

CALIFORNIA GRAND JURORS' ASSOCIATION



PROCEEDINGS 19th ANNUAL CONFERENCE

September 22 & 23, 2000

Sheraton Sacramento Rancho Cordova Hotel
Rancho Cordova, California

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California Grand Jurors' Association

2000 Annual Conference Program

Sheraton Sacramento Rancho Cordova Hotel, Rancho Cordova, California
September 22 & 23, 2000

Friday September 22, 2000

1:30 – 4:30 p.m. Annual Membership Meeting – Conducted by President
Les Daye

1. Approval of Meeting Agenda and Minutes of 1999 Annual
Membership Meeting
2. President's Delegation of Tellers to Count Ballots for Board
of Directors
3. Officers' Annual Report to Members
President Les Daye
Vice President – Programs Dan Taranto
Treasurer - Linda Baker
Vice President – Membership Mike Miller
4. Nominations Committee Introductions – Linda Baker, Chair
5. Announcement of New Directors – Les Daye

6. Committee Reports
Conference Committee – Elwood Moger, Chair
Training Committee – Sherry Chesny, Chair

7. Afternoon BREAK

8. Chapter Reports

Los Angeles Chapter	Audrey Lynberg, President
Marin Chapter	Jack Olive, Director
Monterey Chapter	Roger Loper, Vice President
Solano Chapter	Donald Enneking, Member

Sutter Buttes Chapter Diane Westmoreland, President
Tulare Chapter Phyllis Webster, Vice President

9. Membership Comments to Board of Directors

President to establish time limits based on number of members expressing an interest to express a comment. Members making comments from the floor should use a microphone or speak loudly to assist the Association Secretary in recording official meeting minutes.

5:00 p.m. Board of Directors Meeting

1. Election of New Officers
2. Action on Board Retreat Results

6:30 p.m. Informal Reception & Conference Dinner

1. Presentation of Chapter Resolutions – CGJA President Les Daye
2. Farewell Comments by Retiring President
3. Announcement of New Association Officers
4. Retiring President’s Presentation of Gavel with Comments by New Association President
5. Angelo Rolando Award – Presented by Dan Taranto, 1999 Award Recipient
6. Life Time Achievement Award – Presented by New Association President

Saturday September 23, 2000

- 9:00 a.m. Welcome Elwood Moger, Chair
- 9:15 a.m. “Grand Jury Reform Issues” Clark Kelso, Professor
McGeorge School of Law
University of the Pacific
- 10:00 a.m. “A Lobbyist’s Views of Dealing with the California
Legislature”

Jackson Gualco, President
The Gualco Group
- 10:45 a.m. Break
- 11:00 a.m. “Future Considerations for the California Grand Jury”

The Honorable Quentin L.
Kopp
Superior Court of California
County of San Mateo
- 12:00 p.m. Conference Luncheon

[Invite Pending – California Lt. Governor Cruz M. Bustamante
- 1:30 – 5 p.m. Conference Open Forum Jack Zepp,
Moderator

Panelists: Sherry Chesny, Kay Kaufmann, Jack Olive, &
Cliff Poole

CALIFORNIA GRAND JURORS' ASSOCIATION ANNUAL CONFERENCE
September, 22, 2000

(PARTIAL, due to recordation failures)

Introductory remarks by Elwood Moger, First Vice President

Okay. Why don't we get underway for the morning proceedings?

I would like to welcome you all again to our nineteenth annual conference.

We are going to have an exciting program today

Your program booklet will be a good guide for you as we go through the day, as to our speakers. One of the things that has changed is that we were going to have lunch in the Sacramento room, which is the first room to your right, which leads to the ballroom. It has been changed to the San Francisco room, that's the middle ball room, .so when we break for lunch we'll just go down to the middle section of the ballroom to the right, that's the San Francisco room and have lunch in there, and we'll have a luncheon speaker today.

This morning we have three speakers for you. We've tried to vary a little bit, leading off the program will be Judge Kopp. I think most of you know about him and I'll give an introduction when he arrives, he's due here at 9:15.

We thought we'd mix that up with a lobbyist for you and so we have Jackson Gualco, who has his own firm here in Sacramento and he has a very interesting career which I will introduce to you.

Then we will end up with Clark Kelso who is a mover and a shaker in the state and heads the Government Institute down at McGeorge Law School here in Sacramento. Those three will give us some variation on interest to the Grand Jury and what's happening today.

And then I thought we'd get to a little bit of a lighter note, but something more entertaining and so we've invited Jerry Waldie who is a former congressman, who will be speaking to you. He sat in on the judiciary committee when they were impeaching President Nixon so he has a lot of insight and so it should be interesting to hear his words.

What I've asked each of these speakers to do is take about thirty minutes and then they'll go into your questions and try and do some answers to those questions, so be prepared as you hear the speakers...I don't know what they are going to say or how provocative they are going to be, but do feel comfortable to have an exchange with the speaker.

Today we are recording through the house system for our proceedings document, but we don't have anything out in the audience. As we go through the question and answer be sure and identify yourself when you get up and be sure and wait for some one to come with a cassette so we can get you on the record.

We are going to have some publications outside by the registration desk for you to look over and purchase if you want and feel free during the breaks to go out there and browse around. We have in your packet the evaluation form. I ask you to look that over

and give us some feed back on how you saw this conference because that's important to us as we go forward for our next conference.

The last point I'd like to make is the Chapter formation and the fact that we have 6 people here who know about chapters and are presidents of Chapters .If there are some members who want to form a Chapter I suggest you talk to them, talk any of our directors, our president, myself regarding that.

It gives me a great deal of pleasure to introduce the Honorable Quentin L. Kopp, who was appointed to the Superior Court of the State of California for the County of San Mateo by Governor Pete Wilson in January of 1999. He's widely recognized in California for his outstanding service in the California State Senate. He served there from 86 to 98. He was very strong supporter of this Association. He's somewhat of a legend in the Bay Area. He served on the Board of Supervisor for I think 6 consecutive terms, 5 consecutive terms and he had a run as the president of that Board from 76 to 78, and then they called him back to be the president in 1982 so he certainly had the respect of his fellow supervisors, and the voters in the San Francisco Bay Area. And, that was most evident by a special record that Judge Kopp has. He was elected in 1986 as the first non-incumbent independent in the State since 1941. He set a little bit of history as he was the first independent ever re-elected to the legislature in California, so we're looking at a little bit of history here today in California; a very distinguished patriot here in our state. He served on many commissions and if I started running through all the things that Judge Kopp did we'll never get to his speech: He's been on transportation, law revision, the Little Hoover Commission, just to name a few. He's spent some twenty-seven years serving virtually every board and commission, particularly within the Bay Area. A true legend in his own time. He has appeared before our Association down in Monterey once before and he's here today to speak on the future considerations for the California Grand Jury. It's a pleasure to introduce the distinguished Judge Kopp.

Judge Kopp

Good morning and thanks very much Elwood for that flattering introduction. I suppose that I have to concede that I'm a part of history...but a very modest part history, as the only independent that was ever re- elected as an independent. I have to add that caveat because there were independents through the history of California's legislature who were elected as independents then switched registration to Democrat or Republican, ran that way and were re-elected that way. But I used to tell people facetiously, and I borrowed this from an Edward Bennett Williams speech many years ago to one of those clubs in Washington D.C. that concentrate on humorous speech's by celebrity speakers, that I was successful as an independent because I took votes from the poor and money from the rich --and then I protected each from the other. Well I am indeed pleased to be known as a supporter of the Grand Jury. I was first elected to political office in 1971 to the San Francisco Board of Supervisors as Elwood stated, and I always valued the reports of the San Francisco Grand Jury. As some of you may know San Francisco has the only city/county in the state, also has a distinctive component of the Board of Supervisors instead of just 5 members which is the case in the other fifty seven counties, San Francisco because it is a city and county and because of San Francisco's history it has

eleven supervisors. There were one or two others who would at least scan the Grand Jury report. I always used it naturally as a source of ideas and the same thing was true after I was elected to the State Senate. I can remember the first report, I represented the northern half of San Mateo County from the City of San Mateo north to the San Francisco line, and then essentially the western half of San Francisco, and I can remember the first San Mateo Grand Jury report after I was elected to the State Senate. I extracted an idea from it and introduced a bill as a result. The bill wasn't successful because of the cost attached to it, but I use that as an illustration of the value I attach to Grand Jury work and Grand Jury reports. Then I was given the opportunity a couple years later, after that famous or infamous Attorney General's opinion that set the requirement of a department had to comment on a Grand Jury's set of recommendations could be satisfied by the two words: "no comment". No comment equaled a comment under the statute and finely I was fortunate in being able to obtain an enactment of a measure which corrected that, and which also provided for advanced notice to any department to correct clerical or other kinds of factual and perhaps often trivial errors that may occur in Grand Jury reports.

Now, I am a Judge, as indicated, and I make this observation generally, there's not quite a world of difference but there is a discernable difference between legislators' ideas of how a particular measure will operate, in fact and in practice, and the way it does operate in fact and practice. I've been a judge now about nineteen months and I've concluded that if I had to form my life over that the best sequence of events would have been service as a judge for a given term of 6 years and then participation in the legislative process as a legislator. But that is rare that that happens. But in a perfect world for someone who doesn't mind the hurly burly of elective politics, and elective office challenges, but who also has the legal background to qualify as a judge, that's truly the sequence that would be my prime objective. That is also true specifically now narrowing it to the way the statutes are written with respects to the work of Grand Jury and the actual practice of a Grand Jury.

I was fortunate in that our County the court does not follow a seniority system or does not adhere to a rule of making the Presiding Judge each year the Grand Jury advisor, because I was appointed about 6 or 7 months after I became a judge as the Grand Jury advisor for the year 2000. San Mateo County was one of the minority, I think there were 6 in all that were functioning on a calendar year basis rather than a fiscal year basis. After surveying a number of people I thought that it was desirable to use the fiscal year basis. So as a result I am the Grand Jury advisor not for twelve months but for eighteen months and I rather suspect that I'll be re-appointed by the next Presiding Judge as the Grand Jury advisor for the following fiscal year. I predict or I forecast just personally that I'll have 2 and ½ years as the Grand Jury Judge.

Now as the judge I went through the process of collecting names of people and then interviewing people who had expressed a desire to be part of the Grand Jury, to be members of the Grand Jury. So I now have at least that experience under my belt and as far as the future of the Grand Jury is concerned I have already drawn some conclusions, at least tentative in nature and maybe a year from now if you honor me with another invitation I'll be able to convey some more pronounced and permanent conclusions after I've experienced a period of time in which the Grand Jury reports are finally published.

Having that twenty seven years of public life made it relatively easy and as comfortable as it can be to deal with the media and that's one of the components of the future of the Grand Jury. Let me begin that part of the discussion by transmitting to you my tentative conclusions that the future of the Grand Jury in California maybe a difficult future because of some of the changes which have occurred. I want to thank Mr. Daye for providing me before I came here a couple of page summary on the nature of some of the philosophy of your present day leaders of the Grand Jury System in California. Well one of the most obvious factors in the future of the Grand Jury started in 1990 with the adoption of proposition 115 which was another one of what I will call and was called a crime victims initiative. And that changed the method of formulating felony charges against the defendants in the criminal courts. It made the preliminary hearing so easy for District Attorneys because it essentially allows the use of hearsay at preliminary hearings, which in a way would have shocked me as a lawyer, if you had said that would ever occur 20 or 25 years ago. But it is constitutional to do so and that has obviated the use of the Grand Jury for criminal cases. I have consulted the California District Attorneys Association with respect to the use of the Grand Jury for criminal case indictments throughout the State. The association has concluded that about 98% of felony charges now are handled through a preliminary hearing leaving only about 2% to Grand Juries. The 2% is reflected most usually, according to California's District Attorneys Association, in some of the smaller populated counties of the state. Now that as practical matter means a reduction in the prominence of the Grand Jury. Because people less and less will read or otherwise see action by a Grand Jury.

Lets knowledge the fact that a Grand Jury is a mystery to most citizens. If you ask most citizens about the nature of the Grand Jury few would be able to convey to you an answer with any degree of accuracy. So that's a fact that must be recognized as far as the Grand Jury future is concerned.

Secondly the population of California is burgeoning and continues to increase in the number of local governmental agencies. When I became a Supervisor almost thirty years ago there were under 4 hundred cities in California there are now over 4 hundred forty cities in California. We're located this morning in an area which is emblematic of the desire of neighborhoods and then larger groups of neighborhoods to govern themselves. The number of Special Districts in California has not diminished. There are over six-thousand Special Districts and there has been a proliferation, maybe not a proliferation, that's too strong a word-- but there's been an increase in the number of Special Districts in the field of transportation, particularly. That was a field which I devoted more time to in the State Senate than any other. I know around the state there are new joint powers authorities being formed. Now that has a consequence which is the second factor with respect to Grand Jury. That complicates the life and understanding of people who volunteer and are selected for Grand Jury service. There are more agencies to deal with; there are more laws to learn in a very compressed period of time.

Thirdly, it seems to me, and this is just a subjective impression, that it's more difficult now to find people who are still active in business and professions to serve on the Grand Jury. We've had a lot of discussion over the years in public institutions and public forums about lessening the financial and time burden on people called for Petit Jury service. We've had discussion about legislative methods of encouraging employer's to make employees available without loss of pay for example for Petit Jury experience.

That has dominated this little part of public policy in California more so than any similar policy with respect to service on a Grand Jury.

The Penal Code, essentially the relevant statutory provisions, inveigh the judge and anyone else who participates in the selection process to obtain as diverse a group of nineteen people as possible. As far as background is concerned, as far as geographical location in the county is concerned, as far as business and professions are concerned. But that is difficult and sometimes insurmountable as I discovered in my own experience as Grand Jury Advisor in today's economy. It was probably always the way. People who are active are aspiring to greater economic achievements and so not very much interested in a Grand Jury. Along with that comes the plain fact that experience is an important factor, but also important is that kind of energy which people who are still active in businesses and the professions imbues a Grand Jury with.

Now there's a fourth factor that gives me pause about Grand Jury, it's based on an innate limitation and that's the secrecy limitation of a Grand Jury and a Grand Jury's work. Now that has to be counter-balanced in some way by the need to convey to people what the Grand Jury has done and to convey it in a forceful way. I think that is constantly a problem. A problem of encouraging the media and even addressing the attention of the media to the product of the Grand Jury. And here I assume that it's a good product and that it's worthwhile, but it's very difficult in my estimation based upon my twenty seven years or so and now almost thirty of watching the Grand Jury process, to draw the attention of the media in a way which translates into public opinion. We know that we have no power, literally. We have the power to formulate findings, we have the power to formulate recommendations, but our ultimate power is in persuasion and persuasion is based upon public opinion and we can't individually do very much so we have to rely on the media but on the other hand we're circumscribed by that rule of secrecy. All of which leads me to believe that there should be a re-examination of some of the finer points, and I emphasize finer points, of the secrecy provisions of the law itself.

There is also I think, and here I will be personal and I'll use the personal pronoun, there needs to be more discretion in my strong opinion as far as selection is concerned by the judge who has the responsibility. I know first of all judges are different, different in attitudes. I don't mean that facetiously, and you can draw that inference, but I mean in attitude. I was surprised by that. I'm used to being out and around various neighborhood organizations, the service clubs, the this and the that. Judges aren't, judges for the most part, and I'd just be guessing probably seventy five percent of them, go to the court house in the morning and then they go home at 5 o'clock and that's it. They might go to family social events. The social life, as my dear wife who is here this morning will verify, for us has been in large part a social life based upon events round town, round the county, of one kind or another. I'm not afraid of those and I don't consider them an intrusion and that's also physiological because so many involved people who helped me, supported me in my political endeavors. But the fact of that kind of an attitude by judges has relevance to the selection process itself. I have kind of a schism here because I live in San Francisco, we lived in San Francisco, when I say my county I'm talking about San Mateo because that's where I'm a Judge. I asked last year, after I was selected "what do you consider the role of the judge to be with respect to the Grand Jury?" And the answer was "the role after the selection is zero, don't come around." And I know in some counties

that's a fact of operation. I spoke to the Santa Clara Grand Jury earlier in the year and I was fascinated to learn that the Santa Clara County Advisor never attends any of the meetings, has nothing to do after the selection. Of course Santa Clara had that conspicuous set of problems in 1998/99, I know you are all familiar with those or at least cognizant of them. Well I can't imagine that kind of a role for me.

That also is pertinent to the selection process itself. I found the selection process limiting. The law provides that up to ten people from the prior year can serve for another year on the Grand Jury and that implies and people will always say it's useful, it's valuable to have somebody with a year's experience carry over. I don't think that's arguable at all, it is useful, but it's also limiting. We had for example 8 people who wanted to serve another year. I had the very difficult assignment and responsibility of choosing only 6 for that purpose. Which I suppose didn't make me too popular with the other 2, but that meant as a practical matter that only thirteen new Grand Jurors would be selected. The Law requires a minimum of twenty-five be put into the hat with a maximum of thirty, so as a result it is confining in terms of selection. Now the code does provide in section 903.4 that a judge need not, and it's phrased negatively, select jurors from the lists returned by the jury commissioner. I don't know how many judges exercise that. But I may take a careful look at that in the next selection process. That then pertains to the collection of names in the somewhat formal listing words of the penal code. I don't necessarily think that the random selection process, and I don't mean drawing names from the pool, but I mean in the collection of names in the pool itself is the best system of identifying people who will render genuine contributions to a Grand Jury. In the old days, the days when I began practicing, I used to read of some practices in some counties where the Grand Jury Judge in an autocratic manner would pick his, and I use the word "his" deliberately because most Judges were male, would pick his "cronies" who he thought would serve whatever function he wanted out of the Grand Jury. Of course we have changed substantially since those days. But never the less I want, as far as the future of the Grand Jury is concerned, some kind of imprimatur in legislation which would encourage the identification of people with particular skills or particular professions or career backgrounds who could add a dimension that otherwise isn't available from simply notifying the press that the Grand Jury selection process has begun and then standing back and waiting for the applications to come in.

Finally, let me comment on two further aspects of the future of the Grand Jury. One is the interviewing process itself. I found that to be important. That's not surprising because it's common sense to interview people in a systematic way. I found it also important to have the forthcoming foreman of the Grand Jury who was a foreman, not a woman that may occur next year, present for the interview. I think if I were, in repeating that process, I would perhaps also include yet another member of the Grand Jury from the prior year. So I'd have two heads instead of just one to rely upon in devising the list of those who will go into the pool for selection. That interview process is difficult for the interviewer because a Presiding Judge is not likely to be so pleased about giving the Grand Jury advice or much more than a couple of days to accomplish that because you are out of the court room for two days. I consumed three days in doing it. It really ought to be done over a week in order to allow for interviews that are longer, and go into more depth than in trying to do it in three days which really means about fifteen minutes a piece.

The other thing in the final aspect of the future of the Grand Jury is something that we have to come to grips with. That just stems from the fact that the Grand Jury of today is really out of the criminal business and the effect and ability of any institution to succeed in its objectives is based on the public, again public acceptance, public knowledge and public opinion. There's always been that tug of war that innate conflict between local officials who disdain a Grand Jury, who have little intrinsic regard for a Grand Jury's work or a Grand Jury's product, and Grand Jurors themselves. They are capable of analyzing government, of investigating governmental practices and then reporting to the community at large. I think the Grand Jury in the future has to accommodate and recognize the fact that it primarily exists for the purpose of over-seeing local government. Sure we have a governing board called The Board of Supervisors, we have governing boards for all the other local agencies. But I see the future of the Grand Jury best in a light of supplementing what governing boards might like to do but also might be inhibited by thoughts of re-election or some other political consideration from doing.

Now maybe I am Pollyanna, Pollyanna, she's the right word to use, but I think there are local officials who will welcome and will invite Grand Juries in the future to contribute supplementary observations to the operations of local agencies. I think the future of the Grand Jury depends upon the lessening of that innate conflict that has been a part of Grand Jury work since time immemorial in California. To do that, again within this circumference of secrecy, is certainly necessary to Grand Jury practice. I'm trying to practice what I now preach as far as the work of our San Mateo County Grand Jury is concerned for the next year. I do it in general and elliptical ways, I tell the Supervisors all "you'll be surprised how good and how much you're going to like the work of the Grand Jury" trying to eliminate any suspicion or any fear on their part. I start with the Board of Supervisors because they are more significant than any of the other local governmental agencies. Unless you're in a county like Los Angeles where the city is more significant or at least as significant. I'd like to encourage all of us to adopt that kind of attitude. Take a council member out to lunch, take a supervisor out to lunch, or something like that to build that kind of relationship. I am convinced that it will pay off as far as their receptivity to Grand Jury reports.

And so I conclude by stating in summary that the future of the Grand Jury in California has troubling aspects to it. With any endeavor those troubling aspects can be overcome. I believe that we should all concentrate on overcoming those aspects, increasing the visibility of Grand Juries, increasing the ability to deal with the media, and that may mean some tinkering with parts of the statutes that are now in effect, but altogether giving ourselves more prominence in our respective counties.

Q Unidentified: In relations to your interviews of prospective Jurors, the way we've been doing it for 2 years, and it seems to be working very well, is that 5 Judges sit in a room with a table. A Judge, someone from the sitting Grand Jury and someone from the Association do the interviewing; it seems to work very well.

Judge Kopp:

That's a good idea...if I could get more Judges interested, (that was something I didn't utter,) most Judges in my experience aren't very interested in the Grand Jury. Which is maybe why when I set at the suggestion of a former Grand Jury in San Mateo County I offered myself as the next Grand Jury advisor, that offer was accepted immediately. Yes Ma'am?

Q Emma Fishbeck from Los Angeles County, I was curious about whether or not you had a District Attorney as advisor also or are you the only advisor?

Judge Kopp:

San Mateo does not have the District Attorney as an advisor. San Mateo has County Counsel as advisor and County Counsel is faithful in his attendance, as am I at every Grand Jury meeting, not the committee meetings, but at the meetings of the whole Grand Jury every 2 weeks at quarter to 5 in the afternoon. It takes a couple of hours usually, plus or minus and personally I wouldn't think a District Attorney would be appropriate as the legal advisor. The problem with County Counsel in many Counties, including ours, is that County Counsel is also the lawyer for many agencies, not Cities but many of the Special Districts and so there's always that suspicion that the County Counsel is trying to serve 2 masters. You have to recognize that and I think most County Counsels recognize it themselves so bring it to their attention. Yes Ma'am?

Q Unidentified: I think you answered my question, I was going to ask you if you think it's a conflict of interest for the County Counsel to be advisor to the Grand Jury.

Judge Kopp:

Do I think it's a conflict of interest for County Counsel to be the legal advisor to the Grand Jury? In spite of the fact that most County Counsels also represent Special Districts of one kind or another. It is! And it has to be addressed forthrightly, somebody has to put it on the table. What I think occurs over a period of years, you don't have much turn over in County Counsels, most people treat it as a career and so they treat being the Grand Jury lawyer also as a career and they are probably sensitive about any suggestions that maybe you ought to excuse yourself for the next half hour so we can talk about the East Ajax water district which you also act as lawyers for. But most...I can't imagine them not accepting something in that spirit. Yes Sir.

Q Unidentified: There's a danger in tinkering with the secrecy requirement, let me suggest that the problem can be solved more effectively by having the Grand Jury report anything that they need to report if there's (inaudible) and that should cover all things that need to be revealed. As for the County Counsel or other advisor, I would suggest a solution would be give the Grand Jury a voucher to engage any counsel they see fit to do

so. That'll leave them to decide that. There's also a problem with the selection process is presumed honest Judges. I think the Grand Jury system is supposed to function in an environment in which that assumption cannot be made.

Judge Kopp:

I would dispute that last observation. I think the greater concern would be disinterest by the judiciary as a whole. Of course some Judges are more interested than others Judges in the nature and extent of the Grand Jury's performance. But I think it's the exception rather than the rule. I suppose it also reflects the idea that the Judges are all part of the same County establishment, isn't that what it reflects? That they are all part of the same local agency, kind of establishment. Most Judges aren't challenged for election or re-election; it's rare that there's a challenge. I found at least in my level, Trial Courts, Superior Courts, now inclusive of Municipal Court Judges that they are oblivious of outside political considerations. The second point... unless the last part of your implication is that a Judge should not participate in this selection process, is that the idea that you are expressing either directly or indirectly?

Q same individual: I would be in favor of a more random process of these screening, perhaps to be done by the previous Grand Jury.

Judge Kopp:

Well I would not favor a random process. In fact I would oppose a random process of selecting Grand Juries. I want a careful selection process as to whether there could be some other selector I think that's a fit and suitable subject for debate. The reason a Judge selects is historical. That's the way California was a hundred fifty years ago. But there could be another individual, could be another group doing the selection. So put me down as interested in debating that. Well, that's a fit subject for debate. As far as the legal advisor is concerned, of course any Grand Jury has the right to ask for outside counsel, and I would think it would be an exception on the part of any Judge to decline to approve the retention of outside counsel. This all assumes the Board of Supervisors' budget for the Grand Jury includes enough money to pay outside lawyers. It is more difficult to some extent, mostly bond issues, and I'm just thinking now of my own County because we are considering retaining a lawyer for an outside opinion. Depending upon the results of a County Counsel opinion and analysis by a member of the Grand Jury who is a lawyer as to the validity of the County Counsel's legal opinion in terms of legal analysis. As I started thinking about who do you get for outside counsel, firms and lawyers that I started thinking about might themselves have some innate conflict. And then the...I forgot now the first question you had or the first point was...oh, on the secrecy...on the secrecy...you're right!

You have to be very careful tinkering with the secrecy provision. But, and I'm not suggesting the abolition, do not misunderstand, but in some way that accommodates the

need to keep the media interested...interested...interested.. and of course part of that which I think will function in that direction is not waiting till the end of the term to issue that report. I think that is the worst thing that a Grand Jury does is wait till the end of the term, issue a report like this, put it on the desk of the press, I assume you've got a press room at the County Court House, you usually do, their eyes will glaze over. And so our Grand Jury will use the interim reports. The first one will be in a couple of weeks, in October then the next one in November and in December. Course here's eighteen months to work with. Which keeps them thinking about this.

Then there's another part of the secrecy and that is that secrecy is now limited, and there's a recent opinion of the California Attorney General that people should read as far as... how far...how many people does that extend to. Somebody provides information in a session with a Grand Jury committee, there's no law that prohibits or enforces an admonition to that person not to discuss it I have no control over it. There was a newspaper squib a couple of months ago from somebody who had appeared in front of one of the Grand Jury committee's. And I got a telephone call from a citizen who complained about the fact it was in the newspaper ...how did that happen! Grand Jury is leaking this information! I said no the Grand Jury isn't leaking, the person who was interviewed is free to talk to the press or anyone else, and maybe that ought to be dealt with too. How about the gentleman in the 2nd or 3rd row.

Q Cliff Pool, Solano County: A couple things your Honor, you say that the Grand Jury today is basically out of the criminal business. But I think when you say that you are comparing apples and oranges. The use of a grand Jury by a District Attorney for indictments, I wouldn't disagree with you there, but there is a way around it. But if you tinker with the Grand Jury laws, and you take away the indictment and accusation authority of the grand Jury, then what you have done, is you have made them a toothless tiger, okay? A Grand Jury does not have to exercise those powers but it's like the old adage..."walk very softly and carry a big stick." Ninety nine percent of what you do will be reported but just the idea of that potential in the background creates a tremendous respect. Now as far as your...

Judge Kopp:

May I stop right there? That is not what I'm thinking about. I agree with that that power remains and should remain. But I'm thinking...the point I'm trying to make is, thinking about the bulk of the Grand Jury's work. And the old days of using the Grand Jury for indictments are gone...the D.A's won't do it.

Q Cliff Pool, Solano County: Apples and oranges!

Judge Kopp:

Right!

Q Cliff Pool, Solano County: The second one where you would like to select the Grand Jurors specifically, and I think that's a very admirable thing. I would love as a

foreman to a Grand Jury to say okay I have two Accountants, three Attorneys, I don't need the Doctor, get the hell out of here....

Judge Kopp:

Well you might for the department of health.

Q Cliff Pool, Solano County: You have a valid point, bring the Doctors back. But in doing that, what I have now created is, since I am doing the selecting, I have created another political entity. I have got way from the random Joe Doakes sitting on his back porch, not too smart, but that's what Grand Juries bring to the situation, they bring common sense, okay! We've got all the smart people running the government and some time the guy in the back yard or the house wife who's been sitting home dealing with the kids... not too shabby with what they come up with...Okay! And in that vein I would disagree and I would be extremely cautious in reaching out to change something that is...has worked. There are fifty-eight Counties? Many of the reports for years prior to 1998, I call Grand Jury mushroom series...Okay! ...and I'm sure the connotation there is to keep them in the dark and see what grows mushrooms. And that has been what happens.

In 1998 came the training laws for Grand Juries. Where Grand Juries are getting out and finding out that.. wait a second, what our District Attorney or County Counsel has told us is not necessarily the same opinion that fifty-seven other Counties have. And they are just now getting educated and reaching out and trying some things. We are still going to have some juries that just go in there and once a year publish a report. And it turns out okay; and it whitewash's. But you're also going to have some juries as they learn that they have these abilities that are going to come out with some very comprehensive reports that are going to shake a few heads.

You also have to remember that there is, what I call the compressed learning curve. A Grand Jury even though it has a year to operate, in reality operates for about 7 months out of the year. By the time they get seated, get in there, get some training, start investigating, it's time to shut down and make damn sure the report gets out on time. So you have a extremely fast learning curve and the best thing you can do is carry them over for the second year because now you have a little bit of experience and a little bit more to carry on, and I think that's my time.

Judge Kopp:

Bear in mind that the trouble I have with random is in defining the word random. Because random means the lazy, the interested only in the badge, and that kind of a syndrome. And that's the kind of syndrome in random that I want to avoid. I agree with you...I concur that you find somebody that's been out of the business world taking care of a family for ten years who's got the desire to get in there, that point of view is desirable and necessary.

Q Cliff Pool, Solano County...I'll give you one classic in our own Solano County last year and the preceding year we made appearances at each Council board meeting prior to

the selection process. We also issued these interim reports and got some nice write ups with the local news media. And I agree with you, that what is critical to a Grand Jury is a news media. But we had more applicants for the Grand Jury this year than we've ever had in all the years past.

Judge Kopp:

Yes, because now it's up here rather than down here as far as the public....

Q Cliff Pool, Solano County: Publicity and too, you had some controversy in some of the reports and it's the first time in years many people have read the report.

Judge Kopp:

In fact I saw that, someone sent me the published report. Yes Ma'am I think you were next.

Q Sherry Chesny: I'm just going to put a final thing. I know we are on a time limit thing here. I want to thank you for doing the corrections to the Brown Act Law and for typing it up. I have seen a lot of abuse as I served in public office and I've also served on the Grand Jury a few times. So I saw abuses in the Brown Act provisions, especially closed sessions, defining closed sessions and typing that up was a real improvement.

Judge Kopp:

I appreciate that.

Q Sherry Chesny: I really respect you for being independent, because there was tremendous opposition to that. I was on a water district boards, the association, we were just flooded with..."oppose this law!" they're changing the Brown act. And yet our board supported the changes and...

Judge Kopp:

Well that's nice to know because the water agencies, the water agencies were, well maybe not the mightiest opposition, the Cities were, but the water agencies were almost mind-boggling. I had one water agency, which testified-- I hate to tell war stories about the Brown Act revision which took us 3 years to finally get signed-- Who said why should anyone want to attend our meeting? And it was a lawyer representative who said it. I want to just add one other thing because I forgot. Part of the bill that we accomplished together, what ever it was, 4 or 5 years ago, was the notion of training and training is indispensable. And you got to make it training in a way that doesn't wear people out. And we, and that means not these 3 day chunks but rather maybe 4 or 5 hours one day and a month later some more training, etcetera. Gee! That is just vital to the whole process. Yes sir?

Q inaudible: One thing in our Grand Jury we do have people signing an admonishment that they are supposed keep secret what we talked about. And I assume if they violate that admonishment there's some legal penalty.

Judge Kopp:

No...there isn't. I'm not advising you not to do it because it will perhaps intimidate, but there's no legal enforcement.

Q same man: Is it a violation of trust?

Judge Kopp:

No, ...unless you want to sue them for breach of contract. All you could get is money damages.

Q same man: the 2nd thing is a curious conflict too and I'm not sure how to resolve it. As you mentioned the Supervisors set the budget for the Grand Jury. However Supervisors are among the people that the Grand Jury can consider investigating. It's very difficult to have somebody who theoretically has the power to investigate and make recommendations about set your budget. How do you get around that?

Judge Kopp:

Well the only...the manifest way, the obvious way, would be to have the State appropriate money distributed to the Counties on some kind of County formula basis. Which is a whole different way of looking at the Grand Jury. No I wouldn't exclude it, but as a practical matter you have to get the money some where. And you're right if you don't want the County Board to do it you have to get the money somewhere and you have to go to the State legislature in this time of bounty and convince the legislature and convince Governor Davis, who I don't think is a particularly sympathetic individual to the Grand Jury since he vetoed our bill to increase the per-diem., saying every body is a volunteer; it's unlike the petit jurors. Which of course is a facial way of doing. But the only other... where else are you going to get the money? Could get the money from the State, and maybe the board of directors of the association ought to think about that if it's to big a problem. I'd rather go at it the other way. I'd rather make friends with the Supervisors without compromise and say we're going to do things that you wouldn't do. Yes Sir?

El Moger: Could we take one last question and then if you need to talk to the Judge or would like to maybe...

Judge Kopp:

Yes, I'm going to stick around.

El Moger: And maybe step outside and chat with him because we want to keep going on with our program and our other speaker is right here in the room .So last question.

Q Bud Alne, Santa Clara County: Thank you for your visit with us. We received a lot of input during the year. Yours was the only occasion when we did not feel like a mushroom factory.

Judge Kopp:

Thanks

El Moger: Thank you so much your Honor. Okay the Judge indicated he is going to stay for awhile and if you want to personally chat with him he will be outside. We want to continue on with the program.

Saturday, September 23, 2000

Elwood Moger

Let me introduce Jackson Gualco, who is the founding principle of the Gualco Group, a government relations and public affairs consulting firm here in Sacramento. They represent a variety of clients in agriculture, business and in the public sector. Jackson has had a varied career. His degrees are from Davis and Sacramento City College, then on to Golden Gate for an M.B.A. He was the chief staff assistant to Willie Brown.... (Inaudible.)

Jackson Gualco

Good Morning ladies and gentlemen. I hope you're not that enthusiastic in the Grand Jury room. Let the record should show clearly that this may be the first time that a lobbyist has voluntarily appeared in front of a Grand Jury. My wife asked me this morning " you know Jack why aren't they listening to some law enforcement type of guy?" I said maybe "they can relate to me". No, maybe this is an opportunity for us both. I know that you take hits occasionally in the press and as a lobbyist I'm kind of used to that same phenomena and I think we both have to deal with stereotypes. Maybe today we can shed some of those in our conversation, and I hope you'll feel free to ask me some questions as I wrap up or if something really strikes you in the course of my comments to you feel free to interrupt me.

Let's dive right into this subject. I'm not going to limit my remarks to the legislature but really what a lobbyist's perspective is on State government as a whole, which of course includes the Executive branch, since that's so much of what makes California government tick, or depending on your perspective maybe not, at key moments particularly when a bill you favor gets vetoed by a sitting Chief Executive. So let me start by kind of what I view as the primary roll of the lobbyist. First is to educate, the second would be to advocate and the third you might find the most intriguing -- and I'll get back to that at the conclusion of my comments -- which means to bifurcate.

Let me start with the first. There are a number of kinds of lobbyist that toil in the halls of the capitol or in the hallways of the agencies. They are really broken down into the following kinds of categories. There are those folks who work for a corporation or a public agency directly so that they are an employee of that entity. So lots of counties for example you'll see employing lobbyist as direct employees of the county. Where they've got that, it's their single contract. For years that was the traditional way for local governments, cities included, less so Special Districts. But cities and counties employed their lobbyist. The second kind are those that would be employed by an association of entities. They'll represent special districts and be employed directly by that association, or the League of Cities for example, or CSAC, or the Association of California Water Agencies. Those are good examples of public agencies that associate themselves together, then employ lobbyists. Then of course there are associations like insurance companies that band together, the farmers, Farm Bureau, Western Growers, business types through California Manufacturing, The Technology Association, The Chamber of Commerce. So those are associations that employ lobbyists. Then there are those of us who own our own lobbying firms and are retained by entities, public agencies and private entities to represent their interest in the Capitol and so I happen to be one of those types. For years we were called kind of contract lobbyist, because we have contracts with these different entities. So if you see that term, I am one of those. We generally have a whole host of clients from different, usually different economic sectors of the State. So it's incumbent on us to avoid conflicts. One of the things we have to look at before we retain a new client is to be sure it's not going to conflict with our existing client base or give the appearance of a conflict. Now, is that always adhered to? Sometimes in the breach more than in reality. This is something, just like lawyers that we have to be very mindful of. So we are retained to go and advise members of legislature and the administration what our clients think about issues. The reason I started out by talking about education is because for those lobbyist who are employed by a single entity that is what they really spend a lot of time doing. They advise the legislature about the kinds of things their employer cares about, why they are an important part of the economic main stream in California, why they think an issue needs to be approached differently. If they happen to represent a social services concern where they are not viewed as part of the economic muscle in California, they really are left with their ability to drop all kinds of information on the legislature and decision makers, including staff, which is an increasingly important part of the process. So that when an issue comes before them they've got the general background information and then in turn those members or those staffers know those folks are out there to act as resources. So it's a kind of funny thing to see when new members in this era of term limits, which I hope to spend a few minutes talking about, when they come to Sacramento for a good number of them they've arrived saying "we don't want to deal with lobbyist cause we've heard all these nasty things about you; if we get too close to you then we could tarnish our purity". "So in order to retain that we're not really going to book any time with you I give a lot of credit to Speaker Hertzberg and Pres-pro-Tem John Burton. They really made a point with their members to say "look you can't go into this battle, with so much being asked of you in so short amount of time and to do it bereft of information." It would be like equipping a soldier with only half the number of bullets that he/she is required to have and expect

them to go out and be successful -- it's just not going to work. So the leadership on both sides of the aisle in both houses I think have been very aggressive about saying to their members "no, you need to listen to these folks, they need to get in and talk to you," talk to them. Now there's going to be those who are not the folks that you want to spend a whole lot time with on a personal level and you may not exactly agree with what they have to say, but they represent something for the most part, especially if they are well represented in your constituency. For example Intel. If you're Dave Cox, who represents this part of Sacramento County, you're going to want to listen to what Intel has to say, because they're a huge employer here. Likewise you're going to spend time with the State Employees' Association because again they're well represented in this district. Those are the kind of things that members need to understand as they get into this process a little more in depth. This is a wonderful way to stay in touch and through the development of a relationship, a professional relationship, both will benefit. All right, that's the education component.

The next one is to advocate, and that's probably where we spend most of our time. Particularly when things start to get hot and heavy in the course of the session, which means when committee deadlines loom, gotta make sure we are out advocating our clients' positions. But it even starts earlier than that, and one of the toughest things we have to do is find authors for bills these days. It's not because there not enough eager members to do it, but with bill limits now in both houses, although rules are meant to be waived, are they not, and they often are. One little trick that has come about recently is the introduction of committee bills cause that gets you outside of the bill limitation. And so they may start off as an innocuous mothers day resolution and then morph into something else at which time those committee members, because it takes a majority / minority of committee members to sign off on the bill, realize "this isn't what I signed on to, please take my bill away". In which case another member takes it over and "voila" we've avoided the bill limitation requirement. That's a little trick, as you get into your legislation, keep that in mind. Cause no one wants to mess with Grand Juries. You've got that working in your advantage. But to try and find a member to author a bill these days is not an easy task because they, I think, have gotten very sophisticated, even with term limits they ask tough questions of us, as they should. "Does this have a chance of getting passed? Has a bill like this been introduced before? If so what happened to it? What's the Governor's position? Who's likely to support it, who's likely to oppose it and who's going to do the work on this bill?" Particularly if you're a rookie member in the minority your staffing load is awful so you really need a lobbyist who's going to work to put the time together to prepare the committee statement, to do the work with committee staff who will be analyzing the bill, to work in developing a coalition of support -- and I'll tell you what, in order to try and get a bill through the process these days with the lack of centralized leadership, particularly in the Assembly, much less so in the Senate, is one heck of a task and it takes probably a hundred times more work to pass a bill than to kill it. Because the system is set up with a number of hurdles to cross any one of them of them can knock a bill out of contention. So if you're in the position of trying to get something through, the amount of time, energy and resources required to make that happen are just exponentially greater.

Advocation means getting a coalition established around your issue and that sometimes is an easy thing to do because there are enough like interests to make that almost something to be done on the natural. But in any case you spend a lot of time lobbying other lobbyist. So boy! Do we just do a great job to one another and we thought, we understand all the stories, all the angles, all the excuses, we know what code that each other is speaking, so they are very interesting conversations. It's like if you are watching a baseball game and the signals are coming in from the third base coach and you're a baseball player, you've got a pretty good idea what that signal means. If you're from outside the process and you see all these body hieroglyphics going on you have no clue as to what is happening and that's a lot of what happens to

those folks who come into the process listening to a conversation between two lobbyists, it's like a Star Trek kind of thing. You need one of those universal translators to understand what's being said. But we understand clearly what's being said. And so we've got to decide is this something we want to associate ourselves and our clients with. Are we willing to spend the time to make it a real coalition as opposed to an Astroturf kind of coalition which members to their credit are pretty clever in seeing through? They know when it's a coalition of paper and convenience as opposed to something where there's truly like minded individuals working together. And beyond that it's just going to take the time to talk to a lot more members and staffers in the legislature.

When I worked there it was clear who was in charge in the Assembly, it was Willie Brown. And the minority leader would either be Pat Knowland or Bob Neal or someone like that who was clearly in charge of the operation on the other side of the aisle and the same thing in the Senate where it was a David Roberti show. The committee chairs at that point were seniors. They had been there a long time they understood the issues. They were the gatekeepers for those issues. Richard Catz with transportation was a very good example, Quentin Kopp in the Senate when he was there. Those guys were clearly in charge. Now it's very Balkanized, there are sub-caucuses within a caucus, there are subgroups that change on a daily basis. It's almost as if one is elected in November, sworn in in December like they will be this year and they are off to the races running for speaker or president pro-tem almost immediately. There is not the time for grass to grow under their feet; they are out doing their thing meeting people trying to figure out where they're going to go the next step politically.

The way that we have now nested two Assembly seats with a Senate seat, you've got Senators looking over their shoulders at the Assembly members running behind them, who only have six years to accomplish their goals. They realize that at the end of those six years or four, given the timing, those nested Assembly members who represent adjacent areas within that Senatorial district could be running against each other. There's a lot of that takes place and it's particularly ugly in party primaries where interest groups, voters, are being asked to choose between very competent and successful politicians and it probably brings out the worst in people because they are forced to be competitive at a time when they probably should not be. They are asking people to make choices when both probably ought to continue to serve or one ought to be dumped, what ever the case may be. Its forcing people to be pitted against one another at a time in their career when they ought to be spending more time maturing and understanding the issues. So that's one of the criticism's of term limits that I have, having seen it work. The other thing is you've got a member of congress who's your friend but they spend a lot of time looking over their shoulders to know who might be interested in coming to their job from Sacramento because Sacramento offers them no opportunities for career advancement and fulfillment. Think about this in the context of your deliberating internally about term limits and what motivates people to succeed is people want to be able to strive for goals and arbitrary elimination from something strikes me as out side of the scope of natural human inclination. And I guess I believe in the natural goodness of people as kind of one of my hopeful elements of Catholicism I hate to see people who are inherently trying to do good arbitrarily thrown out of the system because we have established a numerical limit to their time in office. So advocating is all that much more difficult because these folks are not around very long.

Now here's the flip side to it and you who spend time looking at local government will appreciate this. One of the up sides to term limits is that there are people coming in from local government who have got great experience. They understand some very difficult issues particularly if they come from Boards of Supervisors that have to deal with complex social issues and how to make those dollars at the local level stretch even further. I know those are the kind of issues you're looking at when you're sitting in the Grand Jury room. They also know how to run meetings well; they can

chair committees well, keep business moving ahead. So that's something I've seen that I think is a net plus in the processes, bringing these folks in from local government. Less staffers are getting elected then perhaps in the past. So it's brought a dimension to understanding the State-local relationship which I think on balance has been helpful and I think the decision by the legislature to reverse the ERAF funding shift of several years ago is a direct result of those folks having been in local government and understanding it. But those of us trying to advocate the issues realize we are talking to people who have not spent time understanding what's involved in a hundred billion dollar budget, and that is a lot to ask people to understand in a short time. Besides that, at the same time they are being asked to deal with very big policy questions in California. As we know from looking at what's been going on for the last few years, education has been a big focus. Both the Governor and the legislature are going to continue to see that be a major focus. We're going to start looking at the relationship between state and local government and how funding occurs and at this time of largesse that's something we ought to be able to do free of the crisis inspired by the environment that we had to deal with back after prop 13. So application is a very daunting task at this time and we've got to talk to so many people and there's so little time for them just to function as members.

The final thing is bifurcation, and I heard a few chuckles when I talked about that, but that is probably the most difficult thing for us to do. What do I mean by it? We are asked to separate both legally and ethically our approaches to members of the legislature, the Governor and other constitutional officers to talk about the issues that our clients have before them. And we got to go in and make our case on the merits of the issue, bring in what ever outside political muscle we can through affiliation and a coalition or that we know a certain person in the constituency is close to that member, to make sure that phone call is made or that letter is written. A lot of times on that kind of grass roots activity that's all within the rubric of what's appropriate to do in discussing a public policy question. At the same time we have to respond to an incredible number of fund raising calls and to make sure that our conversation about an issue never crosses the line to get into how to help finance their campaign. I know that you've probably heard all these stories about lobbyist walking around with brown bags of money, paper bags full of money. Never done it, never will and I think 99% of the lobbyist have never done it, never will. But we're still living under the scourge of the Artie Samish caricature of years ago where he had the legislature sitting on his knee showing how tough and powerful he was and that's something I wish we could totally eliminate from, you know, the stereotypes I made reference to at the outset, but they exist.

Here's the difficulty, the California electorate has embraced at different times campaign contribution limitations but the court has tossed out either in whole or in part those same limitations. The public has indicated through polls it has no interest in financing elections through taxpayer dollars, so the system as we know it will continue at least for awhile. Whatever the merits of what to do about prop 208, we're still stuck with a situation where we've got large amounts of money to elect members of the legislature.

Think about it. You're running for the State Senate, its going to take a million plus dollars to get elected or re-elected, particularly in those districts that are close, otherwise known as marginal seats. In the Assembly its going to be 6 to 8 hundred thousand dollars, sometimes a million as well if it's a tough election. So where does that money get raised? You can raise it from folks in the district, 5 to 10 to maybe a hundred dollars a clip but the rest of it is going to come from large entities, large associations, large interests in Sacramento who care a great deal about what happens with State government. And so fund raisers now, instead of costing an average of 5 hundred dollars per person to go eat some bad shrimp, worse pasta salad is now costing a thousand dollars. What used to be a price that would go along with a fundraiser for a committee chair, someone of that seniority, now its costing any new member. And here's what's

happened, it's almost like the missile race, if you're a freshman member getting involved in the process and someone says to you "what would you like to do?" "Well I'd like to be speaker or a committee chair" they're advised by their friends and associate colleagues how well you can raise money. That's one of the ways a member is evaluated as to whether he or she will advance into the next level of leadership, in the caucus or the committee chairs. For those who have an entrepreneurial bent, its kind of like you can just tell they love it, there's this gleam in their eyes; they love going out and making the hustle, being able to show the colleagues how much they are able to raise at these fund raisers and how much is then available for transfer to their friends and associates campaign coffers. That's a way of developing relationships within the caucus that will then allow advance. So a thousand-dollar fundraiser has become a necessity. And if one can't raise the large amounts of money he's probably going to stay at the lower level of the leadership.

Now that's a direct result, I hate to say it, that's a direct result of term limits because there isn't the time spent to develop the relationships over time. It's left you instead with what can be done in this concentrated period of time with regard to raising money that will show who is more adept then the other person. There isn't the ability to raise money through the speaker like there was because speakers are here and gone tomorrow. So if you happen to come from a city where you have a rotating Mayor every year well then you know what its like to be speaker of the Assembly these days. You've basically got a year to eighteen months in office and then it's off to the next race. President Pro-Tem John Burton is a unique person and given his experience in Congress and the legislature before, and the fact that he got elected pro-tem within his first eighteen months in office and then when he got elected to the Senate; that kind of thing will happen very very rarely. So there's less pressure in his house then there is in the Assembly. But he's also got to raise large amounts of money for these well over a million-dollar Senate races. He's got some very tough ones to try to accomplish, he's trying, for example replace Dick Rainey with Tom Torlegson in the east bay and that's going to be a very expensive race. So, I tell you all this just to give you a flavor for the kinds of pressure the members themselves are under because of their knowledge of what it's going to take to get elected. The pressure they are under from their campaign consultants to raise the money in order to what they call "effectuate the program". And then the opportunity for lobbyist to look at developing relationships, perhaps you might say curry favor, by being involved with the election campaigns of key members that are close to their clients' interest.

Now does all that sound like a great system? It does not, I submit and I gather you don't agree either. But it's the only one we have now and we've gone through enough Shrimpgates and F.B.I. investigations utilizing the Hobbs Act as a way of getting lobbyist, members and staffers because of mail fraud that for a long time there was an absolute, almost deer in the head lights, look you'd get from anybody involved in the fund raising apparatus: from member to lobbyist like me because there was so much fear and apprehension about even taking the slightest step to do something that we understood to be fully within the law, that it became almost dysfunctional. Time has worn off and the necessity to raise large amounts of money is there, so the pressure it puts on all those involved in the process is unbelievable. It's a real daunting task for those who want to continue to obey the law as they work within an ethical framework that is sound. To be able to get home at night and say I was able to get through another day without doing something that I'm not feeling very good about. It's kind of an unfortunate way to look at the process and I don't want to leave you with a pessimistic view. Because there are some lobbyists who say it's all based upon money and there are other lobbyists who say no, somewhere in the middle, and I tend to be one of those, some where in the middle. There's kind of a mix between what can happen, and I think it's important to realize that people that are elected to public office are like you and me. You're going to get the same kind of bell

curve in terms of representation of the general public, the great actors and the terrible actors, but everyone else is largely in the middle trying to do what's right to succeed. And, it definitely hurts them when they get the shots in the newspaper that they did something inappropriate when I think that time they were really trying to do what was right and within the law and what made ethical sense. But we are putting such tremendous expectations on their ability to get through every day, with people clawing at them for attention and for votes and for understanding and for empathy, it's a lot for them to survive. So when I talk about bifurcation, it's something that must be done legally and must be done ethically in order to survive in this rough and tumble process.

People ask me "well what's it really like in the context of a post term limits legislature?" and I say in many ways it's like a return to the wild, wild west. Because the rules are being re-invented every day and it's like an organism that's mutating at an ever-increasing speed. I think it's a response just to the fact that California is undergoing such a tremendous change as it is. It's putting such pressure on an institution really set up to be deliberative in reaching an understanding and accord with societal consensus. Dan Walters has talked about it and I don't know if I really concur with where he kind of ends up. To lay this kind of archaic decision making up against an economy that is speeding along at warp speed, trying to keep up with international demands for an economy that's seventh largest in the world. There is a disconnect there and I think we have not dealt very well with social service questions. The legislature and the Governor are left trying to catch up to what is being done out in the economic market place and I think to some degree just feel totally out of control of things that I think normally the public sector would have had a lot of involvement in.

But there's almost a feeling of irrelevance. I mean some of it may be self imposed by virtue of the legislature ducking on some big issues and left that to the people to decide either by voter initiative or just by just the way things develop in communities. I think it is something the legislature is going to have to come to terms with, if you want to continue to be relevant in determining where California is going to go as a society, then how will the legislature anticipate these issues and grapple with them in a meaningful way? And here's where I think: there's a very close similarity between your role and that of the legislature, and that is oversight. You're there to make sure county agencies and things at the local level operate legally and appropriately within budgetary requirements and all the kinds of issue's that you have to deal with. Those are the same kind of things the legislature must look at.

An interesting thing is happening recently and it's questions being raised by the legislature with regard to what local agencies are doing with their budgets. One of the most public fights has been with the Metropolitan Water District of Southern California over cost overruns at the Diamond Valley reservoir and issues related to the amount of reserves that they have in their budget. Those same kinds of questions are being asked other agencies, not just the Met. Other agencies are being asked those same questions and the legislature is asking more and more questions. Some of that may be the result of this pressure that I described earlier that's imposed by term limits to go to the next level. Think about it. If you're from Orange County or L.A., where's the next spot you go if you're in the legislature? You probably go home to run for the Board of Supervisors or the City Council, or become Mayor. So getting involved in those local issues looks a lot more attractive because that's probably where you're going to end up going. So that's reason number one; the second reason is that for legislators who are eager to get an agenda accomplished in a very short amount of time, local agencies can be, excuse my language, pains in the butt. Because you got a way of doing it that may not comport with that kind of approach of the moment being favored by an influential legislator. So it's like "we need to get the Auditor General out doing a study about you to see whether you're doing the right thing" because I don't like your approach. Even though it's a locally based decision it may

be inappropriate in my mind therefore I'm "gonna gettcha". So there's that kind of tension. It's come about, I'd say in the last five years, and it's not-- I wouldn't just lay it off on legislative animus directed at the locals-- but it's sometimes where locals have made some stupid mistakes and continue to dig their heels in deeper. It just creates this environment that if people were a little wiser and understood better the nature of the relationship between the legislature and the local government entity, that the situation may never have occurred. So it is something I raise to you as Grand Jurors, and hopefully it's something you'll keep in the back of your mind: that there is this State - local relationship that is being talked about and looked at more closely. So the kinds of reports that come from you at the end of your deliberations will be looked at more closely by folks who generally may have just dismissed it as another "out of control Grand Jury report." But instead it may prove to be fodder for some deliberations. I know in the case of Orange County that that was clearly the case when it came to some local government organization issues. So, when you sit back at night and think about what is something we can talk to the legislature about that would establish a commonality, I would say your mutual responsibilities for oversight would be something I think you can strike a common cord with a legislator trying to figure out.

"God what am I doing in the same room with a Grand Jury?" This is a frightening experience, so let me just wrap up my comments at this point.

Audience participation unavailable.

Elwood Moger

Our last speaker for the morning is Clark Kelso. He's a professor of law and the director of the Institute of Legislative Practice at the University of the Pacific's Mc George School of Law here in Sacramento. After graduating from Columbia University School of law, Professor Kelso clerked for the Honorable Anthony M. Kennedy on the United State Court of Appeals for the ninth circuit. He's the director of that Institute that I mentioned and has worked closely with the leadership of the California Senate and the Assembly and with the Judicial Council in the State of California and the Executive branch on constitutional amendments, legislative matters and rules of court, and has been a consultant to the Judicial Council for a number of years now. He is well thought of by the people in government and in the judiciary in the State of California. Very well respected law professor. Recently he was invited to be the interim Insurance Commissioner when Chuck Quackenbush resigned his position and he filled into that role and avoided any type of crisis in this state. "There was an earth quake, I could have done without that." So he is a very dedicated person who knows many people and is highly respected. Something like Judge Kopp, if I started to go into introducing all of the honors

that have been bestowed on him I would take up all the time of his speech. So I'm not going to deal with that, there's a bio on him in your program. And he did appear last year at our San Jose conference and was a moderator of our panels, and did an excellent job. Since that time he has been working on Grand Jury reform issues. He invited Jack Zepp and Sherry Chesny and Dan Taranto to a round table he had, and so, we are very appreciative to Professor Kelso for teaming with us and thinking of us as he goes on to research this area. So we are looking at a person who may be wanting to create some new law. He certainly has put a lot of thought into the issues and so it's awful good to have him back; it's a great pleasure to introduce Professor Clark Kelso.

Professor Clark Kelso

Thank you very much, well good morning. Oh! My gosh, I don't get that from my students, remarkable. Thank you for inviting me back to address the Association at its annual meeting. I am a--notwithstanding that wonderful introduction-- I'm a new comer to the California Grand Jury, comparatively. I've never served on either a Grand Jury or a trial or Petit Jury. And it's been only in the last eighteen months or so that I've been having discussions with the leadership of the Association and others on Grand Jury reform issues. Primarily, when I got started I was really focused on the somewhat narrow question of training programs for Grand Jurors. Earlier this year though I decided to commit the resources of the University of the Pacific's Institute for Legislative Practice to conduct a broader examination of the Grand Jury statutes in the penal code and to make recommendations to the legislature for how those statutes and the Grand Jury system can be improved and strengthened.

Now the moving factor in my decision was Governor Davis' veto of Scott Baugh's "right to counsel" legislation. In his veto message Governor Davis explained that the current operation, and this is a quote "that the current operation of the Grand Jury has served us well for 150 years" and he indicated that he was not comfortable signing such far reaching legislation in the absence of a study to determine the efficacy of this legislation. Now the governor specifically mentioned in his message the possibility of a study by something called The California Law Revision Commission. That is a relatively small executive branch agency; they've only got 6 or 7 employees. That Commission performs studies on topics usually directed by the legislature. Their agenda is set by legislative leadership. The Commission's expertise is in drafting legislation and I've had the pleasure over the last half decade or so of working closely with the Commission on a wide variety of topics as one of their hand-full of academic consultants. I knew that the Commission's agenda, at the time of the governor's veto, their agenda was all ready stretching the Commission's staff to its limits. I just thought then that the University could usefully address this topic, conserve the Commission's energy for it's other projects and, quite frankly give me and one of my colleagues a chance to go deeply into a topic that was of some interest to us just intellectually.

The co-director of this project at the Institute is Professor Michael Vitiello who's another professor at the law school. His subject matter expertise is civil procedure, criminal procedure and criminal law and, importantly, and this is one of the reasons I sort of thought we could do this, is Mike has served recently as a foreperson on a Grand Jury, I believe in Yolo County. So he actually had personal experience with Grand Jury issues. In order to gain further insight for the further need for reform we scheduled the meeting that was described earlier. We scheduled a meeting this summer for 2 days. We had representatives from a District Attorneys office, a defense counsel, county Grand Juries, interest groups; we tried to solicit as many participants as we could. We had a modest showing but fortunately we had people who I think represented diverse viewpoints on the topic. We did solicit views, pros and con's on the Grand Jury system, both in it's criminal and it's civil function. In

addition of course we had a team of law students who have been busy digging up every thing we can possibly find that's been written on Grand Juries in California and elsewhere. And we are now close to completing an initial report on the Grand Jury, and I've started having my students draft legislation to implement our suggestions. We will be circulating that draft as soon as it's available quite widely to all Grand Juries in the state, to this organization, to others who have expressed interest in what we are doing, and to the legislature.

I'm here today to give you at least a general idea of some of our conclusions and I'm probably going to avoid some of the more technical drafting things that we're looking at, and really speak in broader terms about the significant role the Grand Jury plays. Now in theory as you all know the Grand Jury is really a remarkable example of democracy at work. Praised as the protector of the citizenry against arbitrary prosecution. The Grand Jury involved ordinary citizens in the administration of criminal justice and the civil Grand Jury gives ordinary citizens the power to investigate local political entities to root out corruption. But, no matter how well, how well designed any political or governmental system is there is always the potential for abuse or over reaching.

Two recent events in California's history remind us that even well designed and well intentioned Grand Juries and institutions can be subject to abuse. As you all know San Diego's 1998/99 Grand Jury has been accused of abusing it's power by making groundless accusations of misconduct against Mayor Susan Golding in connection with efforts to pass a downtown ball park measure. Ultimately the Grand Jury failed to elicit evidence from Golding and brought no charges against her, but her career was effectively destroyed. Critics of the Grand Jury also point to the recent indictment of Assemblyman Scott Baugh as similar evidence of the potential excess of the Grand Jury. Baugh was indicted by the Orange County Grand Jury in 1996 on 4 felony and eighteen misdemeanor counts of falsifying campaign records in 1995 during a special election. Ultimately an Orange County Superior Court Judge dismissed most of the indictments because the District Attorney failed to present exculpatory evidence which would have impeached the credibility of a key witness. Later when Attorney General Bill Lockyer took over the case he forwarded to the Fair Political Practices Commission, so it could determine if the campaign reporting problems merited civil fines. Now arguably that problem was not so much the Grand Juries as the District Attorney's, but you can well imagine in the public's and in the press' mind there tends to be an overlap between those two things. Perceived abuses have fueled calls for reform or in extreme case's for abandonment of the Grand Jury. I think it's well to remember these types of criticism. Don't take them personally, these types of criticism are nothing new for grand Juries.

The Grand Jury has roots in twelfth century England and it has always been a controversial institution and always subject to heated criticism. Praised by some for its role in protecting citizens from oppressive government the Grand Jury originally also served the Crown by helping it seize control of the administration of justice from ecclesiastical, baronial courts. The modern perception of the Grand Jury as the protector of the public from oppression, I think originated as long ago as the seventeenth century with the refusal by two, and they were characterized at the time as two rogue Grand Juries, they were out of control--they refused to indict two Protestant enemies of King Charles 2nd. Because of the timing of that event, late seventeenth century, there was wide spread adoption of Grand Juries in the Colonies. Where I think there always was concern about governmental excess and abuse. But even the Colonies were divided on the utility of the Grand Jury, why in some Colonies service was considered the single most important public service that could be rendered by the public, but elsewhere absenteeism was common-- forcing Colonial legislatures at times to impose fines on jurors who failed to serve. It's just so funny when you look back in history these common problems and responses just keep appearing time after time again.

Beginning in the 1730's when the Colonials began to clash with royal authority the Grand Jury became one of the bulwarks of the Colonist's rights and privileges. Most of the Colonies lacked a representative Assembly and absent a representative government Colonist used the Grand Jury to challenge royal authority. In Georgia for example, the Grand Jury claimed the power to inquire into any matter that it saw fit. And in addition to serving its official function of determining whether to issue indictments, Grand Juries protested abuses of power by royal governments, refused to enforce some laws, just refused to do them, and proposed adoption of new laws. A Boston Grand Jury in 1765 refused to indict Stamp Act riot instigators. In 1770 a Philadelphia Grand Jury proposed a protest against the increase of taxes on tea. And in 1774 a New Jersey Grand Jury refused to follow a court's direct charge to denounce Colonial mob violence. So you can see the Grand Jury was really part and parcel of our revolutionary history. The Grand Jury was part of the revolution. That connection no doubt explains why the Bill of Rights of the United States Constitution includes among its provisions a guarantee of Grand Jury indictment in Federal prosecution. After the revolution Grand Juries continued to serve oversight functions. The frontier states in particular relied on Grand Juries. Grand Juries again often served as the only representative government to which citizens could bring grievances. Some States and territories began to look on the Grand Jury a little more positively and expanded their activities to encompass things such as studying the conditions of jails, treatment of prisoners, to examine toll roads and bridges and to audit the accounts of county officials. California has always recognized the civil functions of the Grand Jury since the state's inception. And California's first Constitution required that a criminal prosecution begin with an indictment by a Grand Jury. Now the requirement of an indictment in a criminal case was removed from the California Constitution in 1879 and today, as you know, most Grand Juries spend most of their time exercising civil oversight functions. Although we clearly have notable exceptions. Some years in our study we discovered most of the time was spent doing criminal matters. That of course is why we have legislation now that permits a second Grand Jury, simply to focus on criminal matters. That's going to be, I think, one of the areas where we'll be suggesting some changes so that the Court can have the power if it needs to have a Grand Jury for criminal purposes. The Court and the District Attorney can make sure that one gets created.

An accepted 1996 study of California Grand Juries documents numerous instants where Grand Juries have performed effectively, and it suggests that Grand Juries have taken very seriously their civil oversight functions. One of the things that we found in our review was there really hasn't been any systematic studies of the efficiency and the effectiveness of Grand Juries. What we've seen most recently is anecdotal arguments, and those arguments often time dissolve, as I'll point out. Many times specific cases really don't give you a fair picture of how well an institution is doing. During the early twentieth century a number of other states reformed their Grand Juries and gave much of the power of the Grand Jury to the District Attorney. But similar reform efforts failed in California because Grand Juries had gained a reputation as enemies of municipal corruption. And a number of early Grand Juries really did earn that reputation for the Grand Jury for all of us today. For example in the late nineteenth century a Grand Jury took on the notorious political boss of San Francisco's municipal government, Chris "blind Boss" Buckley, who was considered a henchman of --who else but-- the Southern Pacific Railroad. San Francisco's Grand Jury issued a final report in 1890 that denounced fraud in local government and highlighted city officials who had reaped tremendous personal profits at the expense of the city. At various times Buckley was able to get some of his men on the Grand Jury to try to prevent serious investigation of corruption. But that strategy ultimately failed when a Judge dismissed nine panel members as obvious plants on the Grand Jury and directed the Jury to make a complete investigation of all charges of corruption against local officials. The

result was Buckley took an extended vacation, and other politicians took to their heels. The Grand Jury's final report in 1891 not only led to indictments of public officials for fraud and bribery, but also led to the Mayor's appointment of a committee of citizens to draft a city charter to remedy conditions that led to corruption. That same report almost twenty years later remained the impetus for continued investigation of municipal corruption in San Francisco.

Now I know that there can be a temptation to believe that the sort of fundamental wide spread corruption that was found by the 1891 Grand Jury in San Francisco simply cannot exist in our modern system of government, with its checks and balances, and with an ever watchful press. But, ah, and the chuckles tell me you all know what's coming, anyone who believes that has really lost sight of the reality that government is, in its day to day operation, a human system made up of men and women. The fact that it's a human system means that government is just as susceptible to fraud and abuse as every other system run by human being. We are as a species frail and we are subject to temptation. Power is a very seductive temptress.

Anyone who thinks corruption on a grand scale at the top of the governmental organization can't happen needs to look at the sad case presented by my predecessor in office, former Insurance Commissioner Chuck Quackenbush. A good example of a need for outside oversight at the state level. Now we do have the possibility of legislative oversight and correction as a check and balance on corruption in executive branch agencies. This time around, particularly the State Assembly Committee on Insurance did a very good job of dealing with investigating, commenting on and issuing a final report dealing with former Commissioner Quackenbush and some of the problems at the Department of Insurance. It worked very well. I suspect in part that is the topic of our luncheon speech today: how you can have, and what it takes to have good oversight.

At the local level though, where separation of powers and checks and balances is probably not as well developed, there tends to be a greater interaction among legislative and executive. The Grand Jury I think remains as one of the only truly independent watchdogs of corruption and mismanagement. And the history in California does show that when it works well the Grand Jury system is a powerful example of democracy in action. The system empowers a group of concerned citizens to serve as a watchdog over public officials whose conduct may not otherwise be subject to public scrutiny. Even if the Grand Jury does not uncover fraud and corruption it may uncover incompetence or inefficiency.

Of course participation on the Grand Jury educates jurors about local government and in return the Grand Jury reports may, if they are made adequately public, and publicized adequately, may educate the public at large. Critics of the Grand Jury contend that it's just a waste of public money and they give a number of reasons for it. One is that Grand Jury reports are as inept as their members. That gets both the members and the reports combined in one criticism. Now whether or not the reports are inept, they say they're ignored, the Grand Jury is just a relic. Then third, often motivated by their own agenda, is that Grand Juries abuse the power that they do have. These tend to be the three most common complaints leveled at the Grand Juries.

Professor Vitiello and I believe that the burden of proof on this issue lies with the critics of the Grand Jury System. It is they that must amass a convincing case based on systematic study, not a hodgepodge of anecdotes, that the Grand Jury should be substantially reformed or abolished. We put the burden on the critics for two reasons. First, in theory the civil watchdog function makes a great deal of sense as a Constitutional check on government abuse. Concerned citizens, who have limited tenure and do not serve for personal gain, really do have the potential to check abuses of power by entrenched public officials whose work is not otherwise open to public scrutiny. Lay citizens bring a common sense to the task which can be missing in government. And lay citizens are not part of a

political establishment. Second, you can't deny that the Grand Jury in California has a very long and very impressive constitutional pedigree. I always agree that we shouldn't perpetuate an ancient institution just because of its history. That's not a good reason alone to continue to do something. The fact is, and as history suggests, and it's not even old history, even recent history suggests, that the Grand Jury has served us very well. For every publicized instance of public abuse there are far more numerous examples where the Grand Jury has served its intended purpose. Because of its long history, those who seek abandonment of the system bear the burden of proof that the system does not work. For my money the critics are nowhere near satisfying...

(Inaudible)

The evidence just doesn't suggest that unqualified, uneducated, people are volunteering to serve and spending their time serving on grand Juries. Professor Vitiello and I agree that there can be improvement in training. That of course is where I initially became interested. There are some programs, very good programs that are being developed. This Association is taking a leadership position in promoting the development of those materials and getting training available statewide. But there's always room for improvement in educational programs. Every year on a faculty that's what we do, we sit down with the curriculum committee and try to figure out how we do a better job. It's a painful process of self-examination, we are right now in the middle of about a two-year effort to develop lawyer competencies, and after we develop them we're going to go back and see how well our curriculum does that. It's extraordinarily painful. I can tell you, it brings out the worst in all of us.

But we think there can be improvements in Grand Jury training programs. A couple of suggestions, and these are things that probably don't rise to the level of statutory changes, but which I think are worth considering. I think there is room for the development, and I know there are resource and money issues here, but these are good things to do if you can: there's room for the development of simulation exercises to train Grand Jurors how to conduct interviews, and write reports. A lot of the skill set that you need to do the work that you do can be better taught through clinical type relations. They help you develop the skills of researching, the skills of verifying statements, finding documentation, interviewing techniques and synthesizing reports. I think more hands-on training might improve the competence of those who serve. Certainly in the law school world until about the mid 1970's or so every thing was done in a classroom just with casebook. Beginning then and continuing today we finally realized you needed to have the clinical experience in a law school, so that when you come out you have actually developed some of the day to day lawyering skills that you're going to need to practice law, a little more on a medical school model. I think some of that might be useful for Grand Jurors as well.

I do think, turning to a slightly different approach, if we could improve the quality of the pool of prospective Grand Jurors, and the training of those who serve, that should improve the quality of reports. That was one of the other concerns, ineptly done reports. Frankly I think evidence of incompetent reports is equivocal at best. The ones that I've seen, I don't see anything that says that the report was poorly done or ineptly done. Almost any document that anyone produces can be improved if only you had more time to do it. But the documents that I've seen suggest serious attention to serious problems. One criticism of Grand Jury reports that is frequently repeated--supposedly cited as evidence of both the incompetence of the reports and the wastefulness of the process--is that few recommendations are acted upon. And it's a frustrating thing certainly for Grand Jurors to see their recommendations not acted upon. Now the estimates vary, one study is that fewer than 20% of Grand Jury recommendations are acted upon. Another student of the Grand Jury found, well maybe it was like 30% of recommendations are acted upon, but it's a number below 50%. But I have to say even on the assumption of only 20% or less of Grand Jury recommendations are acted

upon, that does not in my mind support a charge of incompetence or wastefulness. By comparison for example, elected representative place far more legislation in bills in the hopper than are actually adopted and signed by the Governor. As in sports, percentages are going to be deceiving. If a quarterback completes 30% of the passes attempted he's incompetent. But if a batter achieves 30% in baseball he can end up in the Hall of Fame. It just depends on what your measure is. Grand Jury critics, and we looked hard, they did not explain why a 20 to 30 % success rate is for Grand Juries, for that institution, why that is a poor rate of success. And actually, given the relatively low cost of Grand Juries in the scheme of government, 20% to 30 % success rate seems to me like a not half bad return on investment. Exactly the cost benefit ratio. So we didn't really see a good reason for suggesting that just because the success rate was just 20% to 30% that necessarily means something is wrong.

Of course you all know some of the other reasons why recommendations may not be implemented, even if they're good. Grand Jurors will often have been excused from service by the time public officials must respond to reports. One remedy now in use by some Grand Juries is the "interim" final report. That can become public during the early part of a Grand Jury's tenure, forcing a response during the term of the Grand Jury. This then allows follow up by that Grand Jury. There are ways of addressing those sorts of problems. But, critics would argue, even when a recommendation is adopted, the reality is that the recommendations are often based on suggestions of one or another public official. Ideas that might have been implemented anyway even without the Grand Jury report. That particular argument is very hard for critics to document. I frankly think whether true or not proponents of the Grand Jury have a ready response. Even if some of the suggestions did not originate with the Grand Jury itself but instead came from government, the reality is, as you all know, often those suggestions would not have been implemented because public officials would be dragging their feet, or there would be other opposition within government. Now the added pressure brought by the Grand Jury may be the thing that made the difference between an idea becoming bogged down in red tape and being implemented.

Somewhat ironically, critics also fault grand Juries for re-inventing the wheel. That is, by advancing suggestions advanced by other Grand Juries or urging ideas suggested by public officials and arguing that their recommendations are ignored. To some extent these criticisms are contradictory. Absent greater power to command compliance, and that's a questionable power, I think, to extend to the Grand Jury, Grand Juries persuade through public opinion, public pressure. If the recommendations of one Grand Jury are not acted upon, but are actually good recommendations, it's hard to see why a subsequent Grand Jury should be criticized for reurging the same recommendations in a subsequent report. In my experience over at the Department of Insurance the things that I'm doing over, they are not novel, it's not new stuff that I've made up, it's basic stuff, like "we're going to follow the law". Don't think I made that up just for this speech. That actually was one of the first things, I had a series of meetings, group meetings with the employees, that's the first thing out of my mouth: "we are going to in this department respect the rule of law". I felt that was perhaps something new for the department.

I subsequently learned that actually, I don't want to give you the impression that the entire department had the problems at the top, I have subsequently learned that at the Department of Insurance that the problems were at the top. They were concentrated at the top; the civil servants throughout the department had really been abused by leadership for quite some time. There had been, not just with Quackenbush, but for 10-15-20 years, there had been a neglect of the organization by leadership. They just didn't work hard within that department at the leadership level to impose internal checks and balances and to impose internal systems. That's really one of the things we're working on right now.

Well! Finally, I do want to return to the charge that began my speech, and that was that Grand Juries abuse their power. Professor Vitiello and I concluded based on our review of the history, that the specter of abuse is overstated. No doubt you're going to find instances where Grand Juries step over the line. As I said, that's just inherent in any type of institution. But critics really do overstate the power of Grand Juries and overstate the degree of possible abuse and, I think, understate the constraints that are imposed on Grand Juries. Many of these are useful constraints, you can tell I kind of like checks and balances, everybody needs to be accountable to some one. First, Grand Juries have no power to impose their recommendations on local government; at best if public officials don't respond to Grand Jury recommendations the Grand Jury can influence policy only through public opinion. Given the limited tenure and the reality that jurors have usually disbanded by the time public officials must respond, Grand Juries have limited power to impose their ideas by appealing to public opinion. That power just isn't there most of the time. That limitation on the effectiveness of Grand Juries serves as a check on potential abuse. Second, while specific examples may demonstrate that the system can be subject to abuse, if the system is otherwise worth retaining, and I think it is, the occasional abuse is simply a cost we ought to accept in light of the Grand Juries' benefits. Moreover, checks already exist to deter abuse. While a Grand Jury need not seek legal counsel, it may invite input from County Counsel or the District Attorney, either of whom may urge restraint. The Grand Jury also works with the Presiding Judge of the Court who may exercise some degree of guidance and control to prevent a Grand Jury from irresponsible behavior. Finally and most important, and this is just a characteristic of the Grand Jury itself, a Grand Jury report is not the product of just a few people. It's a report that requires a super majority of agreement by the members of the Grand Jury. Achieving that necessary majority requires building consensus among panel members and that does increase the quality of the Grand Juries deliberations, reducing irresponsible behavior. So in

closing, Professor Vitiello and I see a system that at best is a powerful instrument of participatory democracy and continues to perform a useful roll in local government. As I have indicated several times from my own recent experience at the Department of Insurance, I can vouch for the benefits of having an outside institution constantly on watch. If former Commissioner Quackenbush and his top aides had thought there was out there an effective watchdog waiting to be unleashed upon them, the scandal of the department never would have happened. It happened only because they thought nobody was going to be watching and nobody would be able to control them.

Now we have quite a few other specific drafting recommendations, I'm not going to bore you with those as I said today. We will be releasing our report later this year. I'll be sending copies of it to leadership of the Association and to each Grand Jury in the State and to the legislature. I'm very much looking forward to getting reactions back to that report because you'll have to remember this is a couple of academics doing a report. Mike has had some practical experience with Grand Juries and I have some practical experience with government organizations. But we're still academics and so we'll be looking for some responses back from people who are actually in the field on what things we've overlooked, where we've made mistakes, what can be improved in our own report. Certainly our hope is, then we'll be able to present to the legislature early next year a package of reforms for legislative consideration that will encompass both civil and criminal aspects of the Grand Jury. Thank you very much.

Q From Los Angeles: (inaudible)... would you or have you considered jury anonymity?

Professor Kelso:

Well I've already considered, along with the Judicial Council, trial jury anonymity and I thought in certain cases it was a good idea. I think it was essential in term of a trial jury in some cases for the jury to perform its function. I have not given it a great deal of consideration in terms of the Grand Jury. In part because I think one of the checks on a Grand Jury in its civil function is that there is not anonymity. That you have to hold yourselves responsible for your own reports. And it does seem to me that that's an important check on the civil function of a Grand Jury. On the criminal side, there I think it might be much closer in concept to the Blue Ribbon commission report on juries that I authored about five years ago now, where we suggested that there might be circumstances where anonymity might be an important safe guard for you performing your function. Yes?

Q Unidentified: Who gave you the money to do the study, why did you do it? (Mostly inaudible)

Professor Kelso:

Well you'll have to judge for yourself whether I'm for you or against you based on my comments. I think I'm for you, but I'm not going to make an assessment of whether what I'm suggesting is good or bad from your perspective. I've learned not to guess what other people's motivations and perspectives are. Why I did it -- this is what I do for a living: The Institute for Legislative Practice, these are the sort of studies we do, we've been doing them for 5-6 years, I've been working for 10 years on it. There is no money for this, there's no support, so we didn't get outside funding for it, it's simply an academic exercise that we do. And no one in particular asked us to do it. When I saw the Governor's veto message I thought it would be a good project. In part not just for something I'm interested in, and Professor Vitiello's interested in, I'm always looking for legislative projects for my students because my primary responsibility is to provide a good educational experience for students in several of my seminars. This is a particularly good one. Yes

Q Les Daye: Thank you for pointing out the District Attorney's role in Assemblyman Baugh's potential indictment troubles, after all he is a graduate of McGeorge School of Law.

Professor Kelso:

Well, so be it, so's Bill Lockyer.

Q Les Daye: I'd like to hear more about what you talked about on the role of training, by using real hands on kinds of things.

Professor Kelso:

Sure, as an example, just to talk about interviewing, one of the things that we do, and it's not just McGeorge, almost all law schools now have this type of program, you have either simulated interviews with clients or many law schools, and we are one, actually have live clients. We have a family law program. Taking community legal services people, and it's funded by mostly federal money and by some state money. You have students conduct the interview, it's video taped, you have someone who can then go to that individual student and say "Okay here's what worked well, and here's what didn't work well in that interview; here's how you can improve your interviewing techniques". This is extraordinarily resource intensive education. That's why in the law school world

that's one some of the law schools had to decide to do. Which was to divert a large amount of resources to a relatively small number of students at any one time. But that type of personal attention really is useful. There's no other way you can teach some of these things other than to do it, to have someone who has more experience than you help you improve your own ability. That would be the sort of thing that I'm thinking about. Actually there's a lot of material written about clinical legal education and describes the types of programs that are available. A lot of it is material written by Professor Anthony Amsterdam at NYU Law School. I'd be happy to make that sort of material available. Yes?

Q John Roland, Sacramento: (inaudible) regarding the 14th amendment?

Professor Kelso:

Well let me do the second one first. The selective incorporation doctrine is a legal doctrine that has been used by the United States Supreme Court to apply most of the provisions of the U.S. Bill of Rights to the states. As it happens the Grand Jury provision is not one of the provisions that the court has chosen to apply directly to the states. Personally I don't think that makes any sense, they may as well have incorporated all of them, they've done almost all of them. The way the court did this, they did it piece by piece, one right at a time and when they got to Grand Juries I think there were concerns of trying to impose that nationwide, some how. That's an argument that I think can't be usefully revisited, only the U.S. Supreme court can fix that, I don't they're likely to do it. As for teaching about the Grand Jury, and its role in the schools, I am in favor of that, in theory. The difficulty is I don't know if that would really improve the quality of the Grand Jury. It would make the Grand Jury better known, it would be a useful way in terms of government civics to explain how at a local level you need to have checks and balances. I have serious doubts whether anything done through 12 could actually, 20 or 30 years later when somebody is on a Grand Jury, improve their ability to serve in that function. As a general matter better government and civics education I think can only improve in a general matter what Grand Juries do because people will be more likely to know something about government. And I know that one of the problems right now is that most of us don't know that much about government. Certainly until I started getting involved in governmental issues about a decade ago, even as a law professor, there were huge amounts of law and practice that I didn't know anything about. Yes?

Q Ron Miguel: Is there any chance that your report will be issued in draft form prior to publication.

Professor Kelso:

The report when it's issued will be issued in draft form; I didn't make that clear. The purpose of the distribution will be to elicit comments and I should add, we will be undoubtedly putting it up on our web page so it will be readily available to anyone who's interested and once I get it actually up there I'll have the full thing so you can get right to it. If you get to McGeorge you'll have to navigate a little bit to it. Yes?

Q inaudible

Professor Kelso:

Yes I am looking at that issue. There are difficult, obviously political, problems with it. I think right at the moment, I 'm leaning in the direction, and don't hold me to this to the final, because Mike and I are still talking about it, on the grounds that the Court is to some extent ...I'm looking at the possibility of having the Grand Juries' financing essentially be part of the Court's budget. On the grounds that the court is to some extent, and that means coming from the state, essentially on the grounds that the court, that the Grand Jury is to some extent an adjunct of judicial functions. But basically I'm trying to look and see if there's some way we can change the funding source. Now that may not be something you even want to ask for, because once you get into the state funding, I mean, you know, and that's why I'm being very cautious about it, because I don't know where the funding source, in theory I know where it comes from...but there's a practical and political reality about where your funds come from. You'll want to be thinking hard about where you'd like your funding to be coming from. One thing we won't be proposing, just because I don't like these sorts of things myself, we're not going to be proposing a constitutional amendment to give you guaranteed funding. I don't believe in that sort of constitutional provision. Yes?

Q. Marianne Jameson, Contra Costa County: A comment on carrying out recommendations: the last Grand Jury I was on, we took 5 years of previous recommendations, excluding those that had been rejected or those that had been so nebulous, in every case where the recommendation was clearly made and accepted it was carried out for the 5 year period.

Professor Kelso:

I'd love to see that, that's a useful sort of anecdote to bolster our sense of the way this actually works. Just a couple of more and then I know it's going to be lunch time. Yes?

Q Peyman Mottahedeh: (inaudible)...on corruption in California and the Grand Jury is not there to do their job -- the job of the Grand Jury is to do reports. Lack of education of Grand Jury cites, Quackenbush, Orange County and L.A's Rampart police scandals as missed areas of Grand Jury investigation.

Professor Kelso:

Well, that's an easy question. Whether there is a problem there I think is first subject to debate. I mean, the examples you give, just to give a quick response. For the Insurance Commissioner, I don't know if that would have even been in the Sacramento County's jurisdiction, some people are shaking their heads no. As for Rampart, what are you going to do when you already have an F.B.I. investigation? I'll tell you what I did at the Department of Insurance, first day I got there I called up the U.S. Attorney and said, "I'm going to cooperate with you any way I can and I'm going to keep out of your way". So at least for those two examples, they don't quite work to make the point. To the extent there is a problem, how do you change it? That's very difficult because what you're suggesting is that District Attorneys, who are independently elected, are going to have to realize that they need to be to some extent ceding some of their power over indictments, accusations and criminal proceedings to a Grand Jury. And the Grand Jury from their perspective is not going to look like it has the same authority the D.A. does. I'm not certain how you would change that mind set other than-- Grand Jury's themselves, to the extent they find corruption, they have the power to do

that. You've got the power, and historically-- San Francisco is a great example-- if you actually exercise the power and you do it well... that's how you change public opinion. The risk is you exercise that sort of power and you do it poorly; well you can set Grand Juries back quite a ways. And the particular things you're talking about, as you know they're very high profile, sensitive things so if you're going to do it you gotta be really sure you're doing the right thing. That's a very high-risk type of thing to be doing. Just a couple more then we'll have to quit. Yes?

Q (inaudible) from San Francisco: What is the risk in bringing something to the legislature?

Professor Kelso:

There is a huge risk in taking anything to the legislature; anytime you put anything on the table in the legislature there are risks associated with it. Now this particular topic my sense is that no matter what we do there are going to be proposals for a variety of types of Grand Jury reforms, Scott Baugh, he's going to do something. There are others who are going to do something; it's a topic that's in the air. I don't have any sense myself of whether there's an appetite for reform in the legislature on this topic or if there is, what direction the appetite is. I'm not that close to lobbying types of activities. We tend to stay a distance from the sort of vote counting that you'd need to do to have a sense of that. And I suspect there are others who are much better positioned to give you that sort of information. I think we have one here. Yes?

Q Clif Poole, Solano County: Talking about Rampart, a Grand Jury if they were investigating the police department would probably never have come across that to start with because the guy was caught stealing in the police station, the police caught him and he rolled over and started things. Should a Grand Jury by some fickle finger of fate run across that it would mean just as much as the police or anyone else once you bring it public. Whether it's an accusation or otherwise it's the publicity that drove it, not the idea of an accusation, a charge and indictment, whatever. The publicity of what had occurred has just driven it on and on and will continue to drive it.

Unidentified:

And one thing just to follow up on that a little more, notice that originally the L.A. D.A.'s office was going to be the one, they were going to be the white horse saving us all from that. Look what happened to them? I mean they took it on and ultimately I don't think has reflected very well on the L.A. District Attorney's office. That's why the "feds" came in. So this sort of thing, often times the best thing you can do is identify the problem and pass it on. Make it public, and let somebody else... then once it's public let the story play itself out. Because sometimes if you try to take too much control you end up not being able to accomplish what you need.

Professor Kelso:

Why don't we take one more down here...you had a question?

Q Inaudible-San Louis Obispo County: Can you comment on the role of the Little Hoover Commission?

Professor Kelso:

Sure, that was one of the things we looked at over the summer. The Little Hoover Commission is a state level agency that does a somewhat similar function to a Civil Grand Jury oversight function. Its membership is quite a bit different; they tend to be political appointees. It does have a professional staff that produces reports on a variety of state government efficiency, corruption sorts of issues. There are nice comparisons there, I mean their recommendations are routinely ignored by the California Legislature. Their reports are of a professional looking quality, they have a lot more resources, they do, to be more serious about their influence, they do things that then can be used in the legislative process and they're reasonably well respected. The difficulty is they've got a professional staff and my sense with them is somebody else sets their agenda. The professional staff ends up being the one that kind of drives what goes into these reports. And the actual members, the political appointees of the Commission to some extent are a little more at the mercy of the professional staff than is true of Grand Juries. I do think if you want to retain that citizen involvement that the better way of doing it is by not having a professional staff. There are costs that go with that, you've got the training, and your reports don't have that P.H.D. look to them all the time. But on balance I think it's better to have the citizen involvement than it is to try to professionalize what Grand Juries do. Again, with Grand Juries the main thing is to make things public, bring it up to the sunshine, and for that you don't really need a professional staff as much. The question of whether you need a professional staff to do investigations is, I think, probably a closer one. And that depends in part on how much you want the Grand Jury to actually be out there investigating. In a state agency I've got all sorts of people who can do investigations, I can call on the C.H.P., I've got an internal auditor, I've a state auditor so I've got a lot of resources available. To the extent the Grand Juries don't have those sorts of resources available that may limit to some extent how much you actually are able to uncover. On the other hand, if you can, again, if you are can uncover a little bit and bring it to light, sometimes that's enough to get the ball rolling so I end up being equivocal on that. .

Thanks again very much.

OPEN FORUM

Elwood Moger

This is the last phase of our program for this conference, we'll be closing out at 5 today. I want to remind you again to fill out the evaluation forms for this year's conference; some people did not have them in their packets. If you go out to the merchandise table you'll see some forms there, there's a box, so please look for your evaluation forms in your blue packet and complete them during this afternoons session and leave them in that box on the merchandise table before you leave. This is really important to us, to have the members and attendees give the planners some feed back on how the conference has gone. Next year we will be in the southern part of the state and it will be about September 14 or 15 of next year so mark your calendars. Jodie Harrod is going to be coordinating all the arrangements for that conference and, as I asked yesterday, we always need helpers, people to

work on the conference. See me during this conference, Jack Zepp, any of the others if you have some interest in helping.

Today we have a panel of our members and Jack Zepp is going to be our moderator and I will introduce him to give you a little bit of his background if you haven't heard it before. Then he will introduce the panelists to you as he gets started. And so this is the fun part of, a lot of give and take- if you have issues bring them on up to the panel and we can kick them around in a round table type fashion. As was announced last night Jack is our newly elected president. He recently retired from the law firm of Latham and Watkins in San Francisco where he was a partner for some thirty years. He worked in anti-trust defense, hostile takeovers, general securities and commercial litigation. One of those guys who was highly gifted in winning an argument I guess. So it's awful good to have him on our Association team as the new "leader." His service with Latham and Watkins took him to many offices: he spent time at their New York office, their Los Angeles office and he finally ended up in San Francisco where he chaired the ethics committee. He attended law school back in the mid-west at the University of Illinois. He was the editor of the Law Forum back there. Following law school he clerked for the California Supreme Court Justice Roger Traynor. In his youth he was a little wild as he built and raced cars and motorcycles, and if you talk to him I guess he's had 1 or 2 crashes in his experience. As a lawyer he enjoyed sailing down in Southern California and now he's up in the Bay Area, and he indicates he's tinkering around a little bit with metal sculpturing and is either opening or considering opening a studio at Mare Island ship yard over in Vallejo. So it's with a great deal of pleasure I introduce our moderator for the open forum, Jack Zepp.

Jack Zepp

Thanks Elwood, I have to tell you it's a real pleasure to bend metal when you're not on it or in it. This is I believe a fairly long standing program and it is designed to be basically a simple open forum primarily to answer questions of Grand Jurors about the Grand Jury process. We have with us today four people who I think are very well suited to talk about that subject. On my far right is Sherry Chesny who you probably all know by now is the chair of our training committee and a former foreperson from Placer. (Inaudible) Clif Poole of Solano County a former foreperson who served on the 98/99 Grand Jury, if my memory is correct. Clif tell me if I'm wrong, it's the 98/99 Grand Jury that did the series of accusations? 99/00, 99/00, okay! So Clif is our guide and has most recently been active with accusations, I believe. To my immediate left is Kay Kauffman. Kay is a law graduate who has decided not to take the bar for now I guess and is enjoying what she's doing with her law degree, currently as a legal assistant. I haven't had a chance to ask Kay about this, it caught my eye when I first saw her bio--but I can't go beyond saying she was with the California Highway Patrol for a number of years. Doing what?

Kay Kauffman: I was the dispatcher and a trainer at the Academy.
Okay you weren't carrying arms?
Nope.

Jack Zepp

And to my immediate right is Jack Olive. Jack is a fellow Marin County resident. Jack is a practicing lawyer, who in 1997 authored an extremely, in my opinion, difficult and well documented, carefully researched and very analytical report on the fact that our County has a retirement system that

was designed in the 1930's and is not workable, and is not likely to be a successful retirement system today. So with those 4 people available to answer your inquiries I think I'd like to just start by opening the floor to anyone who's got any questions about the Grand Jury procedure. Yes Ma'm?

Q (Unidentified) What is the law about a husband and wife both serving on the same Grand Jury at the same time?

Jack: Sherry I'm going to give you first shot.

Sherry.... Well first I'm going to ask because I remember an E-Mail that came in about that and is there anything in the law that says one way or the other?

Jack... If you want to know what opinion I've already given I'm not going to tell you.

Sherry... I remember seeing the E-Mail from some County, I don't know if, whatever County it was, basically asking that question, was there something against it? I think it would be up to the Judge's discretion. Personally, as much as I love my husband, I don't think I'd want to serve on the Grand Jury with him or be on the same committee. Mainly, I like independent thinking and I wonder how much you'd be swayed either by a close friendship or any kind of a close personal relationship. I wonder what effect it would have on independence. There are probably people who could do it and do it successfully, it's going to be a very personal thing that's going to vary from person to person. Personally, as a Judge if I were interviewing, that would have been a negative in my consideration. Those people would have to have an awful lot of positives for me to put both their names in the pool, both at one time. But that's a personal opinion. I've never heard of this before; I've never gotten any feedback in any of the training seminars about this occurring and whether or not it was successful. It's going to be interesting after this year, because there may be a couple of different Grand Juries out there who are experiencing this, it will be interesting to get the feedback as to how successful it was, but I really don't have any prior knowledge of this ever occurring before.

Q. (Unidentified) When they came in to the first meeting I told them not to sit together. (Laughter.)

Jack: Clif, do you, as a foreperson, have a view on this?

Clif: Remember the foreman has the ability to place them on the committees and you may want to separate them off of the same committee for their own benefit. They're independent; they're going to make up their own minds. I don't see a problem with it other than the problems they generate themselves. And in order to help them as foreperson maybe you put them on separate committees. That would be my thought on it.

Jack: Yes?

Unidentified: My view is that it is undesirable because of the strain it would place on the rest of the jurors. That is if my wife was there and she took a position that was not popular others might be somewhat reserved about attacking that position for fear of offending two jurors instead of just one. I think it would be better if they were not on the same Grand Jury.

Jack: Any other views on that subject... yes Ma'm?

Unidentified: I don't think you could stop it from happening, there's no way that a Judge can decide, all names, I mean if you're qualified you're qualified and all names would go into the hopper and, hopefully there's enough names in there that the odds that both would be drawn wouldn't happen. But if they are then, like you said, put them on separate committees. But I don't see any harm in it what so ever.

Sherry...Most of the Counties would have a large number of applicants and the Judges in their interviewing narrow it down to either 25 or 30 people whose names actually go into the drawing. Usually by the time of the drawing, where they draw out of the random drawing, it's only 25 or 30 left in there, so they may have started out with a hundred and eliminated it. That's where the elimination would be done, at that stage.

Jack: Okay?

Unidentified: I would have a concern, and I think the Judges should be concerned with the appearance of collusion. And that the two might act independently. Two can go out and do something. I think there's more of a chance that might happen or that would appear that would happen. And I think that our appearance and our public presence are important and should be protected. I might speak to the Judge about doing it again.
You might save the marriage!

Jack : Save the marriage if they weren't permitted to serve? Okay! I guess in the order of, once we're past saving the marriage, in the order presented, it would be that the Judge might try to preclude it happening during the screening process. It's the one place to my knowledge in which the law might get impacted. Because the law does set forth standards of who can be a Grand Juror and I could see a disgruntled spouse taking a position that the Judge was violating the law by keeping one of the two off of the Grand Jury. If they're on the Grand Jury, it sounds like the wisdom is that the foreperson ought to step in and see to it, first of all have a talk with them, make sure they understand what kind of problems this is creating, keep them off the same committee if that seems wise, and exercise the kind of foreperson authority that would will try to keep the other Grand Jurors from being unhappy about it. And persuade everybody that they are acting independently of each other and try to keep the peace as best you can.... Any other questions? Yes, back there?

Unidentified: Judge Kopp stated that he and the County Council sit in on each plenary session of the Grand Jury in San Mateo County. I find that fascinating and I would be curious as to the panels' reflection on that.

Jack: Does anyone want to--I can give you a legal response--but, Kay?

Kay: I don't know what the legal response is. I know we threw them out.

Jack: That's the legal response. (Laughter).

Sherry: I don't know of many Judges that are that interested or have the time maybe to go in and...Senator Kopp or Judge Kopp now is very interested in Grand Juries obviously and that's why he's making the effort and it may be very beneficial, you know for that particular County. But you're not going to find that in other Counties. I have a real concern about County Counsel being in Grand Jury sessions, he, you know, there was some talk about the conflict with Special Districts, a conflict of interest, the County Counsel has a conflict of interest with Grand Juries because of their involvement with Special Districts. Very seldom does a County Counsel act as a legal advisor for a Special District. Most Special Districts have their own independent legal advisors so it's not with Special Districts it's with the County Counsel's role as the County Legal Advisor. You know and that's where the real conflict is and I was kind of, I perked my ears up, when he said that because I thought he should not be in that room. Because you investigate County departments and he would have to defend them in any case, or action of the Grand Jury.

Jack: Let me just read you what the statute says so that if anybody has this issue, it's Penal Code, section 934, which says: "unless advise is requested", (that's by the Grand Jury), "unless advise is requested the Judge of the Court or the County Counsel as to civil matters shall not be present during the sessions of the Grand Jury". That's the law. The "iffy" one is the D.A. because there is another statute, and I don't have my reading glasses and I'm not finding it right away, but there is another statute that say's basically that the D.A. upon his request or words like that, can appear before the Grand Jury; and the context of that statute is the D.A. needs to get an indictment because somebody is about to leave town or something, he has the statutory authority to convene the Grand Jury, appear, and say "this is what I need from you guys." The legislation that I mentioned the first time that we were together this weekend that I said, or maybe I just said it to the Board, the first thing I did for this association was, I wrote legislation designed to prevent the D.A. from using that statute as a lever to get into the Grand Jury civil deliberations. We made a decision not to proceed legislatively with that statute. That that's not a loophole for the Judge and the County Counsel is clear.

Unidentified: My understanding of the D.A.'s role, that we ran into, we just barred anyone from coming in, County Counsel or D.A., we just told them you come at our invitation or you don't come at all. But my understanding of the D.A.'s clause that you're talking about is basically during an indictment he has the right to be there to present the indictment to you. He absolutely cannot stay during the jury's deliberations. No one can stay except who is recording and at the request of the jury to stay during the deliberations and comments.

Jack: I agree -- you just need to know there are Counties where the D.A.'s take the position that that's not correct, and they're sitting there and they won't leave the room.

Unidentified: Well two attorneys give you seventeen decisions.

Jack: Right, give me fifteen minutes and I'll change my mind...yes Ma'am?

Unidentified: Are you saying that Judge Kopp or any other Judge was not supposed to be in the jury room?

Jack: Correct.

Unidentified: I wonder if anyone in San Mateo County pointed that out, someone should send a note on that. I was curious as I came in late. If I asked a question it might just show I hadn't heard his talk, and therefore it may have been referred to. But I was appalled when I heard him say, particularly because I know Kopp and I know what a heavy-handed guy he is.

Unidentified: Mr. Moderator could I ask just one question?

Jack: Yes.

Barry Newman: When we try and bring this microphone to you it's not because we think the panel will not hear you, we accept that fact. We want to do it because to hear the answer without the question leaves an awful lot to be desired. So if you could just wait a second until I can come over and we get, part of it is to get your question into the record. Because we're hearing the answers just fine. So from now on if you can just do yourselves that favor, it's not for us.

Unidentified: I am from San Mateo County, and I know that it must be very unique for Tom Casey, who is County Counsel. I retired in 93 off the Grand Jury; Tom Casey was County Counsel then. My interview for the Grand Jury was by a telephone call. So it's unique for Quentin Kopp to do it one on one. I mean it's totally different from what has been standard for County Counsels office in the interim seven years so I think it's something that Quentin instituted due to the fact that he felt this was the way he wanted to do it. Whether it's right or wrong, the statute may dictate it, but I will bring that to his attention and probably get hit over the head for it.

Jack: I need to point to whom he's supposed to take the mike to. Yes?

Q. Joe Joynt, Placer County: Read the statute again Jack, if you would please. Didn't it say that unless requested they cannot be there?

Jack: Yes.

Joe: Well maybe San Mateo asked him to come.

Jack: Yes, it's entirely possible. But yes it does say "unless advice is requested".

Ouriana Riddle, Solano County: I'd like to hear the opinion of the panel, of the council of what they think if you invited a manager for an interview in the Grand Jury room and he brings the City Attorney with him.

Jack Z: How about taking that one?

Jack Olive: I think the Grand Jury has the power to interview him without the City Attorney. I don't know that the Grand Jury has to enforce that, or take that position. I think it would depend on the subject of what you want to interview him on, that would be my call.

Sherry: I'd like to say, you know in interviewing, I feel very strongly in interviewing each person individually because you're giving them the opportunity to be candid with you. I think again I agree with what Jack is saying it just depends on the subject. If it was just something to get like an overview of something, maybe having the City Attorney there might be helpful, you know you might want to get information from him. If you're just basically rounding up information. If you're asking specific questions going to one of your investigations, definitely it should be done separately. And I would stick to that.

Jack Z. I would agree. I would just like to add to that, that I don't think he said it in this room but he said it out in the hall, Kelso and his band are leaning towards supporting the next generation of the Baugh bill, which without any question will provide that a target of a criminal Grand Jury has the right to counsel in the Grand Jury room when the target is present. You might disagree with that as a policy but it is clear that is what the Baugh bill will do. What is unclear is what happens around the edges. I know that Clark does not intend to introduce legislation that a witness appearing before a Grand Jury during a civil investigation has the right to counsel. And where the rubber is going to hit the road is between those two. What if you start a civil investigation that converts into an accusation? Where you start a civil investigation and you convert it into a potential indictment at some point, that's where we'll just have to watch and see what the legislation says. Yes, Kay.

Kay: I think with the Baugh bill coming up, any future jury, if it does get through they have to be aware that something that starts as civil might end up as criminal. And so you have to stop and think about whether you truly want to exclude counsel in the beginning, as you may need that testimony.

Jack: Good advice.

Kay: Speaking of confidentiality, if you have two interviewees in the room at the same time, the second one hears what the first one says, and hears the questions that the Grand Jury has asked and therefore it's violating the oath of confidentiality right there, but the fact that they're an attorney might taint that a little better, I mean put a different slant on it. But I would definitely opt for individual interviews.

Jack: The attorney's are just more fun to have around...yes?

Bud Alne from Santa Clara County: My understanding is that 832.7 of the Penal Code, the peace officers personnel records are confidential except for Grand Jury investigations, District Attorneys and the Attorney General. My understanding is there's an amendment before the legislature right now to remove Grand Jury as one of the three exceptions to that confidentiality. Does this organization have a position on that?

Jack: I don't know. Does anybody in the room know whether we have a position on this? Anybody on the board?

Unidentified: I don't think we have a position on this yet.

Unidentified: We don't, nor do I think we have any active consideration for taking a position.

Clif (?): I know it's an actively used procedure, it was used the year before mine, 98/99 for an entire police department.

Unidentified: And my first blush thought on something like that, that would play right into something like the Family Support division and Child Protection Services, that the Grand Jury can't get into the records without getting a court order to get into a specific record from a Judge. And it hinders solving any number of problems and yet the Grand Jury is the only agency or group of people who has a penalty attached to violating their secrecy. Because it's a misdemeanor for a Grand Juror yet the District Attorney or anybody else should they violate the secrecy of CPS or FSD there's no penalty. Just they can't do it.

Unidentified: One thing, can anybody say to what extent Grand Juries currently have the right to access specific records relating to minors, if there's an agency dealing with minors?

Jack: Clif it sounded like we're already addressing that, do you want to take that one? The question is can anyone speak specifically on what the law is regarding accessing records of minors.

Clif: Currently as I understand it, from last year which as far as I know nothing has changed--if you want to access a record of CP or FSD, which is currently under the District Attorney, next year it's under the County or State or whoever, somewhere along that line. Anyway, if you want to access those records the only way you can do that is by Court order, okay, and generally there is a Judge within each County who is assigned to the child area of those particular services. And my understanding of the Judges responses or feeling on it, if you have a specific cause and a specific need to go after a specific case, they will generally grant you the ability to go in there and look at that particular child's case and cause. They will not grant you a fishing license to go searching around for believed, perceived or otherwise miss-abuse within a department. But in a specific case generally you can get a Judge to allow you to go see.

Sherry: I've heard of Grand Juries that have done studies, I'm not sure if it was minors, but they were confidential records that they allowed them to have with the Judge, with the pull of the Judge, they were allowed to get access to, not just a specific record but a lot of them. However all the personal information was blacked out, you know, name, any identifiers, any identifying information was all blacked out.

Jack: Yes sir?

Unidentified: Jack I have a little bit to add to this. When I was foreman of the Monterey Grand Jury we had a case like this and we got a court order but we were never allowed to have the papers in our own jurisdiction. With the papers came a person who was responsible for the papers. It was a whole carrier full of documents. We could go through them, and use them for anything we wanted, take notes, but we could not copy them and we could not have them in our hands, they had to be with this person. That was sense the Court order was all spelled out very carefully, and it was satisfactory as far as we were concerned.

Jack: The person didn't attempt to interfere in your use of the documents.

Unidentified: No.

Jack: Anyone else? Yes sir?

Unidentified: I just want to say, for the information of anybody who isn't aware of this, we had a Court case where our Grand Jury, San Luis Obispo Grand Jury, wanted certain logs from the California Youth Authority and the Youth Authority said no, and besides that next year you won't be able to look into our facility because it's not really a jail. Our local court held that yes we can look into the Authority, it is a jail within the meaning of the law and that we can have the records although certain identifying information was deleted with the thought that if the Grand Jury showed need beyond that we could come back to the Judge. My understanding is that the State deputy Attorney General who was handling it is not appealing the case, possibly because he doesn't want to set a precedent that this applies statewide. So this is just for information of anyone who runs into a similar situation.

Jack: Correct me if I'm wrong but San Luis Obispo got your presiding Judge or Supervising Judge to authorized you to use outside counsel for that litigation, didn't they?

Unidentified: County Counsel conducted the case for us before the local Judge and won the case against the State Attorney General. And again they're not going to appeal it because in my opinion, they don't want to set a precedent, they're willing to give up the records and concede that we can look into their place, with the limits of certain information deleted.

Jack: I apologize, I had the wrong county although you've certainly got a County Counsel with some guts if he's going to litigate against the State Attorney General. Congratulations to your County...
Yes Ma'am?

Jeanne Forbes, Tulare County: The remark was made just a few weeks ago that we really could not look into the juvenile facility because Probation is not part of the "jail system".

Do you have a view on that?

Jack: Clif. Who funds your juvenile facility, your county?

Clif: County, grants, the state. Well if it is funded by the county it's the same thing as Solano County and you can read a report or a copy of a juvenile hall report in that we went completely through it. Juvenile Hall in Solano County, and I would assume in yours, is what I call a prostrated conglomeration, it is funded by the County, The Chief Probation Officer runs it, is answerable to the Courts, but hired by the County. Okay! And when you get a conglomeration like that nobody knows who's on first and what's on second and nobody wants to pay any attention to it. So yes, if it receives County funds, if there are tax dollars from your County, you should have the ability to go through it.

Jack: What you have to watch for, sometimes if somebody says to you "you can't look at juvenile hall" you need to ask them why, because very often what they're saying to you is it's not a "public prison" under section 919. But it is a county operation under section 925 so they blow a little smoke at you by using the wrong statute.

Sherry: I would say whenever you get an opinion from someone about you can't do this, ask them to cite specifically why you can't. Have them give you a copy of the code, the section that they are going by. Don't just take them at their word.

Jack: Yes, sir?

John Roland, Sacramento County: One of the things that the Grand Jury could do to very quickly build public support for them and their operations would be to investigate and report on the illegalities in the Traffic Court System of this state. Traffic court is notorious for violating the law. But there's another more urgent matter that Grand Juries need to address with the elections coming up. One of the things I did last March was to take a camcorder down to election central here in Sacramento and video taped the way the ballots were being counted. As you know as in most counties punch cards are used and part of the punch card operation is to manually remove incompleated punch holes, chad, as they were, from the cards. And this system is widely, is wide open for abuse. You can be sitting right next to someone and they can cast a few thousand extra votes during the course of an evening's work and even someone sitting right next to them wouldn't know it. There's undoubtedly vote fraud going on and a Grand Jury should look into that.

Jack: Well there are two good suggestions for Grand Juries to consider in their priorities.

Sherry: I know in our county our County Clerk invites Grand Jurors to come in and be part of the official observation team of the voting process and you can't touch anything, you can't touch the ballots. But we observed the whole process, prior, with absentee ballots and went through the whole election night and it was very interesting. As far as chads, and chads are those little pieces of paper that cover up the hole. If any ballot has more then one opening on it, it has been punched more then once it's out. It's not counted. So you can't really, what happens in the machines, as it goes through the machines some of that chad is loose and it comes off and therefore there's a potential for two things to be voted on that particular card. Our County is changing to a new type of voting machine this year to get rid of that because of that, you know, that chad. They're the little pieces of paper that fill up the hole but they are loose sometimes and they do come out even though they haven't been

punched out. But really I was very impressed with the whole process from beginning to end almost every thing had two or three people right there but no one person ever had access to any ballots where they could have done anything to them. That's one County.

Emma Fischbeck, from Los Angeles: Yes I don't think very many people understand about what you can observe on election day. But all of the polls are open to public inspection after they close. If you wish to go in and observe the counting, not the actual counting of the votes, but the counting of the ballots to make sure they are safe and secure, you may do that. And they cannot keep you out. And also go to your political party, and there are teams that go down to the headquarters where they are collecting all the ballots, you follow them down there or you can be on the team that's down there until they're all counted. It is open to the public and that's what they do to keep it honest.

Jack: Yes?

Unidentified: In Solano County last March we observed the whole process of the election and the person who does the chad-- to be accused -- I think he has to be a magician to pull those chads without the person sitting next to them being aware of what's going on because I was also impressed of the way the election process was taking place in Solano County.

Jack: Lets see: Dorothy?

Dorothy Snyder, Marin County: I just wanted to address to Cliff in response about juvenile justice. There is another layer here. You get a juvenile hall that not only has county funds state funds but federal funds. So in answer to your question who's paying, you know, there's layers that need to be addressed not just the county.

Clif: I understand but the county funds are what gives the Grand Jury the ability to go in and investigate. When they receive county funds. State funds do not necessarily give you the ability to go in and investigate a local agency. But the county funds almost automatically give you that right.

Phyllis Webster, Tulare County: This past year when I was on the Grand Jury we were interviewing a person that had a complaint, and learned of some irregularities with a water election board voting and a school board voting. We reported the suspicions to the election board and suggested that they have some one at both of those polls for the next election to keep an eye on what was going on. We didn't tell them exactly what happened but that there were suspicions of alleged misconduct, and so that's what they did.

Unidentified: This is in relation to something that Judge Kopp answered but frankly I was totally astounded by the answer. And that is even if a person signed an admonishment that they're not supposed to speak anything about their testimony to the Grand Jury and what it involved, in effect he said "well if they do it you can't do anything about it". Is that just Judge Kopp's opinion or is that established law or what. That really, it took me aback.

Jack: I'll take that, if nobody else wants to. I think that's Kopp's opinion reflective of probably 99% of the Judges. What he's basically saying is we're not going to do it. There's an Attorney General's opinion that said: a) you can give an admonishment, b) it sets forth the language of the admonishment that the Attorney General thinks is valid, and c) it says if you give that admonishment and the witness violates that admonishment the remedy is contempt of Court. What I think, what I'm hearing Kopp say is "we're not going to do it." And I don't think he just means just Quentin Kopp. I think, my sense is most Superior Court Judges are not going to spend time on a contempt of court charge, when the person was not admonished by the judge. Now if it was really important my suggestion to you would be to get the person in to the judge and have the judge say "I am ordering you not to disclose" and read the admonishment. Then if the person violates a judicial order it's pretty easy to get contempt of court. But violating something that a third party, a Grand Juror said, the judges aren't going to mess with it.

(Inaudible)

Jack: No, I'm saying that there is an Attorney General's opinion that says that is the remedy they can use, if they want to. But a judge has discretion whether or not, how and when, to enforce his orders.

Kay: It is discretionary on a judge's part for a contempt of court and you rarely see them. They almost have to come up and yell in a judge's face and they get warned five times; it just doesn't happen. It's there but it just doesn't happen.

Clif: Certainly regardless of what the law says or the Attorney General's opinion you have the Constitution and a person has the right to free speech. If a Grand Jury calls an individual in and says "tell me what you know." It is what that individual already knows, that's their knowledge; they may have already talked to people about it. So you've got a reality base to try to come up with a contempt and I can really understand a judge saying, "no I'm not going to touch it." So I have a tendency to totally agree with Quentin, the Grand Juror takes an oath of secrecy but the individual coming in doesn't.

Jack: Just to add to that, what the Attorney General's opinion, and I don't remember the number to which I am referring, said was basically for the admonition to have any validity at all, forget whether or not the judge is ever going to enforce it, to even be valid it has to be limited to an admonition not to disclose that information "learned" in the Grand Jury deliberation proceedings.

Clif: Oh I see.

Jack: Not the information you brought in. Yes, Peyman?

Peyman: I was just going to make a clarification comment that might be helpful. I heard some of the questions about whether the Grand Jury can investigate an agency, if it's a state agency or local. With the language that's used in the Penal Code about what the Grand Jury may investigate. They use quite often the words "within the county." When they say the Grand Jury may investigate within the county it doesn't mean its only county offices or county departments, it means anything that's within the county. You could have a state office within the county, for example Sacramento, you have all the state offices here and because that's within the jurisdiction of the Grand Jury they can investigate that.

There's been for examples cases where legislators in Sacramento who were accused of bribery and corruption were referred to the Grand Jury by the judge and the legislators were from some other part of the state. Because the act was done in Sacramento, the Sacramento Grand Jury investigated and indicted them. Other cases where judicial officers for example, in the case of *People v Ward*, 1890, a judge was accused by the jury for corrupt misconduct and the judge was in fact was convicted of corrupt misconduct and was removed from office and the Supreme Court reversed on a technicality. But then again that goes to show that even though Judges are state officers for example. Even so they are within the county and the Grand Jury does have jurisdiction. In 1851 when the state was founded there were almost no state departments what so ever.

Jack: Okay, *Samisch v Superior Court*, which is the bribery case you're talking about, does say what Peyman is saying, there's no question about that. There's a lot of open interpretation however in how you treat 919c in its entirety; but that is a point of view that you can validly assert. Yes?

Unidentified: But anyhow like you said they could --our admonishment is just basically the questions that were asked of them. And its read statements close to that. But anyhow like you said they could have talked to every Tom Dick and Harry before they came in and they can still do that. It's just that you don't want them going out of here during a whole investigation repeating the questions so that other people are prepared for the questions that are going to be asked. And that's what it's about.

Jack: There is one other thing I might just mention; it just sort of went by me-- if a Judge were going to be called upon in the exercise of discretion to cite somebody for contempt of court for violating an admonishment my suspicion is that the judge would think very differently if this was a person in a fraud case who went out and went to the press and blew the whole case wide open, then it would be of some witness into the operations of the department of public works who went out and said "God, they're looking into the condition of the roads". I mean at some level you would probably get serious enough that any judge would react but that's going to be on the criminal side. Yes sir?

John Woods, Solano County: I'd like Mr. Poole to give us a few words on his experience with the accusation process.

Clif: Accusation process is very seldom used and probably rightfully so. The power of the Grand Jury (inaudible) ...The District Attorney does not have to prosecute her for any crime what so ever, it is discretionary...he can walk out and say "no I don't want to prosecute". The Attorney General would have the ability to come in if the public cried loud enough and prosecute. The only time a District Attorney in a county has to prosecute is when an accusation is brought forward. What John is alluding to is sometimes you may feel you have all of the evidence absolutely necessary, you may have been assured by legal opinion that you have all of the evidence necessary to proceed with a accusation. You have the total legal right. You have all of the evidence that you believe is necessary to proceed. But if your District Attorney says I really don't want to do this, okay, even though you can force him to do it supposedly you have the legal evidence to do it. You better watch out because we're not attorneys and this is the guy that's got to prosecute your case and in comes reality instead of legality. And all of a sudden you may find out that you do not have the evidence that is necessary to proceed. Okay, so there's such a thing as legality then comes reality.

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