



Grand Jurors Journal

An Association of Former Grand Jurors

Spring 1997 - Howard Rien, Editor - 925 Dowler Drive, Eureka, CA 95501-1216

From the President

On January 19th the Board directed me to prepare letters to all grand juries, grand jury associations and boards of supervisors expressing our concerns regarding CSAC's grand jury reform task force and its ill-conceived "Grand Jury Training, Communications and Efficiency Act of 1997." Our letter was read to the Humboldt County Board of Supervisors on Feb. 4th and they voted unanimously to reverse their position and oppose CSAC's AB829! On Feb. 6th, a CSAC statewide bulletin announced that CGJA was making presentations opposing their bill and urged that CGJA comments be disregarded - they mentioned that only two counties were opposed to AB829, and the rest of the counties approved. Our statewide mailing went out on the 7th. CSAC sent out yet another retaliatory bulletin on Feb. 10th.

Reportedly there was little discussion about AB829 at the CSAC Board meeting on March 19 and 20. The most recent CSAC bulletin reports that only 10 counties have actually endorsed their bill (down from a presumption of 56). They also admitted that other boards of supervisors were re-evaluating their position. The CSAC bulletin failed to mention that three counties are now on record as opposed.

Assemblywoman Helen Thomson (1996 CSAC 1st V.P.) has introduced the CSAC Grand Jury Reform Bill - AB829. Our legislative team will attend to testify at the Assembly Judiciary Committee hearing on AB829 on April 2. The legislative team (legislative and editorial committees) has submitted a detailed 4-page CGJA critique of AB829 to all members of the Assembly Judiciary Committee.

Asilomar - you can now register for the Asilomar Conference. The details of the program are still being finalized; however, we have pre-eminent presenters. The program will focus on issues of grand jury reform. Friday afternoon is devoted to the open forum and educational panels for queries by current grand jurors. Saturday will premiere grand jury reform presentations. Sunday morning will feature the executive committee meeting and a general wrap-up. Register early!

Senator Kopp, at the urging of Hilda Bernstein, sent an informational bulletin to all court administrators throughout the state informing them of the requirements of SB1457, the new grand jury response requirements, that took effect on Jan.1. Good work, Hilda!

Another bit of good news is that the 3rd Appellate Court in *Bradley vs Lacey* has affirmed the grand jury's right to file an accusation without D. A. approval. The CGJA joined with the plaintiff as *amici curiae* (Steve Phipps did the legal work -atta boy, Steve!). This ruling has been approved for printing, which means it is considered precedent setting.

I wish every grand juror would join our unique group to help advance the interests of the civil watchdog jury, particularly those of you out there that fall into the "doer" category. See the "Help Wanted" further into this journal. Give me a call (I mean it). We are not tax-subsidized like CSAC and hence depend on "can do" volunteers who are willing and able to take on approved CGJA action projects and studies and follow them through to completion (as has been done with our Generic Handbook, Reports Index, Conference Proceedings, etc.)

- - Dan Taranto, CGJA President

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Howard's briefs

I couldn't think of a single subject to talk about and it seems that I am expected to write something for this publication. If for no other reason, to help Mickey fill up the pages. So . . . why not some brief observations since the last *Journal*.

CSAC - I wonder how many have seen the letter put out by this August body, almost within minutes, of our Association going on the offensive. On careful reading it really did not address the issues we have raised. Talk about skirting the issues! If you

want a copy I think out President may still have it on file. It is apparent that CSAC needs some additional education on our unique grand jury system. I suppose it is comforting to some though to know that they seem to be running scared.

State Grand Jury - I still hear rumblings in the wings but it seems like a pretty dead issue for California. I must admit that I think there is a need but, how could it be put together? A recent article in *The Militant Monitor* notes that a presentation was made to the Regional Council of Rural Counties' Supervisors in Williams, CA on February 21st on the need for a statewide grand jury. I wonder if our own Al Amaro attended. The *Militant Monitor* is the publication of the Northern California Coalition for Limited Government (NCCLG) headquartered in Dixon. Chairman is Ralph Morrell; he can be reached by phone at 916-678-2543, e-mail at Radsig@aol.com. Editor is Ann Klink. Her e-mail address is AnnieCPS@aol.com. Their research lists five states with statewide grand jury systems: Arizona, Colorado, Florida, Oklahoma and North Dakota.

Annual meeting - Our president and his committee people have lined up some big guns for our state wide meeting in August so make your plans now. Sounds like a wonderful place for meeting with privacy and serene surroundings for relaxation when not busy with the important meetings. I hope I will be able to make it and certainly urge everyone to try their best to attend. You'll find more information elsewhere in this *journal*.

Court funding - With many counties, including my own, having severe money problems the legislature seems to continue to fight over the court funding problem. If this continues I would suspect it could trickle down to the grand juries also. Perhaps it is yet another area that we should watch. Too many grand juries are underfunded as it is and if counties have to kick in more of their general fund dollars for the courts some areas will face reductions. Keep your ears open and be prepared to step in and help your grand jury during the upcoming budget sessions.

Howard

From the South

First Vice-President south says. . .

I have real concerns about any legislation, practice of Constitutional Amendments that weaken or demean the Grand Jury of this Association. I particularly ask that you watch A.B. 163 and its amendments. This, however, is only one of the many social, political and economic currents. Please plan to attend the Regional meetings and state convention. Three words are paramount - networking, networking, networking.

Regional First Vice Presidents and the State President need to be alerted on installation of new officers.

Orange, San Bernadino and San Diego County Associations are working in cooperation with the county governmental structure to follow up on recommendations made by the grand jury that have been approved by the Board of Supervisors as shown in the Board response. this approach reduces confrontations.

San Diego has a representative on the Inmate Welfare Fund Committee, which is under the control of the County Sheriff. This is a move in the right direction.

The Riverside County Association is busy with the Speaker's Bureau. It, too, is looking at continuity and implementation.

There are so many good ideas to help the counties, cities and special districts. The big problem seems to be to get these ideas reduced to writing so other counties might profit. Then is next step is action on the best judgment available. This needs to be done face-to-face in uninhibited discussions in Committee.

Los Angeles County has a strong, viable association that continues to be in the forefront. Los Angeles and Orange County have numerous video and audio tapes. I'd like to encourage the use of these. There is one audio tape that is almost encyclopedic. It is long but it is extremely good. The Los Angeles Grand Jurors Association has an orientation tape for incoming grand juror applicants and appointees.

I beg and plead with you to keep informed and to support your County and State Associations.

Jerome Johnson



**Be sure to register early for the Conference at Asilomar, August
22 - 23 - 24, 1997**

**The speakers and program will be as outstanding as the site is
spectacular**

Legal issues, notes, reminders

Senate Bill 1457 faces first use

This will be the first time that grand juries around the state will be implementing the provisions of Senate Bill 1457, signed into law last September 30 by Governor Pete Wilson.

Some juries are confused about a couple of its provisions, namely:

A grand jury is authorized to request a subject agency appear before the grand jury to discuss or verify the grand jury findings. **Note: this is permissive. A grand jury is not required to have such an agency contact.**

A grand jury is mandated to provide an agency a copy of the portion of the grand jury report relating to that agency **48 hours prior to its public release and after the approval of the supervising judge.**

The bold-faced portions of this summary indicate parts of the bill that were not made adequately clear to some sitting juries who saw only drafts of the bill with some suggested amendments that did not pass.

The bill also requires a specific and detailed response from a subject agency to findings and recommendations in a grand jury report. Several counties had previously adopted such a response format and have found it to be useful.

Legislative Review Committee busy

The CGJA Legislative Review Committee is taking a look at the revisions of CSAC's proposals in AB829, introduced by Helen Thomson. On the basis of their decisions the board will decide the official position of the Association.

Also under review by this committee is a proposal, opposed vehemently by the Grand Jurors Association of Orange County, regarding the disclosure of exculpatory evidence to a grand jury during indictment hearings.

This bill, AB 163, if passed, would add Section 939.71 to the Penal Code, to wit:

937.71. (a) If the prosecutor is aware of exculpatory evidence, the prosecutor shall disclose and, if feasible, present that evidence to the grand jury. Failure to disclose and present exculpatory evidence as required by this section shall be grounds for dismissal of the indictment.

(b) For purposes of this section, "exculpatory evidence" includes, but is not limited to, evidence tending to negate guilt or tending to show that a witness called by the prosecution is not credible.

According to Jody Harrod, president of the GJAOC, the GJAOC feels this would return grand juries to pre 1990 status. They believe that District Attorneys would not bring indictments to the grand jury because many would not stand up in court.

California Grand Jurors Association
Sixteenth Annual State Conference
at
ASILOMAR

Grand Jury Reform will be the focus of the 16th Annual CGJA Statewide Conference to be held at the ASILOMAR Conference Center August 22-23-24, 1997.

PROGRAM TOPICS

- The Mission of Civil Grand Juries in California's Form of Government.
- Reforms Needed to Resolve the Constraints to the Grand Jury System.
- Reforms Needed to Preserve the Independence of the Civil Grand Jury.
 - The Little Hoover Commission &/or a State Grand Jury?
 - Grand jury Reforms During the Past 20 Years.
 - Reform Legislation pending: AB 163 & AB 829 and more

PRESENTERS

Senator **Quentin L. Kopp**, Champion of SB 1457
Jeanine English, Executive Director, Little Hoover Commission
Gerald Ulman, Professor of Law, Santa Clara University School of Law
Jerry Coleman, California District Attorney's Association
Scott Thorp, Deputy Attorney General
and others

UNVEILINGS

The Compendium of Grand Jury Law
Unveiling by the Governor's Office of Planning and Research

The 1997 Index of California Grand Jury Reports
Unveiling by the CGJA GRIP Committee

The 1997 Grand Jurors Syllabus
Unveiling by the CGJA Generic Handbook Committee

OPEN PODIUM

Once again, by popular demand, the Friday afternoon "Open Podium!" for current and past jurors to orate and query on issues regarding grand jury authority, purvue & protocol with a panel of experts.

If you are not currently a member and would also like to receive a registration packet please immediately contact Michael Miller, Membership Chair (415) 344-1074 for further info.(3/5/97)

THINKING LIKE A LAWYER

CSAC and the Citizen Consumer

In 1991, The County Supervisors Association of California (CSAC) completed an organizational renovation resulting in changes that better represent all the interests of California counties.

The significance of the change is best stated by the organization's new name: the California State Association of Counties. While the CSAC symbol remains, the new name encompasses all of the county family.

- CSAC Constitution and Policies (C&P), p. 20

Now county administrators and other "experts" sit in on discussions, participate in "task forces" and everyone is a member of the big bureaucratic family, a jolly on-going commercial concern, but I can't help feeling very much the same way that Robert Redford felt when he asked (in *Butch Cassidy and the Sundance Kid*), "Who are those guys, anyway?" In the movie "those guys" were the Pinkertons pursuing the hero - and I see the Grand Jury in an heroic role: the freely democratic spirit exhibited through the people's right to freely inquire into the government they sanction. CSAC, on the other hand, has begun to appear to me as something like the Pinkertons in the movie: legitimate, sanctioned by authority (CSAC is a non-profit organization), but one never quite knows who they are or what they are doing dashing about the badlands.

Every California county is a member of CSAC and is represented in the organization by a member of the county's board of supervisors. The organization presents a "unified voice of county government" is an "advocacy consortium". What, one wonders, is an "advocacy consortium"? Indeed the organization has many, many tasks: it is a "clearing house" and an "informational", "educational", "information exchange resource".

Naturally, it is also "a center of expertise and counsel for implementing new laws and regulations." The new laws part becomes especially important considering

The reorganization reflects changes in the make-up of California, whose citizenry more and more turn to leaders and administrators of local government for answers and solutions to their problems.

- C&P, p. 20

The orientation of this organization seems paternalistic. As government has more and more presented itself to (and been perceived by) the public as essentially a provider of services, there has inevitably arisen the feeling that government should in some fashion behave as a business. The citizen becomes a customer, a suppliant, a patient, or a client. It becomes the business of government to identify the problem and to solve it. This significant shift in perception has consequences for democratic government which can only be alluded to here.

And CSAC - with \$20 million (from county taxpayers) annually, a 5-story Sacramento office building, and a budget that is not apparently open in its details to the citizen - wants to help with these solutions. This is because,

California's unparalleled growth and expansion in the past several decades have required many to rethink ways of serving the needs of a people who demand quality of government services.

- C&P, p. 20

Angry over a grand jury report, San Mateo County Supervisor Mike Nevin (then CSAC President) has been doing some of that rethinking. He has been largely instrumental in the creation of AB 829, the so-called "Grand Jury, Training, Communication, and Efficiency Act of 1997." This act, while nominally improving training, would improve neither communication nor efficiency. In fact, the bill - which, according to the legislative council, "would require a grand jury to meet with the chief executive or department head of an agency subject to its investigation to discuss the nature of the investigation and to receive the comments of the chief executive or department head" - strikes at the heart of the grand jury process by jeopardizing confidentiality and discouraging whistle-blowing. Although it has been suggested by proponents that the jury need not reveal specific information but merely need advise the department head that the department is being studied and ask for comment, one sees scores of problems. The most obvious problem is perhaps that of the administrator who informs her people of an on-going investigation and either frightens off informants or enable obfuscation.

Even more frightening is that provision of the bill requiring that, "During the investigation and prior to final approval of the report, the grand jury shall meet with the chief executive or department head of the investigated agency to discuss the nature of the investigation and receive the comments of the chief executive or department head." This neglects the fact that the grand jury operates most effectively and ultimately most democratically when it speaks through its report. One again may imagine the arguments that would ensue - even the litigation from disgruntled administrators that could ensue - were this passage to become law.

Now Supervisor Nevin has as much right as any person to be miffed by a grand jury report, and he has a right to get a bill pushed through the state legislature if he can push it. AB 829, however, is being pushed by CSAC and CSAC is publicly funded (but not apparently covered under the Brown Act) so that the end result is that a bill which could truly weaken the grand jury system is being heavily lobbied by persons (supervisors, county administrators, etc.) who are best served by having such weakening occur.

All this funded by the public, the only entity not a member of the new happy "county family."

County government is a one stop shopping center for health care, environmental protection, safety, and an array of services providing Californians with a unique quality of life.

C&P, p. 20

CSAC is not the villain of this piece. I believe that grand jury reports contain inaccuracies. I believe even that talking about reports before they come out is a good thing - in a business! I think that it is possible that many county supervisors and most county administrators would like to see the grand jury a part of the "county family."

But one must recall that the CSAC "family" believes itself comprised of leaders and experts, finders of "answers", purveyor of solutions, provider of a "unique quality of life."

Some expertise and its concomitant arrogance may be necessary to the operation of specialized government - but no one must forget that citizens are the creators and not the passive consumers of government. An unfettered watchdog grand jury is crucial to that creative task.

- - Stephen R. Phipps

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(The opinions herein expressed are those of the author, a California attorney, and do not necessarily reflect the views of the CGJA.)

News from around the State of California

Orange County tracking

The Grand Jurors Association of Orange County notes that the Board of Supervisors approved a recommendation of the 1992/3 grand jury to appoint a Tracking, Implementation and Review Committee (TIRC).

TIRC review reports will then be placed on the Board of Supervisors agenda for possible action. Simultaneously, the report will become available to the general public.

GJAO also has assisted in recruiting efforts for new grand jurors. A group of 230 prospective jurors underwent orientation procedures. This group was then narrowed to about 90, with the Marshal's Division doing a background check and interviews to follow by the end of the March. A panel of judges will choose 30 prospective jurors by May 9; names of 19 jurors and 11 alternates will be drawn by lot May 21, and the new grand jury will be ready to take over July 2, 1997.

The president of the association's Board of Directors has also appointed a chairman for the new Legislative committee to establish liaison with the California Senate and Assembly and to establish liaison with other grand jury associations around the state.

Association hits the road

The Grand Jurors' Association of Riverside County plans to hold its April meeting in Indio.

This change of venue from its usual meeting place of the CASK-N-CLEVER Restaurant in Riverside will enable the group to visit Riverside County's new courthouse in Indio.

Orientation planned

The Orientation Committee of the San Bernadino County Grand Jurors

Association is developing a comprehensive program for volunteers seeking to serve on the San Bernadino County grand jury.

The group is also studying a proposal to the county's Board of Supervisors that would permit members of their association to serve as the County's Implementation and Follow-up Committee. The group plans to have the proposal ready to present to the Supervisors during this spring.

Association members have been studying highly successful Implementation and Follow-up Committees in Orange and San Diego Counties. In a number of other counties, sitting grand jurors provide follow-up through their Continuity Committees.

HELP WANTED!

The CGJA needs someone who can set up a CGJA Website; someone who knows how to prepare a grant application to fund grand juror training programs, educational materials and reference publications; someone who can write clearly and develop informational handouts; someone interested in the preservation of historical documents to help work toward the establishment of a state-wide grand jury reports archive. There are many meaningful projects waiting for you. Perhaps you have some ideas, too. Call me!

It is also very good to simply join and enjoy keeping up with current events through the quarterly *Journals* and the annual conference.

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