled engagement, and I was asked to come here. Thank you.

NICHOLS. We are now --because happily, and I am very happy about this, during my term our court did unify very promptly and according to the constitutional measure that allowed for unification of trial courts, and within a month of the effective time of that, we had called a vote in our two courts -- the Municipal Court and the Superior Court, and by majority vote in each court (lot of words leading up to that) voted immediately to unify. So it was my privilege to administer the oath to all municipal court

judges. The municipal court is no more in this county. We are all the same rank just like in federal court, Article III, Trial Courts, the Superior Court of California, County of Santa Clara. There are 79 of us with ten court commissioners. Just a word about the efforts we make in this county, and I am sure they are replicated throughout the 58 counties. We know how daunting the work of grand jurors is. We know that the compensation is a pittance. We know that, and I believe that the grand jury having its origin really back in the twelfth century, performs an important (and I'm just speaking personally now) watchdog function. As a judge whose decisions are constantly subject to review, panels of three judges and then seven judges and then nine judges and the U.S. Supreme Court, all with computer-aided legal research; all with staff in law libraries far away from the fray and the emotion of the trial, scouring the record months later, looking for my mistakes, so that they might be published in the permanent law reports for all to see. (laughter) We know that accountability is important, and no less so for citizen grand jurors, in my opinion. Thus we have statutes that govern your conduct just as they govern ours. We've made good efforts over the years, with a full-time employee, the efforts of our judges, letters to the San Jose Mercury News. This is pretty much a one-newspaper community here in our county. Except for the local and regional newspapers and so forth, imploring them for free spots in the newspaper where they write articles about the need for recruitment and the like. This year, as in previous years, we made every effort that we could think of through our full time employee and our personal efforts -- letters to every church in the community, every ethnic group, speeches before La Raza Council, the Roundtable, the various groups. This year, Judge Komar replicated those efforts from time immemorial, and not single applicant came forward from those presentations. The word of mouth and the like, but the speeches before the various organizations didn't produce an applicant according to Judge Komar's publicly announced press release. This is not a criticism; this is just saying that we're all in this together, and when you read an article in the paper about how the court isn't getting enough of this group or that or the other. It's a human enterprise. And even though our pamphlets that we hand out and our orientation and the like makes clear that this is a very time-consuming task, it is always the case that within the first couple of weeks, someone resigns from service, saying that they are overwhelmed and that they cannot attend to the very time-consuming aspect upon which they, of course, fully agreed in advance before taking the oath. It's not a criticism. It's just the real world situation. We're knowledgeable people. We know these things. But I know that your work product is condemned, just like ours is, because you issue reports that are lightning-rod reports, and I think that one of the challenges is to have adequate public knowledge of the work that you do. That's a challenge, I think. I'll talk about that later. That is we send the reports to the public libraries and so forth, but often I think the press doesn't really focus in great detail on the substance of those reports, and so forth, and run series on them and that type of thing so as to get front and center public recognition and public criticism for the work that you do.

I'll just talk briefly now about the grand jury orientation, because I know that there'll be small group discussion. But just to give an example of what was conducted, and those of you who are grand jurors this year know better than I. I'm just looking at the format of the orientation for this year, and, of course, I wasn't there and would not think of talking about what actually went on in the grand jury room. The -- but I know from my personal experience, that I instructed and charged the grand jury, and we have had an educational program that has varied from time to time, but this year, there was a presentation by the legal advisors to the grand jury: George Kennedy, District Attorney and Ann Ravel, County Counsel, on the purpose and history of the grand jury. And they spoke about the duties and responsibilities of grand juries and presented a grand jury manual with a compilation of the law cases, and so forth, to the grand jurors. There was a presentation by Margo Smith, from our District Attorney's Office on the subject of diversity. We had a presentation from the Executive Director of the Alameda County Housing Authority on group decision making. Often there is a time period that is

involved, and isn't it miraculous that when we have sitting petit juries, and some of you have been on juries. The miracle is the fact that people from disparate walks of life come together, have never met each other, say nothing, go into a room and do things more civilized than Henry Fonda's Twelve Angry Men. (laughter) And, you know that's a real challenge, to come together on life's most important decisions focused in that way. There were presentations on the organization of our county and city government, through the Department of Corrections, Social Services Agency, Valley Health -- Hospital, City Manager's Association, a specific discussion on the subject of confidentiality, a subject that is emphasized each year but can be problematic, interview techniques with a presentation by a District Attorney investigator, because you're brought together and, of course, have to write publishable reports, and hopefully employing proper and respectful investigative techniques. And finally, a discussion with former grand jurors. I've really come upon my own, ten minute self-imposed time limit And I'll sit down at this time. Thank you very much. (applause)

KELSO. Thank you Judge. Our next speaker will be Thomas Casey of the California County Counsels Association. Mr. Casey. (applause)

CASEY. Good morning. Let me talk a little bit about county counsels and the California County Counsels Association, and then I'll talk about the grand jury. In California there are 58 counties; there are 55 county counsels. There are two counties, Modoc and Alpine that just have district attorneys and in San Francisco, there is an elected city attorney who also functions as the county counsel. As you all know from your individual counties, county counsels are appointed by the Board of Supervisors; however, their appointment varies, depending on the county. In general law counties, they are appointed for a four year term. In charter counties the term can vary from, as I describe it, from Tuesday to Tuesday with three votes or in some cases, they can actually have civil service status. So it varies significantly around the state. General law counties traditionally are smaller counties; charter counties traditionally are larger counties. As an organization, we essentially meet to share information, problems, difficulties, how to deal with Boards of Supervisors, how to deal with elected D.A.'s and Sheriffs, how to deal with grand juries. We essentially all do the same work. Our organizational activities deal with coordinating litigation, coordinating continuing legal education, like the District Attorneys Association does. We do not do lobbying. Our clients lobby; we do not. We provide legal analysis of bills; we write language for bills; we participate in committee hearings. But, we do not lobby for bills. That's up to our clients, As county counsels, our clients are wide and diverse. In many counties, the county counsel represents much more than just county government. In my county, for instance, we represent 22 of the 24 school districts, all separately elected. We also represent several special districts: water districts, sewer districts, fire districts. In addition with the rise of special districts that have county-wide jurisdiction, we now are involved in transportation issues. We're involved in city- county government associations --- things of that that nature. We do have a staff. We have a staff of three people in Sacramento. Our Executive Director is the former District Attorney of Modoc County -- one of the counties that doesn't have a county counsel. And they provide basic support and backup for the organization. As to grand juries particularly, about six years ago, the organization formed a committee to talk about statewide issues involving grand juries. And in particular, the value of trying to standardize information that is provided to grand juries. That resulted in a manual that many of you may have seen. This manual is essentially a compilation of manuals from around the state. We probably looked at 20 to 25 different manuals and drafted one that is updated annually and that is provided to each county counsel for that county counsel to do with as he or she chooses. In some counties, it is simply repeated -- printed verbatim and is a manual that I suspect you use. In other counties it goes through significant local adaptations to fit the local circumstances. The manual, if you've seen it, has essentially two parts: the first part is a discussion of how grand juries operate; the

second part which is appendices is a resource document. It provides you with sections-- all of the penal code and government code sections that deal with grand jury cases, attorney general opinions that have talked about grand jury powers, suggested committee organization and things of that nature. In my county, I have been involved with the grand jury for 20 years. Professor Kelso queried how I was the first county counsel in 1987. Let me give you a little history. Before the 1920's and 30's, all legal services in counties were provided by the district attorney. There were no county counsels. The district attorney typically provided both prosecution activities and so called civil advice. Beginning in the 1920's and 30's particularly in the largest counties -- I think L. A. was the first -- there were created the offices of county counsel. County Counsels typically are appointed by the Board and provide all of the so called civil service. That includes defending the counties and all of its officers and agencies in litigation, giving advice, advice to all of county departments, officials. As county government has grown, the range of our activities has grown. We are the lawyers for the Superior Court; we are the lawyers for the sheriff, we are the lawyers for the Board of Supervisors; we are the lawyers for the district attorney. And you can go on and on with anybody or anything that county government does. Most county counsel's offices were created in the '50s and '60s into the early'70s. In our county, the County of San Mateo, our charter provided that all civil legal advice was done by the district attorney; therefore, it required an election to change that. That election process started in the 1970s, failed three times, and finally in 1987 the voters decided to approve it and split the office. I was probably one of the last county counsels to be appointed in any county of significant size, and so since then I have been the county counsel. Previous to that, I was the Chief Civil Deputy in the D. A.'s Office. It was in that role that I began with the grand jury in 1980. I was first asked to be involved with the grand jury when 18 grand jurors went to the presiding judge and said, "It's either the foreman or us." (laughter) The foreman was a retired shipping company executive who as I understood it from the grand jurors ran his grand jury as a ship, and the other 18 were the crew. Since then, I have been the primary legal advisor to the grand jury in our county. And the work varies significantly from year to year. There are years when I have attended every single grand jury meeting. That is not something I recommend. It was not something the grand jury wanted, but frankly I acted as a referee. There are other years where I will meet with the grand jury once or twice, answer their questions and simply provide what service they ask for.

In terms of training, I have been responsible, and my office has been responsible for providing the grand jury training for the last 15 years. Previous to 15 years ago, we used to put grand jurors on a bus, and we sent you through the county for two days, and you went and saw the airport and you saw the juvenile hall, and you saw the Jail and --. The theory was two days on a bus, and any group could bond. (laughter) It was actually the grand jury that came to me and to the district attorney and to the presiding grand jury judge and said. "The bus tour is wonderful, but we really think there's got to be a better way." At that point we designed and have with modifications continued a program where for typically two days the grand jury meets at the beginning of their term and have presentations to them, much like Judge Nichols described in Santa Clara County. Myself and the District Attorney will talk to them, the County Manager and the County Departments will speak to them. We always have a panel of former grand jurors who will speak to them of their experiences. Frankly, the training varies from year to year depending on the judge. The judge is the one who decides what training actually the grand jury receives. So in some years the judge wants more presentations, and in some years.

(45 minute segment missing)

JUDGE LESLIE NICHOLS. In any event that's an editorial comment 'cause my wife sat on a community school music and art board and trying to promote this all, but the idea is, I think, that we

are attempting to interact with students. Many of us get invited to schools. When we go there during daytime hours, we are foregoing our obligation to preside over actual contested cases and controversies at the courthouse, so it gets to be balancing issue of how you spend your time.

CLARK KELSO: A couple of specific ones here: Who sets the fees paid to grand jurors? Well, that's set by statute is the answer to that question, so it's the legislature. I actually in preparation for this conference in going through those statutes was surprised to find the \$10 fee. When I was working with the Blue Ribbon Commission on Jury System Improvement, our focus was on the petit jury. We made a recommendation to increase its \$5 a day fee. That was now probably four or five years ago that was recommended. The legislature has still not enacted that, even though, I believe now, for two years running, the governor's budget has actually included funding for an increase in those fees. So, it's a legislative matter. When I saw the \$10 figure, it did make me think that maybe I need to place a call over to someone in the Judicial Council's lobbying office and say, well, as long as you're going to propose the increase in the petit jury fee, why not go ahead and propose the grand jury -- civil grand jury fee as well. It seems to me that would make some sense.

KELSO. Who sets the budget for the grand jury? Now there, I'm at a total loss.

TERRY MCNALLY. I can probably answer that. In Kern County, the Board of Supervisors is ultimately the group that helps with the establishment of the budget. For the grand jury, the County Administrative Office is the one that works directly with the grand jury in developing its day to day expense requirements, etc., but ultimately, it's the Board of Supervisors that approves the budget for a grand jury. So, if you need to get close to anybody during the process because you have concerns that you don't have sufficient resources to do your job, I suspect that the first person you want to talk to is the County Administrative Office. They usually have a budget analyst that's assigned to the grand jury, and those people are the ones you need to know and talk to on a regular basis about your budgetary requirements.

KELSO. And so the funds then for the grand jury are local funds, not state funds.

MCNALLY. That's my understanding that they are general funds from the county, That's correct.

KELSO. That actually is, it seems to me, is a pretty significant fact. One of the implications is that we've got some of the important stakeholders here today, but obviously we missing an important stakeholder, and that is the Board of Supervisors. And I gather the Association there would be CSAC, the California State Association of Counties, would be, it seems to me, an important player in any of these sort of efforts.

KELSO. This question is directed to David. What method is used for district attorneys to keep current with up to date court decisions, legislation, etc. Grand juries are dependent upon D.A.'s and county counsel for this. What assurances do we have that you all are up to date?

DAVID LA BAHN. First we try as hard as we can to get things out there. We publish a case digest, so every two weeks, we send out to the prosecutors that are the members a brief synopsis of every case that's come down.- In addition to that, many of the larger offices have networks within them that they pass down the latest court decisions. So we hope that that works, and then as part of any training that we're putting on, we'll always have a briefing area that says what are the current cases -- a case law update and a legislative update. And in the legislation area, once a year, we send out to every

prosecutor in the state our legislative digest. And that's an analysis of every law that's been passed that affects criminal, civil, family support, any of the areas in which our members are operating, and when a bill that's an urgency bill -- which means a bill that's going to go into effect prior to January 1 or the July date, we get an update out there immediately to say here's a new law coming down with urgency. We actually hand them the entire bill, that way -- because it's going to happen so quickly, they can work at the local level as to how they are going to do whatever the new statute is. But that's one of our real core functions is -- as soon as something happens, get it out there.

KELSO. I think we're coming upon 10 o'clock. I'm going to have one more question. I do have some of these questions that we'll be coming back to after the break. This question is for Terry. Without sounding rude, -- this will be an easy one for him -- what legislation initiated trial court administrators? Are trial court administrators in all 58 counties? Structurally where do you all come from? Who are you accountable to, is the way I interpret that question.

MCNALLY. There is legislation that establishes court executive officers; they report -- and a couple of different configurations and now that most of the courts have merged into superior courts, they are usually at-will employees; they are not civil service. They report and are responsible to the judges of the superior court. And because of that, since we work for a large number of judges, those individuals kind of help us on a day-to-day basis, direct us as to what they want to accomplish in , the court systems, and generally it's a day-to-day working relationship. I'm not sure about Santa Clara, but I would suspect that there is the Presiding Judge, that is the person that generally works with the Court Executive Officer on a day-to-day basis with respect to administration, and then -- but ultimately the Court Executive Officer is responsible to the superior court judges

NICHOLS. If I can just talk for a moment on that question about the grand jury investigating the superior court. There's an aspect of that that you might agree with or not agree with, but I just want to expand upon it for just a moment. One of the reasons, I think, is an attribute of judicial independence. When a case or controversy is in a courtroom, the court reporter is taking everything down, the exhibits are received into evidence, the parties are then able to assemble the case, present it to a three-judge panel in a higher court that from a distance will review it, possibly petition for a hearing in the Supreme Court. And when that same litigant, for example, unhappy as they may well be, because it was a case or controversy very important to them, may write a confidential letter to the California Judicial Council which the judge has no right to get ahold of and complain about that judge. So that their investigative staff, constitutionally empowered might ask questions of others about the judge who, of course, because of the need to control that judge, may not know what's going on. That type of thing. All that is a way authorized by the people through the Constitution to investigate the possible misconduct of the judge. If the judge during the pendency of the case, were subpoenaed into a grand jury room, not because of an alleged criminal violation, for which a judge can and has been arrested historically, but because a litigant goes to the grand jury, tenders a complaint and wants you to criticize the judge's conduct. I believe there's some thought that might undermine the independence of the judge, and the judge might seek possibly to curry favor rather than simply calling a decision in a tough controversial area of contested cases or controversies. I suppose that part of the idea is -- there's plenty of work to do, that work is allocated to others. The civil grand jury's function is not to investigate the court, and that's -one of the thoughts I have.

KELSO. Let me follow up on that. But your comments help me understand better where this particular question is coming from. I know there's another one that I have from somewhere else that is similar. Since the judicial system has a procedure to hold judges accountable, please explain why actions done

by one superior court judge can nullify the wishes of the majority of registered voters. The next paragraph is in reference to initiatives. And this just amplifies on what Judge Nichols has said. Courts are invested with the power of judicial review. That's the term that we use -- that scholars use anyway. That's the power to declare statutes and initiatives unconstitutional if they are in fact unconstitutional. And separation of powers -- the principle of separation of powers gives that power to the judicial branch, so that the legislature and this includes the people acting by initiative when they pass an initiative statute, so that neither the people by statute nor the legislature by statute can contravene constitutional protections. So when a judge does that, a judge is exercising power that is constitutionally given to that judge. The only way of reviewing that decision is by appeal through the judicial process. That's not a decision that really should be subject to investigation, even by the Commission on Judicial Performance. I've taken the position quite frequently that the Commission on Judicial Performance -- its job is to look for judicial misconduct -- a judge who isn't showing up for work at all, a judge who is inebriated on the bench routinely. That's what the Commission on Judicial Performance looks for -- misconduct, but not errors of law that may be committed by a judge in the course of adjudicating a particular case. We correct those types of errors exclusively through the appellate process. That's why we have appellate courts. And so really, to the extent that some of these questions about can we look at judges, to the extent that those are being inspired by, can I look at how a judge reached a particular decision in a particular case and then criticize that judge for that, it does seem to me that really is not appropriately the role for the civil grand jury. That's the role for a court of appeal. Well, with that editorial comment, we will take a break until 10:25, because I think I ran a little long here. Then we'll come back and continue our discussion. Thank you very much.

(Break)

Panel Review - "How Associations Can Work Together for Quality Grand Juror Training"

(Segment Missing)

RON MIGUEL. It did cover those items in Penal Code 914, and it is the hope of the committee that put the curriculum together and those of us who taught it and the State Board of our Association that this will be expanded to several geographic sites within the state. This is not necessarily to supplant. In fact, not at all to supplant the individual obligations of each county. There are a lot of peculiarities to each county, absolutely, and we all know them. But there are the generic and that, plus the mingling of the information from people in various counties that you just referred to, is what we would hope to achieve.

CLARK KELSO. And you're referring, of course, to the program at LaVerne College of Law? (Background noise) He got ahead of me here. I was going to get a complete agreement from everyone on the panel and then spring it on 'em. Tom, I think you were the one who had said initially that you all were -- in your association were not, as enthusiastic about statewide training. So, my comments in part were directed sort of at your position a little bit. What do you think about the point that, at least on some of these things, there really can be, improved quality statewide by having a recommended statewide curriculum?

TOM CASEY. Yes. This may reflect my view of the State of California. I don't believe in statewide activities. Um, you look at it, I mean, you pick the area you want to look at and you say, "Do you want the state to run it?" You feel comfortable that the state should be running things, then statewide training

is probably a good idea. I don't. And frankly as the statute says, the three things that were picked are minimums. I think in the drafting of the language, those were highlighted as things that were common to every county grand jury and, in a minimum should be included. Frankly, those probably take about 25% of the training we do for grand jurors. And it becomes much more of a localized issue. You know, how to get records in L. A. is a vastly different thing than how to get records in Humboldt County. And if you don't get trained as how to get records in L. A., you're never going to find them in L. A.

KELSO. And actually that relates even to interviewing.

CASEY. That's right. And interviewing and who to talk to and how to get information. I think local people, whether it's the Contra Costa County current grand jury or former grand jurors or the County Counsel or the judge. I think local people do a better job, and I just am not a believer in statewide training.

KELSO. No, the program that was developed by the association in the LaVerne program, when I looked at it briefly in preparation for today's meeting, it looks like a very good comprehensive sort of approach to training. What we're meeting here then about is not just -can we develop a curriculum. That's been done already. The question seems to be then, and this relates to really Tom's point, I think, to what extent should use of that curriculum be in some sense mandated or encouraged? Because each grand jury already has the power to say, "I like the LaVerne materials. I want 'em down there." And then to see if they can do that. I take it that part of our discussion here really does relate to what extent should, for example, the Judicial Council decide that it wants to encourage courts or require courts to make use of that particular curriculum? Now, Tom's point about local control versus state control is a huge issue within the court system.. It's a big issue. Um, the move to unification and statewide trial court funding, Um, has come with a lot of, oh, I shouldn't say bodies on the side of the road (laughter). That's a little too strong.

UNIDENTIFIED SPEAKER. Road kill is just a little strong, here (laughter).

KELSO. Road kill's a little strong but, at least from the perspective of some judges, they may have felt steamrolled in some of this that state funding and the increase in the authority of the Judicial Council has been at the expense of local flexibility and local control. And so that battle is the one that Tom's talking about is a battle that, if we were to end up going to the Judicial Council might have to be, um, fought again is too strong a word but at least confronted. I don't know if our court administrator has any thoughts that he would like to express on that.

TERRY MCNALLY The only thing I can hazard a guess, is right now with all the other things on their plate, the grand juries are not on the radar scope of the Judicial Council. I would not think that's one of their top priorities. So, if you're going to get anything done, I would concur local is probably better than trying to appeal to a Judicial Council who has such a broad, uh, slate of responsibilities now that they just may give short shrift to it.

KELSO, In your programs, yours are not mandated by statute are they? No. So, really your programs have developed over time where the value in the program was obvious enough to each of one of the District Attorney's offices that they decided to spend resources supporting the program? (Background -- Yes, that's correct.) So in that sense it was a locally developed initiative. Les?

LES DAYE. Our association before even one word for the curriculum was drafted produced a two-page document of training guidelines that generally outlined what type of topics from the vast experience of those who've served as grand jurors would be valuable for the study of the civil grand

jury. And in that there is a part one and a part two that takes into account. Part one is the orientation and the materials that are presented on the local level by each individual county or potentially by a couple of counties brought together to a site. Before there was any thought of putting together the nuts and bolts of the actual curriculum, it was recognized that many counties do it this way and should continue to do it this way, because there is no way that a two-day training session could possibly cover more than the 25% that was mentioned of some of the items that are in 914B. So we, we recognize that the guidelines to whomever is going to take this approach have to recognize that the local people are still going to have a huge responsibility and always have.

KELSO. Have a couple of questions back there?

MARCY BACHMANN. Hi. My name is Marcy Bachmann. I'm from Contra Costa County. I'm a woman, and I'm not giving up this microphone (laughter). O.K., My question is, um, we're talking about grand jury training, but there is apparently no training at all for alternates. I joined the grand jury in Contra Costa in the Fall after someone who was on the grand jury resigned. And after I joined the grand jury, four more people joined the grand jury as alternates. All these people continued through the end of the year with no training at all. And they were playing catch-up essentially. And the only reason I was able to join with any sort of intelligence at all was that I had been living in the county for a number of years-- for several decades, and I had been serving -- I had a job on the newspaper, and I was very, very aware of what was going on in the county, maybe too aware. (Laughter) And I really feel that some training has to be made for the alternates and maybe they should be included in the original training because they get thrown on, just tossed onto the grand jury with no training, and they're expected to play catch-up, and it's very, very difficult for a lot of them.

KELSO. That's a good comment. It seems to me that what you would want to do is find out how many alternates there are -- how often are alternates actually then added to the grand jury, and then figure out whether you should have alternates be required to participate in training whenever it's offered. Or, if that's not cost effective because alternates are not routinely being added to a grand jury, making sure that once they are added that some type of training is provided at that point. Sir?

DAN TARANTO. I just wanted to make a comment with regards to this consideration of local versus regional training. I've been involved in regional training programs for ten years, every year. And each year I conduct a poll in my workshop of the people in attendance, And we've had attendance at the seminars from-- everywhere from 50 to 450 jurors from around the state. And so I've had quite a bit of exposure to jurors over the past ten years. And it would be my sense of it that the jurors would appreciate very much a local orientation that gives them some familiarity with what's going on with the -- you say the idiosyncrasies and peculiarities of each individual county and also the opportunity to get some familiarity with the various officials that they're going to be working with. But, in addition to that, I think there is a great benefit to be reaped by all, because there is no one county that has a team of superstars to present such a training program. On a regional basis you can tap into a much broader array of talent and expertise than you can on the local level -- and to provide something more of a generic nature. So our association's position is that both is best. Both the local training and orientation as well as in addition to that a regional experience where there's an opportunity to get some cross-pollination of ideas and processes from other areas to help basically upgrade the grand jury process throughout the state. Because really you never know which county is going to come up with the best idea. And once the best idea's out there others adopt it without any particular persuasion as is evidenced by the proliferation of, say for instance, the publication of grand jury reports in the

newspaper tabloid form that started in one county, and now is currently being done in about a third of the counties. And over the past ten years this idea has spread of its own accord.

KELSO. Good. I think there's another question up here? Yes, ma'am.

JANET PRARIA (MONTEREY). I just wanted to agree with Dan. Being a new grand juror, having gone through the local orientation, having gone through the LaVerne orientation, I thought the LaVerne orientation was absolutely invaluable. I thought the local was excellent. And I agree with Dan that there needs to be both. And I don't think there's any question that there's enough generic and enough information, so that it gets us going without having to try and figure this all out for ourselves -- you don't have to reinvent the wheel, um, you know theory. So, I, without a doubt I would go for both. And I thought LaVerne was absolutely critical as far as I was concerned.

KELSO. Let me ask. What do you perceive are the main obstacles to having that type of approach done in every county? Is it just lack of information? Lack of will? Or are there particular obstacles to having that simply be adopted everywhere?

PRARIA. When you say adopted everywhere, are you talking about each county putting on that type of training?

KELSO. Each county making available to its grand jurors that type of training. Is it just money? (many speakers in background) But money is one obstacle. But what other obstacles are there? Money may be one. Yes?

UNIDENTIFIED MALE SPEAKER. I did the LaVerne training. Excellent, excellent training. Our grand jury had very extensive training by another entity at the beginning of our session -- two day session, provided by the administrator, not necessarily our judge. Our judge probably would not have provided any training but the administrator talked us into it. And so we've had some very, very expensive and good training, two types. The problem that I see that here are three kinds of grand juries in California. And when you do the generic training as for maybe 25% to 80% of the stuff that's given is not of (inaudible) with your grand jury at all. And so the local, back up to Tom Casey, the local training is very, very important. And we've got to differentiate between the three kinds of grand juries that we have in California. And that goes through this next two days also. Thanks.

UNIDENTIFIED MALE SPEAKER #2. This is not exactly a question. However, we're speaking of curriculum, and we're speaking of various ways of approaching our training. The most, I think, the most important part of training is the manner by which those who are doing the training, the strategies and the tactics that they use in providing this training. For example, I turned around and I think the worst teaching that takes place, with due respect Professors, is in college, because they use the lecture method. We're using the question-and-answer and panel. The most effective method is hands-on, and there are tremendous amounts of teaching strategies that it would take too long to represent. Right now there are several people sleeping. And the reason why I know this 'cause I was the secretary. And we would have some very serious information being given to us, and I'd look around and my colleagues, three or four of them, due to age I 'spose, (laughter) listening to a voice, you know a monotone, and I'd have to go like this (knocking noise with mike). You know, I would do it as a secretary, and they would. This is what I'm talking about. I think we should have not only the curriculum but the strategies and the tactics that goes into training. We haven't considered that.

KELSO. Yes, ma'am?

UNIDENTIFIED FEMALE SPEAKER. I thought the point of the mike, by the way, was this is being recorded. (Many speakers at once.)

KELSO. Oh, it still is true. My apologies. I thought everybody just liked having the mike, 'cause they thought it was like Donahue or something. Or, you know. (Laughter)

SERENA BARDELL. San Francisco. I see a problem. We talk about the need to make grand juries more diverse. Now, on our grand jury, '96 it was, I traipsed up to Yuba County. It was wonderful. I went to the training, and I loved it. There were a lot of other people on the jury with me who could have gone in terms of their, you know, they had the time. They were either retired or what-have-you. But I was the only person other than the foreperson who happened to be one of the instructors as well who went out of 19 people. And if you want to try more and more to get a diverse by age, by race, by education, what-have-you, um, grand jury, you've got to be realistic about providing training and making it as easy as possible. If you have somebody that works five days a week, has two, three kids at home, that person is not going to go 50 or 100 or 150 miles to get training. You're going to have to make it as doable for that person as possible. And I think it should be mandatory. If that means the first week or two of the grand jury sessions should be training, then so be it. But I don't think it should be left up, because there are always gonna be a few gung-ho people that'll want to learn and want to go. And that isn't going to make the grand jury work as well as everybody having the same training at the same time from the same people. And I think it's terribly important for, somebody I think chuckled a bit, but I think it's terribly important for forepersons to be trained also. And it wouldn't hurt for judges too (laughter) -- for something to happen to make judges respect the grand jury system more than they do and stop appointing cronies and stop reappointing people that they know, and, uh, I don't know what can be done about that. That's sort of above and beyond. But, all these things have to work together if you want a really effective and strong grand jury. And I'm not sure everybody wants a really effective and strong grand jury.

KELSO. Les?

DAYE, I'll just make a quick comment. To defend the presiding judges, um (laughter) believe it or not, in our diverse state, there have obviously been juries that were hand-picked by judges. They asked for volunteers. They weeded through and then came up with the 19 or however many. But there have also been, and I know of one particular example that flashes right into my head where last year there were 19 jurors serving on a jury that went in kicking and screaming, found out that they have liabilities potentially as jurors, and they were not the cronies that you're talking about. So, I mean, there are some counties that heavily rely on the old fist, we need 19 people, and there's gonna be 19 whether you like it or not. So we can't stipulate that those people need training any less or those people are in a, you know, situation like you're describing. Because there are a tremendous variance in the way court administrators have to select even those 19 jurors, and we don't have an ideal system. And all you have to do is look at some of the seated juries to see that you're not getting the diversification that the community generally would like because the jury is supposed to reflect that very community. So it's not a perfect system. Training, at least, if it were in a function of the local and perhaps regional level, would at least expose people to the gist of the job so that they knew coming in someone cares that we make something out of this, that we learn how to edit and write a report. I mean, there is a talent to that. A writer does not make a good editor. Our jury had a famous writer as the head of the edit committee, but boy did he need a lot of help. (Laughter)

KELSO. Let me, before we take a few more questions, let me move just a little bit away from training to the practice manual or procedures manual that I think were mentioned much

earlier. Um, is there any type of statewide grand jury procedures or practices manual? Just as a factual matter, is there Les?

DAYE, I would say we've provided such a document and have generally made it available to most juries. That's the Syllabus and we find out through feedback that most juries have, in fact, have this in their library. And it's a generic document that takes into account common sense as the things that occur within juries, the penal code and procedural issues which, of course, the jurors realize they can set some of their own procedures. But it, of course, makes no attempt to define what the departments and the potential issues are in any given county.

KELSO. Sure. O. K. Yes? Oh, wait.

STEVEN PHIPPS. Yes. Steven Phipps, sir of Humboldt County. Just to follow up on Serena's thing and the question which was asked earlier, what about education for county counsels, court administrators, perhaps even education for some judges? Most judges, I think, do a fine job. But for example, at the moment, just to pull a quote out of the press which may be an incorrect quote by Mr. Kopp or now I guess Judge Kopp has said the other day that "on his jury, by gum, they weren't gonna accept complaints." They were gonna run it different -they weren't going to take up all their time with complaints. Well, that's a clear misreading of the way juries get to decide what they want to investigate. So Judge Kopp apparently doesn't understand that, or he was misquoted. Likewise, county counsels. I would be curious to know what you guys in the county counsels society talk about among yourselves. (Laughter)

KELSO. O. K. Let's go down the panel, I guess. (Laughter) They all have extensive training, so let's see what they say.

CASEY. I'll start. We have a manual. Every county counsel in the state is given a copy of it. We update it annually for every county counsel. Periodically we have discussions about grand juries and what their powers and duties are. Like any organization, all we can do is provide it. Whether your individual county counsel reads it, disagrees with it, throws it away, I can't control that. But we provide, I think, a fairly extensive amount of information to county counsels about grand juries. What they do with it after we give it to them is their business.

PHIPPS. How do you recommend they handle the problem of that conflict of interest that occurs between the agencies and the grand juries? They represent the grand juries sometimes and the sheriffs department at (inaudible word)

CASEY. As I said, I think, earlier, it's no different with the grand jury than it is with anybody else. I mean, I represent the sheriff and the D.A. They don't agree sometimes. My view, there are two elements to it. One is, and this is my experience in San Mateo County, most of what you do doesn't involve conflicts of interest. It may involve differing opinions, but it's not a conflict of interest. Our job is to give you advice regarding the law. My advice is the same to you as it is to the sheriff. I don't change it. Now you say, well why should I rely on that? The only thing you have to rely on is my integrity that that's what I'm going to do. If I don't have integrity, it won't matter.

PHIPPS. O.K. Well, then just out of curiosity, what about, what do the prosecutors have to say, for example, about is there a consistent position that a grand jury asks a prosecutor, do I have to access to police personnel records, for example?

DAVID LA BAHN. Police personnel records are one that are controlled by statute, and the issue there would be the relevance as to is it a case that relates to an officer's conduct or is it a case that relates to conduct by- civilians. I was going to say, when you look at the issue of training, do D. A.'s train on the grand jury? The answer's yes. That's always covered in the new D.A. training. That's one of the things that you have out there. Our focus is more on the criminal. And I share the lady who mentioned that there are three kinds of grand juries out there. I think that is true. You have a grand jury that's pure civil -- hears only civil matters. You have a hybrid that's a predominant civil, hears some criminal cases. And then you have the grand juries that are only criminal; they're called for the purpose of hearing criminal cases. Our focus is only the latter two. And our focus really is not to do what's going on in the civil arena but merely what's going on in the criminal in the criminal arena. How do you present it? And I think important to us is the changes that happened in 1992 with Prop. 115. Because prior to the time when there was a post-indictment preliminary hearing, there wasn't much of a reason to take a case to the grand jury, because we would have to present it to you in its entirety. And then if we got an indictment, then we'd go back to court and present it in the entirety to the court. So, once that proposition passed, then it became a point of let's take some cases to the grand jury and the important resource that the grand jury is. Because having taken child sexual assault cases, adult sexual assault and gang homicide cases to grand juries -- on all of those cases, they're all different. And for the victims to be able to be in front of people that aren't accusing them, that are just listening and hearing them out, to put kids up in front of a grand jury is outstanding. Gang members who are concerned for their own lives would much rather go into the secret room and give their testimony than to be in front of a court room where everyone can intimidate them, and it may, in fact, cost them their lives. So we are wary, and that's why recently with the association, we've been so involved in the legislative process. Because as the grand jury was attacked, and I can further state, I've had cases that the grand jury did not indict on or indicted on one thing and wouldn't indict on another. I don't think that it's just a pure rubber stamp, and I think that the questions from the grand jurors are extremely probative. It's always just the concern of, you don't want to ring a bell; you don't want to bring in a particular evidence that's going to make you lose your indictment. But being able to speak to the grand jury afterwards, what are the strengths in my cases; what are the weaknesses of the cases. You guys know. You're very similar to what the trial jury's going to be and that's why it's such an important tool on the side of the prosecution.

PHIPPS. That's partly what I mean by education. You see, there's a regular grand jury which hears both criminal and civil matters until the criminal grand jury may be, may or may not be, impaneled later. And sometimes I'm wondering whether or not these organizations -- in other words, is your agenda the same agenda as a regular grand jury's agenda is? A regular grand jury, for example, might be seeking to elicit information and not be as concerned as you are about formatting an indictment and thus are potentially (inaudible). How do you handle that?

LA BAHN. It may or may not be. If we don't have any idea of what a civil grand jury is doing and then all at once the D.A. advisor is brought to the grand jury saying, "O.K we want to indict this individual." We're at a real handicap as to what's happened, what evidence has been presented, can you indict, can you not indict. At the same time, you'll probably have some resistance from prosecutors to sit through entire civil proceedings to see whether or not we think that of all the evidence then presented may in fact lead to indictment. And I don't mean to ever suggest that every

case -- in fact, the cases that are taken to grand jury traditionally are kind of marginal cases. They're cases that you want to see and want to watch it play out. Um, I take great offense at people who say, "Oh well, D.A.'s always want indictments." That's not true. You're being handed very difficult cases, and your decision is exactly what well act upon. If we get the indictment, we'll take it to trial. If there's no indictment, we'll walk away.

KELSO. A quick comment before going on -- on the conflict of interest issue. As Tom said, this isn't an issue that's unique at all to grand juries. My exposure to it has been with the legislature and at the state level. I'm Executive Director of something called the General Counsel's Association that includes the general counsels of state agencies and the legislature and the judicial branch. The very first meeting we had, we spent most of our time talking about conflict problems. What do you do when you've got different departments that have somewhat different interests. And so it's not a problem that's unique to the local or the grand jury level. And in the legislature it's really quite remarkable what they have. They have one lawyer -- we'll, it's one office of a lot of lawyers, but one office that represents all of the legislators. Well, of course, and the one office drafts all of the legislation. And, of course, you've got legislators who are just going at each other with conflicting legislation. They've got one office that does it for all of them. Well, how do they solve the conflict problem? They resolve it simply because the office has the trust, and it's an office of unmatched integrity; that's how they manage it. And the government lawyers are very different than private lawyers. As a private lawyer, I'll tell you, the sort of conflicts that government lawyers have to deal with, I would find really very hard to live with, but it is a common feature of government lawyers, state, federal or local, that they deal with those sort of conflict issues. On the question of training...

NICHOLS. I'll follow-up in a moment. This gentlemen's been holding his hand up for some time. So, I'll defer to you, sir.

TARANTO. O. K. Well, I'd like to ask the question before our time runs out, because I think it's burning on many of the minds in the room, as we have representatives from all of these officers of the court associations, what, in the minds of you representatives, could be put together in the way of a coalition or an ad hoc committee or some kind of an ongoing conference of all of these different, diverse functions of the court as well as the jurors to continue this discussion on some collaborative approach to broad-reaching training for grand jurors throughout the state and perhaps even some consideration of more comprehensive training to the officers of the court?

JUDGE NICHOLS. I'll follow-up on some of the comments and questions that were addressed by all of you. Our questions, just like the affirmative statements, represent our own personal life experience, and sometimes they're pretty much pregnant with a point of view. And I've picked up on some of that kind and some of the questions and comments One of them asked by several people was about training of the various people including judges. Even judges could use training, of course, is the tenor of it, and that's a truism in my view. It's different in every county. And I can understand, if you're in a county with a single judge beleaguered with calling all the court calendars. You might say, "My goodness, that judicial officer doesn't seem to be attending to my needs or the public needs in this area sufficient to meet the task." In the larger counties, in my personal experience, and I can only speak to that, but I had been on the court for about 15 years and two terms as assistant presiding judge working under the presiding judge before I then was elected to two separate terms. And before that, generally with the court of our size, you must have been on the court for a number of years and been sort of tested through assignments and supervisory positions. Are you a worker? That type of thing. And ultimately, you're selected by your peers for a finite period to act in this way as presiding judge. And so in the years preceding my getting to the position of presiding judge, which I no longer enjoy, I did meet with the

county counsel. The district attorney got some of the kinds of training -- that training you yourselves are talking about. And, of course, I'm obliged with every case to read the law and study it, try to understand it, read the treatises, and so forth. Someone commented, and I want to be explicit about this, because you are respected members of the grand jury. We hear out on the street, but I haven't heard it in this room until someone said that the, sort of as a truism, that you're all here because you're cronies of the judges or at least some of you might be, and that perhaps there are those who don't want the grand jury to be strong. Now, I am sure that there are those who don't want the grand jury to be strong. We see these discussions buffeted around in the press from time to time. My own views were stated at the beginning concerning the support for the grand jury. I won't repeat those now. With reference to the charge of cronyism, you should be the judge of your own circumstances. But I know that in our county of about two million people that most numbers of people that we could get to apply to serve on this, on this standing grand jury was, at most, 60. And of those, people fell out. And of those who were selected, people fell away in fatigue even though the brochures and the training indicated, it's going to be four days a week or so. And I've described earlier the efforts that we've made so that the grand jury constitutes the real face of the community in all its diversity. So if you believe that the people get there because they believe the judge would give a wink and a nod, it's going to be a real special favor I'm doing to you (laughter) to serve on the grand jury, well I leave it to your good judgment in that regard. Thank you. (Laughter and applause)

KELSO. To get a little bit back to the question about what will your organizations do. Now, I'm not going to ask that question -- to ask them to commit themselves. They're all going to have to say, "Well go back to our boards and talk about it, " I'm sure. But I think if there is something, if something's going to happen other than simply the Association itself is going to promote this, and I think from our discussion there's some pretty good ideas of what the Association can do itself to prepare. It sounds like you've already got a statewide curriculum, you shop it around, you make sure that it's got both state and local in it. If there's going to be something additional in a way of a Judicial Council rule or what I think would be more likely if the Council did anything, would be something called a standard of judicial administration. If something like that is going to happen, it does seem to me that you'd have to learn about, who do you talk to with the Judicial Council? Where does this have to go, if you're going to do it? Where would this go within the Judicial Council? Would this be a presiding judge's committee type of thing? Do you just call up the Judicial Council and say, "We've got a great idea; why don't you come talk to us?" David or Terry or John, where do you go?

MCNALLY. There is a -- they're now called the Council of Presiding Judges, but there is a formal body of presiding judges who, we've all pointed out, are ultimately responsible for the grand jury. That would probably be a good start because most of those advisory committees do address legislation and generate their own proposed legislation. So that probably would be a good start. So I, uh...

NICHOLS. If you wrote Bill Vickery (sp?) who's the head of the administrative office of the courts, raise the subject and ask that this be referred to the presiding judge of the advisory committee or any appropriate standing committee of the Council or that it be attended to in some manner. That, at least, is a start. You call 'em up and talk to 'em too.

LA BAHN. And as I was saying, usually with the Judicial Council, what they'll do is they'll send it out for review. So we're talking about the other associations that are represented here. Once they've looked at it and done whatever work they're going to, out it goes to the D.As, public defenders, county counsels, both the private and the public bar. So that's part of a process, but different people do get input.

KELSO. So actually one way of getting -- making sure all the stakeholders get notice of this is actually to send the letter to the Council, to Bill Vickery (sp?) or to the chief saying, "Here is something we'd like to be put on an agenda." And then everyone will ultimately get informed about that. You "CC" all of the organizations that you need to, so everybody's aware of it. So you begin some type of a process there.

LA BAHN. Absolutely.

NICHOLS. You want to think carefully about what you ask for because the point is well taken that the state -- there are views that whereas these matters were attended to at the lowest level of government in the past, that owing to the unification of the courts and building of it, organizations, establishments, hierarchies and the like -- that sometimes when you ask for something, you get it. And that implicates such issues as your own authority. I'm sure you would carefully think through what the task is that you would ask to be engaged in.

KELSO. Now, I have a procedural question here. It's what -- about twenty till now, twentythree to, eighteen till? The question is, will the panel ever complete the answers to our earlier questions? (Laughter) The ones given to them on 5 x 7 cards. And I know we have other comments out here. So the question is Les, what is your and the group's pleasure at this point in the proceedings?

NICHOLS. I can tell you. My son is twenty-eight, my daughter is thirty-two, my grandchildren are five and a half and three. That was one of the reasons... (Lots of laughter)

DAYE. Well, first thing, is your sense is -- you've looked at the questions. Is there a common theme left that we have not...

KELSO. Well, there are lots of questions, and we have more comments, I think, out here. It really is whether ... I want to make sure that this panel has satisfied your goal of beginning to vent this issue.

DAYE. Well, I would say the answers we just got regarding who to provide comment to -- to the Judicial Council may be one of the ultimate steps that we need to take. My sense would be with -- let's take questions.

KELSO. All right. In the back there.

UNIDENTIFIED MALE SPEAKER. I'd like to state something that's very unpolitic in governmental circles. And that is to try to pin down responsibility for grand jury training. Let me pose this, uh, theory. Of all the responsibilities represented at the table, it seems to me that the chief and most direct and most effective responsibility is of the court administrator as advisor to the presiding judge and as the one who would execute the type of training provided to grand juries. I'd just like a reaction to that theory.

KELSO. I think that's incorrect. I think as a legal matter what 914 says, it's the court. And what that means as a practical matter, is the presiding judge. The court administrator will, I believe this is fair to say, within budget limits and after consultation with the presiding judge, would do whatever the court instructs the court administrator to do. They have in many courts employees who do training. So there may be in some counties an ability within the court to provide training. But I think it's correct to say, it's the court and that really means the presiding judge. I think that's in terms of the point of responsibility right now, it's the local superior court, the presiding judge.

NICHOLS. Yes, I think your point is well taken. It's just that, at least when I did it, and I emphasize that I'm not the current presiding judge -- once it's down respectfully with the foreperson, with the district attorney, the county counsel trying to find out what the state needs of that autonomous body are said to be. But also with an obligation not to just snooker the person. We've learned from conferences such as this, historically, the kind of information that might be helpful. We have an obligation to make suggestions and indicate resource people who might be helpful to the grand jury, and I'm sure the foreperson would be grateful for that. And in that way, you construct that. But the presiding judge wouldn't just delegate it to the court executive on something like this. I assure you.

KELSO. Yes, ma'am.

KAREN ALBRICH (sp?) I'd like to tie up a much more mundane issue which is ... I'm Karen Albrich from the Orange County sitting grand jury. We have mandatory six-day training which included three alternates. This is directed to someone back here. We have now been through all three of those alternates, so we are trying to discuss what we do if we, do lose more members. And we've decided on a mentoring program, a big brother, big sister kind of program that has worked in other organizations I've been a part of.

KELSO. Comments? Yes sir?

UNIDENTIFIED MALE SPEAKER. I'm (inaudible). To add to the lady from Contra Costa about the training of grand jurors and also your question. Our court administrator, they pull 30 names out of the hat, and the first nineteen are the grand jury. The next 11 are the alternates. Those all go to the training. All 30 go to the training. So our most effective members of the grand jury quite often are the alternates who are brought in later, and we have now gone through all of our alternates. We have 18 members in our jury. (Laughter)

BUD ALNE. I'm Bud Alne from Santa Clara County. And I think we have to remember that the grand jurors are citizens representatives, and we're looking at the public service sector to be sure the interest of the citizens are protected. The chickens would benefit by the expertise of the -- knowing the expertise of the fox in order to do the best for themselves. And I think that the training that we're talking about would be provided in part by many of the experts on the public service side. But it's the grand jurors who are going to have to decide what kind of training they want. And this is difficult for a single grand jury, to decide. We come late to the knowledge that we need to make that decision. And I think something like the California Grand Jurors Association is probably the biggest single item that would ensure that we get the training that we need. Much as they would like to, those who are in public service, are not in a position to determine exactly what grand jurors need in the way of information and advice. And expert as they are, I think that the grand jurors, the Grand Jurors Association have to decide what kind of training they want and how they're going to get it.

MCNALLY. I'd have to concur with that -- to answer that the court administrator question. We can facilitate that, help with materials and add some continuity, but our level of training improved when we got the former Grand Jury Association involved, and they committed to help with the training. And since then, I think that our training has been above par and something we can really be proud of occurring.

LA BAHN. I would also join that from the D. A.'s Association. We can be part of the training, but we cannot establish your training. And a lot of discussions that happen today, I mean if you look back to

the Penal Code, Section 916, which is your enabling statute. It says that, "other than choosing the foreperson, the jury shall determine its rules of proceedings." So you're in a very unique situation. And the judge keeps saying watch out for what you're asking for, where you can determine the way you want to do business. And again from the D. A. side, our only concern is when we're looking at the criminal case, is that indictment going to stand up? If it's handed down, is it going to stand up? And insuring that you are legally trained, properly instructed. So you know what the law is as you compare to the facts that you hear.

KELSO. Yes, ma'am

EMMA FISCHBECK. I would like to know whether or not there is a prohibition in the law about having jurors, either petit jurors or jurors on grand juries, be anonymous. We've had a number of instances in Los Angeles County where jurors have felt intimidated by gang members being in the audience. And myself personally as a member of the grand jury when a case was presented in Los Angeles County, I felt like I had to go home and buy a shotgun, because I was afraid that these people who lived in my neighborhood would know me and take retribution. Anyway is there any prohibition in the law that requires jurors names to be on the true bill or the -- has to be kept open so that the defense attorney can give that information to a defendant?

KELSO. Well, I certainly -- I think I can speak as to the trial jury, the petit jury. The answer there I believe, is that on a case-by-case basis a judge may order that the names of the jurors be anonymous and be kept from counsel. It's quite clear at this point in California that you cannot do that routinely. You can't simply have all of your jurors be anonymous, identified by number only. There have been cases holding that. But my recollection from when I researched this a couple of years ago was that on a case-by-case basis that was permissible. Um, David?

LA BAHN. Yes. I'd say L. A. County, in fact, has a procedure that a number of their cases, they are using anonymous juries, and they like it. As far as the Grand Jury. I thought that was kind of interesting. When I presented in Orange County, especially gang cases, you wouldn't believe how quickly the signs go down of the grand jurors when a little gangster comes in to testify. The people did not want to know who they are, and I thought it was ironic preparing for today. I'm living in Sacramento now. I looked at the home page and went to SAC County and pulled up the Sacramento County grand jury. There it was in full color with their names down at the bottom. I thought, well, that's kind of neat but being the sort of paranoid prosecutor I am, I'm going, "Boy, would I want my name and face out there."

UNIDENTIFIED SPEAKER. The Penal Code requires that the public, that annually the list of grand jurors be published. If you don't want that, you have to change the Penal Code.

JUDGE LESLIE NICHOLS: A criminal accused has the right to complain if the indicting grand jury does not fairly reflect the community, and for that reason, we call our indicting grand juries in for finite periods, shorter periods, and they're drawn in the same way petit jurors are. The Department of Motor Vehicle lists were added long ago, because so few of us vote. It used to be the voter registration lists, but now its the DMV lists, and those people are randomly called in, and so that's not such a problem over a long period of time. They do their work and they go home and they're thanked and excused. As it relates to the sitting civil grand jury, of course, that's one of the reasons that you carry out your charge within your defined area. You're not indicting somebody, but investigating and reporting on the various agencies of government. And I should think that there would rarely be a reason, because I live in the pit, and everybody knows who Judge Nichols is. They can excoriate you in the press; that's one of the

freedoms we enjoy. And I support those, but you are (short blank section) and the public has a right to wide discrimination -- you don't have to just bury it at the library to say, "How about that." You know now you cannot discuss the confidential information any more than I can the reasons for the cases, but I think...

(Missing Segment)

DAN TARANTO people went to the trouble of submitting them, but do we have the time to answer some of the written questions.

ELWOOD MOGER Yes, if there are questions that are of a (inaudible) nature, we'll get to some of those

CLARK KELSO. I think I got them. I've been through these. I think I've got eight that have not been answered. They're very specific questions, and we'll see if we can't get through them here relatively promptly. Is it appropriate for or legal for the district attorney to have a full time presence in the grand jury meetings and deliberations?

SEVERAL PANEL MEMBERS RESPONDING. No. No.

KELSO. No. Good, that's an easy one (blank spot) ..foreman before of all the names have been drawn?

SEVERAL PANEL MEMBERS RESPONDING. That actually was done-- by statute -- by this year's presiding judge, as authorized by statute, I do believe Yep. Yes, it's authorized by statute.

KELSO. What do you think about a sitting grand juror directly contacting a legislator and so proposing legislation as distinguished from merely recommending that the Board of Supervisors, for example, propose the legislation?

UNIDENTIFIED PANEL MEMBER. A grand juror can do anything they want as a citizen, including calling legislators.

KELSO. We're doing very well here. Who should open the grand jury mail. (Laughter) Is it legal for, grand jury mail to be opened and screened by others than the grand jury?

UNKNOWN VOICE. How about the Court Administrator?

TERRY MCNALLY. We do not open mail, period. **OTHER.** Is that a policy? **MCNALLEY.** That's our policy. We don't touch their mail. **GENERAL DISCUSSION.** I think the secretary does it. I don't know about other counties, but I assure you that's something we're not going to get involved in.

NICHOLS. In our county, I've never seen grand jury mail. We do have an employee who works very closely with the grand jury, and I've never heard a complaint about her performance. I trust she delivers it to the appropriate people.

DAVID LA BAHN. Orange has a full time staff person who is in charge of the grand jury. That's where the mail and correspondence goes there.

KELSO. Could you comment on -- The secretary does open the mail. I think that's what I heard. Could you comment on the conflict -- issue of sitting grand jurors participating in local, electoral politics-- like for example, endorsing a candidate or serving on a campaign committee.

THOMAS CASEY. They can do whatever they want. You can't stop them. I mean the question is whether or not it's wise in terms of the public acceptance of grand jury reports. As an individual grand juror, you can do whatever you want as a citizen. You haven't given up that right.

NICHOLS. You're not bound by Canons of Ethics or a code of professional conduct and so forth for judges, and you would have to use your good, mature judgment to determine what you thought your greater loyalty, I suppose, was -- getting on a stump for a candidate -- would that somewhat impair the vitality of your vote on a grand jury or neutral investigative report. I'd leave that to your good judgment.

KELSO. How do each of your organizations use the internet, and would you support the posting of all grand jury reports on the internet?

SEVERAL SPEAKERS. Recognizing that (inaudible) I think that's a local county issue.

LA BAHN We love the internet. The internet is the way. Our home page -- everything is on there. Links with the different D.A.s offices. It's a tremendous communicationstechnique, and that was one of the things I went to. That's why I knew about Sacramento thing. I think your reports should be out there -- at least a synopsis of your report -- what you're investigating and what do findings you have. What a way to communicate.

KELSO. Are the courts becoming web-based?

NICHOLS. We have a web page, and , of course, I had some particular comments. The foreperson was interacting with this year's presiding judge on such and such a day in our county.

MCNALLY. We're becoming more and more active. We're a little behind the curve as far as web pages. I know our grand jury has crafted an agreement with the local newspaper, and they insert the final report in a newspaper format in one of the issues of the newspaper, and that's proved to be very, very helpful. It gets the final report out, and to a larger and broader audience. Web-based, that's an interesting comment. I know that our grand jury does not have a web page. It's something I'll have to look into.

KELSO. I've got just a couple more. How difficult would it be to extend the term of grand jurors so that one-third of each grand jury was inaugurated every few months, thus avoiding whole juries that are totally inexperienced? I don't think that's possible, is it?

SEVERAL PANEL MEMBERS. You'd have to have a statutory change. Statutory change -I think the procedures for selection are by statute.

KELSO. If the County Board of Supervisors reacts to a grand jury report by cutting off funding the following year, what is the recourse and what statutes would apply?

CASEY. There are specific provisions in the penal code where the judge can authorize up to \$10,000 or something, and then beyond that you have to go to the Board. So the court has a substantial role in controlling what the grand jury has money available for.

KELSO. Why so often are grand juries not told that they have a lawful duty to inquire into corruption of public officers of every description -- Sheriff, D.A., judge, bureaucrats, under Penal Code 919(c) There is a premise there that jurors are not being told that.

NICHOLS. That assumes a fact I do not know to be in evidence. In our county the presiding judge instructs, they have a detailed manual, and so forth. So I have no comment on that.

KELSO. And the final one, and again I just don't know enough of the law here to know what this really means. So I'll just read it. McClatchy is used (I guess that's a case name). McClatchy is used as an excuse to excise citations from open scientific literature in grand jury reports. How can this be justified when the scientists themselves use refereed (I think it is.) literature in their reports, and the author clearly intends that the material should be published.

UNKNOWN SPEAKER. I don't know anything about this issue.

CASEY. I can't imagine how McClatchy fits in that. McClatchy, for those of you who don't know, is a case that says you cannot disclose the identity of witnesses in your grand jury report. What that has to do with excising references to scientific material beats me.

ANOTHER SPEAKER. I think here it references also juries doing their own work -- doing their own original work. And that's the gist of this question.

OTHER SPEAKERS: I don't know how McClatchy speaks to that. I don't think it does.

KELSO. Well, I want to thank you all for all of your attention and all of the good questions. We have reached the lunch hour and the end of this panel. I want to thank the panelists for spending the morning here with us. I think it was very useful discussion.

"Adding Bite to the Watchdog's Bark" - Stephanie Doria

EL MOGER. We have an interesting program for you this afternoon. We have several different perspectives on the grand jury this afternoon. We're going to lead off with first Stephanie Doria, and she's going to give her views on her Pacific Law Journal article and to talk to you a little bit about her views of grand juries today. And then Mark Morodomi is coming in from Sacramento; hopefully, he'll get here -- and Mark is here -- that's wonderful. And he'll be following Stephanie and talking a little bit about the California Fair Political Practices Commission. And then we'll turn the program into a panel discussion again, and we'll have two investigative reporters here, and Marcy Bachmann, our Vice President of Editorial will lead a panel discussion on investigative reporting and the civil grand jury in California. We're going to have two breaks this afternoon. So you all stay awake, and you can look in your program, and you'll see when those breaks occur. And I want to remind you tonight for our banquet, we're down at the other end of this second floor of the hotel in Salon A, and we have our California Attorney General, Bill Lockyer, coming. The reception will start at 6:30, and the banquet should get under way about 7:30. And then after the banquet, the Attorney General will make some comments. Reminder again, we are going to use the remote mike this afternoon. And so, we're trying to record these proceedings for our documents, so please be patient. Don't be intimidated by Clark Kelso's comments this morning, and use that so we can get these remarks down. And some of you may not be attending the banquet tonight and leaving. I do want to make a last reminder to you about that evaluation form. It's important to us. Please fill out the comments. A box will be on the registration table for you to drop them in. We also have merchandise and publications out there on the table for you to purchase and look through during the breaks. Are there any questions about the conference program before I introduce our next speaker?

It gives me a great deal of pleasure to introduce Stephanie Doria. She's a member of the California Bar. She's an attorney with a very prestigious law firm in San Francisco, Paul, Hastings, Janofsky and Walker, a national law firm. She has a B. S. Degree in Political Science from Boise State University. She has a J. D. Degree with distinction from the University of the Pacific, McGeorge School of Law. That's Clark Kelso's school. And I hope you got to talk to him a little bit during the breaks. And she is the author of "Adding Bite to the Watchdog's Bark, Reforming the California Civil Grand Jury System," which was published at the McGeorge Law School when she was a student there. So I'll turn it over to Stephanie Doria. (Applause)

STEPHANIE DORIA. Thank you very much. Thank you for having me. I'm just very honored and pleased to be here. I'm very, kind of new at my career; I just graduated last year in 1998, so it's quite an honor to be asked to speak at a function such as this. So, I'm pleased to be here. I first became interested in the subject of civil grand juries when I was in law school. I was looking for a topic to write a law review article on, and couldn't think of anything, and I went to my faculty advisor, and he suggested that I write about civil grand juries. And I had never heard of a civil grand jury. I didn't know what he was talking about. I didn't know what he was talking about, but I had a deadline for picking a topic and didn't have anything else, so I said, sure why not? Civil grand jury sounds good. So that's what I wrote about, and I basically started from square one. I spent about a year, researching and reading every article that I could find, every statute pertaining to the grand jury. I became acquainted with Dan Taranto at that time. He helped me a lot. He sent me materials and talked to me on the phone quite a few times, which was wonderful. And this all culminated in the publication of this article and how I came to be here to speak to you today. So what I'm going to do is -- I'm going to first discuss some of the history behind the grand jury system which I think is very interesting.

