



**ROUNDTABLE DISCUSSION**  
**ON**  
**GRAND JURY REFORM**

Transcript of Proceedings  
June 1 and 2, 2000

Moderators:  
Professor Clark Kelso  
Professor Michael Vitiello

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**Roundtable Discussion on Grand Jury Reform**  
**Transcript of Proceedings**  
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## AGENDA

Roundtable Discussion on Grand Jury Reform  
June 1-2, 2000  
2:00 p.m. - 5:00 p.m.  
Seminar Rooms 4 & 5  
UOP McGeorge School of Law  
Institute for Legislative Practice  
3200 Fifth Avenue

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Moderators: Professor Michael Vitiello  
Professor J. Clark Kelso

### June 1 B 2:00 p.m. - 5:00 p.m.

#### **Topic 1. Should the Grand Jury in its current form continue to exercise civil oversight functions?**

What has been the historic role of the Grand Jury with respect to civil oversight?  
How well does the Grand Jury perform its civil oversight role?  
Can the Grand Jury perform its civil oversight function in light of its structure and resources?

#### **Topic 2. Should the target of a criminal Grand Jury investigation have the right to have counsel present during questioning?**

What are the purposes of a criminal Grand Jury investigation?  
Would achieving the purposes of a criminal Grand Jury investigation be undermined by the presence of counsel during questioning?  
What due process rights should witnesses and targets have during Grand Jury questioning?

### June 2 B 2:00 p.m. - 5:00 p.m.

#### **Topic 3. Can the selection process for members of the Grand Jury be improved?**

Should there be more diverse membership on the Grand Jury?  
Should compensation and/or benefits for Grand Jury service be increased?  
Should tenure on a Grand Jury be modified?

#### **Topic 4. Does the Grand Jury need more administrative support?**

Who provides staff support, and is it sufficient?  
Where does a Grand Jury find experts, if needed?  
Does a Grand Jury need independent legal advice?  
Are there unmet training needs for Grand Jurors?

## Attendees

**Ronald Cheek**  
Manteca, CA

**Sherry Chesny**  
Meadow Vista, CA

**Gloria Gomez**  
Los Angeles, CA

**David P. Harris**  
Modesto, CA

**Roy Hubert**  
Modesto, CA

**William Larsen**  
San Jose, CA

**Jim Paige**  
Lodi, CA

**Clif Poole**  
Vacaville, CA

**Dan Taranto**  
Arcada, CA

**The Honorable Terry Van Oss**  
Stockton, CA

**Chris Wing**  
Sacramento, CA

**Jack Zepp**  
Sausalito, CA

## GRAND JURY REFORM ROUND TABLE DISCUSSION

June 1-2, 2000

Clark Kelso: Well it is 2:00 and I will go ahead and start us off. My name is Clark Kelso. Thank you all for joining us here today. To my right is my colleague Professor Mike Vitiello, whose the director of this project, I'm really just the host. The first thing I thought I would do is have us go around the room very quickly just to indicate who you are, and what your affiliation is, if you will.

I'm Jack Zepp, I am the Director of the California Grand Jurors Association. I'm Dan Taranto, likewise I am the Director and Past President of the California Grand Jurors Association. Sherry Chesny, Board of the Directors of the California Grand Jury Association. Clif Poole, Solano County Grand Jury. Amelia Burroughs, I'm Professor Vitiello's research assistant. Cristina Johnson, I'm also a research assistant. Mike Soejoto, I'm the third assistant. Gloria Gomez, Superior Court of Los Angeles County, Director of Juror Services. I'm Bill Larsen, Special Assistant District Attorney Santa Clara County, Adviser Grand Jury. I am also here on behalf of the California District Attorney's Association. Dave Harris, Stanislaus County District Attorneys Office. Roy Hubert, Stanislaus County District Attorneys Office. Ron Cheek, San Joaquin County Grand Jury. Jim Paige, San Joaquin County Grand Jury.

Clark Kelso: Very good, thank you very much. The first thing I thought I would do is to describe to you all briefly how we got involved and interested in this topic. My invitation to you I don't think indicated how we got where we are and I think that is an important piece of context to know. As many of you may know for about seven years or so I have been working on trial court unification issues and most recently I was retained by the California Law Revision Commission as their consultant on drafting statutes to implement trial court unification. In the course of doing that work, and this is now about 2 2 years ago, we did come across some provisions in the Grand Jury Statutes and the Penal Code that should have been modified to take account of unification. We came across a couple of provisions that were really obsolete in that technically they no longer worked as they had originally had been drafted. So I assigned a couple of students at that time that I had to fix up these little pieces of the Grand Jury Statutes and very quickly we discovered that there was no easy way of fixing up the little pieces that we had identified that had a problem. That was my first, really, brush with these sorts of materials.

Last year I invited the Grand Jury Association to come and moderate a panel dealing with training and education of Grand Jurors and was of course tracking along with the Law Revision Commission various Grand Jury bills that were moving through the Legislature. We did take note of Governor Davis' veto of Scott Baugh's bill last year where he said, essentially, one of the reasons for the veto was something like this shouldn't be done without further study. He noted that the Law Revision Commission had not been asked to take a look at this. I had consulted then with the Law Revision Commission to see if they were interested in taking on this particular reform effort and their platter was full enough that they thought perhaps they would not take on this sort of a project initially.

Particularly if we here at McGeorge and the Institute for Legislative Practice, of which I am the Director, if we decided that we would take on this project.

That really then is how we got to where we are. I agreed that we would take on a project to look at Title 4 of the Penal Code dealing with Grand Jury proceedings. I have had some students over the last semester pulling together resource material that we could gather through ordinary channels of legal research and then we realized that's clearly not going to be enough and that we needed to reach out to people who live with Grand Juries on a day to day basis to gather additional information. That is really how we got to where we are I managed to convince my colleague Mike Vitiello to take on the task of being the Director of this project. I think at this point I will turn it over to Mike so he can indicate some of his - where he now stands in terms of his research and some of his background.

Mike Vitiello: The first thing I want to mention is we are transcribing. Your comments will be taped and we will have the comments transcribed, and we will make copies available to all of you as long as Clark has a way to contact you.

Clark Kelso: And there is a contact sheet over there that most of you I think have found.

### *I. Discussion of issues relating to Civil Grand Jury*

Mike Vitiello: Another preliminary remark I want to make is that if any of you have have material that you have either in an office memorandum or the like relating to the Grand Jury process please make it available to us if its the kind of material you can share.

Very briefly a comment about my own experience, one of the reasons why I was a nominee to take over the project was that I served as a Grand Juror in 1995 and 1996 in Yolo County. Despite my experience, whether in fact the Grand Jury ought to be reformed very much is an open question in our mind at this point. So whatever material you have we would greatly appreciate it in helping our thinking.

The format we are going to use today is we are going to start with the first topic on the sheet that all of you have. Should the Grand Jury in its current form continue to exercise the civil oversight function? Because we are collecting data we want to get input from you and I think we will start moving around the room going in this direction. If time becomes an issue then I will ask you to shorten your remarks, but at least at the initial stage if you would go ahead and give us some of your insights on the general topic. Again, we have some break down questions, but the first topic we want to cover for the first part of this session is AWhat about the civil oversight function? Does it work?@

Clark Kelso: I am sorry before we start on that in terms of overall process what our plan is by the end of the summer is to have a document that will have recommendations, very likely proposed legislation except that we will be proposing reforms that again we will circulate to everybody for comment. Then there will be another draft after that and at that point we will probably call it a final recommendation that will be again circulated to everybody. Our plan is to do this essentially through written recommendations.

Dan Taranto: May I ask will that report go to the Law Revision Commission?

Clark Kelso: It sure will. One of the staff members of the Law Revision Commission is next door to me here on campus. I am working closely with them on lots of issues. Nat Sterling, Executive Secretary of the Law Revision Commission, he will definitely be interested. We probably will go to them to get us some help in a mailing list. We have a pretty good size mailing list just to get people here, but they have a much larger mailing list of people who I know would be interested in reading a report on this.

Jack Zepp: Before I respond to the question I just - if you are collecting resources we are - have resources on our website which is [www.cgja.org](http://www.cgja.org) and you might want to check on what's on there. We're adding more all the time. I just found some interesting stuff in a 1962 Santa Clara Law Review article written on reforming the Grand Jury. The answer is short. In my opinion the answer is yes the Civil Grand Juries should continue to exercise civil functions largely in a manner that they now exercise them. They should be better funded to do it, they should be better trained to do it, but they should continue to do it. This is really early in the process to say this, but I must get it out because I don't know exactly how you intend the question. The option, in my mind, and I speak only for myself, is the code now applies to two interests, the regular Grand Jury and the Judicial Grand Jury. An option that needs to be considered in my opinion is whether to stop having Civil Grand Juries spend time doing criminal work and permit them to enhance their civil function which in some counties is now interfered with by the criminal load they have to carry. That is my bottom line.

Mike Vitiello: When you say better funded - to what extent?

Jack Zepp: Well it's up to the county. I served on the Marin County Grand Jury, which I think we have a friendly Board of Supervisors. We have a friendly Presiding Judge, and a friendly Court Administrator. We have a budget of, I think it was \$70,000, but \$40,000 of that was a bookkeeping, it was rent they were charging us for the room they provided so it wasn't money available to us so we had \$30,000.

Clark Kelso: Nice room.

Jack Zepp: Not as nice as this one. We used it all up by the time we ended up circulating our report. In fact, I am sorry I have forgotten your name. Amelia. I gave her a copy of - we did a newspaper supplement that went to 60,000 people. We would not have been able to do that - we also did the 300 copies of the published bound report - we would not have been able to do that if the local newspaper hadn't been willing to do it free. We were out of money. All the mileage, all the per diems come out of that. Somebody from smaller northern county probably has a much smaller budget and I'll let them speak to that. I believe that the Southern California Counties, particularly the ones that are using the Grand Juries to do criminal, they have huge budgets. I think they spend most of it - this is a belief, I don't have any basis for this other than my belief, I think by and large budgets are spent on criminal trials.

Mike Vitiello: When you said "better funded" I assumed you meant increasing the per diem for individual Grand Jurors.

Jack Zepp: Personally I don't think that is a big deal. Based on my experience on my Grand Jury, we serve eighteen months, we only had one person who cared, really, about the per diem. But Marin's not a typical county. It might be a very big deal on other places. I was thinking more about just increasing the budget and letting the Grand Jury spend the money in discretionary ways. For example, child care. We have heard women with children say they would be apt to serve on the Grand Jury, but they can't get a babysitter. I think in many counties, I believe this is coming, it is not there now in Marin, there are child care facilities for the government workers and we just let the Grand Jury participate in that. But if you don't have that, having some money that could be spent on child care type issues, I think would be useful. I have no experience with attempting to get a presiding judge to authorize either independent counsel or private experts, but I am sure there are counties where there is no money to do that . . . . So I just had in mind bigger budgets.

Clark Kelso: Would it be useful for us to have information about budgets in each of the counties? Is that something that would be readily collectible?

Jack Zepp: If you can get the Grand Juries.

Dan Taranto: The Department of Finance, I think, put out a list - and I understand they used to have this ability and they may not have it anymore, but there was a list that was published in 1991 and 92 that delineated the amount budgeted to the Grand Juries in their respective counties throughout the state. If a new list can be obtained that is one of the things we have on our want list is we get a current list. Our suspicion is that the Grand Jury budgets have actually been going down over the past decade rather than going up or even staying even. That most counties are cutting back on the Grand Jury budgets, which are largely already pretty darn minimal. I would say your typical average Grand Jury budget is probably under \$30,000 for the year for 19 people to do all that is expected of them.

Clark Kelso: At the local level who would we ask to get like last year's budget. Would that be the Grand Jury itself or the county \_\_\_\_\_?

*(Everyone talking at once)*

Clif Poole: The Grand Juries actually have them in most cases. Grand Juries can get a copy if you want to request one from the Grand Jury.

Clark Kelso: We have had a pretty good response from our couple of mailings so far, so maybe that is the easiest thing for us to do.

Jack Zepp: We are about done - we call all the Grand Juries in the last month or two months in the process of trying to compile an updated mailing list and I don't see why we couldn't share with you once we have done this. *(Inaudible)* It's very hard to get to Grand jurors, they move. We think there

are some Board members that use the wastebasket when they get mailings from our organization. Some grand jurors we never hear from, we don't know if anything we send out is getting to them.

Bill Larsen: Do you want us to chime in?

Clark Kelso: I think probably - what do you think Mike? I think chiming would be better because these are issues that everyone has some familiarity with.

Bill Larsen: I would suggest...

Mike Vitiello: One thing would you identify yourself the first time you speak because when we have it transcribed I think it would help the person.

Bill Larsen, Santa Clara County: I would recommend that as part of the analysis of the issue of funding for Grand Juries, whether it be civil or criminal, that there be a particularly fine tuned bill of particulars with reference to what the money is needed for. To generically say we need to increase the budgets of Grand Juries without a supportable shopping list of things that are essential to carry out the function of the Grand Jury is likely meaningless. It would appear to me in my many years of advising Grand Juries that although money is always something that the Grand Jury complains about not having, that the key with reference to the civil oversight function is simply that you have a group of nineteen lay people that in a large degree don't have a clue with reference to investigative techniques and the process. They are frustrated and they pick out a few topics to investigate in their jurisdictional arena and try and produce a report at the end of the fiscal year, calendar year, which ever way the particular county operates to impanel their juries. So I think that I would even be interested to know the areas where more funding would enhance the ultimate efficiency and effectiveness of the Grand Jury's product, which is to oversight and report on the functions of county or city and taxing district functions. When it gets into specific areas of needing, in an investigation, an auditor or other expertise there's provisions in the code now for the presiding judge to authorize up to \$30,000 and beyond that the Sups. [Board of Supervisors] have to approve any appropriation above \$30,000 for such purposes. Those are legitimate requests in given instances of investigation, but other than supplying the copy paper, pencils, and the badges, and the I.D. cards, and so forth it is real important to get that budget, that theoretical budget, so to speak articulated in writing as to the essentials that are not currently available, in terms of money, to provide them to get the job done.

Mike Vitiello: Could I ask you to go back to something you said earlier and actually some of your comments suggested that you are less sympathetic to the civil oversight function of the Grand Jury when you describe the typical Grand Jury clueless and the like. What is your view on that?

Bill Larsen: You have misread me 100% wrong. I think that the Civil Grand Jury is an essential aspect of local government. It has been around for hundreds of years and hope to God that it continues to be around. The only practical substitute that I can visualize for the Grand Jury, and something would need to be substituted for it if it was abolished, would be something like the Inspector General, which would be an office that would be a funded office. It would have an Inspector General, and deputies. It would be a separate, autonomous department of government.

It couldn't be influenced by the supervisors, by the city counsels, what-have-you. And they could go in and delve in to the functions of local government without any reluctance and because of their fully salaried positions and what-have-you they ultimately might be more effective than the current structure that we have with the oversight Civil Grand Jury. I am not so sure that the state and the local governments are prepared to fund a multimillion dollar venture going from a modest increase in budget request that has been articulated here to millions or even billions of dollars. So I think the importance of maintaining the basic structure of the current civil watchdog Grand Jury is - even a blind sow can find an acorn from time to time, it is real good to have that lay group routing around in the books, the files, and the offices of local governments. They are not Dick Tracy, and they don't - we cannot expect them to be, they are lay people from all walks of life. I think it is a healthy, important component of government that should not be lightly discarded.

Mike Vitiello: What I would like to do at this point, actually, is to ask first whether anyone in the room takes an opposite view. Takes the view that we ought to get rid of civil function and then - you do?

Clif Poole: No. I just disagree with some of the comments.

Mike Vitiello: If we are unanimous about that - if you are unanimous that we should not get rid of the civil function then I want to put some more refined questions on the table and that is to see how you respond to some of the specific criticisms and to see how the system then could be tinkered with rather than getting rid of the civil function.

Clif Poole, Solano County Grand Jury: I was listening to those comments about the possible Inspector General being a little bit better, and of course I have a tainted view as a Grand Juror, not an attorney, representing or advising the Grand Jury, but in this year alone, and within our little county, Solano County, I can cite instances where there has been at least \$5,000 paid back to the City because of the rooting that the Grand Jury did. Secondly, when you look at individuals, local citizens, as a Grand Jury vs. an Inspector General, the government, the credibility of the local citizen holds more weight with the public than does government inspecting government, it's lost in the process. They may be inexperienced, and they are, and that is part of the problem for the first six months everybody is rooting around digging, trying to find out, and no, they don't have the investigative powers, or abilities I should say, but that is where the education comes in from those that are supposed to advise the juries. That is where a lot of the education comes in as this new law that passed awhile back requiring education and training for Grand Jurors. It has made the difference of daylight and dark in our county and that is all I can speak for. I refer to many of our Grand Jurors prior to that education as mushroom juries. They were kept in the dark and fed what is appropriately left behind because much of county government, and much of government, is political and there is no way of getting around it. It is there. The District Attorney is elected. The County Counsel is appointed by the Board of Supervisors, you have an inherent conflict. The District Attorney has to get re-elected next time around. He is not going to tick off the local political powers if he doesn't have to. The County Counsel is answerable to five people, and he has to be a mathematician and count to three, so he is not going to jump out there. That was my response to the -.

Clark Kelso: A question I would like to raise, sometimes in looking at judicial administration issues within the Judicial Counsel, we all have to distinguish between some of the small and some of the bigger counties. I am wondering if there is any reason to do that with respect to the civil oversight function and in particular with Los Angeles. I wondered does anything work in Los Angeles better than -

Gloria Gomez: I can safely say that, you know I have not been a Grand Juror, of course, and I am not a legal advisor. I happen to be on the administrative side of impaneling the Grand Jury, recruiting and selecting all the Grand Jurors for the regular Grand Jury. Some of you may know we are also in the process of impaneling our very first criminal Grand Jury.

Clark Kelso: I thought you always had two.

Gloria Gomez: No, no. We have been trying, we have been trying very hard to actually bring on a second Grand Jury since about 1992 and have not been successful until now. That is to say the least, I think, part of it that has brought about this change is that there is a real problem with the criminal work, you know, overtaking the civil or watchdog function of the Grand Jury in Los Angeles County. I know from talking with a number of the Grand Jurors the frustration that the experience that they have four days worth of criminal work and then one day only dedicated to the civil watchdog function. And that is a very, very difficult thing to accomplish, particularly when you are doing your committee work on some of the requirements of jail reviews, etc. etc. to try to fit all that type of work in on one day is very, very hard for a lot of the Grand Jurors, at least that is what they express. So I think many of them feel that the function is meaningful and many of them, I think, feel that they really would like to see a much more concerted effort in that area, not that the criminal component is not important, but I think you can't do both and do them well. I think that is what I am picking up from the Grand Jurors in Los Angeles and I don't know I see some heads shaking here in the room so I suspect that that is probably the way most of them feel. In any case that is what we are picking up in Los Angeles from our Grand Jurors.

Clark Kelso: In a government as big as Los Angeles would it be justifiable to say everybody else needs a Grand Jury but Los Angeles needs an Inspector General and they need a big staff. Something different just because of the complexity of government down there?

Gloria Gomez: Well, you know.

Clark Kelso: Maybe you need both the Grand Jury and Inspector General.

Gloria Gomez: You know I don't know that the Inspector General concept is necessarily a good replacement, you know necessarily, for the Grand Jury. I suspect that, you know, I have to fall back on what I heard from the Grand Jurors. I suspect that part of what we would miss in an institutionalized type of structure as the Inspector General office would become, is that you do lose that citizen participation component, that capacity, I think, for individuals to come in, you know, who are not necessarily tied into a particular political agenda. That sort of thing I think is something

I am hearing some times from the Grand Jurors and I wish some of them from Los Angeles were here, but unfortunately they are not.

Bill Larsen: May I just not defend myself, but again I am a lawyer, maybe that is why I am not making myself clear. I was not promoting the Inspector General. I wish I hadn't even articulated it.

Clark Kelso: Well I am glad you did because it was something I was thinking about.

Bill Larsen: The point I was trying to make was that local government needs some kind of rooter. Some kind of outside entity that has tremendous power like the Civil Grand Jury has - tremendous power. To walk in and say Alet me look at your books@. I mean no search warrant, no nothing, that is tremendous power. My only point was that we need that component in government. We need a rooter, we need a function that would go in and look for those acorns and then I concluded by saying I don't think the answer to your proposed discussion topic, I don't think we should abolish the civil oversight Grand Jury. But, you know, in broadening the discussion and responding to the concerns about the community participation and what have you, if the Inspector General concept was something that needed to be looked at further as an option then an elective officer could answer to the people, didn't have to worry about answering to the Sups [Board of Supervisors], or to the D.A., or to anybody else that would be autonomous, but then it gets political.

Mike Vitiello: Let us go back to the - I want to make sure everyone has had the opportunity to have a say on the broadest theme and that is whether the civil oversight function was bad. No one seems to be a dissenter. But I want to make sure that everyone has had their say. I know that - anyway go ahead, did you want to weigh in or anyone else want to weigh in on the broad theme, and then I have some specific criticisms I want to put out there.

Dan Taranto: I would like to make one comment, at your leisure, addressing the comments that I have heard so far, there is one excerpt that I think really covers this topic area on the worthiness with the Grand Jury system it comes from Monroe v. Garrett, the recent conclusion says, AIn our system of government a Grand Jury is the only agency free from possible political or official bias that has an opportunity to see the operation of government on any broad basis. It performs a valuable public purpose in presenting its conclusions drawn from that overview. The public may, of course, ultimately conclude that the jury's fears were exaggerated, or that its purpose, or proposed solutions are unwise, but that the debate which reports provoke can lead only to a better understanding of public governmental problems and operations.@ I think that pretty much covers, in my mind, the legitimacy of the Grand Jury and its role in our system of government. But the one comment on L.A., when you were looking for some new ideas here, and differences between say the counties in small populations opposed to those that are very large populations, I have often over the years teased with the L.A. Grand Jurors that in fact L.A. needs at least five Grand Juries, or at least one Grand Jury per million population because how can they hope to even comprehend the enormity of what is in their purview, let alone tackle it. Whereas in the small or medium sized counties the Grand Jury has a more realistic hope of grasping the field of areas that they have been investigating. So I frequently make the suggestion that each supervisorial district should have a Grand Jury.

Roy Hubert: I don't mean to infer at all that the Grand Jury process is not legitimate. I do think that intuition and anecdotal stories from Grand Jurors, or exposure to them are not necessarily fact. With that in mind - I don't think that because the Grand Jury process is a legitimate process, but that doesn't presuppose that some other process could not also be a legitimate process . And referring to the Inspector General concept, I think we have something akin to that probably in the city and county of San Francisco regarding the Office of Citizens Complaints, which operates to the new cases involving alleged police misconduct. Again, intuition and anecdotal stories are no substitute for fact. But I would suppose having lived in that environment and been exposed to the media for a period of time that the citizens of the city and county of San Francisco don't find that the Office of Citizens Complaints to be an illegitimate process. It has a great deal of efficacy. Perhaps a great deal of fairness in representing citizens= interests. I guess history becomes revisionist with regard to how we view a historical role of Grand Juries, I am not sure what the revisionist's historical role is, I've always viewed it as a bunch of sacrificing citizens who put in a lot of time to learn something new and who sacrifice, who are an objective group of people. On the other hand . . . there is always the perception among some citizens and maybe they are Civil Grand Jury targets or maybe they're office holders or targets of the Grand Jury, that people have personal agendas on Grand Juries and pursue those agendas not in an altruistic, public interest way, but in a personal and perhaps even sometimes vicious way. I just wanted to say that . . . I understand working for District Attorneys who is a political office holder that people may perceive that the District Attorney responds in a certain way because he needs to be reelected. There are District Attorneys that don't need to be reelected . . .

*(everyone talking at once)*

Roy Hubert (cont.): I work for a District Attorney that doesn't respond to that kind of pressure. I think painting with a broad brush like that is really unfair to District Attorneys.

Clark Kelso: The Citizens Complaint model was the other one I was thinking about. I think here in Sacramento it was at least recommended that they create such a board L.A. may have something similar.

Gloria Gomez: We do, we do.

Clark Kelso: And it may be that one thing we may want to try, Mike, is to identify what other types of independent investigatory bodies are there. Just from a functional perspective to make sure that we don't have some overlapping jurisdictions. And it maybe that the only thing you really have is things like the Officer Complaint Board. That is probably worth trying to uncover a little bit.

Bill Larsen: I might just chime in on that. That appears to me, that topic, to be somewhat unique and unrelated to this broader topic of Grand Juries. As I understand these few jurisdictions that have these Citizens Complaint force, that is a very debated issue in terms of its efficacy and its effectiveness. We are the fourth largest (Santa Clara) county in the state. We use the Grand Jury to review, for example, police killings. I comment on the function only in that I understand it to be a situation primarily where citizens complain about the conduct of the police and the Complaint Review Board checks it out. The Grand Jury looks into matters that citizens complain about, but the

beauty of the Grand Jury is they don't need a complaint, they can root. That is the important, seminal aspect of the Civil Grand Jury Watch Dog function - that you don't have something like the citizen complaint.

Sherry Chesny: I have something to say. I think what would be hard to replace is the fact that the government wants citizens. It is our government. It's the people's government. I think that sometimes politicians aren't reminded of that on a frequent basis. And I think that to me the way I see a Grand Jury is that they take nineteen lay citizens and yes, we're lay citizens, and I think that is what we should be, lay citizens. We put them in a position for one year of studying and looking at your government and then you write a report for the citizens of the county - report back to the citizens. I think to have it anything else you take out that citizen element which I think is very important to have in government. Because it is the people's government. I would say as far as complaints, complaints can be about anything. It can be about a special district, it can be about a school district, it can be about a police type thing or whatever. So, you know, if you have complaint centers for police issues they aren't going to be able to take the wide variety that the Grand Jury can take. I think the complaint role is very important.

Mike Vitiello: I am going to use the prerogative of the chair and see if there is any dissent from the following proposition, and then I will move the discussion to a different, a slightly different area. I take it that we are unanimous that preserving the civil oversight function of the Grand Jury - that we should preserve it - the civil oversight function of the Grand Jury. There is no dissent on that proposition. And again each of us may have a slightly different view about whether other entities ought to exist to handle different kinds of complaints, but at least on that broad theme we're unanimous. If that is a fair characterization, I want to toss out some specific criticisms that have been leveled at the civil side of the Grand Jury and see how all of you react to them. One of the comments, actually it is hardly a single comment, one of the criticisms that has been leveled at Grand Jury reports, sometimes even leveled by Grand Jury reports themselves is questioning whether they come up with worthwhile suggestions. Let me read to you, for example, one San Diego Grand Jury made 103 recommendations of which city and county officials were unable to find a single one they acted on that wasn't already in the works before the Grand Jury report. Critics have also charged that every year when a new Grand Jury is impaneled it spends much of its time reinventing the wheel. Treading in the footsteps of predecessor whose reports have been ignored. The criticism I want to hear some reaction to is that things that Grand Jurors focus on are already subjects that have been identified by local officials, and they know that there are a problems and, by and large, Grand Jurors come up with retread ideas. Ideas that are simply retreaded and that the Grand Jury reports are by and large ignored. Familiar criticism? You all heard it? Okay. So I haven't invented that one. Go ahead.

Clif Poole: I would have to agree with some of the comments and I attribute much of it to the education that is there, and the training, and hopefully it gets changed. But to stop it, no it will never stop as long as you put nineteen new people together each year. Hopefully you can modify it through training, through education and you can help it along so you don't have 103 reinventions of the wheel. And that is what has been going on for years as I understand it within the Grand Jury system. No training, no education, 19 new people every year, 10 or 12 whatever the number of replacements

is, and here they go. Try to bring them together, they're lay people, no, they don't understand investigative practices, no, they don't understand government in many cases. If they are fortunate they have a couple people on there that maybe know a little bit about it, just enough to get them into trouble, but they need an education of the Grand Jury. Those Grand Jurors that are picked for a year. California Grand Jurors Association, I wasn't even aware it was around until recently. Since then I have joined. I am not active in it yet. We don't have a chapter. Here is a resource. Again, I can only speak for one county because I haven't been around the state, I haven't seen the others and if you don't know what to do you are going to spend the first few months getting into trouble trying to find out what to do, and how to do it. You are asked to write a report. Not everybody understands what they are looking at as they go through, but again some of this education and a little bit of carryover I think could help tremendously, benefiting everybody.

Dave Harris, Stanislaus County: I don't really see that that criticism being that much of a criticism because a lot of times what is happening is you have common sense vs. bureaucracy. You have lay people coming in going, "why do you do that?" And the bureaucracy is going, "well, because we always have." They never answer the question "why do you do that," so it gets retreaded and the other thing which is part of the first, criticism that the government is working on a process to fix it, but it takes them forever to put together a committee, put together a study, to put together a panel, to put together a commission before they ever get around to saying should we actually do it. The Grand Jury just uses common sense and most of it goes, "why don't you just fix it." It's a criticism that can say we are working on the problem, but I think the Grand Jury is very effective in just coming right to the point and saying this is a problem, fix it. I don't view those criticisms as really being valid. I think it is an oversimplification of the distinction between the Grand Jury, what they are looking at, and what the government is looking at and trying to dodge what the Grand Jury's looking at. That has been my practical experience with advising the Grand Jury for a number of years.

Mike Vitiello: Other reactions?

Dan Taranto, California Grand Jury Association: The one comment I want to make with regards to the San Diego example of 109 recommendations, all of which were underway by the time the report was due, this is a very common. Grand Juries are conducting their investigations, they stop by the office, they see that the handrail is missing from the stairway up to the rest room, and they think, "hmm, missing a handrail." Well next day the handrail gets replaced, but three months later it comes out in a report that the handrail should be replaced and the department says we fixed that a long time ago. It is one way to kind of shrug off the liability of what the Grand Jury is - it is a very typical kind of thing. It happens over and over every year. The other issue that I stand on reinventing the wheel. Grand Juries redundantly redoing things that prior Grand Juries have done, I think the key problem here is again support to the Grand Jury, lack of facility. Its astounding to me how few Grand Juries have decent... (*tape ran out*)... have to scratch all Grand Jury reports for 25 years so that any brand new Grand Juror can almost immediately determine what the former jurors have been doing and if they come on to an area of interest this year, say handrails in Department X, they can refer back to those 25 years of investigations to see if the handrail was reported before or other kinds of problems Department X had. So that by the time they visit the Department X they are familiar with where all

the predecessors have been and what they recommended. They can then follow up to see if those recommendations have been acted upon or if they are ongoing chronic problems that still haven't been attended. So they can be more informed before they actually visit the department, but they need those resources, the key to effective Grand Jury system is almost generically tied to how fast they can get their hands on accurate information. By having their own library of former Grand Jury reports, as well as operational manuals in the various departments, or city charters, county charter documents that have an impact on their authority. If they are readily available to them, as opposed as to having to even look for them, and ask for them, and wait for them to come, the jury just has that single year, and every delay in their ability to pursue an inquiry impairs their ability to do a more thorough and complete job of it. So resources, I think, largely explain the reinventing of the wheel.

Jack Zepp: I would like to respond to the San Diego comment. I think that completely overlooks a major function of the Grand Jury performing its civil oversight function, which is in some way, its the flashlight that is shining on the problem. But if the county turns around and fixes the problem the Grand Jury is happy. Its done its job. You don't need to get the credit for the report you have done what you are there to do. I would be willing to wager that at least half of those hundred and some odd instances where they are saying it was fixed by the time the report came out -got fixed because they found out the Grand Jury was investigating them. As soon as you go to somebody and say I would like to see how you are handling this item in the budget, they know you are looking at them, and that if they are doing something wrong they fix it, and that is what they are there for.

Clark Kelso: That is one thing, at least if I understood the statute correctly, your report comes out at the very end, within thirty to sixty days. Can you do things earlier?

Jack Zepp: Yes. On my Grand Jury we issued, I think from our third month consistently almost every month through the end of our time.

Sherry Chesny: But they are all called 5-1 reports.

Jack Zepp: Yeh, they are all through the year, but they are bound in one volume.

Clark Kelso: Okay. I got you.

Clif Poole: Yes, going on what Jack says this is the first year our Grand Jury has issued, what we call interim final report, it's the same ball game. As soon as they were prepared we started issuing them. That stopped some of the San Diego comments. It didn't give some of the entities time to get their act together. They were caught by surprise this year, totally.

Mike Vitiello: Any other comments on that broad attack, because then I have a question I want to toss out if there is no one else who wanted to comment on that. One of the things that I have asked my research assistants to find, because they keep quoting different figures in documents they have given to me, about percentage of recommendations that are acted on. Bruce Olson wrote in 1966 that 30% of Grand Jury recommendations are acted on and I am wondering if any of you are aware of other data and then - no, no one is aware of any other data. Okay, we have actually identified

other - Can you give me an anecdotal sense then, in your experience, of percentages of recommendations that are acted on?

Sherry Chesny: I have served on a Grand Jury three times in Placer County, and I sincerely believe, from my own experience, also, I hear the complaint a lot at the training seminars for the Grand Jurors, "we made all of these recommendations and they didn't accept any of them - nothing was acted on." Government doesn't work quickly, it does not turn on a dime, and what you see, if you really look, is that some of those recommendations are going to be implemented two years from now, three years from now. I don't think anyone has done that kind of review, that is what really needs to be done. It doesn't happen quickly. On some things you do. I have no idea what percentage are actually acted upon.

Gloria Gomez: I can safely say from, you know, since I have been impaneling Grand Juries for the last, I don't know how many years, from the repeat of Grand Jurors that come on board, we do hear that there is frustration with the fact that the recommendations sometimes on the reports that come out at the year end, that they feel sometimes, although the work is heavily there, they have done a whole lot of homework, but many of the recommendations just are not acted upon and it does bring a little frustration. But then I keep asking well if that is the case, you're back. I think it is the dedication for the job and it is a very meaningful thing for - you know the reports and so forth that come out. Sometimes they do cause quite a stir. In Los Angeles, last year, the Grand Jury put out a report on the L.A.U.S.D. Belmont High situation, and I know that it caused a major problem, a stir if you will, not a problem necessarily, but a stir in terms of how that project was perceived, etc. Not necessarily welcome to the communities it would benefit from the opening of that high school, but nevertheless this is the function that I think some of these reports do play if nothing else they do focus in the attention. But there is frustration that the recommendations are not necessarily brought into being and acted upon. . . .

Roy Hubert: I have experience in one county, not the one in which I work currently, but with Civil Grand Juries. I think almost all Grand Jury recommendations are acted on at one level or another. I think perhaps it is human nature for governmental officials are being criticized implicitly or explicitly with regard to Grand Jury recommendation that they are not going to assume a lot of visible responsibility for getting something wrong, inadequately, or perhaps not being totally competent, but I do think there are responses at different levels. Stanislaus County, I know, looking at the Board's agenda, directs department heads to respond to writing to recommendations from the Grand Jury, not all of them, but some of them. That is a form of response. Whether that's been, in a pragmatic sense, particularly useful, I don't know, but it is a response and it is a form of acting on. I think change also occurs based upon these recommendations, and it may not change immediately, but I think it's long term change, I have observed two examples of where government and unit functioning has changed in anticipation of the next Grand Jury's report employing criticism the second time so there's been a policy change, or an activity change, but its not immediate or immediately reflected. I am sure that's got to be frustrating to the Grand Jurors. I think also in terms of public policy development, I think it does shape and change long term public policy because the public is very interested, I think, in those recommendations and response to them gives a lot of

attention to them. That's a citizen participatory kind of thing that is so important in this process. So I think there is always change.

Ron Cheek: I agree with - your statement as relates to the criticism that all it is is a rereading of old ideas. I don't take that as a valid defense because in fact it is brought up again and again, and it does have an impact on that department head, or that reported, or that function over time. They don't want to be criticized over, and over, and over for the same issue. The one comment that I have that was raised (I just finished up a year on our Grand Jury) is that the education, the training, the resources, those are all important. The urgency is something that our Grand Jury didn't recognize and that should be part of the training. I'll tell the Association. But some how that urgency has to get out there more because the time, our foreman explained when we started, the time is going to fly by - and none of us listened. The urgency of the whole situation is really (*inaudible*) is one year term and you have enough time - many of the things we worked on were things that take a full year to really investigate and understand for 19 novices to really understand the details of these kinds of things. We spent the first 3 to 6 months - knowing what a Civil Grand Jury is supposed to do and that's a waste. Got to do it faster.

Clif Poole: On this response, I think the responsive government, in many cases, is proportional to the publicity that the Grand Jury report gets. And it is not the pressure of the 19 people, but is the pressure of the entire county if the newspaper picks up on the Grand Jury report and the more that publish it the more response you get out of it. A second factor that enters into it if a Grand Jury, 19 people, all of a sudden tells the city, or county or agency that, "gees you need to do this and it only cost you 3 million dollars folks," well you carry a tremendous amount of weight. I don't think you carry 3 million dollars worth of weight at the time. There is going to be a long process that gets to that point. In our particular instance this year, I have had some of the same comments from our Grand Jurors that gees, you know you are not accomplishing too much. We have 7 cities in our county and 7 cities have now adopted brand - or are in the process, I should say, of adopting brand new travel policies, and expense policies on how their politicians travel and how they account for it. I don't feel bad at all, okay.

Jack Zepp: If you are looking for statistics on responses, I suggest that anything - any statistic you can develop prior to this year is meaningless, because this is the first year that Grand Juries are getting comfortable with 933.05, and the fact that the agencies, elected officials, have to respond to the Grand Jury, and have to tell them that they are going to take an action, what they are going to do, and when they are going to do it. So, this year's Grand Juries are the first ones to look at, last year's Grand Juries, the responses they got and they are now in a position to see - oh they said they were going to put the hand railing up in a month. Let's take another look and if they didn't they either issue another report or, depending on what it is, they issue an accusation. Some of the chapters of the CGJA are undertaking to help on this motion. They are doing additional review of responses (*inaudible*) the public and then advising the Grand Jury which ones - these are typically people voted for to begin with, stay active in the chapters. In some counties, I think San Diego is one of them, the Board of Supervisors enacted legislation authorizing a Review and Implementation Committee, whose job it is to see that the Grand Jury recommendations are being followed. So these 933.05 and

I believe some of the cities, like San Diego, I think is going to cause a much higher response rate going forward than whatever it was in the past.

Bill Larsen, Santa Clara: I agree with the gentlemen, in 933.05 of the Penal Code it says just that, and it also illustrates something that in an otherwise pretty good statutory scheme that doesn't need radical surgery, but illustrates that maybe just some clean up stuff needs to be done. For example, in 933.05 of the Penal Code, it says Subdivision (a) AFor purposes of subdivision (b) of Section 933". Well unfortunately 933 of the Penal Code was amended at the same time and they added a new (b) and changed the old (b) to (c). So (b) now provides that Grand Jury reports will be lodged with the county clerk in each county, and in perpetuity the reports and the responses thereto will be lodged with the archives of the State Archives. So we have right in the same legislative process, the same exact time, over here at this wonderful place with the dome, they have 2 bills side by side and they create this kind of ambiguity which on its face obviously they can figure out what they are talking about, but on the face of this statute it's totally ridiculous. So going through with your fine assistance, I agree that there, because it has developed after the common law structure was put down by our legislature, there have been some piece meal statutes relative to the civil and criminal process, that have created some anomalies and some inconsistencies with reference to a nice smooth nomenclature. But the statutory scheme itself, both civil and criminal, are pretty darn good, may not be broken, and may not in substance need to be substantially fixed.

Mike Vitiello: Let me toss out two other criticisms that are actually related and then I would like to ask another question. The three things I want to put on the table and then spend about 20 minutes or so and then take a break. Two other criticisms, the Grand Juror who has a personal agenda, gets on the Grand Jury with a personal agenda, and therefore the Grand Jury goes investigating things that perhaps should not be investigated just because of that personal bias as a Grand Juror, with subpoena power and the like. And that blends right into the other criticism, although sometimes they are stated separately, and that is the Grand Jurors= abuse of power. And the common example that is cited is the case of the accusation about the Mayor of San Diego involving the - what was it Proposition C -the downtown ballpark measure. Again, I don't care about the specifics of that, what I want your reaction to is are Grand Jurors exercising their personal agenda if they get on the Grand Jury, if they have an area that they want to use this power, and then do they abuse the power once they are on it? And the final thing I want to do in the time we have left is to talk about specific improvements to the Grand Jury functions to address some of the problems that you have in fact eluded to.

Clif Poole: Obviously I have an opinion on everything. They do get on the Grand Jury. Yes, they are there, and they are going to be there from on out, there is no way of stopping them because the manner in which the Grand Juries are picked; you try to weed them out through your interviews, but you don't always catch it. But remember they are one of 19, and in most cases, and I can flat tell you in our case, they were weeded right out to where they became totally and completely ineffective on the issue. We got to the point of saying, "you will not bring up anything on this because nobody is going to listen to you and let you work around everything else." And it is going to happen. I don't know of any way of stopping it.

Mike Vitiello: Well I suppose in the extreme you get rid of the Grand Jury, but we have decided we are not going to do that. Your point is yes it exists, but that the fact that we have 19 people on the Grand Jury is enough to blend out that imperfection.

Clif Poole: I would say in most cases the other 18 jurors can and do control that. Is it going to happen 100% of the time, probably not.

Bill Larsen: I did an unprecedented thing in our county, Santa Clara County, it never happened before. I got a call from some other Northern D.A.'s office. They were beginning to have a similar problem with their jury, but ultimately our presiding judge, 2 years ago, canned, in mid-term, the entire jury. It was a dysfunctional jury and they took it to the Court of Appeal, and said they had the right, the dissident five, they had a property right to hold this office and the judge denied their hearing. The Court of Appeal denied their writ and they sought review and the Supreme Court asked for the full briefing on it, without granting a petition, and denied their petition for review. Upholding the proposition which the presiding judge, although limited in his supervisory powers, could exercise that power of canning this organism. So it doesn't get that bad it's unprecedented. Unfortunately we were the example, but the gentlemen cited the typical dynamics that I have seen occur from year to year. You have potentially, from year to year, the one or two or three that are out of step with the others, and they are in our county during the litigation that I just discussed, they complained about being marginalized. Well, that's what happens. They get marginalized. It's a practical dynamic.

Dan Taranto: I think that it does exist and in the workshops that I have been involved in I basically suggested that there is not a human that walks the earth that doesn't have at least one bone to pick with something and so we all carry our own predilections and predispositions on certain kinds of items, but the way you mitigate that is a good orientation, a training program pointing out that this kind of behavior, when it occurs, is disruptive and nonproductive, and that people should stop and think about what it is that is in their own system that they might be a little bit blood red about and recuse themselves in those kinds of issues, and realize that their overzealousness on a particular official, or particular governmental process could give the whole Grand Jury a black eye and they certainly don't want to drag that baggage off ----. I think just that kind of a wake up call can eliminate a lot of that sort of stuff, but when the jurors are unfamiliar with what their purview is what the ramifications of their behavior is, then they say they are more subject to goofing up and getting a little carried away in certain areas, and not realizing what the rules are. Training is the key.

Sherry Chesny: I think to, sure people might have their opinions on different things, but Grand Juries don't print opinion, they should be printing information that has been verified, not our opinions. . . . As far as the Grand Jury being (*inaudible*). It takes 12 votes to issue a study, so one person might have an agenda but he's not going to get very far. You know when you have 12 votes to undertake any kind of work at all. That right there I think is the big balancing thing. For my own experience in 3 years, I would say once we had a person who came into that jury with a bias. It was obvious from the beginning. The other jurors just immediately, just shut this woman up. They wanted to be as far removed from her as possible. We told her, we don't care, we don't want to know those types of things about people in that department. She had an inside relative that worked in a

certain department. She was trying to tell us all the nitty gritty. So it went so far that eventually she had one friend on the Grand Jury, and she and this friend decided to start their own investigation. But they never asked the full panel. It was never voted on. It was their own little private investigation. Well needless to say when that came to light they were removed from the Grand Jury. With the jurors going to the judge saying we want this person removed.

Gloria Gomez: In Los Angeles we - it is an interesting process that we go through when we do the actual recruitment. Of course, we do our judicial interviews. Most likely all of you go through the same process. The interesting thing though, we do do a very interesting screening process where the foreperson for the Grand Jury - the 23 people who express an interest in Los Angeles to become the foreperson, go through a pretty stringent interview process to see if they have an agenda, and then moreover - actually one of our favorite judges who frequently is part of our panel for screening the foreperson - has a favorite question and usually its Awhat would you do if you find a Grand Juror who is interested in opening up the Marilyn Monroe death situation?@ That question normally solicits a lot of information about how a person is going to handle a recalcitrant Grand Juror. Nine times out of ten you can see how people are going to react to that kind of a situation. I am always part of the interview process for that and I think it is very clear that when you have that strong leadership and a strong legal advisor willing to nip something like that in the bud you really don't have to face those kinds of issues. I think you are absolutely correct. Peer pressure is the other component. You know, people just are not going to stand for that sort of thing. So, it works, it works very well. I know we have had only occasion in my tenure that we had a recalcitrant Grand Juror that just was absolutely intolerable and I think those three sources of pressure put that whole thing aside.

Jack Zepp: I cringe at the thought that proposed legislation relating to Grand Juries regarding legislature because God knows what they will do if it gets in there. But you are obviously considering that in any event, - if you get a person of that type - and I agree with the comments of the other Grand Jurors to either absorb them and/or marginalized them, the exception is the foreperson. If you a foreperson with an agenda, I think you have a real problem. And Dan and I were talking coming up here, there is a county where the judge, and under the law right now the judge appoints the foreperson, can get some real (*inaudible*). In some counties the judge appoints the foreperson for two months. Then the Grand Jury votes on who they would like their foreperson to be. The judge removes the first one and appoints the second one. So, however you want to do it legislatively, just change what a lot of states do, which is the Grand Jury elects its foreperson.

Mike Vitiello: Which actually is a good segue into a break in a few minutes. Assuming that there is legislation. No one thinks that the way in which the Civil Grand Jury is constituted is perfect and so in the last few minutes, what suggestion do you have? More training, you don't have to repeat that one - that's a clear message. But other suggestions on specific improvements to the Civil Grand Jury to allow it to do its function better than it does now.

Dan Taranto: It needs a dedicated office, it needs a library that's staffed with adequate materials for quick reference to anything that might come under the purview generically - like operational manuals, the specific laws that describe their powers and authorities and what not. Those two things,

I think, are imperative. There are many Grand Juries in this state about half - that have no dedicated space. They have no typewriter, they have no desks, they have no telephone, they have no fax machine, no copy machine, no file cabinet, no bookshelves, nothing. They operate out of cardboard boxes that they pack in to wherever their meeting room is out of the trunk of somebody's car. And when you have to meet that way, 19 people converging to collaborate, it really impacts their effectiveness. There should be a dedicated space, such as this, that the Grand Jury has exclusive use of and can keep files, documents, work spaces, to have meetings that are convenient to them, as opposed to having to compete with scheduling the meeting spaces that might not be available except once every two weeks. Again, this all impedes the ability of the Grand Jury to effectively use their one year tenure.

Sherry Chesny: As far as Grand Jury organizational, it varies tremendously. I don't think you can find any 2 of 58 that operate exactly the same. I know the county that I came from, now they appoint - the foreperson is selected from those jurors that are selected as carryover. So they have already had a year experience. So they are going in with a year experience already, and I hope they will be carefully screened so they don't carry forward any kind of agenda from the previous year. That has some strength because the foreperson has had a year experience. The other thing - the way it used to be in our county - and also I thought was a good idea, is they appointed carryover as a temporary foreperson for a month or so. During that time the Grand Jurors got together, they worked together, they have an orientation program. The judge would ask us to send him 3 names of 3 members that we thought would make a good foreperson. So this was our input. He chose, and almost always the judges would choose from among those 3 because we were recognizing the leadership, but the judge had also seen in the interview. One time, this was a situation that Jack brought up, goes along with that, what do you do if you have a foreperson whose is not objective. In Placer County one year we did have a foreperson that the jurors - he was not one of the three. The judge chose someone else rather than any of the 3 which - we were willing to accept that. But this man was a tyrant, very autocratic. For example, he went through all the mail. He decided what complaints the jury should see, and which ones they should not. He did things his own way, period. When the jurors complained to the judge, the judge said He's your foreman, you're going to have to learn to work with him. It turned out later the jury found out that he had been the judge's campaign chairman when the judge had run for reelection. So there was a tie there. Anyway the jurors eventually went to the rest of the Superior Court and they had an in camera hearing. You know with the other 3 judges. In the newspaper the foreperson resigned due to his wife's health. See, you let people save face, that was a nice way to do it and that solved that problem. But you know occasionally you can get a foreperson that is a problem and the judges need to take notice of that. By the time this was resolved, I think they were well over half way into the year, if not 3/4 of it.

Gloria Gomez: Your question having to do with - what else would you do to try to keep up the civil function. One of the things, as a person that does, or attempts to do recruitment and fails miserably most of the time, I think a need is very prevalent to have public relations, or public outreach, community outreach, you know, to inform the public at large what a Grand Jury does. What is it? It doesn't make for a very easy task, if you will, because its not a sexy thing in the media to be able to provide public information about what a Grand Jury is and please apply etc., etc. But you know the problem is that many people just don't understand that there is such a thing as a Grand Jury, and

what it does. In our particular county with the diversity that we have, I am sure many other counties are similarly situated, we have a real issue. Reaching out to all parts of the communities that are out there. So, something along those lines might be of some benefit. Maybe the Grand Jury Association could take on some sort of an effort in that regard. But I think that that would very much improve, I think, what you see in terms of the Civil Grand Jury functions and if there was some educative process that was reaching out to the public at large.

Mike Vitiello: Lets take a 10 minute break and then reconvene at 3:30 and start talking about the second topic, and that is: Should the target of the Criminal Grand Jury investigation have a right to counsel present during questioning?

BREAK

Mike Vitiello: Why don't we get started again, it's getting late in the day.

*(End of first tape)*

## ***II. Discussion of Issues Relating to Criminal Grand Jury***

Clark Kelso: ... Grand Jurors, and I hate doing things, you know to - that in small counties it makes absolutely no sense at all to split them [Criminal and Civil Grand Juries]. But I wanted to raise the question whether they should just be split. It seems to me the issues that they cover are very different. You may want to have very different selection mechanisms for the people who are on the Criminal Grand Jury vs. the Civil. And they relate to the problems of cross representation of the membership on it. The issue about right to counsel, it seems to me, is very separate so I am really wondering about, you know, does it make sense to just - instead of making it an option, to split.

Clif Poole: In the true sense of Criminal versus Civil, I think yes it probably would make sense, although our Grand Jury in Solano County, we have never been used as criminal, but I can understand in L.A. where they do use a Criminal Grand Jury quite a bit.

Clark Kelso: Yes, I think that is my other point that I was thinking of, is that Criminal Grand Juries are used less frequently than they were historically. You've got to wonder why that is still. You need a Criminal Grand Jury, then impanel one.

Clif Poole: Where I was going with that is the Civil Grand Jury on occasions runs into something that all of a sudden may become criminal. Now, if you're meaning to void them from doing that, and having to move it somewhere else, you see the cross-over?

Clark Kelso: Yep.

Clif Poole: Okay. That would be the only concern I would have, other than that on a strictly criminal where the District Attorney brings in a criminal case, says please issue me an indictment, etc. in that fashion I would have no problem with the separation.

Dave Harris: In our county there is no problem. We have two separate Grand Juries and if the Civil Grand Juries investigating something and it starts to turn into criminal they work with our office to get it switched over. So there is no logistical problem doing that, and it makes it more efficient for them, so they don't spend a year coming up with something then writing a report saying somebody should be indicted. Because in our jurisdiction they are not selected so that they can return an indictment.

Clark Kelso: Do you send lots of criminal cases through the Criminal Grand Jury? Is it kept busy or is it once a week, one day a week.

Dave Harris: Probably about an average of one a month. We don't do as many criminal indictments, and again part of that is after Prop. 115 it is much more expeditious to go through a prelim and do a hearsay prelim than to go through the Grand Jury now, so that moves it that way. But having them separate allows the Civil Grand Jury to concentrate on what they need to do, then something that is criminal can get switched over fairly quickly.

Jack Zepp: I agree with you Clark, that if you don't split them it is going to be very hard to write the legislation that, assuming we are going to have some version of law, it's going to be very hard to write legislation that determines when, during the course of a regular Grand Jury's investigation, a person is certainly entitled to counsel. If they see something turning criminal, they are about to turn it over to the D.A., I think it will be very hard to deal with that. There is also a concern, in my mind, we just need to be careful about what happens to 919(c) if we are talking about splitting the Grand Jury. That is the power of the mandatory obligation to the Civil Grand Jury has to investigate basically misfeasance in office, and that very often is going to be potentially criminal.

Mike Vitiello: I would like to toss in an earlier question from my experience on the Grand Jury and that is in the entire year we spent only three days doing indictments. I wonder how typical of - that was Yolo County - and I wonder how typical that is of small counties. Because if it is typical that you are doing very little indictment in small counties then should that county have to impanel a Grand Jury as well as a Criminal Grand Jury.

Bill Larsen: Bill Larsen speaking, Santa Clara County. We implemented that 904.6. It became, as you know, effective October '91. We impaneled our first additional Criminal Grand Jury in February of '92, and have consistently used that additional Grand Jury since, and we constantly use the Grand Jury. We're in session as we speak.

Mike Vitiello: Criminal Grand Jury?

Bill Larsen: Criminal Grand Jury. We call it the blue-collar as opposed to blue ribbon Grand Jury because these are people right off the street. Theirs is involuntary servitude as opposed to volunteers, and we can't realistically expect that they can serve for a year with the constant platter full of work to do. The longest jury we had was in '98, we had a six month period because we needed to put that trade secret case on, and it took us twenty-six sessions over a period of six months. That was

pushing the envelope we had seventy-six sessions of that Grand Jury. Twenty-six were with a single case, and the remaining of the seventy-six days were with other cases. We crammed in all kinds of cases. We find that the Grand Jury is extremely useful in gang cases, multiple defendant gang cases. We use it as an inquisitorial, investigative body. If we didn't have the Grand Jury we would be ineffective in enforcing the murder statutes when committed by - particularly gang type situations. Typically we will have one, two, or three "targets" at the beginning of the investigation. We want to get the other ten gang members who are equally culpable under the murder laws because of the gang affiliation that was part of the activity that resulted in the killing. We don't know who the ultimate "targets" are going to be, the other targets, until the investigation is completed. But I certainly want to throw in the idea that although I haven't done a scientific survey, I don't know how many counties regularly use the Criminal Grand Jury, the fourth largest county in the state uses it very, very regularly, and frequently.

Mike Vitiello: There's no suggestion that we would change. I was asking a different question. I was talking about whether -

Bill Larsen: I understood - I hear what you are saying -

Mike Vitiello: Because I'm asking about whether we ought to impose the obligation to have a separate Grand Jury for criminal matters on small counties, where - no one is proposing that we would change the way in which it is structured now for larger counties. The question is whether you mandate the split. That is the question.

Bill Larsen: I understand the question. The answer to that is that it is a very simple, simple process. We impaneled one yesterday for this lengthy case we are going to start next week. In 2 and a half hours, we started at 9:30 and the jury was charged and out of there at 12:15. It is a simple, simple process. We have a little handbook we put together that you can do it in your sleep. Anybody could impanel a Criminal Grand Jury through 904.6. The beauty of it is, it eliminates completely any attack on the composition of the jury down the road with reference to quashing the indictment, so there is a big plus. I don't know whether it should be mandated so little counties have to impanel an additional Grand Jury.

Clark Kelso: What I was thinking about was mandating it for larger counties, and leaving it optional for the remainder because I frankly was surprised that, and concerned, that in LA they have been having one Grand Jury and that destroys the effectiveness, from what I heard, of the Civil Grand Jury. There obviously has been some reluctance in LA to make use of this optional second Criminal Grand Jury. I was just wondering if perhaps LA could be helped out a little bit.

Bill Larsen: On that same subject matter even if you didn't make a distinction on large counties, small counties, I would urge that you amend 904.6 to provide that upon the request of the District Attorney, or the Attorney General, the presiding judge, or his designee, *shall* impanel an additional Grand Jury. I had one year with a particular unnamed presiding judge, where I had to go hat in hand and persuade him that we needed an additional Grand Jury. And we shouldn't have been in a

position to explain to the judge the nature of the secret case that we were going to take before the Grand Jury, he had no business knowing anything about it.

Dave Harris: By doing something like that, that fixes the problem of big county, small county. It is relatively simple, but if the people are going to use it, need it, they should have the tools available to us.

Gloria Gomez: I was just going to say, you know it is interesting how the perceptions are, but in Los Angeles since 1992 the presiding judge has been the party that wanted the Criminal Grand Jury and the DA has not been willing to go that direction, and so you see this is the thing about legislative things, you know, mandating things that is real, real difficult to contend with here. I think it is something to say about the cost that we are talking about here. You know, if we are impaneling a Civil and Criminal Grand Jury, as an example for Los Angeles, you know, one of the things, not just the reluctance on the DA's side, and I might add it wasn't Mr. Garcetti per se, I think that was having problems initially - we had a real issue with resources. Our county government, you know, the chief administrative office, this is a county function. It's got to be funded by the county, the Grand Jury does. At least in Los Angeles County we do have Rule 810, and it's a non-810 type of thing, so the County Grand Jury, Criminal and Civil get funded by the county. We are talking about half-a-million dollars here, for each one of these bodies that the county has to come up with in our particular county. I am sure in the smaller counties, you know, the budget situation, back when, and even now, probably isn't looking very, very positive in many respects. So I think administratively, practically speaking, it could be an issue. So mandating something, one county over another, doesn't seem real logical to me in terms of the concerns that come up administratively.

Mike Vitiello: In interest of time let's move to the topic that we originally had assigned, and that was: Should the target in Criminal Grand Jury investigation have the right to counsel present during questioning? I think all of you are aware that there is currently no constitutional right or the United States Supreme Court has not found the Constitutional right to have counsel present. A number of states have adopted, in one form or another, a provision which does allow for counsel in the Grand Jury room for the party. Again, I want your input on that subject.

Bill Larsen: I think it is important to look at the - look at the federal system and use it as kind of a baseline rather than a few other states that have created a panoply non-existent, non-mandated constitutional rights. As you know the Federal Grand Jury system, and Justice Scalia illuminated that in U.S. vs. Williams, in 1992, pointed out that it is simply a charging process. The target, defendant doesn't have any rights basically. He doesn't have the right to have exculpatory evidence presented because then the prosecutor would become the defense attorney, and it would become an adversarial process. I think it is very, very important to fully recognize that our nation's process is one of expedient, efficient, probable cause determination based on hearsay, the case agent. When the FBI comes in before the Federal Grand Jury and says the bank teller told me that so-and-so, this guy, whom she identified in this picture, was the one who gave me the note and the fingerprint expert compared the fingerprints of this guy with the fingerprint on the note and it was one and the same. That is the end of the indictment issues, its totally valid, there is no attack on probable cause because it was hearsay, there is no attack because the defendant didn't have an attorney present to

defend him, because it is a charging process. It is not a trial, it has nothing to do with the defendant's ultimate right to due process and a fair trial. When Governor Davis, wrote his very nice single page veto letter on AB 527 to have defense present, he did say among other things that it hadn't been studied by the Law Revision Commission. But on October 9<sup>th</sup> 1999, when he gave this letter he said these additional things: He said that the current operation of the Grand Jury, which follows English common law practice has remained essentially unchanged in California since 1850, and has served us well for 150 years. Then there is a paragraph about the debate among legal scholars and the Law Revision Commission Study. And then in the last two very short paragraphs, that I must read, it says, "AB 527 would place a new burden on what is now a reasonably efficient Grand Jury system."

Additionally the presence of defense counsel at Grand Jury proceedings may lead to undue delays, and interference with the Grand Jury's "fact finding process." And then finally, "the secrecy of Grand Jury proceedings is an essential element of the Grand Jury process. AB 527 has the potential for turning a fact finding process into a quasi-adversarial proceeding." I think that this process should carefully, seriously consider the governor's observations. We certainly made those points to the Governor, the California D.A.'s Association, and he took those points to heart. There is more to this than simply this dynamic that we are involved in here. There's the aspect that if we go back to Scalia's opinion in '92, we look at the Federal system, we look at Governor Davis' comments, that CDAA, California D.A.'s Association, certainly fully supports, we don't want to turn it into an adversarial process and there's tremendous ramifications to providing that a target have counsel. One is: What is a target? I illustrated very briefly to you the gang situation where we don't even know who the peripheral targets are until we get to the end of the Grand Jury process. And those guys are being hauled in with subpoenas to testify could turn out to be the targets, but we didn't know that they were responsible sufficiently to indict and prosecute at the front end. So this business about delaying the Grand Jury process, there's tremendous ramifications to this. I want *my* defense attorney to represent me. I've been subpoenaed in to the Grand Jury. But *my* defense attorney isn't available for ten weeks, so you guys just cool your heels until *my* defense attorney is available to come in and represent me. Certainly you could put, well if you can't have *his* defense attorney he could have *a* defense attorney unless *his* defense attorney is immediately available. It creates tremendous problems that are not mandated by the Constitution and are not required in the procedure that is followed in the Federal systems. Because Scott Baugh, a very anomalous case, it's a single case, let's do a study. What study has been done statistically to find out how many horrible instances have occurred where innocent people, like Scott Baugh, presumably, was railroaded by the Orange County D.A. and got indicted and then ultimately after a lot of litigation his indictment got thrown out? That is exactly like the things we talked about with the Civil Grand Jurors, a particular Grand Juror having an agenda and coming in. Scott Baugh had an agenda. He got stung and he threw the baby out with the bath water when he proposed this Bill 527 was in the hopper two years before it died, and then it got reupped, and overwhelmingly passed by the Legislature, and the Governor had good sense to understand the historical importance of this.

Mike Vitiello: I am going to let somebody else have a say. You are?

Chris Wing: My name is Chris Wing, I am an attorney in Sacramento. I'm a criminal defense lawyer, so I have a slightly different take on this. It is a real retrograde analysis of the Grand Jury in the State of California. All prosecutors, it seems to me in California, have envy of the United

States Attorney's Office and what they are allowed to do with Federal laws. Under the California State Constitution significant number of the points that you made are just not available to a prosecutor in California. Williams is not the law in the State of California. Johnson is the law in the State of California and it requires the district attorney in the Baugh case, which is a specific example, who failed to put exculpatory evidence before the Grand Jury, that is why he ended up losing that indictment. That is the law in the State of California, so if we want to change that then we are going to have to some how change the Constitution, at least as it is interpreted by the Supreme Court of the State of California. In the anomaly between Williams and Johnson, and there is a number of other issues which come up between what happens with the State of California versus what happens with the Feds. We don't have to spend ten minutes dealing with this, it seems to me, the differences between the Federal practice and the State practice, my practice is roughly 70% Federal, 30% State. I deal with Grand Juries on a daily basis in Federal Court. I deal in Sacramento County, Yolo County, Placer County, El Dorado County, Nevada, Yuba, Sutter Counties, and I don't think in the last ten years I have seen one Grand Jury come out of any of them. It is just not utilized. I am amazed that Santa Clara uses it to that extent. I can understand them being used generally. If you want to use them in gang cases that's a decision that you make. You are still going to have to prove your case at some point in time with the ability to cross-examine. 115 is the latest law. Most prosecutors I know that really try cases don't use prop 115 as much as others do simply because they want to find out what their case is all about before they get in front of twelve people and jeopardy attaches. But that is not the point, it seems to me that perhaps we have gotten off, what I thought was a brilliant triad here of questions because before we get to the issue of the target being represented, or any witness being represented, by an attorney we have to answer the question of what are the purposes of the Criminal Grand Jury investigation. Is it inquisitorial, which it seems like Santa Clara uses by your own admission to a significant degree. And that's fine, but if they are actually investigatory - you've got an idea that there is a crime out there, and you know at least the landscape of players, its not that tough to find targets. The U.S. Attorneys Office finds targets, sends out target suspect letters on a daily basis. This is not brain surgery to figure out who the targets are, at least who the subjects are, or the suspects are. If we are not going to end up putting out a manual like the United States Attorneys Manual, and make a determination of how effectively eliminate why the Supreme Court of the United States allows the process to work as it does in the Federal System. Because the United States Attorneys Offices self-regulate to such an incredible degree, that don't have all the problems that we are going to get with Scott Baugh's case, with the Cummiskey case, with all of the horror stories that we see in the newspapers based upon Grand Jury abuses. What we need to go back from - what is the purpose of the Grand Jury investigation. If it is an investigation, I don't think I have ever seen one. The only time I have seen Grand Jury "investigations" is when the press has gotten on to the District Attorney and said there is a crime out there, go find it. They can't find it so they impanel a Grand Jury to take some political heat off themselves. You know, normally what happens in the Federal system, it's not an investigation. The only true investigation I ever saw in the Federal system was (*inaudible*), and that is simply because they didn't know how many players they had going at the time, and they locked up every single witness under penalty of perjury and utilized it.

Clark Kelso: For someone who is not an expert in Criminal Law.....not in that case, but in the Federal system that they are constitutionally required to go through a Grand Jury indictment?

Chris Wing: Absolutely, they have no choice. The Constitution requires that you go through - it's waivable, but you have to go through the Grand Jury. The Grand Jury can be an extremely effective tool, but there are a lot of secrecy issues in the Federal system versus the State system. Discovery issues which are totally different - the Jencks Act, versus California discovery. They just don't blend at all, you are mixing apples and oranges if you are trying to go into the Federal system because it is based upon Anglo-Saxon Jurisprudence and the Constitution of the United States, which is different than the Constitution of the State of California. We've got to parse all these various things out and realize we just aren't dealing with that situation. A Prosecutor cannot withhold exculpatory evidence. A Prosecutor cannot utilize illegally seized evidence in front of a Grand Jury. Oh, he can if he gets an indictment, it's going to be thrown out on a 995 motion. Calandra, in the United States Supreme Court, allows that. When the term came up that a Grand Juror would indict a ham sandwich, they were talking about Federal Grand Juror. There is no doubt about it. I mean it's not even close to being adversarial. There is no doubt about that. California is more of an adversarial system because of the due process requirement that is placed upon the California Supreme Court. So we have to understand what it is we are dealing with, what the landscape is. It's not a barren wasteland like it is with the Feds. There is actually hills, and valleys, and people that are out there that the Supreme Court of California said "you have to take care of these people before you go to the Grand Jury." I think what we need to do is figure out what is the purpose here, and then we can work out the other issues.

Bill Larsen: With all due respect, we have our scholarly debate now because Mr. Wing has failed, and I ask your law clerks to please read footnote 5 in Daily Journal Corporation v. the Superior Court, 20 Cal 4d 1117, July 1999 case. Cal. D.A.'s Association was amicus in that case. Footnote 5 clearly, unequivocally points out, and Justice Mosk, by the way wrote this opinion, someone who has a great aversion to the Grand Jury, Mosk has, that there are no Constitutional tethers with reference to Grand Jury process. That it is strictly a matter of statute and that the only thing that the California Constitution adopted in 1879 provided for was that offenses might be prosecuted by indictment. But Justice Mosk in his footnote 5 says that all other aspects of Grand Jury procedure were left to the Legislature. So there is absolutely 100% unequivocally no Constitutional rights of any kind with reference to the Grand Jury process. Mr. Wing throughout Cummiskey - Cummiskey was a issue of what burden of proof is required at the Grand Jury proceeding. Probable cause in Cummiskey, they upheld the indictment. They found that the process was appropriate. In Baccus they gave lip service to due process and Constitutional aspects, they upheld the indictment. So let's look at the hardcore scholarly works of our Supreme Court of most recent vintage and that's this 1999 opinion. It says that -

Roy Hubert: It did not uphold the rule in any of the cases.

Bill Larsen: It absolutely, unequivocally clarifies any ambiguity that might have existed, and I don't think there was an ambiguity, that there is no Constitutional provisions in the California Constitution that have any bearing upon -

Mike Vitiello: Let's assume that for a moment - the question is not what a constitutional minimum requires - if its constitutional minimum we wouldn't have the discussion about whether this is sound policy.

Bill Larsen: No, but I...

*[lots of talking]*

Mike Vitiello: I am going to use my prerogative as the Chair for a moment to get back on task because you're engaging in a personal debate.

Bill Larsen: No we are not...

Mike Vitiello: Excuse me, there are other people who want to participate. Go ahead.

Roy Hubert: I don't want to get off the topic, lord what is happening to me, he is a criminal defense attorney and I agree on, I think, everything he said. I would agree, I think Johnson is the state of the law in California. It's different than the Federal scheme under Williams. I suppose the best gloss we can put on Johnson is the defense is in a sense vicariously in the Grand Jury. We have an obligation to present the best prosecutor's exculpatory evidence. We send out Johnson letters in our county, invite exculpatory evidence, we invite, without counsel, targets to appear and testify before the Grand Jury. I do think it is a Constitutional due process scheme. Mr. Larsen from your county, February 18, from the Sixth District Court of Appeals talks very much about due process and has in fact expanded the discovery rights beyond the testimonial aspects of Grand Jury incorporating some due process things. I frankly don't think they are particularly harmful to prosecutors and shed some light on the process of...

Mike Vitiello: That is what I want to focus on. Let me follow up that with a questions. What happens because...

Bill Larsen: May I respond first to this added...

Mike Vitiello: No. I have a question actually.

Bill Larsen: Well, he brought up...

Mike Vitiello: The question I want to follow up goes to the point you made, and that is, again, we are not talking about Constitutionality and we are not talking about -

Bill Larsen: Yes we are. This gentlemen and that gentlemen both stated constitutional...

Mike Vitiello: Excuse me, excuse me, I am going to again use the Chair to get back on task, and that is whether this is sound policy. What I would like you to address is the administrative concerns.

Roy Hubert: Could having counsel present....?

Mike Vitiello: Right.

Roy Hubert: I frankly think that in a practical sense its probably unworkable for a variety of reasons. I think there is some possibility for delay, perhaps some difficulty for scheduling - I don't know exactly. In the final analysis, when it is all over, if you are going to have somebody go, consult with counsel, they are going to go back and before the Grand Jury, and say hey, I am not answering that question. Is the net effect the same as having somebody's counsel sitting there and saying hey, he is not going to answer the question. I really don't know, but I think in terms of scheduling, and perhaps the swift administration, or speedier administration, of justice it probably would slow things down, and be, I think, over-all detrimental, rather than beneficial on balance.

Dave Harris: That's the practical approach of realistically how it works. Anybody that works in the Criminal Justice System knows trying to get five defense attorneys in the same place at the same time is like winning the lottery. It is just not going to happen. And that's what I'm talking about, if you are doing a multiple defendant case in a Grand Jury you got to get their defense attorneys there, and you may not indict in the first place. I mean that is the whole process, you look at the first question, which what is the purpose. The purpose is are there enough facts to indict them, so if we are looking at that the purpose of the Grand Jury is to determine if there are the facts a true finding process, which we know, whether we want to use the term constitutional or not, defense attorneys constitutionally have a different duty. Their duty is not to the facts, not to the truth, not to anything but their client period, that is their ethics. Whether it is right, wrong, or indifferent. Whether you agree with it doesn't matter. So you then place their particular duty, their particular needs of their client into this proceeding and it may not be to the purpose of finding out whether there is a fact, whether there is a truth, or whether there should be an indictment. So you create this whole new area that they can attack from all these different things, and you are just making the process very, very unworkable. The history of that is like preliminary hearings years, and years ago when they became mini-trials. Prelims went from a 30 minute prelim, for burglary, to a two week prelim. And finally there had to be an act, there's Prop. 8 coming through and reigning it back in to get to a workable process at 115. By putting a defense attorney in, it doesn't accomplish anything except protect an individual. But does it really do that? If the Grand Jury is doing their job, if the D.A. is doing their job, those individuals, they will be protected if they need to be. If they need to be indicted, they need to be indicted. The defense attorney's duty is to protect them at a later point and time in front of a jury.

Mike Vitiello: I would like to hear your response.

Chris Wing: Perhaps this is a problem in the issue of appointed lawyers for targets, but as far as where I work in retained cases, I am part of this Grand Jury system. Though I am not in the room, I'm right outside, pacing up and down with a list of instructions to my client. If I would even venture the thought of allowing them, as a target, to go in and testify for the Grand Jury. And there are times when you do that. And what is going to happen is there is going to be this in and out, excuse me I need to confer with counsel. I think logistically it may be take more time to be able to

deal with that in front of a Grand Jury over a session than just to make sure that our calendars match. Most firms have more than one lawyer available. I can see this being an issue in the circumstances where you have a non-retained attorney, and you have a target who does not have an attorney and perhaps cannot afford one. But they deal with that in the Federal system without a problem. They send out the target letter. The guy takes it to the Federal Defender and says "I'm a target, help me." And they do that. I can see the logistical difficulties, but I mean really I am part of this Grand Jury system anyway. If you are going to indict my guy - or going to ask him to be a witness on Thursday, and Thursday doesn't work for me, generally you're going to accommodate his appearance, my appearance, for a couple of weeks anyway. I mean that is just generally how things work. I think what we are talking about is do I get inside the room, or do I stay outside the room. It is the same thing with witnesses. I even think the Supreme Court of the United States allows the due process, allows attorneys to represent their clients, allows them to be outside, whether they are targets or not, on issues of privilege, on issues such as that. So we are going to be part of this process, you are not going to be able to legislate us out of this. It is just going to be a matter of where we sit, are we the sheep or the goats.

Roy Hubert: I don't see an advantage under the Johnson scheme for defendants in a tactical sense as opposed to having counsel there and target's counsel, you are a target, we invite you to present exculpatory evidence. The reason we have a case was, so the defense attorney, who is a good defense attorney, takes his best shot at it. I have talked about exculpatory evidence, beautifully prepared, tabbed, copy for everyone, the original for the foreperson on the Grand Jury, and what is it, it's largely self-serving and would otherwise be objectionable. And I have put evidence like that - I would have a 995 motion, because I wouldn't have enough competent evidence to get past - to show probable cause. But what I do as a practical matter as a prosecutor, I say, "each one of you has to look at it all, and consider it," and then I am quiet like a lamb, and don't interfere with that process. So what happened can never be impugned in terms of the prosecutor meeting his Johnson responsibility. So that's the advantage.

Chris Wing: And like a lot of the criminal justice systems, the fact that we are part of it insulates it from a significant amount of problems down the road. Other than IAC claims.

Dave Harris: There is one other issue, and this is the area that concerns me most, about why the defense attorney should not be part of the process of the inside proceedings: As anybody that has ever worked on the Grand Jury knows, there are things that become available to the witnesses, whether they should be or shouldn't be, just by the nature of the proceedings. You walk in, there may be pictures of who all the defendants are up there. So just because you are there, you may get asked questions, and as an attorney you can figure other things out. But putting the defense attorney in there who, hopefully, usually, practically are smarter than the targets, they can figure out what the case is, how things are working, to a greater extent than the defendants can. Especially if they are sitting there asking questions. And suddenly you have the issue of secrecy that comes up, and you can swear a witness, a target, a defendant to secrecy about what they are asked. But how do you do that with a defense attorney? You tell them, "okay, we are not going to let you talk about this," but then aren't you violating the attorney/client relationship between the defense attorney and the client? Okay, we are going to limit it, you can only talk about these things, but you can't talk about these other things, or you can't discuss it with anyone else. So then if they want to investigate something,

are you preventing the defense attorney from getting a private investigator to go out to investigate something. Okay, we will let you talk to the private investigator, so how far do you let this go? How much do you legislate this? Where are you butting up against the Sixth Amendment rights of the defendant and their attorney/client relationship. I think that as it varies, to use the term "the slippery slope" where the minute you put a defense attorney in there you lose all secrecy in a Criminal Grand Jury proceeding. If that happens, in certain cases, to use the gang cases as an example, do people die because of that? We're not saying the defense attorney - not going to say the defense attorney is going to go out and say you know that guy right there is going to be a witness, and the person turns up dead, but if a private investigator goes out and starts talking to people about well are you going to be testifying, are you going to be testifying, or are you going to be testifying from practical sense we all know that those things do happen in criminal cases now, and by starting it in early proceedings, when you are just looking at the case trying to find out who all the targets are, you create an issue for safety for the people's lives.

Chris Wing: Again, I don't mean to dominate this, it's the same - I am in there now doing the same thing.

Bill Larsen: No you are not.

Chris Wing: Well not inside, but I am outside. My investigator is debriefing every single witness that walks out of that place that will talk to us. We know what evidence is being subpoenaed, if they are not under some kind of a federal, specific limited secrecy situations. Really I know a lot more about what is going on than you think. If it is a problem of knowing targets, don't you think my target, if he walks in there and sees those pictures, he is not going to come out and tell "guess who else's name is up there on the board?" I mean that is going to be debriefed from all of these witnesses anyway. I think one of the issues that we have to deal with, perhaps, is a sub-issue, if we decide to, is this privacy issue. How much privacy should there be? In the Federal system, as far as witnesses, there is actually no privacy. Anybody that walks out as a witness out of that Grand Jury room, other than, even an agent, if they will talk to me I can get a statement out of them. I can ask them anything, if they will tell me they will do that, and I go out and do my investigation. There's always, on a case that's valuable enough, there's always going to be a shadow investigation on the Grand Jury. I mean I am going to know who is going -

Clark Kelso: What happens in the state system with respect to that secrecy issue?

Dave Harris: Well, see that is one of the distinctions between Federal and California, where in California they're advised not to discuss what is going on with the Grand Jury proceeding. It doesn't apply to targets, for them talking to their attorneys, but it does apply to other witnesses, officers, detectives, whoever comes in. They are told -

Clark Kelso: But those detectives could - could those detectives talk to a target's attorney about what happened?

Dave Harris: No, they can't because they are sworn to secrecy by the Grand Jury.

Bill Larsen: They are admonished, and they are subject to punishment by contempt if they violate that admonishment at the conclusion of their testimony.

Chris Wing: But they can talk to their lawyer. So if you put five targets in there, each of those targets goes out and talks to their lawyer, if there is a joint defense agreement among the attorneys then each one knows exactly what the other one said.

Bill Larsen: But generally these gang members aren't as adept at recalling with precision, like the expert skilled counselor is, and then ultimately having a caucus with the skilled receptors, i.e. defense lawyers, getting together, figuring out what's going on, and subverting then the efforts to ensnare these additional gang members that were working on with reference to this investigative Grand Jury process.

Jack Zepp: I have a quick question.

Clark Kelso: Yeah, sure.

Jack Zepp: Where did this authority to admonish or swear a witness to secrecy come from? I can't find an opinion -

Bill Larsen: It's a Grand Jury - It's an Attorney General's opinion. Do you want the citation?

Jack Zepp: Yeah.

Bill Larsen: I will give it to you after -

Clark Kelso: It would be useful.

Roy Hubert: Talking about secrecy, targets with cell phones are ahead of us now. I was just in front of the Grand Jury in December and the witnesses knew who was doing what, quicker than my investigator did, who was sitting outside the door and that is what was amazing. In fact there was a better source of information from them than [*lots of talking*]so information travels quickly.

Mike Vitiello: Let me go to a point because Bill you were concerned about efficiency and you're .  
..

Chris Wing: My name is Chris Wing.

Mike Vitiello: ...Said look, I am going to tell my client, if there is a question you're confused about just come out and talk to me in the hall. Is it your experience that targets before the Grand Jury do go and consult with their attorneys during the proceedings?

Bill Larsen: Some do. We have had many that have come in without counsel out in the hallway. They have wanted to voluntarily present their side of the case. I agree with my colleague from Stanislaus County that it is the subtleties of having enlarged photographs, maps, diagrams, and so forth, we're halfway through a lengthy Grand Jury investigation, indictment proceeding, but the Grand Jury room is filled with exhibits and so forth, are we to have to shroud all of those when...

Mike Vitiello: But his point goes to secrecy. That was the concern he was raising when he was talking about the fact that counsel was going to be more - and I was going to your other point, because there are two different points that you made. One related to efficiency, and that is the question I have.

Bill Larsen: Well, well, I mean I see it basically one in the same. Secrecy is the essence to accomplish the objectives of the Grand Jury investigative inquisitorial process. There is nothing sinister about the word inquisitorial. It's part of the function of the Grand Jury.

Mike Vitiello: I understand that, I want to hear your view on the efficiency question because you made a point, a rather forceful point, about the inefficiency of allowing counsel in the Grand Jury proceedings. I mean one of the very strong concerns voiced is the thought that an attorney is going to make it into an adversarial proceeding. There is no judge there, you have the possibility of disruption in the Grand Jury room. What I am really focusing on is how different is that, because Chris's point is look, he says I'm out in the hallway, I tell my client when you get a tough question come on out and discuss it with me. Now I want you to respond to that very specific efficiency argument.

Bill Larsen: Well I can tell you from a practical point of view, we do 50 to 100 indictments a year and, I can't recall the last time that a defense lawyer was pacing up and down the halls. It hasn't been, as a practical real life scenario, a problem. Mr. Wing maybe is overactive or something, I don't know, but it hasn't been a problem. But we will, the California D.A.'s Association, in Santa Clara County at least, will live with Mr. Wing out in the hall. I mean it's fine, we are not proposing that we pass a law that he can't be in the courthouse when the Grand Jury's convened. It's fine. But the prosecutor and the Grand Jury should be able to conduct their business when they want to conduct their business, not when Mr. Wing's calendar provides for it. So we summoned Mr. Wing's client in and he has two choices, either to claim the Fifth, on some valid basis, or answer the question. And if he says, "well I don't know whether I should claim the Fifth or answer the question because I need to talk to my attorney, but he is in Europe for three months," are we supposed to suspend the case for trial?

Mike Vitiello: I think your answer to the actual question was that in your experience people before the Grand Jury simply don't do "I need to stop at this point."

*(End of Side one)*

Mike Vitiello: ...to call this gentlemen before the Grand Jury, he is your target. He's probably talked to his attorney, and in your experience his attorney has chosen not to advise him by sitting in the

hallway. That was only a summation of what I think you said. Do you think that if the counsel had a right to be in the Grand Jury room suddenly attorneys would have a much more active interest in what was going on? Rather than attorney's right to stand outside the Grand Jury room, in your experience they don't exercise it, but you think that attorneys would be more aggressive about coming into the Grand Jury.

Bill Larsen: I don't know the answer to that question. The answer that I do know is, in our gang cases, our gang murder cases, we don't find that these people we are calling as witnesses, that we do target, we suspect that they are the prime after this murder, but we know that there's others that we are hoping to incriminate as well, those prime targets they don't have Mr. Wing. They don't have somebody sitting out in the hallway. Maybe that is part of the reason why we don't have this problem, but there is no Constitutional right that I am aware of as we sit here today, that says the person has a right to an attorney when he goes into the Grand Jury room.

Mike Vitiello: No, no, that's old hat...

Clark Kelso: Do we know what happens in the other states that have this? Does CDAA or any of the others have information about what do they actually do in states that have this, or some version of this?

Bill Larsen: Well, I am not sure numerically how many states. You know we are throwing out this idea *other* states have a panoply of rights, why don't we think in this term that there are many states that prevent the initiation of a felony prosecution upon written affidavits attached to the complaint. No preliminary hearings. There's no Grand Jury indictment proceeding. There is no defense attorney allowed. The judge reads the written affidavits, and if there is probable cause set forth in those sworn affidavits, you better prepare for trial. That is when you'll get your due process, in the trial proceedings.

Clark Kelso: I understand that, but that's a slightly different aspect of criminal procedure, and I guess what I am wondering is, I mean, in the assembly bill analysis identified as of 1983, I don't know looks like about 8 states, and I believe we've got a list of a couple of others. How we gather information about how this actually works in those states, I presume the way to do it is to call up the Colorado District Attorneys Association and say, "what has been your experience?" and call up the Colorado Defense Attorneys Association and say, "what's your version of the experience?" Unless someone else has some ideas for us about that.

Gloria Gomez: I was going to mention that perhaps the National Center for State Courts, you know, Tom Munsterman, our National jury expert, probably has a lot of info on that.

Clark Kelso: That's a good idea.

Roy Hubert: But logic tells us - I mean it makes sense that if we have one more mandatory player for each part of it, we have one more scheduling problem, and that is just going to compound - We don't have a lot of choice in our county when we take cases to the Grand Jury. We can choose

whether we are going to the Grand Jury, but scheduling is sometimes a problem in terms of availability. Isn't that right David? So we have a very small window, but we do accommodate targets=attorneys, and we do accommodate witness attorneys. I think we have almost more interest from attorneys representing witnesses, and we will juggle and schedule when witnesses appear, and sometimes - recently in December I changed the date to accommodate some attorney, so to that extent we . . .

Chris Wing: Bill, do you send out target letters to these guys?

Participant: [*inaudible*]

Chris Wing: Okay so that's a waiver.

Bill Larsen: No, we - often we get the package of wonderful inadmissible evidence from the defense lawyer and under this statutory requirement of making the Grand Jury aware of potentially exculpatory evidence, not the Constitutional requirement, there is none in California. Please read Footnote number 3 in Cummiskey, that recognizes U.S. v. Williams, the one that says there is no federal requirement in exculpatory evidence. In the Supreme Court Lucas and Cummiskey in 1992 says in Footnote number 3 that U.S. v. Williams is very interesting. That it is not important to us because our whole Grand Jury process is one of a statutory basis, not a constitutional basis. And also, my good colleague to the north of San Francisco cited (*inaudible*) and I just wanted to make sure that your law clerks are not misled. The dissenting opinion and concurring opinion by Justice Mohara, in that case, of the three member panel, said, "I diverge from my colleagues' majority opinion when they hinge their decision on statutory grounds and reject California Constitutional aspects as it relates to Grand Jury process." Let's all at least agree, or agree to read, what the law is and it is that there is no Constitutional rights with reference to Grand Jury procedure. May I cite on the record for my friend from the Grand Jury Association the witness admonition provision is set forth in 66 Opinions of the California Attorney General at page 85, a 1983 opinion and that sets forth the whole scenario on -

Jack Zepp: Thank you.

Dave Harris: Can I go back to a question you're talking about efficiency, and I want to point out something that is kind of an undefinable thing, but it's human dynamics. We were talking about the Civil Grand Jury, about these people being from, lay people from the community kind of coming in a rooting around. If you think about what happened when we started this discussion about Grand Juries with defense attorneys being involved, it became somewhat adversarial, which is just like happens in a courtroom. If you bring in a defense attorney in front of these nineteen people from the community, they suddenly take a very passive role. They become just like a petit jury for a criminal case, where they sit there and they stare at the judge and they get bored, and they don't pay attention because they are listening to these two lawyers argue with each other throughout the whole trial. The same thing happens in a Grand Jury. When they are there, they are active participants. They may not ask most of the questions because the prosecutor, the A.G. does it, but they really get involved and they start writing questions at the end and they pass them around, or they ask the questions and

they pay attention. But when you suddenly change that dynamic of two - let's say it this way, it's pretty much true, two egos, or two attorneys arguing with each other, those lay people who don't know anything sit back and they just stare, and the whole point again is just the accusatory process...

Mike Vitiello: Again, you are assuming that by analogy to the petit jury. Have you had any experience where counsel was present?

Dave Harris: Not in a Grand Jury proceeding, but...

Mike Vitiello: But by analogy to the trial process...

Dave Harris: No, not by analogy, by talking to Grand Jurors. Since one of the things is I am the Civil and the Criminal Grand Jury Advisor, one of the things we do is we talk to the Grand Jurors. When we're done, "how did you find this experience? Is there anything that we can do different? Have you ever been on a Criminal Jury case before? Yeah. What's the difference?" And they sit there and go - we just sat there and stared at the Judge, we were bored, we didn't know what we were supposed to do, we didn't care, we weren't involved. We just listened to the lawyers argue back and forth." "Well why did you find this different? Because I was the person doing it. I was responsible. I was the person that was in charge." And that undefinable dynamic makes a huge difference, and again if you put somebody in there that changes that dynamic it's going to slow down the efficiency.

Clark Kelso: Wasn't Baugh's bill, who knows how it might have been interpreted, in my reading of it, it didn't appear to me that counsel was going to be saying anything at all to the Grand Jury. If that is not clear enough it could be clarified, but counsel doesn't talk in the Grand Jury proceeding. The only thing counsel could do is advise the witness. I'm just wondering how would that dynamic be effected by simply having the defense counsel present in the room?

Dave Harris: Again, it's the slippery slope. Once the defense attorney is in there, what prohibits the defense attorney, because the bill didn't prohibit the defense attorney from becoming an active participant. He could object to any questions.

Clark Kelso: Well, no. No, counsel shall not object to any questions. I mean it could be made - I agree, it is not as clear as - I mean as I look at it now, like what you are saying, it is not as clear as I originally thought it was. That counsel shall be a potted plant, apart from consulting privately and quietly with counsel's client, so that no one else in the room can hear it. It doesn't say it quite that clearly. But actually that is what I had thought the intent was, that counsel is a potted plant, and doesn't go in there pointing around at things.

Chris Wing: Which I think is the experience of the states which do allow attorneys in. That there are limits as to what that attorney can do. I mean if by the mere presence of a defense lawyer, that is going to chill members of the Grand Jury, I just don't think that makes any sense.

Mike Vitiello: Well that addresses one concern and that is that the efficiency concern no longer becomes as powerful, other than the scheduling complications. But how do you respond to the real concern about secrecy?

Chris Wing: Well I think you have to bring common sense to this. I mean if they have a blackboard there with pictures of the targets that they don't want me to see, then they just cover it up, or you have it in a different room. I can't imagine the logistics of bringing this - you're going to bring in a target of this investigation who theoretically can see, he is going to sit there and he is going to look at those sixteen buddies of his, or three buddies of his, or whatever it is, and don't you think that he is going to remember who they are? I mean, am I the only person that can count to three among my clients? It makes no sense. They are not going to have all kinds of stuff out there, or if they do and they are willing to make that available to the target witness, then how can they say there is a secrecy issue here?

Bill Larsen: The real world is he's obviously talking about these genius corporate criminal clients that he is defending. We're talking about dirt bag murderers, gang members that go out and disembowel people.

Mike Vitiello: Hold on, before we get into a debate. Let me follow up with a question, because I'm not sure if .... Earlier the description was of who the targets were. That was one of the descriptions you gave. The kind of information that would be in the Grand Jury room. A board that would include the many different defendants. And he says, Chris says, look wait a second, my clients recognize the, in your terms, the scum bags with whom they hang out. I guess I don't hear a response to that because you started to talk about corporate clients. Why wouldn't a gang member recognize all of his buddies who are pictured on the blackboard, or on this picture board that you've got up?

Dave Harris: Because, if I could just jump in on that, it was my point originally, that the point is defendants by their very nature don't understand, or most of them do not understand, the legal consequences of what might be up on that board. They may not understand aiding and abetting RICO conspiracy, things like that. Things that only lawyers are going to understand, so by putting a picture of a bunch of homies up there doesn't mean anything to the defendant other than, okay maybe this is a group of my friends, I don't understand this, but the way that it is up there something the defense attorney might figure out by being in that room, that's too great of a risk to take.

Bill Larsen: Or multiple defense attorneys being serially in the room on the same day, or different days, then collaborating because they all have a common interest in defending their clients. Mr. Wing's proposal about shrouding the exhibits. We may likely have to question his client about the exhibits and we have to expose the exhibits to both the witness and the Grand Jury to make sense out of the questions we are asking with reference to these variety of diagrams, aerial photographs, exhibits of a collage of gang members. You name it, I mean, it's limitless. I couldn't exhaust the variety of graphic displays that would typically develop during the course of a lengthy multi-defendant, multi-murder, horrible, horrible situation, and have Mr. Wing right in the middle of a secret Grand Jury proceeding.

Gloria Gomez: Well, you know I've got to say I am sitting here squirming because I am hearing so many things on the rules and the law, and all these kinds of important things. But you know part of what troubles a great about what goes on in a Grand Jury setting is the issue of secrecy. I think real problems in the community in terms of what goes on with regard to how the process actually works.

And the scumbags, you know, that don't have the representation, that don't know the rules, very much, in many situations, represent a very substantial part of this population of the state. Hard to say, you know, what the perceptions are, but I don't think anybody here in this room would argue that many people of color seem to be feeling disenfranchised and they tend to be individuals who are targeted a great deal. And in criminal prosecutions, now of course, there is pro and con in terms of that particular aspect of what goes on in the justice system. But it seems to me if we are arguing the *is* and the *ought* of the situation, you know, we have to take into consideration what is against what ought to be. I speak the ought from the standpoint of what does the community now expect? We know, you know, twenty years, fifty years ago that the community could abide with, let's say, the secrecy and the due process, or lack thereof, in the process that we have in the Criminal Grand Jury or the Grand Jury process generally. Is that the case now? That is the question that I have. You know, you can argue until you're blue in the face all about what the Constitution says, and what it doesn't say. What the rules are, and what the rules aren't. But what, I think, is important, very important, in guiding what the law ought to be, is really what the expectations of the community are at large, and a great many articles have been written about the fact that so many people are feeling that the justice system just is not representing, you know, the interest of the community at large. Part of this is the Criminal Grand Jury's function of bringing in indictments. In our particular county they bring in four hundred of these indictments on a yearly basis. They are constantly in use, the Grand Jury is. So that is something I am wondering, shouldn't it be thrown into the mix, you know, not just as an intellectual pursuit, but I think something that really should be considered in terms of the process that we are discussing here.

Roy Hubert: I don't mean to focus on you Mr. Wing but you're a valuable resource in this context.

Do you want to be in the Grand Jury room is my first question, and the second you see if that were to happen, either as a defense attorney, if that were to happen, you see, the natural evolution of the doctrine of Johnson and spanning to where you, representing the target, would be allowed to put on exculpatory evidence and call witnesses in front of the Grand Jury.

Chris Wing: In answer to number one, no, not really, but if I am given the opportunity that's what I am going to do because I think it is going to speed the process up, and it is going to be easier for me to listen to the question and say don't answer that, than it is going to be having a guy walk outside and try to get the question right. I had a Grand Jury witness one time who took the Fifth Commandment, so I understand you're idea that there is some slippage in that fifteen feet, between the witness chair and me.

Bill Larsen: That's close enough for government -

[*laughing*]

Chris Wing: He didn't even know which one that was. The point is this, I don't have a problem with you putting on the Johnson information, and Johnson is the exculpatory evidence that is required, at least statutorily by case law in the State of California. Because I think that has a greater impact on the jury if you do it, than if I do it. Because you are the Grand Jury's buddy. I am making a cameo appearance and leaving, you're bringing the donuts. I would oppose the idea that I would put exculpatory evidence. It is much better if you do it because you already have the credibility, because nobody has challenged your credibility, and I don't get to challenge. Any statute that I have ever read, or any anecdotal evidence I have ever seen, I don't get to challenge anything. All I get to do is say "don't answer that question." If we get a real fight then we go in front of the Judge. It is not an adversarial system, we are not trying to turn this into a mini-jury, that's not the legal argument here - I don't think that is what anybody is proposing. I think the secrecy issue is an important issue, but I think you've got to understand from the beginning, if you are going to make this information available to the targets, especially if it's to the target, who would theoretically, at least know who their homies are, and are going to be able to accurately report, when they walk out, you know, there I saw a picture of Bad Bob, and Little Jim, etc., etc. I think that the point that was made as far as the perception of the Grand Jury, I think that is an exceptionally valid point, because the average defendant, perhaps not the white collar person in charge of the securities fraud or something for the State of California, but the average defendant that gets involved in the Grand Jury process does believe that the Grand Jury are a bunch of golf playing, poker playing buddies of which every cabal of the Superior Court Judges got together and picked them, and it's not a representative sample, and I think that is the perception. Is that a true perception? I have no idea.

Mike Vitiello: That's the subject of tomorrow's input.

Chris Wing: I think that is a very important issue.

Mike Vitiello: It's a hot issue.

Bill Larsen: But under 904.6, if the lady from Los Angeles is doing her job, she has a demographically perfect, randomly selected group of jurors that are coming in. The blue collar jurors, the trial rural jurors, off the street, and they are not the country club status, they are a random pick.

Chris Wing: I think that point should be made in our reports, because I don't think most people are aware of it.

Roy Hubert: As long as they don't express an aberrant point of view that does not [*inaudible*]

Clif Poole: Obviously I am not a lawyer.

Mike Vitiello: Don't worry about it, that's a compliment.

Clif Poole: In this case I picked up what Johnson is. Evidently it is you have the right to something, and you are now a target, issuance of rights. As far as an attorney being in the Grand Jury room with

the prosecutor, there is no question in my mind, from what I have seen today, that unless he follows Mr. Kelso's example of a potted plant, it is disruptive and would not - it would slow the process. There is no question in my mind and I have yet to see an attorney who can follow the judges gavel to shut his mouth. Not picking on anybody, but he is like the rest of us, and I do the same thing myself, and especially when you get involved into it. As to the individual picking up on the evidence of what's going on in there, generally from the witnesses that we've had, and I've again have not been involved in Criminal, but just from other things that we've had in there, they are busy looking at the Grand Jurors, trying to anticipate their next question. They are not picking up on what is in the room around them. They are busy concentrating on giving their answers and making sure they don't foul up. My concern, when I saw this first question on there, was I didn't realize where it was coming from, but basically does the individual know that there is a potential for a criminal action. Do they have the ability to have an attorney? And I assume for what I am hearing that the Johnson letter is that notice, "look you are the subject of an investigation that may lead to criminal action." If you've got any smarts about you better go get Mr. Wing or somebody like him to represent you. My reaction, from what I have seen here today, no I don't want to see attorneys in there anymore than what you have to, but I want to make sure that the rights of the individual are covered so he knows, or has been advised, or some how gets to an attorney before he gets into that room, and knows to follow his attorney's advice.

Mike Vitiello: What about other Grand Jurors. Are your views similar?

Jack Zepp: The Association doesn't focus on the criminal side. I will say I am a trial lawyer and I have done a couple of Grand Juries. There is no doubt in my mind that if I thought it was critical to my client's interest I would open my mouth...

*[laughing]*

Roy Hubert: You need to remember that it may not be neat, and it may not be efficient, but we do justice in this country in an adversarial milieu.

Chris Wing: You have to look at the long term goal, and opening your mouth is not going to do you any good in front of the Grand Jury because you are a cameo guy. You are not going to be able to do that. The best thing you can do is cover that witness, not try to get the Grand Jury to come up with a not a true bill, because your job to do that is with a powerful Johnson approach. Johnson is basically saying I have a bunch of exculpatory evidence out here that these people ought to know about, and have the D.A. put that on it. So I disagree with you. I think that that's not what the motivaton the lawyer is going to be.

Jack Zepp: When you said that if you were in the room and had a dispute would take it to the Judge, what happens to the Grand Jury while you and the prosecutor are off visiting the judge?

Dave Harris: They sit and wait.

Chris Wing: They eat a donut.

*[lots of talking]*

Clark Kelso: What about Public Defenders practices, because I am interested at the report that you don't see counsel around. Do we know whether that is because the targets have not, are not aware that they should be seeking counsel at that point, or the targets actually don't have a right to get a public defender to represent them at that point, or public defenders have decided it is just not worth our time to stand outside the Grand Jury proceeding, because there is really not much we can do. Do we know why we aren't having counsel?

Gloria Gomez: I don't believe there is a right to counsel at that time.

Clark Kelso: At that stage.

Bill Larsen: And part of it, realistically, is that in many, I would say in most cases, we don't call targets in Grand Jury investigations. When I say that we don't have attorneys running up and down the halls, it's partially because we are not calling targets. But we do call targets from time to time, but it's not the general rule. The complicated factor in this consideration that you are looking at is, I hark back to the gang, the potential multi-defendant gang case where we have two or three people that we know are good for it, we wind up with ten people that we're prosecuting for murder successfully because they were part of the gang enterprise. But at the forefront of the investigation, we didn't know actually who those people were let alone what responsibility they had for the acts involved. A couple of other practical things before we run out of time in terms of Mr. Wing being in, and any consideration of such legislation. Does the attorney get to take notes? Keep in mind that Daily Journal Corporation said until the indictment that everything is secret in the Grand Jury room. All the transcripts are not prepared until there is an indictment, if no indictment, they're never prepared except for those very limited statutory provisions that you are aware of in limited circumstances.

Mike Vitiello: So you obviously don't take notes...

Bill Larsen: Does Mr. Wing get to take verbatim notes? Does he get to have a tape recorder surreptitiously sliced into...

Clark Kelso: No.

Bill Larsen: Well there's nothing - the only law now on the books is that you can't record the deliberations of a Grand Jury. There is nothing that says you can't have a tape recorder whirring away in your pocket when you're in - as a witness in the Grand Jury room. So these are all additional little things which go back to this business of finite reconstruction of the line of questioning, the subject matter of the questioning that occurs in this little part of the puzzle on this witness, and we have ten attorneys. Ten Mr. Wings, or ten different in the case.

Clark Kelso: But what you have indicated is, at least what I thought I understood now is, at this point in an investigation there is no right to counsel who is known to be charged or indicted.

Bill Larsen: That's correct.

Clark Kelso: And in fact, you aren't going to have these ten lawyers, at least in the gang cases.

Dave Harris: But see that's the whole point this statute in a sense is creating that right.

Clark Kelso: It may create the right, but what counsel is going to show up? Nobody is getting paid to show up. They don't have a right to counsel at that -

Mike Vitiello: You're argument would be Coleman v. Alabama, in other words that it becomes a critical stage and therefore if a public defender is appointed...

[*talking*]

Clark Kelso: Ahh...thank you.

Bill Larsen: In the Baugh bill, at least one of the Baugh bills, I don't know if 527, I don't even know if that was ultimately his bill, because the original ones got canned, but in those original Baugh bills it provided that the subpoena should notice the witness. You know, he had originally two, one for witnesses and one for targets. The target should be notified that they have a right to an attorney. And we raised the issue then, well if you make a statutory right to an attorney, do they have a right to court appointed counsel. Then they made some modifications in those bills that were killed originally, I don't know...

Clark Kelso: Well the one that ended up getting enacted did say, and I presume -

Bill Larsen: (*Inaudible*) you mean?

Clark Kelso: 527, "nothing in this is construed to grant a constitutional right to counsel in the United States or California Constitution."

Mike Vitiello: That is not binding on the court. You said something that - I want to get some more feedback from the prosecutors, and that is how often you call targets. Because again you may be over stating your case if you call targets infrequently then the concern that you have about efficiency you may be undercutting your arguments. So I want to hear from the prosecutors how often you call targets in your Grand Jury practice.

Dave Harris: I'd say it is not frequently that we call them. In certain types of cases though, if there is not a real security issue, there is not a risk to witnesses, or - Where we normally do it is when the defendant-s in custody. We will send them an invitation to testify. You can't send them a subpoena, but we can send them an invitation. So they are electing themselves whether they want to testify or

not at that point in time. What normally happens, though, is where you have something that comes up, you're doing a more complex case, where you bring people in and they admit to something. Where they implicate somebody else while you are there, so you may have already called that person as a target and didn't know that they were going to be the person you indicted. That has been my experience where - and also it is really not up to us. The Grand Jury hears the evidence, and I have had a number of cases where the Grand Jury starts adding defendants onto the indictment by the time that you get done. So you may not have intended to indict somebody, its up to them when they hear the evidence. By doing this, if we are supposed to notify target before hand and they weren't a target when we started, have we just created our own 995, but was something we couldn't even control in the first place.

Chris Wing: Well you clearly invited an argument for the defense side that even if you do it now with the legislation the way it is, is some kind of a potential hearing to determine whether or not that person was a target, you knew was a target, and didn't notify that was a target, and take that as far it as far as it will go. Do you notify a target? You say you send them a letter. Is the letter saying "you're a target of a Grand Jury investigation and we would like you to come in and tell us your side?"

Dave Harris: My practice is not to specifically tell them. You let them know that they can come and testify and if they were not a target you send them a subpoena.

Chris Wing: And nobody in your jurisdiction has gone to the Courts and said that they consider that to be a violation of due process?

Dave Harris: Nope.

Roy Hubert: I think my Johnson letter uses the term target.

Clark Kelso: Well that's interesting.

Chris Wing: I think that is a real scary - I think that is a real dangerous practice to not notify the person.

Clark Kelso: But that must be, because whatever this Johnson thing you are all talking about, must be of relatively recent vintage.

Roy Hubert: 1984.

Clark Kelso: And we still have divergent practices on the content of the letter.

Dave Harris: That's one of the other points, that any time you create a change, a significant change, in any type of practice you're going to be litigating it from now until doomsday. Johnson came about a long time ago, but still nobody definitively knows what you are required to produce for Johnson.

So most prosecutors, we bend over backwards to put on inadmissible hearsay, self-serving defense evidence, so we don't jeopardize our indictments.

Bill Larsen: Johnson was '75, but it's - Johnson was codified two years ago in 939.7 of the law.

Roy Hubert: Johnson is at 15 Cal. 3d 248.

Clark Kelso: That's the exculpatory evidence, I guess we were wondering about this notion that your sending a letter telling them that they are a target, or some prosecutors don't tell them they are a target. Why is there a different practice?

Dave Harris: Well that is not really a Johnson issue.

Clark Kelso: Okay, I apologize.

Dave Harris: That is more of a Fifth Amendment, where you are bringing them in and compelling them to testify, and you are not notifying them in advance.

Clark Kelso: Why is there no standard practice as to whether you actually say to someone "you're a target of the investigation."

Dave Harris: That is a very factual specific thing. It's hard to say you're a witness, you're a target without looking at the very specific...

Mike Vitiello: Yes, I think his question goes to why, from county to county...

Clark Kelso: Yes, why from county to county is it different? I mean, if you've determined someone is a target, I thought I heard, was that in some counties the letter that goes out says, "please come and talk to us," but doesn't specifically say, "you are a target, you may be indicted."

Bill Larsen: Well, some of the counties believe that the Grand Jury process is an investigative, inquisitorial process like the case decisions have articulated it, and just like the detective who goes out and investigates. He doesn't go to the guy that he suspects of murder up front and say, "hey I think you killed your wife, will you talk to me?" He does investigation, he does surreptitious stuff, he does tricky stuff to catch the guy, and get all the evidence on him before he burns it up.

Clark Kelso: I thought I understood that the failure, that if in fact some of the target, the failure to notify them of that fact when you ask them to come in, I thought I understood that that was an important thing to do.

Roy Hubert: No, the improper thing would be if you bring the target in knowing that they are a target, and you force them to testify. So that is where your Fifth Amendment violation could come in, where you are compelling their testimony.

Clark Kelso: So instead of notifying them that they are a target you just invite them come in and see if they happen to show up.

Roy Hubert: If you're smart, and you know they are a target, you are going to tell them they are a target because you eliminate an issue that you are going to have. There is nothing exotic or esoteric about it, Feds do it all the time. PRP's, Potentially Responsible Parties, I mean EPA has sent out letters all the time, it's not problematic from the world in which we live.

Clark Kelso: But there may be still - what I am hearing is there can be some strategic decisions about whether you notify someone and subpoena, or just invite them in without actually saying you're a target. That's what I am hearing.

Bill Larsen: And there may be variations county to county, because we don't send a Johnson, what would be commonly called a Johnson letter, inviting a exculpatory evidence, unless we know that the target has an attorney, as a courtesy to the attorney, because under, read it yourself, 939.71, only if the prosecutor is *aware* of exculpatory evidence does he have the duty to tell the Grand Jury that it exists. We *create* the knowledge of exculpatory evidence by inviting the attorney for a target that we know has an attorney to give us the exculpatory stuff. But the defendant doesn't have a right to have us ferret out his exculpatory evidence. There is no right for a target to get a letter from the prosecutor saying along with the subpoena "you are a target in this case." You just subpoena the guy and haul him in. If he has not got brains enough to go out and get an attorney, that's the way the cookie crumbles. Now the lady from the south would prefer that all people have letters, and have public defenders.

Gloria Gomez: I didn't say that.

Bill Larsen: Everybody gets treated at the accusatory stage differently than...

Mike Vitiello: She says she didn't say that.

Bill Larsen: That's not what I heard.

Mike Vitiello: Again, we could play it back on tape, but we don't have time. Here's a question, a factual question, that I want to ask you, and that is how often do you have to present exculpatory evidence?

Bill Larsen: Say that again.

Mike Vitiello: How often do you have to present exculpatory evidence?

Bill Larsen: All the time. I think every prosecutor's office would probably agree that if when in doubt as to whether or not something that we are aware of could possibly be tending to negate guilt we inform the Grand Jury of that. The Grand Jury then has the option under the current case law, to choose in their discretion, whether they want to actually hear it. Whether they want to call up the

actual live witnesses, or whether they would want to say that's nice, but we think there's probable cause anyway. If we brought that tenth witness in that said the car was black when twenty witnesses have already testified its white, it's not going to make any difference to them anyway. So let's get on with it.

Mike Vitiello: Well, any final parting shots? We are right at the time we promised to end, but I want to thank you all. I think it has been extremely helpful. We have got our eyes opened on a number of important questions. I don't know how many of you would be able to make it tomorrow, but ...

Clark Kelso: I think most of this group has indicated that they are going to be here tomorrow. Let's have hands, who's here tomorrow. Very good. We should see tomorrow if a few other folks join us. ... There may be a few others. Thank you all very much. Have a pleasant evening in Sacramento.

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JUNE 2, 2000

### *III. Discussion of Increasing Diversity Among Those Serving on Grand Juries*

Mike Vitiello: Okay, why don't we go ahead and get started. It looks like we'll be an intimate group. Originally there were about 17 folks signed up, but I think some of them came yesterday and indicated they were getting their input in then and so more talk for us. Okay, we have 3 subquestions in topic 3. The general question is can the selection process for members of the Grand Jury be improved, and then the 3 subquestions - let's start with the one dealing with diversity, should there be more diverse membership. I will take any taker on that - anybody wants to bite on that topic.

Clif Poole: I don't know how you change, or...

Mike Vitiello: Will you do me a favor again just state your name for when you speak for the first time just so whoever transcribes this will...

Clif Poole, from Solano County: I don't see how you can achieve diversity and still select people at random without some type of appointment. To change the diversity would mean you would have to change how you select, and right now there is a random pool, or a random selection out of a barrel. To change the makeup you have to know how to get a different group of people.

Gloria Gomez, Superior Court L.A.: What Mr. Poole is saying I think is quite correct. If you are doing the random draw there is no guarantee that there is going to be the diversity per se. It is not necessarily the case that it will mirror the county or the population at which you are aiming.

Mike Vitiello: Is your pool in L.A. the voter registration?

Gloria Gomez: We have both the DMV and ROV. Now the DMV we use the I.D. card holders as well as the drivers lists. But as I am saying typically when you do a random sample you hope that you produce a sample that is very much like the universe, you know, from which it is drawn. It is not necessarily the case that you will mirror that population, particularly if you have the types of problems where people do not respond to summons from specific areas geographically. That is a problem, for instance, in Los Angeles. We have certain areas in the county where we have a typical high non-response area for jury summons and so in spite of the fact that you have names and addresses, and who is living there, etc. doesn't mean necessarily they're going to be part of that pool. There is a problem with that. However, I have talked with our Grand Jury, well the national expert on jury matters, about stratified sampling, which is something that would, or try to bring in the diversity - complete into the mix of how you select jurors. But he assured me that there wasn't any particular jurisdiction he could point to that this stratified sampling to achieve diversity.

Clif Poole: I don't know whether the law requires, such as what Gloria is talking about, where you are going through DMV and voter registration in the different counties. I know our county demands that when somebody becomes eligible for the Grand Jury it is a recommendation by a politician, local official, etc.

Mike Vitiello: And they also accept people coming forward I would assume.

Clif Poole: Yes, that is also available. About the only way I can see that changing to a large degree is to interest some of your college students, some of your high school seniors, - okay we have 2 younger people on our jury this year, and it is amazing the enthusiasm that they have derived out of this and the following of their friends, because they have made sure to send their friends a copy of the Grand Jury reports as we have issued them. And this (*inaudible*) a bunch of friends in L.A. so you will have some volunteers next year. They are fired up.

Jack Zepp: In my county all Grand Juries are volunteers. We do use a random sampling and I think as long as we have the random sampling system the only way you can increase the diversity of the jury is to increase the diversity of the pool when the sample gets drawn. The way to increase the diversity of the pool, I think, is public speaking. If you have a chapter - the Marin County Chapter, for example, went out to everyone...this year and spoke about everything from Kiwanis to the high schools and so forth. Public outreach of that type, general publication, education and some how we have to get the school system, at least in the law schools, to acknowledge there are Grand Juries and say something about them. I think if you do that you greatly increase the pool. I also think, as this gentlemen said, I think I would like academics to consider giving credit for serving on the Grand Jury. At least at the level of the law student. I don't know what your policies are, but when I went to law school the graduate credit programs - You know you might consider letting somebody sit on a Grand Jury and giving them credit, or at the undergraduate level maybe a civics course, or history course, or government course as something for which Grand Juries would be appropriate subject to give credit.

Dan Taranto: I would just like to add that one of the biggest problems to getting diversity and a broad participation in the volunteer pool for potential Grand Jurors is that our entire communities

are ignorant of the Grand Jury system. In our research we find that there is nothing from kindergarten to PhD available in public schools that informs the public, even in the slightest way, the broad spectrum of civil oversight authorities that the Grand Jury has and that the Grand Jury is staffed by lay citizens. You don't have to bring any particular expertise with you, just the willingness to make a meaningful contribution to the community. I think if all the civics classes throughout the state were required to give at least a 2 hour chit chat on the civil functions of the Grand Jury that we would find a lot more volunteers evident throughout the state to fill these pools with a greater diversity of potential candidates for the Grand Jury. Also, it would indicate to the public the role the Grand Jury has. That the Grand Jury is there as a place to file letters of concern, with regards to overzealous enforcement, inappropriate conduct that they have maybe witnessed of some official. It could also be attentive to the actual publication of the reports because at the other end out of this general community ignorance the public is not aware that the Grand Jury functions in the civil oversight capacity and produces an annual report of findings and recommendations. Therefore, they are not looking to see it. They don't know it's there. It is as if it doesn't exist, and its impact is less and as a result in the counties in the past ten years there has been a proliferation of ways of getting the Grand Jury reports published in the newspapers in tabloid fashion. In Humboldt we used to produce, I think, something like 200 hard copies that were largely distributed within government and only the media that knew where to go could get a copy. They would get a copy and then they cherry-pick it for the stuff that makes the greatest headlines and otherwise the public is totally oblivious to what the Grand Jury has done. In the counties where the tabloid publications of the Grand Jury reports go out, now in Humboldt, for the same price, they are putting out 30,000 copies of the Grand Jury Report that goes county wide and the nice thing about that is even if only 1 out of 100 of those reports are actually read, the information about the Grand Jury activities throughout the community is more enlightened and out of that, I think, there is greater credibility for the Grand Jury system, a greater awareness of what the Grand Jury does, a greater awareness of people that would like to serve on the Grand Jury now that they are aware of something that they can do as part of their civic contribution to the community. And then the tabloid thing in itself, just the document itself, informs the public of - AOh I didn't know the Grand Jury could do this sort of thing.@ I have heard that comment so many times. AI didn't know Grand Juries did this sort of thing.@ And by meeting that exposure, I think, it contributes to a greater number of people throughout the community that realizes this is another outlet for their volunteerism, and I think that would help broaden the pool with a greater variety of people, and that in itself would help to broaden the cross-section with new participation.

Mike Vitiello: We all have the sense that Grand Juries, in fact, are not sufficiently diverse. Is that our general sense?

Dan Taranto: Well, I don't know if that is necessarily true. I think they could be more diverse, but I think they are largely sufficiently diverse in that the juries, that I served on 2, and both of them though they were predominately white, were in a county that is predominately white, very small like a 6% minority rating in Humboldt. But when you look at the backgrounds, and the view points, and the socioeconomic political issues, there was great diversity on the Grand Juries I sat on.

Sherry Chesny: What I think is more important being a Grand Juror is someone who is very interested, and who is willing to dedicate the time and the effort it takes to do a good job, and that has nothing to do with diversity. I would hate to see people just picked out of the basis of gender, or race, or something else that really didn't hang on that. I think that the diversity is much more a critical issue if they're going to be doing any kind of criminal indictment proceedings then definitely they are in civil - you know when you are getting volunteers it is going to be harder to achieve. There does seem to be about an equal mix of women and men, and wide variety from backgrounds. Where we don't have diversity is probably age, because all the ads in the newspapers say you have to spend 20 to 30 hours a week, and that scares off anyone that has a life. I would like to suggest a couple of things about the selection. I would like to see court people, such as Gloria [Gomez], in her capacity and with other staff in state in similar capacities, maybe come up with some creative ways to get the word out or share ideas on what appears in the newspaper so they don't tend to scare people, rather than - you know, you go for interest. I also feel that when Grand Juries do get, and has an excellent report that has made it to the newspaper, that that stirs up interest. Placer County this year, had a final report part one, come out in January that was about the Junior College up there, with a lawsuit, where a gender discrimination lawsuit with a secret settlement type thing and was definitely kept secret and it was written up in the Bee. I think, 2 or 3 times the media had big articles on it. I just heard that for the first time in quite a few years they have a tremendous pool. It is those controversial reports that make the headlines that makes people aware of Grand Juries and what they do. Another thing that has to do with newspapers again, the first year I served as foreperson, and I decided that I should make an effort to have a relationship with the media, because I could see that recommendations are only - you have to utilize that media to get your word out. So when I was first on I basically contacted everything from the Sacramento Bee on up the hill, and just talked a little bit about Grand Juries. I was surprised at how few were familiar at all with what a Civil Grand Jury does. And a reporter from the Bee came up -asked me if he could come up, and interview me and find out about Civil Grand Juries and they wrote about a 2 page article on Civil Grand Juries, this is going back to 1984, but I thought if nothing else, it helps get the word out. I think we need to start promoting that type of thing that the Grand Jurors have to take - do things like that to call attention to it. Although, they don't have time to go out and do public speaking, we did do some, but it was really very hard.

Clif Poole: Supporting what Sherry says, this year in our Grand Jury we started issuing the interim reports, which got away from what Dan was talking about, picking and choosing what papers were going to report on. We have made the headlines almost every time we have issued a report this year and our jury pool or volunteers coming forward right now are astounding. And similar to what Sherry said, I talked to many of the newspapers at the beginning, they had no clue what a Grand Jury did. Their thought of the Grand Jury is the type of Grand Jury all you guys are doing criminal what are you talking about? How can you do this type of stuff? It was a complete education program, even for the news media, including their editors as to what a Grand Jury is about.

Clark Kelso: Is there a name problem here? I mean, it doesn't - it conveys criminal...

Clif Poole: It conveys, "The Federal Grand Jury met today and they indicted so-and-so...The Federal Grand Jury met today and they issued an indictment against this one." This is what you hear all the

time on the news. It is always associated with some big case, and that is where they are picking up Grand Jury from - so every Grand Jury must be criminal. You guys don't look at anything else. How do you get to that point? What do you mean you can do that kind of stuff? You're a Civil Grand Jury, what's the difference? Those are the questions that I ran across.

Jack Zepp: *inaudible*

Dan Taranto: One of the things that we have tried to work with in the State Association is trying to figure out the access to the state education. However, that is what we are not familiar with and talking with a few people we think it should be something that is incorporated into the text books and into the standard curriculum for educating our citizens they should know what the Grand Jury is in its full scope authorities, and they should know that it is something that they themselves could volunteer to participate in. I think it's the absence of that knowledge that keeps many of these counties short of adequate candidates to assure a reasonably good cross section of the community. It is imperative, I believe, and I think most of my colleagues would agree, that the regular Grand Jurors need to be volunteers rather than conscripts. But that for the Criminal Grand Jury that it should be impaneled pretty much along the guidelines that were put out by the Judicial Counsel in 1962 following Panella's Bill 607, which provided for the extra Grand Jury. I thought they did a good job of distinguishing the importance of the Regular Grand Jury being impaneled with citizen volunteers rather than citizens that are pressed into the service. There are a couple of examples where judges tried to conscript regular Grand Jurors, and those Grand Juries almost axiomatically ran into trouble because they all felt that they were imprisoned and didn't really want to be there. It has to be a desire to do a civic contribution to make a good, regular Grand Jury experience.

Mike Vitiello: Let me just interrupt for a second and welcome our newcomer. We are talking right now about should there be a more diverse membership on the Grand Jury, and are taking comments from anyone on the floor, so if you have anything to add feel free. The only thing I request is when you first speak, to speak your name so that when this is transcribed -

Clark Kelso: And this is Mike Vitiello and I am Clark Kelso, and you are?

Terry Van Oss: I am Terry Van Oss: I thought my foreman was going to be here and it looks he didn't make it and my assistant court administrator, who is in charge of selecting our Grand Jury had the flu today.

Mike Vitiello: Feel free to interject at any point.

Clark Kelso: Did you describe what the basis was for the suit in Los Angeles. Is it, that in fact, you don't have the diverse, or that some how structurally whatever you are doing with the 20 odd rules - all guaranteed not to have a diverse cross-section or what the basis for the -

Gloria Gomez: Let me say there are two suits, not one.

Clark Kelso: Oh congratulations.

Gloria Gomez: Thank you. This is not a common thing for us. Every 5 years or so we have those things crop up, but the current basis, they are always the same basically, it is not so much that we are selecting the systemic problem of how we are selecting the individuals on the Grand Jury, although one suit this particular time has come up with the entire process is a volunteer process and so to that end we are not achieving the cross-representative method that we require - that is required under the common law, and that the fact is that in this particular case we are looking at Fourteenth Amendment type of situations. Fourteenth Amendment claim rather than the usual Sixth Amendment challenge. So what that implies is that once the defense - the parties make their case, we may be seeing a lot of indictments turned over in Los Angeles. So because we used the Regular Grand Jury for indictments, you know, we have this real problem with regard to how they are selected. And naturally our system also is very much volunteer. We do have, of course, the direct nominations by our judicial officers. That is a combination of the volunteer pool and the direct nominees that are pooled for the Grand Jury. It is very difficult when you try to recruit, and believe you me, we do all kinds of things to try to recruit. But when you tell someone, in our case, our term of service is a 1 year term. It is very difficult to break up your life, regardless of whether you are retired or not, to give up an entire year to serve in that capacity. So it is not a difficult thing to see how you can get to a lack of diversity.

Clark Kelso: In those counties that have an additional Grand Jury just for criminal, when you do that does that have to be set up for a year. Can I set that up and let it - have it go longer?

Dan Taranto: Most of the counties that I have heard of only impanel for the time that they are needed as I understand it.

Clark Kelso: So then if we would do something, ... you could have a Grand Jury for 2 weeks?

Gloria Gomez: 904.26 allows you to have a term of service up to 1 year, but it does not force you to have a full year term. In fact, what we are doing with our newly formed 904.6 jury will be a 2 week term.

Terry Van Oss: I think a lot of the counties are using a 6 month criminal - we do.

Clark Kelso: 6 Month criminal.

Terry Van Oss: Yes.

Clark Kelso: Goes along with your statutory flexibility for that then it can be adjusted to whatever the county needs.

Terry Van Oss: Yes, it is a lot easier to get jurors under those circumstances, because then they know they are only going to be called in to serve for a short period of time when there is a need for indictments and we have an agreement with the District Attorney's office that will try and group their indictments so that they can limit the amount of time that jurors have to serve.

Clark Kelso: So with that they would have a 6 month service, but they may only be coming in 1 or 2 days a week, or one every two weeks.

Terry Van Oss: Well, not even that often. In our county, we have a fairly small county, in fact I just found out we are 15<sup>th</sup> in the state, we don't have that many indictments really. The indicting process, as you know, has fallen into disfavor.

Mike Vitiello: Do you have any sense when they choose the indicting process rather than the preliminary hearing information - why do they chose indictment over -

Terry Van Oss: Yes, its for convenience. Well you know the way it is really being used now, by our county anyway, is really is for the convenience of the D.A. and the police officer witnesses, because most of the things that are taken before the Grand Jury now are these long undercover dope sting operations. Now there are some other things, you know, occasionally they will - the Grand Jury is used for its more traditional purpose to weed out things or to get a sense of the community as to what is really important, what isn't, but that's pretty rare anymore in our county.

Mike Vitiello: I served as a Grand Juror for a year out in Yolo County and the only thing they had us do on the criminal side was to indict on undercover drug operations where there was one undercover operative, actually two different undercover operatives, and they wanted to bring them in once, to do a large number all at once, where there was also some concern that if they did an arrest of one person then the undercover operative's identity would become known. That sounds like the experience in your county.

Terry Van Oss: Yes, occasionally it's because of laziness on the part of the people too. If there is a large case involving a lot of witnesses, and it is difficult to put together, it's easier to throw it all in front of the Grand Jury, because it takes less time. It's easier to coordinate everybody in, so occasionally you will see large white collar type crimes that will be presented to the Grand Jury.

Dan Taranto: There is some use of the Regular Grand Jury by the District Attorney in issues of child abuse cases where they want to shelter the child from having to go through both the preliminary cross-examination experience as well as an open trial experience. That is one of the favorite items of the Grand Jury for the D.A.

Mike Vitiello: Back to a quick summary of where I think there is a consensus of whether we - there seems to be some sense that there could be more diversity. You want to say that there is sufficient, but maybe we could get more. But to increase diversity, it seems to me, you have made a couple of suggestions generally under the caption of outreach. Anything in terms, and there 1 or 2 things that you eluded to that might be the product of legislation. Would you urge that we legislate the text books? Have to have a section, or was that just sort of a - I wasn't sure from your comments.

Dan Taranto: Well if that is possible legislative I think it would be a good idea, because personally initially when this information became apparent, our high school students, our college students, and

even our PhD candidates, through the entirety of their educational experience have received nothing in regards to the functions of the Civil Grand Jury in the California. The need is almost a conspicuous absence. I don't understand that, and it is a very important role the Grand Juries plays. I would suspect that a real proper thorough study was done of the effect of the Grand Jury system and the evolution of local government in California, I think you would find there was a profound effect over 150 years. But the little nudgings and groomings and suggestions, and exposes of a regular Grand Jury in the various communities throughout the state would have had a profound effect on polling in California over the past 150 years, but they are not given the credit that they are due. A lot of citizens over 150 years have indicated a lot of time in their lives trying to do something that was meaningful for their communities. They all do it in earnest, that it is meaningful and of some positive kinds of usage to their communities, but yet there is no residual artifact behind other than the Grand Jury reports that this is taking place. I think that if we have better informed citizenry, that you would have candidates volunteering to be on the Grand Jury lined up around the block, and your problem would be figuring out how to sift them out to get the representative cross section that you are looking for. Whereas right now the problem seems to be more not getting the representative cross section, but getting enough jurors to fill out the panel. In some counties it is so bad that I have actually talked to several jurors over the past 10 years that said that "Well I have been on the Grand Jury 13 times," or "15 times." Because they are so hard pressed to find somebody to get on the Grand Jury they keep turning the same people over again. I think that is wonderful, but I think its an experience that should be shared around, and that the more the better. I think this is largely because the ignorance of the communities. People simply do not realize, and I would think that Los Angeles, if tomorrow the people in L.A. knew as much as we do, out of your millions of people, you'd probably have a million people volunteering to be on the Grand Jury. You'd have a completely different kind of problem on your hands.

Gloria Gomez: You're correct. I think you were talking yesterday, and that is exactly the thing - there is just not enough information out there about what the Grand Jury does, and the importance of it. Frankly, there is an entire need for a public relations type effort throughout the state on this thing. That is why I was appealing to you - and you are appealing to me to take up the cause.

Clark Kelso: When you issue a report does it - what happens to it initially? Does it go before supervisors? Is it put on the agenda or any of that sort?

Clif Poole: We issue an interim report and we deliver it to the affected agency, whether it be the city or the county. Whoever is affected by it. Two days after we issue it, we then issue a copy of it, whether it be an e-mail, which is the easiest method we have found to every newspaper within the county and the TV stations. So what that does, it allows them to take only from that particular issue. We have generated a tremendous amount of controversy this year within our county and I look at some of the controversy or the majority of it; when you start criticizing and it becomes front page news they have no choice but to fight back. In the past where we used to issue the report once a year, in tabloid form, and the newspapers picked and choose, nobody really got excited because nobody was reading it. The counties or the affected agency does issue a written response back within the required 60 or 90 days, depending upon what it is. In the past with the annual report they issued their responses, they were appropriately sent to the presiding judge, they were appropriately bound, made

public documents, and filed away on the shelf and nothing really happened. Well, this year we have responded to last year's responses. We took a look at what they said, and much of what has been said - I can only speak, again, for our county - much of what has been said in the past has been a lot of words with no real meat to it as to Aoh thank you very much for your comments, we will be taking a look at that, and it goes away and gets filed away, end of action. This year, with the front page headlines, the public has become involved as to why is this going on. Is this really happening? The political beat has generated something other than just words coming back. It has generated a fight in many cases - I have to respond with something that makes sense. Which some of them are not aware of. Their responses now - we have promised - if they give us their responses in time for our annual report, we will publish them with our annual report. Which now means the public gets a look to see the empty words. But it also gives us another chance to make a comment about their responses. Are they adequate? Do they measure up? Remember a Grand Jury can't force them to do anything. There is only one person that is going to force them and that is the public. The only way you get to the public is with headlines. That is the only thing a politician listens to very well.

Jack Zepp: Just a little addendum to that: Now that the bill, that the recipients of the report are required by law to respond in certain ways, the Grand Jury discovering the depth of meaningful responses. What my county is doing is they are issuing a report solely on responses. So as soon as the 90 day period is up and they have had a chance to look at it a report will come back. It's just an interim final report on agency responses.

Mike Vitiello: Is that the new Grand Jury that is responding or is that the old one?

Jack Zepp: No this the new Grand Jury. It is getting responses from the prior jury. It goes through and determines that: 1) Did they get it all? 2) If they get it, did it comply with the Grand Jury? 3) Did they think it was a substantive problem with the response. Then they will either just issue a report saying everything is fine, or they will comply, or they will say you know we think that this agency failed to comply and this hasn't happened yet because the agencies (*inaudible*) Then either they or the chaplain, the county has a chaplain, will undertake to monitor the compliance that say that they both take action and when. And if the action isn't taken, or isn't taken when they said it would be taken, then the Grand Jury will issue another report saying the agency is failing in its obligations to the public. I think that the agencies are beginning to realize that there is a multi-step, a multi-barrel gun that they are looking at if they try playing old games in responding by saying no comments or, "Thank you very much."

#### ***IV. Discussion of Issues Relating to Resources for Grand Juries***

Mike Vitiello: Let's turn to the second sub-question then. It seems to me we've agreed that if there is better publicity, if there is better outreach, diversity of the membership, probably becomes less of a problem. The second question that we broke out was should compensation or benefits for the Grand Jury service be increased?

Jack Zepp: Yes. Yes, absolutely.

Dan Taranto: And one of the things that speaks to that directly is the part of the compensation is mileage. You incur mileage, standard is 15 cents a mile one way. In the larger counties, if you are right next door to the courthouse, no big problem. If you live 100 miles away and you only get 15 cents one way it creates an extra hardship for representation to come in from the outlying areas.

Sherry Chesny: Our county pays whatever the Federal rate is paying, so that is going to vary, I think, from county to county. I think it has been that way since the first time I served, which was 84. \$25 for a full panel meeting, \$10 for a committee meeting. If you attend more than one committee meeting you only got paid for one. Our jury is kind of similar to that in that ballpark at least. I figured out my hours one time and I was making \$1.00 an hour at the most. It is not anything you would ever do for money. As Jack said earlier, only a few people were even concerned about it. I enjoyed doing it, strictly on a volunteer basis. There were many others like me. There were some people that were anxious to get those reimbursement checks, they were on social security, that sort of supplement. I don't know that it is going to do much. I would like to see, maybe, some minimum standard for some of those counties paying .15 cents a mile, when you are paying \$1.65 for a gallon of gas. I've heard of counties paying jurors only one way. What do they expect them to do to get back home? There's a lot of things out there that are not fair, but...I don't know that it is going to attract any more people.

Mike Vitiello: But there is sense among the people here that there is any urgency to increase the amount of per diem. You're talking - Dan, you're talking about increasing the amount for mileage. You're talking about standardizing those kinds of things. No one here is suggesting that -

Dan Taranto: I would suggest further that, you know, if you want a good cross-section socioeconomic cross-section of the community, you want to approach more of that kind of representation on the Grand Jury then it's true that to many of jurors the paltry sum of money doesn't amount to a hill of beans and pays for lunch or pizza over the weekend or something, but it doesn't matter you are more concerned to have an opportunity to actively be a participant in something that hopefully will be meaningful for the community. But for many that do participate, they can't participate because their incomes are too narrow. They can't afford to take off work, and as the case - there was a study of the Grand Jury system in Humboldt County by the Local League of Women Voters and actually has been conducted three times, they just redid it this year and added a few more things on to the list of positions that they support. Amongst the positions the League has taken is that there should be some provision for the expense that mothers with children have to bear if they have to put their children into daycare to participate in the Grand Jury service. Because you are actually penalizing these people to participate because they have to expend a portion of their limited resources to liberate themselves sufficiently to come to the meeting. So those kinds of considerations that the issues (*inaudible*) now the cross-section of participants, I think special consideration has to be given to participants where the funding is a big issue. Where a couple of bucks one way or another can make the difference if they become a player or not.

Gloria Gomez: To the end that - to support basically what Dan is saying, you know we see the same kind of situation with regard to Petit Jurors, to the extent that you do not compensate, you do not get

the individuals whose employers do not pay for the service, for jury service. Ditto with Grand Jury, you are talking of a term of service that could be six months to a year, depending on the county. So you do have a real problem recruiting people whose employers will not cover that time frame while they are doing jury duties, doing Grand Jury duty in this instance. The problem that that brings, of course, is that you end up with individuals who are typically retired, or homemakers, or individuals who are not able to - who are not really in a situation where they are going to be hurt, you know, their salary is impaired. Now a lot of the employers in petit jury situations, and also in the Grand Jury situation, like the postal service, they pay for the entire period of time that a person is on Grand Jury.

Clark Kelso: Even for a Grand Juror?

Gloria Gomez: Oh yes, absolutely.

Clark Kelso: Does the government do that as well?

Gloria Gomez: No, I am not aware - I think it is agency by agency. I am not aware. I do know the county is obliged to pay for Grand Jury service also.

Clark Kelso: For its employees?

Gloria Gomez: Yes. Again, there are very few employers that are willing to let an employee go for that time period. So that issue of compensation comes into play in that regard.

Mike Vitiello: Has anyone seen any - if we are talking about making it sufficient to attract people who are otherwise not going to be able to get paid, how much are we talking about per day?

Gloria Gomez: I would probably venture to guess, again, at minimum, you know the minimum wage probably would be appropriate to start off, but you know the issue being, of course, we are talking here of diversity issue to some extent, and so some people get a whole lot more than just minimum wage. So if you are looking to aim at diversity issue that is a pretty difficult question to answer to be honest.

Dan Taranto: Maybe some kind of, I am just throwing things out, but maybe some kind of a sliding scale. I know doctors that charge based on ability to pay. Maybe the remuneration should be based on their need, or their income level, or something of that sort.

Sherry Chesny: It would amount to a tremendous dollar amount. Any kind of increase times nineteen, times the activity, and you are looking at huge dollar amounts. And to what extent then is the Grand Juries budget going to start eliminating things, like the ability to hire outside experts, attend regional training programs, and do other things that are not in our own budget?

Clif Poole: Our particular Grand Jury pays \$10 per meeting, and if you have 5 in a day it is still the one regardless if it is a regular meeting or otherwise. In reality you are lucky to buy your lunch for

an all day meeting out of the \$10. Now we get the same mileage that Sherry was talking about, based on government rating. As that changes that is fine, but I would think that if you want to acquire people, and encourage people, you have to pretty much figure that you are going to pay for their lunch, or at least cover their expenses, and in the case of if you want some housewives, or mothers that have children, you are going to have to cover their babysitting costs while they are there. I don't know how you balance that out to where you say okay this group, because she is a mother has children, she gets more than the gentleman over here, or you just balance it across the board and say everybody gets X amount. I also agree with Sherry, that if you start tinkering with it and get it to a minimum wage scale, per se, that you have added a tremendous cost to the counties based on the time our particular jury has put in on it. That is going to be taken back somewhere else.

Sherry Chesny: Maybe that is the problem because where does our money come from? How to spend it. It always seems sort of paradoxical to me that basically the supervisors establish the Grand Jury budget with input from the court. Obviously they are the objects, sometimes, or departments or individuals of Grand Jury investigations so at the same time you have them responsible for your funds when they don't view you as necessarily being friendly. I don't think it is an adversarial relationship, I don't think it should be, but to a lot of political people - If you introduced legislation I know CSDA is going to be on the opposite end than CGJA, on a lot of the issues.

Clark Kelso: Is what the Grand Jury does a matter of state policy, or implemented state policy, or is it really a county local function? Is it a state function or local function?

Clif Poole: It is a combination of both. In essence you are looking at many of your city ordinances, but remember a city - if they violate their city ordinance what penalty is there? So what do you do other than make a report. You have really no recourse. If they violate a state law you have some recourse to go after it in the form of an accusation and that is why yesterday my comments about the District Attorney is elected, the county counsel represents every agency within the county, which is the bulk of what your investigations are. This year we got shuffled to four different county counsels because of potential conflicts as we got going through. Now, originally we had the total county, actual county counsel was the Grand Jury's representative, we ran into some problems last year, changed over, so we assigned it to an assistant county counsel, and even with that we went through four assistant county counsels this year because of the investigations we were looking at and the characters we were looking at.

Dan Taranto: One thing that is interesting about the funding of the Grand Jury, the Grand Jury has purview over not just the county, but also the cities, and the special districts, and each of them have their own taxes, their authorities, and their own revenues, and what not, yet the county is funding the Grand Jury over cycle for all of these entities and maybe there might be some consideration of sharing the burden amongst the other entities.

Clark Kelso: I am sure that they would enjoy that. I guess what I am wondering about is justification, if any, for saying this really is a state responsibility because traditionally on the judicial administrations side of things, you know the courts have all been local...(END OF SIDE OF

TAPE)...maybe there is something to that notion at least in theory. [i.e, state aid for Grand Jury funding] That obviously doesn't mean suddenly 30 million dollars showing up.

Sherry Chesny: I would love to see the state pay for something and let the counties off the hook. Where they have taken so much money from counties and special districts.

Clif Poole: Well if you did that then you could create an office of attorneys, maybe out of the A.G.'s office, that works with Grand Juries all the way across, and you eliminate the local political problems that are there, because every county has them.

Clark Kelso: I was thinking, yesterday, as you were talking on the first topic, of something like a Grand Jury resource center is kind of what you need. I maybe the state government or some other institution could step up to the plate and become a resource center. Certainly another way of doing this is to say the Attorney General, that should be one of his responsibilities, his supervisory responsibilities over local matters.

Jack Zepp: The Attorney General is not generally particularly friendly with the Grand Juries. He is another politician. If you want to help us write grants we will be the resource for you, that is where we want to go, but we have to get some money. The Code provides if they need advice some place, and they don't agree with the County Counsel, they've got a conflict, they can ask the D.A. or the Attorney General. In the instances of which I am aware of where they have gone to the Attorney General, the Attorney General always backs the local politician. He is part of that club. We get calls and we try to respond to them, from people who - I was showing you yesterday, and we made this available to the Grand Jurors so they have them all - and we get calls and we try to respond to them. There is a tremendous level of frustration in some counties with the County Counsel, the whole government. But the people the Grand Jury has to turn to, the presiding judges, I was talking to someone just very recently, the presiding judge basically said, I am not going to get into the fight, you solve it. They had County Counsel that they didn't trust. The D.A. was running for office, and he wasn't going to get involved. They are sitting there with a very difficult situation. Although a public official took a draft, a report they sent asking for comment and published it, to make it look stupid, because it was full of typos and they didn't have (*inaudible*) and so forth, and they were trying to figure out what to do about it. If you can't get the presiding judge to authorize to hire an independent counsel, and pay for it, it's the end of the game.

Dan Taranto: You know part of the problem too is the Grand Jury is only there for a year and every time you stall the Grand Jury's access to information, you are impairing the ability of the Grand Jury to fulfill its duties. I will tell you, run out the clock is the game that's played throughout the state. Not by all the officials, some of the officials are absolute champions of the Grand Jury system, and of course they are very helpful, but there is a fairly high percentage of -

Mike Vitiello: Well you're giving me perfect segue into the next topic, and that is the idea of running out the clock, actually goes to the next topic, which is whether the one year tenure is appropriate. Whether a different tenure would be more appropriate, and I suppose either shorter or longer. But I suspect I can anticipate the problems with shorter is that by the time you feel

comfortable with the job you are at least six months into the Grand Jury process. What about the tenure question?

Dan Taranto: Well, it was proposed a while back to do the year and a half, and that was a CSAC idea. We uniformly opposed it because right now it is hard enough to get jurors to do it for one year and the year and a half thing is going to create a cycle that is kind of lopsided, you know. It doesn't naturally come out at an ending at the same time, each time. I think you would have a hardship. It would create an additional hardship to getting the diverse representation and/or even adequate volunteers to fill your Grand Jury room in a number of counties.

Sherry Chesny: I would suggest as an alternative, have them serve a year term, but provide training prior to the year beginning. Now there are a few counties that have some county orientation programs. I know of one, Contra Costa, that supposedly the whole month of June. Now whether they are training all 35 that are still in the pool, as most people are, you know, not selected, I don't know. I don't know if maybe it would be possible for them to be selected earlier, and have more of an extensive training period, so that on July 1, they are ready to begin rather than sitting there for another month or two to find out what it is all about.

Mike Vitiello: What about staggering?

Jack Zepp: My county switched from calendar to fiscal year, so somebody had to serve eighteen months - I served on that Grand Jury. I thought personally eighteen months was fine. We only had one hold over. I don't frankly know whether that was because nobody else would want to go another year, but we didn't lose anybody for the fiscal eighteen month term. I was thinking the same thought, but I think staggering and have them serve a year and at least those that want to hold over serve for six months. Then you replace them so that you constantly have a trained Grand Jury that's just sort of brings in new people on a periodic basis. I haven't thought through it, so I don't know.

Dan Taranto: Well that has been tried. The legislation in the mid-80's, I think came out of Shasta County, where they were trying to grapple with the same issue of continuity and the law changed, and for awhile there you would be carrying over four members, and for awhile you couldn't carry over any, then they came back and changed the law again to where you could carry over up to half. The idea was that you would always have this ongoing better continuity, but the problem that developed out of that, in talking to the jurors that served under this system, is that you end up with a jury that's playing seniors and juniors. It kind of stratifies the Grand Jury and then you don't have that cohesiveness that you do when they are all impaneled together.

Clark Kelso: Of course, carry-over is a little different than just staggering. At least what I think of as staggering, is you have one-half of, or one-third of the group starts on July 1, the next third starts four months later, the third third starts four months later, and you are just on a continually rolling, staggered term.

Mike Vitiello: Well some of Dan's concerns still would arise...

*(lots of talking)*

Sherry Chesny: What happens, I think, when you do that, if you did that, I think it's kind of nice when a Grand Jury comes in session fresh and objective and they can select their own areas. I mean you would always -the newcomers would constantly be working on the issues that had been decided by those prior to them. I don't see that they have as much freedom in selecting new things.

Mike Vitiello: In any of these things you are going to have to make hard decisions. Dan was raising the concern about the clock running out and we have all been frustrated by the fact that our term on the Grand Jury ends, and so we no longer have the same level of energy when the response finally comes out, unless you are doing it at the interim report way, which we did not, I don't think we could. So, I was suggested staggering - recognizing it has some blemishes, but would it effectively respond to these other concerns that are raised, most importantly the clock running out?

Clif Poole: I don't think so because what you are doing, you are disrupting the committees. In other words, you have one committee that has started on a subject, and they are half way through their report, and their investigation, now all of a sudden you take some of their members and they have to leave, and you bring somebody brand new in who doesn't understand what has transpired to date, and you are losing the history of that particular report. You are actually interfering with each of the reports as you go along. In many cases it won't make a bit of difference, but in many other cases it would. Our particular jury, you go in for a year, ten of you are able to carry over for one more year. Now last year we had nine carry over, or ten carry over.

Clark Kelso: Is that a joint decision on the presiding judge and those people?

Clif Poole: Yes. They volunteer to carry over, he can accept them, or reject them, as such, and allows up to ten, which gives you a good continuity and carries over fairly nice.

Mike Vitiello: What about - if you feel comfortable saying this - the concern about stratification?

Clif Poole: No. Yes, and no. What we did we went, everybody old and new, went to the same jury training all over again. It made the new people feel comfortable that they knew a lot of what the old people did so it kind of got rid of the stratification that was there, and they blended together fairly well. This year we are only going to have five people carry over. It will make a little bit of a difference. What Dan is saying, though, is stalling. We ran into it this year, an agency stalled us through subpoenas, through everything, up until April of this year. So we are talking ten months, when finally we got enough information that all of a sudden the individual we were looking at within the government wrote a check for \$5,000 back for the government that he had been erroneously paid. But we couldn't even get to that point for ten months.

Jack Zepp: Mike, while you are on the subject let me just say something, that's a little hard for me to articulate; a good functioning Grand Jury is an amazing organism. I've never had an experience like that in my life. Having to reach a consensus nineteen people, all of whom weren't mirror images of me, was just awesome. And you have to take, somehow a fact of that into one of your

recommendations you may come up with staggering, role overs, or what have you. If it is a good jury, after about the first three months it is a unified organism.

Sherry Chesny: That coalescing might be harder to achieve...

Mike Vitiello: Well, it may be that fact that you can have carry over may be sufficient to deal with the problem.

Sherry Chesny: Carry over can be a problem, and yet they can be good. I served as a carry over my last year and maybe as a result that second time I served the committee I was on got to a very interesting study that could have criminal implications, and definitely get an accusation from the new board elected officer. However, what - we were consulting with the judge on a regular basis on that, and so when it got to a certain point we turned it over to the District Attorney's office for an investigation, and sat back at that point. He was basically giving us updates on their investigation. The District Attorney, at the end of the year, suggested that I, and a couple of other people from our committee carry over. So we did. I think we had five carry overs that year, which was a lot for our county. Then we found out that - well, you know, their case could never be fully investigated because the main witness passed away, so it was all for naught. The second judge, the second year, said that had it gone to an indictment he would have considered anyone from last year's Grand Jury, who was involved in this investigation, tainted. And not have let us participated in the indictment. So that -if you have a lot of carry overs, like nine, you know right there you wouldn't have your twelve people. I don't know if that is a wide spread opinion, judicially, or not. But it was, I thought, gosh, on one hand the D.A. said do you want us to carry over because of our knowledge of this investigation. On the other hand the judge is saying hey, you would have been out of it all together. So, it was kind of interesting in that standpoint. But carry overs, what I saw of them, another lady and I both decided that as carry overs our job was to give guidance at first, and you have to give leadership at first, and guidance. But then to sit back, not accept any chairmanships, not be involved in a leadership role. Let the new Grand Jury be its own self. I did see one individual, who was a carry over, who went in there with an agenda, that was something from the year before, that she wanted done. She got herself elected chairman of that committee, and basically had a runaway committee, with a hidden agenda, due to this one carry over. I think that carry overs need to be screened. What we started after that year, what we talked about is the Grand Jury at the end, is a system where the Grand Jurors themselves --let's say the six people that want to carry over, or eight, whoever, interested in carry over, you usually have to volunteer to carry over, then had all the jurors vote on how they would rate those people. The votes were then individually folded, put into a packet and sent to the judge without tallying and giving the results, but that way the judge selecting the carry overs had the opinions of the other eighteen people that worked with those people. I think that kind of input was nice, because people sometimes look good on paper, sometimes people interview well, but they might not be the best Grand Juror. Unless you have been in that room, you don't know.

Clif Poole: Basically our foreman is normally chosen from the carry overs, but we do similar to what you do. We have a rating sheet that we pass around before the end of the year to all nineteen members of the jury rating everybody on that panel in about eight or ten different categories. Then

we forward those rating sheets to the judge, and from that it gives him a general idea of what people are, it identifies the carry overs, those that are leaving, but it rates everybody on the Jury.

Mike Vitiello: I would suggest that we have come to a pretty good spot to take a break of about ten minutes. There's some iced tea and soft drinks there, and some cookies. Let's start off again at 3:15.

*BREAK*

Mike Vitiello: Does the Grand Jury need more administrative support?

Participant [Poole, Taranto, or Zepp??]: Yes.

Clark Kelso: With this group I know what the answer is going to be.

Mike Vitiello: Now that won't do, as Bill Larsen said yesterday, we need a bill of particulars, and so if we are going to make a credible argument - if this is an area we go into - what we need is some guidance on specifics. What administrative support - what kind of staff support and the like.

Clark Kelso: Yesterday there was mention, I think, facilities was one issue that is not actually included under topic or technically. In general the bill of particulars should include everything. Dedicated space will be one.

Sherry Chesny: One thing I hear the juries would really like to have, and some times they do a little bit, but maybe not enough, is some clerical support. Someone that's been sworn to the confidentiality aspect. Especially someone that is very good with computers is what they need.

Clark Kelso: When you say clerical you are referring to basic word processing.

Sherry Chesny: Word processing. You know some counties do provide that. Some times it is not an arrangement that there is someone in the court that will do it, but it is going to be on an as they can basis. You know it is not really a very dedicated -

Clark Kelso: I (*inaudible*) forget the court's executive office, they may have staff people there.

Sherry Chesny: I know in our county it was someone that was actually working for the judges in the courts. They designated one person.

Clif Poole: We have had basically the same process where the executive officer supplies someone on an as needed basis, and it's as they can fit your work in, but I agree with what Sherry was saying, what you really need is a typist and computer type person that when you have the work, and I don't think, we were extremely busy this year, and I don't think we could have supported a full time secretary. In fact our executive officer and I were talking about it, here a few weeks back, are we in a position to do that, and I don't think we are. Yet, you have enough work where maybe you had six months out of the year, or enough portion where you can't just wait for somebody who has a full

time job to fit in your work. You have too much to fit, but not enough to make a whole job of it.

Jack Zepp: We had 8% of the secretaries who are court administrative and that time consumed, by the time we were done with training, and she participated. She was a wonderful woman, but she was very busy. I think on my jury probably 3/4 of the people who were computer literate, had computers, and were perfectly capable of typing their own reports, and letters, and so forth. The ones who didn't by the end of the term, had sort of been moved into a sub-category of Grand Jurors who couldn't really play like the people who could write their own reports because they didn't have anybody to write. They'd sit there pecking away at an old Remington or something. We couldn't use it, we were all electronic. I think there ought to be at least enough support to provide for people who can't provide for themselves.

Clif Poole: We found the same thing. There are certain committees that you end up with that nobody is really computer literate or that needs a fire extinguisher next to the computer when they start typing. They are a little bit slow on the pace.

Dan Taranto: And that is another important thing too in how fast you get the drafts, because a lot of what the committees do, if they work through the draft copy and are refining the drafts for review by the full panel for instance as far as the staff work, (*inaudible*) because no staff was provided in Humboldt County. They didn't even have a typewriter so I went to the Board of Supervisors and asked for a typewriter. At least if we had a typewriter -they gave us a typewriter but it had sticky keys. We all got a little annoyed with that, we decided to go back and ask for a word processor, and we could finish our day, type it up, get the draft back to the committee cleaned up so that we could go through a couple of drafts in our meeting as opposed to a draft that someone has to take it home, type it up, copy it, and bring it back, really slows down the process. They said they didn't have the money to provide us with a word processor, so we were tenacious enough to determine that the Grand Jury could do a fund raiser. So we raised the money ourselves to go out and buy a word processor. You can understand why some of the Jurors get the notion that the county government is not as friendly and smiley as they might be, doesn't really want to help the Grand Jury do its job.

Clark Kelso: Do things like making - you get a draft, things like making copies and then circulating it just within the Grand Jury - that is done - a court will do that for you? Give you access to their copier or how do you - or do you go to Kinkos?

Dan Taranto: Well without going to Kinkos, I think subsequent to my time on the jury the courts made provision that the Grand Jury could use the county copying machine for a certain number of formal copies. You had to have a little numbered thing you plug in and you got checked out.

Terry Van Oss: You're from Humboldt? And I thought our county was the chintziest county in the state. What a revelation! From time immemorial we have always had a secretary who was assigned to the Grand Jury and I am sure in the old days before there were computers there was this - every county has them - you know this old gal that was just crusty, she was there forever, and she knew

everything, and she told the judges where to get off, and what to do and everything else. But she is gone now, unfortunately.

Clif Poole: She got stuck with the Grand Jury.

Terry Van Oss: Yes, but she was a wonderful person. But in those days, I mean, I am sure that the Grand Jurors wrote out, handwritten, hand wrote their reports, they gave them to her and then she got them into a pretty decent shape and then gave them back a draft and then they'd fix that and then that is ultimately is how it got done. Now we have a more modern secretary, and she is a computer whiz, and so she does all the stuff on a word processor. She's sworn to uphold their secrecy and our Grand Jury also supplies interim reports, which I think is probably the better idea. One of the most frustrating things from PJ's point, you know, you get these things back and you grind your teeth because you want to change the writing. You don't want to offend anybody, and so you just grit your teeth. Occasionally you will see this obvious, really, typos and you can say, "well I think it was just a typo -change that okay - I will suggest to change that." But other than that you just have to take it the way it is because that's their work. So it is really, really frustrating sometimes, but basically then I just proof them and they go back. I think she provides all that - they don't have to lift a finger for the word processing, unless they want to.

Dan Taranto: I think the whole society - everyone is going to know how to run a keyboard. before they know how to make a ham sandwich.

Terry Van Oss: Now they have drive and speak, you just talk into them.

Sherry Chesny: It is handy to get your drafts done quickly and distributed to your committee quickly so that you can refine the word processing.

Participant: I would say a copy machine is almost a must for a Grand Jury. Our Grand Jury had one, and boy that thing was going all the time. I think it adds to the confidentiality. I would be worried about using the county provided copier, because how often do you leave the master up above?

Dan Taranto: Or bad copies that go into the...

Sherry Chesny: I think a copy machine is something that all Grand Juries should have and I really think a computer, too. Usually counties have older ones.

Clif Poole: We must be ahead of our times because we have an actual separate building, an old house that used to be the D.A.'s office as they shove everybody around, we have our own building. They gave us a computer, and a security system, and we have a copy machine. But everything we get generally is what is left over out of some other office. So our copy machine is not the fastest, and when you start trying to copy, for approval, nineteen copies of a report to pass around to nineteen different individuals, and it is a six page report, and you have a couple of them that you are trying to approve that week, you have one heck of a time getting through the copy machine, so out you go the night before, our secretary, our gal that we nominated as a secretary, goes out to Kinkos and tries

to get it done in a reasonable time fashion. A good high speed copier, really would probably be one of the biggest assets that a Grand Jury could have.

Clark Kelso: What does L.A. do? It may not be comparable. I mean you do a lot more criminal, so it may be that there are different issues there, but -

Gloria Gomez: Basically the Grand Jury has its own secretary, its own bailiff, its own reporter, its own chambers, its own entry and exits, its own parking, its own -

Clark Kelso: Oh you do have parking, I was wondering about that earlier.

Gloria Gomez: Free parking.

Clif Poole: Would you send me a list of all the things you have.

Gloria Gomez: But we take, \$25 a day, and .25 cents a mile, both ways. Which is what we count the employees by the compensation.

Clark Kelso: Almost makes you want to move to L.A.

Gloria Gomez: There are computers for the Grand Jury, there is the copier, what ever is needed.

Clark Kelso: How did that develop over time? Was that just the Board of Supervisors, or the presiding judge?

Gloria Gomez: No, I think - well I couldn't give you a whole lot of history. I mean from time immemorial, before even my predecessor, that we have had that set up, and the chambers have been always their chambers. We provide for individuals who are disabled in the Grand Jurors, we provide whatever it took that they need as well. We do what we need to do to make the body a functional body.

Dan Taranto: This is one of the things that might be considered for your list is the compatibility of the treatment of the different Grand Jurors throughout the state. Such extremes from county to county. You hear of the Cadillac system, there is one county that a whole building to itself. It has seven offices. So each committee has its own office meeting room, with kitchen, two staff people, their own parking lot, that kind of stuff, all the way to some county - the most minimalist county, I won't name it, but it had a file cabinet that is chained to the wall in the courthouse hall, and that is the limit of their facilities. Everything else - they have to have their meetings in private homes, or in restaurants, or somewhere else because there is no facility in the county to have a meeting place.

Clark Kelso: The interesting thing is that when the Chief Justice did his fifty-eight county tour he discovered along the same variance with respect to courthouse facilities. Now, of course, he has made that a big push in the last couple of years, and there is a big task force on court facilities with CSAC, and the courts, and the usual cast of players. Trying to address this is the problem. No, it

was just - I was just struck, it was actually quite similar. There is that wide disparity, how you move away from it is a difficult thing to know how to do. What the chiefs has to do is, you know, he stands with his annual address to the legislature, and says AI visited all 58 counties, and some of them are substandard.@ Then he tries to make it part of his budget. Of course, that doesn't exactly work in the context of Grand Juries where, at this point anyway, your funding and support is really all local. It is a different problem. Obviously you have some counties that have a tradition of really providing adequate resources, and then you have others that have a tradition of not, or simply, which was the case with a lot of these courts, the counties just didn't have resources for anybody. There is no money. It is a difficult problem.

Mike Vitiello: Los Angeles County has a single Civil Grand Jury for the entire county?

Gloria Gomez: As I was mentioning earlier, the current Grand Jury, last year-s and previous years, have been doing the criminal component as well as the regular.

Mike Vitiello: Right. But now that the criminal component is separate - do you still have just one Civil Grand Jury, 23 people?

Participant: That's correct.

Mike Vitiello: To look at the whole county.

Gloria Gomez: That's correct.

Clark Kelso: Then the Criminal Grand Jury just meets where ever -

Gloria Gomez: We have yet to impanel our first one. July 5, will be our very first Criminal Grand Jury in L.A. County.

Clark Kelso: Are you planning then on setting up like a second Grand Jury room for them, that will be dedicated to them?

Gloria Gomez: That's what we plan to do.

Clark Kelso: Oh wow. No wonder you said, yesterday, that this is a big expense.

Mike Vitiello: On the other hand you can see, though, as a proportionate, I mean one Grand Jury for the entire county of Los Angeles as opposed to Del Norte County, I assume that is the one with the -

Dan Taranto: Yeah that is the one with the - I got corrected recently, "oh no it-s not in the hallway anymore, now it is in the court lobby inside the office door."

Jack Zepp: I wonder whether it is chained for secrecy reasons or to keep the Grand Jury from stealing it?

Mike Vitiello: Let's talk about Grand Jury's experts. Whether they have adequate access, adequate resources, what your experiences have been in terms of Grand Juries and experts.

Dan Taranto: When you say experts, do you mean other than just from legal counsel.

Mike Vitiello: Yes.

Clark Kelso: What I was thinking of - there were two things I was thinking of, consultants, the auditors, the sort of things typically Grand Juries go and they ask somebody to have this person appointed. A second thing I was thinking about, was one of the interesting things is that the Grand Jurors themselves are doing all of this work, except for, like, the auditors. Rather than a model where the Grand Jurors are supervising some staff that is doing all of the work. So for example, on interviewing, and one of the constant themes is we need to have training on interviewing. To some extent I always ask myself when I see that, well why are Grand Jurors spending their time actually doing the interviewing, as opposed to having a staff that has that sort of expertise. Where the Grand Jurors are actually more in the nature - the Board of Directors is too far removed. So I am not sure what exactly the model is, but where they are more in the nature of guiding an investigation, getting reports back and then making decisions about things. I think I have those two things in mind. I think the first one about just getting auditors, how would that process work? Has it seemed to work well? That is where I would like us to start, because my second one is such a radical proposal that it probably is going nowhere.

Clif Poole: What you're saying about more of an administrative type of a Grand Jury without digging their hands into it. I think that is what the Grand Jurors enjoy doing. Is getting down in the trenches and getting involved. Now, the ability to have somebody to guide them, or to work with them, the auditors, or investigators, or interviewers, if those were available it would be a dynamic help to a Grand Jury. We just function, we are in the trenches, fine we bring - as an example we looked at travel expenses this year. We had one city send us seven file boxes. Fine. I called, Sam Spade, the super-sleuth, down there, that happened to be on that committee. One, by one, by one, they went through every document in there. No, they are not auditors, but when they got done they found enough receipts, and enough documentation to where it caused the city to change their way of doing business. Only because of the public outcry. Now to audit a government for fraud, which you may run into, and we ran into one case this year where we thought maybe we might need that, we then went to the judge. He was prepared to authorize the \$30,000 or whatever it was to hire an auditor to go in and look at the books. It was around close to the end of the year, and the beginning of the year and so we started checking on some of these major firms that do this type of work. They said, "fine come back and talk to us in July after tax season because we're booked up, we couldn't take you anyway." So you now run into a time frame factor within a Grand Jury. So I don't know exactly how you overcome that and I would love to have what you are suggesting available to me, but I don't know that I would prefer that they go out and do the trench work and come back and say well here's what we found. Because a lot of times in the investigation, you start looking for something, but along the way all of a sudden, because you know the county, or you know a little bit about it,

something catches your eyes that would not necessarily catch somebody else's eyes and you may deviate somewhat and find more than what you went after.

*[End of Tape #1]*

Sherry Chesny: ...the question is off the top of their head. Well, what turns out is popcorn questions where they fly off in all different directions. Also people are not skilled in follow up questions. You know, you might have a primary question to ask. You would have to listen carefully to see if the answer is clear and complete. Because often it isn't - we watch tv - you know, political type talking heads, how often do they give a direct, clear and complete answer?

Mike Vitiello: Never.

Sherry Chesny: Well you run into that. Not that they are doing it on purpose, but that is just the way it is. People don't know what a follow-up question even is. You keep asking follow-up questions until it is clear and complete. This is what we try and teach in our training seminar, are some basics like that for interviewing. We say, for example, in our interview, when they are interviewing it says the Grand Jury Committee that is going to be conducting interviews should meet, and decide - set your objective. What is the objective? What information are you after, you know, what are the objective, or objectives for your interview? If you don't have an objective you probably shouldn't be doing an interview. Then brainstorm and come up with some questions that would meet that objective. If you got the answers to that, that would meet your objective. Brainstorm so the whole committee has input. But when you actually conduct that interview one person should be asking the questions. You all have input to what those questions should be, but one person should ask it, and it should be someone that is going to be reasonably skilled for being in that position, and who will do the follow-up questions to it. So we are trying to take the Grand Jurors - there are people that are more astute or have had more experience with questions than others. But I agree for a group of Grand Jurors just to sit down and start asking questions about the room is usually not that productive. They can do an awful lot of talking, but when they get mad they will not have found out the information that they should have.

Dan Taranto: On the issue of auditors, I think it is a great idea to have auditors available to the Grand Jury and do a specific piece on looking at the books on complex accounting review. The problem is, and when I served on a Grand Jury we asked for funding for auditors twice a year, turned down both times, because the cost of the auditors exceeded the entire budget for the Grand Jury that year. And come to find out that counties spend lots of money on various audits themselves. I think it would make an interesting study to see how much counties spend on the Grand Jury versus various audits that they voted for themselves.

Clark Kelso: Well, I thought that if the Presiding Judge authorized an audit then that was then a charge against the county, as a matter of law. So it is not a question of whether its within the Grand Jury's existing budget.

*[lots of talking]*

Terry Van Oss: I think the limit is \$30,000, but that is not a real ceiling, I think the Presiding Judge can authorize more if necessary.

Dan Taranto: No, it has to be approved by the County Board of Supervisors if it exceeds that \$30,000.

Terry Van Oss: That's true they have to vote on it.

Dan Taranto: Yes. In my case one of the audits we wanted, we wanted to audit the county budget process and it required - We had a professional come in, who then gave us the whole showing. He had done a lot audit work for Grand Juries around the state, his credentials were great. In every case, that he conducted an audit, he showed a savings to the County. So the guy had a great track record. But when it was set before the Board of Supervisors they didn't want to pay the \$55,000 for the audit, and so it died.

Clark Kelso: Under the policy, I gather, would be that once it gets to a certain level you need to have the Board involved to make a decision of whether to spend that much.

Terry Van Oss: We spent \$30,000 for a number of years, it's been there for quite a while.

Clark Kelso: Maybe that's something worth looking at, is how long it's been there. It may be that at the time that it was adopted \$30,000 would buy you virtually any type of audit.

Gloria Gomez: That's right.

Clif Poole: I think that's more of the case than the number itself, it has not been adjusted.

Clark Kelso: Any other problems that people have had with getting experts other than counsel?

Dan Taranto: One of the things I have been recommending to the workshops that I present to Grand Jurors, in the issue of training when they are unable to get the training that they think they need. There is no Grand Jury no matter how hard you train them, they are still going to run into stuff that they haven't been prepared for. There is hardly a certificate that you can get without a six month course of some sort, and so how can you pump everything a Grand Juror is going to need in a two or three day, or two week training program. There are going to be things missed, and in the Counties where the Grand Juries, for instance, a good example, is where they predominately investigate counties. If the Grand Jury is kind of stuck developing an expertise on counties because they have a certain amount of material on file, but it's not so many counties that investigate cities, and cities are a lot different than the counties in some regards. And before they embark on that kind of a study, I suggest, well you're getting into a terrain that you are not familiar with, there is nothing keeping you from pulling out the phone book, looking up officials, or individuals that may have expertise in that area, and inviting them to come in and make a presentation to your Grand Jury. It's on an

educational level pro bono, and there are a number of people in the community totally flattered to be invited in to talk about what to look for in a management auditor, various esoteric things that a typical Grand Jury like structure of city government, how it differs from the structure of county government. Call your local college campus, bring on a professor that can maybe make a workshop on how things fit together. But the Grand Jury can bring training to itself that way, and look for it pro bono. Being unaware of that they won't ask unless they think they can. So free is the way I have always gone because so few juries have any money or resources to hire that kind of professional help.

Clif Poole: I would like to have the investigator, like I say, or the interrogator, that understands the legal knowledge and the legalese of what needs to be answered available. Not on an every day consistent basis, but as you start getting into some areas, a jury says "hey, we could use somebody that could really draw something we could use in the future, other than finding out in \_\_\_." Most people are cooperative. Even the people you're talking to, or at least that is what we found. They want to help you, but every once in a while you run into something that is a problem child, and that's the one that I think you may need some outside help to come in and make sure that all the "t's" are crossed and all the "i's" are dotted.

Mike Vitiello: That goes to the next topic and that is what about legal, independent legal advice?

Clif Poole: Oh, I would love to have it.

Sherry Chesney: So would I.

Clif Poole: Without a doubt, there is an inherent conflict within county counsel on your civil matters. They represent every county department, they represent the Grand Jury, and like I say I have gone through three or four assistant county counsels this year because of conflicts that we have run into. But when you go through them, you've already approached that county counsel and says, "hey, we had a problem at this department." They say, "hold it, don't tell me more." But you already told them. So okay now move over next door, we've got the fire wall, but remember you got the county counsel that all of them go to and ask for an answer. Can we do this? Can we do that? And they answer to the Board of Supervisors, who has to be a master piece and count to three, count your votes. Okay, and he is not going to give up his job, and I don't blame him. And the District Attorney, he may be completely, totally, best, honest, type person in the world, but he gets elected every four years, or two years, or what ever the course happens to be, and is beholdng to many of the - it's a structure of life, they get elected because they go around to the community organizations, who all of the other political groups within the county, and they ask for their support in order to get re-elected. And you don't start ousting officials, or giving officials bad times, or taking them to task legally in court and continue to get their support the next time that you come up for re-election. My personal experience, and I can only speak for my own, I am completely, totally unsatisfied, and do not feel confident with what I have received.

Dan Taranto: My comment, in addition to that, is even if you have a county counsel, or a D.A., or a Judge for that matter, that is happy to be of help in giving counsel to the Grand Jury, that these officers of the court are not necessarily knowledgeable enough to give that advice. I have heard so much conflicting information from county counsels, judges, and D.A.'s from different counties, on identical kinds of issues that it draws us to the awareness that future officers of the court are not being trained about Grand Jury process in their law school experience. So when they get to their job, or in their experiences of being an attorney, they find themselves a judge, or a county counsel, or a D.A. that they usually just say well "I got stuck with the Grand Jury this year, what'll I do?" And they say well the way we do it this county is we just keep up old practices, or they just sort of invent it as they go, and I have actually witnessed the county counsel that completely reversed themselves on certain opinions, sort of inadvertently and in a period of one week and we busted them on it, and he laughed and he said, "well, you know us attorneys we can argue any side of the question, it just depends on where we are trying to go." So, where do you get this passionate, unbiased and informed counsel, I don't know if you can trust any of the officers in the court in any of the counties that consistently provide that. Then there is the musical chairs that takes place. You may have a great county counsel this year, and great judge, and a great D.A., and next year all of those people change, and they are new guys that come in. The last one was really knowledgeable, and the new ones don't know anything. So there is this inconsistency of information that comes from these presumed sources of legal counsel. I think there needs to be an independent authority on Grand Jury law, and I think it would be absolutely a god send to the Grand Jury system and the state to have something like a hot line where any Grand Juror could pick up the phone and call this number and get correct information on what their powers of authorities would be.

Clif Poole: You would find probably a more common practice of the same issues throughout the state if you had a centralized advice point. You're bringing up the Judge, in our case we have an excellent PJ. Have no problem whatsoever with the Judge, but similar to what somebody said earlier, the Judge is not going to be an intermediary between county counsel, the D.A., and the Grand Jury. He doesn't want to be, so consequently what generally his advice is to follow the legal advice you get from your District Attorney, your county counsel, whatever. I was telling Mike before we got started, this year we happened to file an accusation. Very serious deal. Between all of the legal advice we had, they couldn't decide on what form to even file it in. There were different opinions. There is not enough information as to how you even write it down properly to present it.

Jack Zepp: I will give you two other thoughts, Mike, on the pro bono hotline. We actually have been trying, without success so far, we have contacted, I think four schools, law schools to see if they would be interested in creating an extra credit program, or something, however their structure works, so that law students could man a hotline and get credit for it, and familiarize themselves with the basic outlines of Grand Jury law. They couldn't give advice in the ordinary sense, but they could say, "look in section 925, and that's where you find whether you can investigate a special district or what have you. That would be a nice resource that the Grand Jury doesn't have. Truly independent counsel available to help with really, really difficult things like accusations. I mean what happened in San Diego was just horrible, nobody on the Grand Jury's to blame. They didn't know, they really weren't getting any guidance to how to do what they were doing. So I fully support some kind of -

at a minimum a hotline, independent outside counsel is ideal. The other thing that I think that needs to be addressed relating to counsel is the case law, the Grand Jury case law, tends to be pretty much a mess. I think one of the reasons it is a mess is the one party who never reads any of these cases is the Grand Jury. These cases all get litigated by somebody who doesn't like what happened by the Grand Jury, but the Grand Jury doesn't have money, it can't hire a lawyer, it can't litigate. There are two people who are at odds with each other, the press type thing versus the Superior Court. But the Grand Jury is never a party, and even if it didn't have standing it doesn't have the money or the ability to write an amicus brief. So your researchers, I am sure, figured this out yet, you get really, really screwy law, and it's, I believe, the result of the fact that the most effective party is not playing in the game.

Sherry Chesny: I would just like to say for independent legal advice when I served as the foreman, we would have to consult with our legal advisors. I used the judge a lot. We had a very supportive judge, and he was great. I was able to - he gave us the bulk of our advice. From going to seminars, I hear everything from a very supportive judge, to some counties that have said, the judge swore us in at the beginning of the year, and we never saw him again until we handed him the final report. There was no dialogue, no working together, nothing. It was like he didn't want to be bothered. Maybe it was partly their fault for not taking the initiative of establishing a relationship. The county counsel, sensing the inherent conflict he would have with any investigation dealing with the county departments, I used county counsel mainly for questions that dealt with city, special districts, especially the general law questions and those types of things. And that worked great. He was very accommodating, gave us a lot of information. The D.A. was very much a political animal at the time I served. He's no longer there. We kind of didn't use him as an advisor. So I think, it varies a lot on how you use your legal advisors. When we needed outside legal advice, and we did get into a situation that required someone that had a lot of expertise in real estate law. We were working with the Judge on the case, this was a case that would have resulted in an accusation and possibly criminal charges. The Judge got an attorney from outside the county to come pro bono, that was a specialist for us. Judges can do that type of thing. They usually have the connections that they know. So that worked out well. I do think, I know that there was a former foreperson from Yolo County, who was working with one of his judges down there, Judge Stephen Mock, about possibly trying to - they were just exploring the idea, I don't know if anything was ever done, I don't think so, of having a retired Judges Association possibly be a source. So there have been various things like that, that have come up. In one county, wasn't it El Dorado, worked about getting their Bar Association to volunteer. I do have a question, from what I have seen the Grand Jury work, often when they want outside legal advice they are dealing with a very specific case that they are working on, how do you talk about your case without violating your oath confidentiality? That is a big question.

Clif Poole: That's a problem.

Sherry Chesny: So what do you do there? I mean it's one thing if it's just about Grand Jury law in general, but if you want specific advice about your particular case and you have to reveal the details...

Clark Kelso: The view is that if you hire outside counsel you are not permitted to talk to counsel about...

Sherry Chesny: What about pro bono or a hot line? That wouldn't apply, would it?

Mike Vitiello: Well hot line would be the obvious problem. Pro bono, I am not sure.

Clark Kelso: It would still be counsel.

Mike Vitiello: The attorney-client privilege that would cover it - sure.

Clark Kelso: And the difficulty that I do think, the difficulty with even having a hot line that is just going to attempt to point someone in the direction of a code section, even that is fraught with peril. I am terrified, I must confess, although we have three wonderful students here, I am terrified of having students unsupervised give a response to that type of a complex set of questions. Because by the time you have decided you need legal counsel, you're probably in trouble already.

Jack Zepp: Well, it's the hotline level that's not where you need legal counsel, that is where you want to know do you have authority to investigate special districts or can you look at a city, supposed to keep things secret, those are all - Unless a jury has a word on it, or a very compliant and responsible county counsel, they can't even get answers to those questions necessarily, quickly. And even if the county counsel voted to give the answers, some county counsels will say I have to have a written inquiry, and then a month goes by before you get the written response, and you have lost one-twelfth of your effective time.

Clif Poole: Well, stop and think about it if, I don't know how much everybody uses their county counsel, D.A., Judge, their legal advise, but in reality over the course of a year, you probably don't spend that much time with them. You ask specific questions, and if you take the amount of time each Grand Jury, out of the fifty-eight counties, actually uses an attorney, get that amount of money out of each county may pay for a staff that you could use, that is completely independent of the counties somewhere in the state. To call, to go to, to whatever. You may be able to hire somebody somewhere else and it actually takes less, or costs less.

Clark Kelso: Gloria, what does L.A. do? You undoubtedly have a full staff of attorneys for your Grand Jury.

Gloria Gomez: Well there is, of course, the legal advisor that I'm fully aware that they are full time.

Clark Kelso: I was only joking. You actually have a legal counsel just for your Grand Jury?

Sherry Chesny: The District Attorney, or someone from the office of the District Attorney?

Clark Kelso: Who is full time assigned just to the Civil, both Civil and Criminal Grand Jury?

Gloria Gomez: Well at this point in time we have asked for a Deputy Four District Attorney, a District Attorney Four which is the highest level for the Criminal Grand Jury. From time to time if there is any kind of issue coming up with conflict of interest, there's the counsel that's available. We do have a budget for consultants. There isn't a real, real high, high budget for consultants, but there is some money when the Grand Jury does need it, it's there. Even so, we do hear from a number of the Grand Jurors that it isn't sufficient. A half-a-million dollar budget isn't enough.

Clark Kelso: To big a county.

Gloria Gomez: It's a big county, but still a year is a year and how can you spend half-a-million dollars in a year, but you do. It's a full time thing.

Mike Vitiello: Let me go back to something I think that was your position earlier and that is the current\_ scheme where you can call the A.G.'s office, you think is inadequate.

Dan Taranto: Well we got that incorporated into AB 1907 as an attempt at providing at least an alternative to in-house county counselors that aren't always helpful. The A.G.'s office, his influence on the outcome of that bill, said at the discretion of the A.G.'s office. Basically they might help and they might not. There is nothing that compels them to help. I think that the A.G.'s office would to some extent be helpful, I am just supposing. There is no guarantee there, and like it was pointed out earlier, you get a call from the Grand Jury down at the A.G.'s office, and then he picks up the second phone and he calls the County Counsel, or the D.A., in the subject county and says I just got a call from one of your Grand Jurors that wants to investigate your part of what is going on. Now the D.A.'s office is ticked off and the Grand Jury has this conundrum, how to investigate something in the D.A.'s office and it turns into this-

Mike Vitiello: Is that a theoretical concern or is that based on -

Dan Taranto: That has actually occurred. I have heard exactly that scenario occurring a few times, so we thought it was a great idea. Now I don't suggest it anymore because I realize that it could be a feedback system to the D.A. to tip him off that the Grand Jury is looking into something in their office and then that kind of obfuscates the whole -

Clif Poole: We had chances where we attempted to use the A.G.'s office and had no success whatsoever.

Mike Vitiello: The A.G.'s office chose not to...

Clif Poole: Basically, very nice of you to call. Let us think it over and we will get around to you. Gees, you mean I haven't responded to you yet? It was a very polite "take a hike, don't bother me."

Jack Zepp: I think there may be three problems with the Grand Jury's office. One, which is probably the least, but I think is real, is they're part of the club. The second is I don't know, but I suspect, I think the gentlemen is correct, in my mind a number of inquiries, serious inquiries, that the 58 Grand Juries would generate is not a lot. So I suspect there is nobody, there is no office for the Grand Jury responder.

Clif Poole: I think that L.A. is an exception, now they have their own attorney.

Jack Zepp: Well, that's true, but I am talking about the A.G. It probably gets assigned to the lowest ranking person, and grant you the law is complicated. I am amazed about how complicated it is, and so they get 3 - 50, whatever it is, questions a year. The person changes every year. There isn't going to be any continuity, and there isn't going to be any real desire to get teeth into it, learn it.

Sherry Chesny: The one case I talked about earlier, could have been an accusation one, criminal thing, there the Judge said to our Jury that he wanted the A.G. to investigate it. He wanted the objectivity of being outside the county because it was a high profile elected person. He said that the County Counsel, that they agreed, that there would be a conflict of interest for him. So he said, "Fine." But he said the D.A. had to agree, too, before the A.G.'s office would take it. The D.A. had to pass on it, say, "yes," and our D.A. refused to do it. He wanted to investigate. Like I said he was a little bit political. So apparently the judge, even though he might think the A.G. should do it, he just can't do it on his own. Is that correct?

Clark Kelso: That's right, the Attorney General has independent authority to determine when to take over an investigation. And the relationship between the A.G. and District Attorneys is a rough one with respect to the A.G. taking things over, and they only do that reluctantly.

Sherry Chesny: Okay, that is exactly what happened, and it always kind of floored me. If the Judge, and he was consulting with the other Superior Court Judges.

Clark Kelso: At least I believe that is correct. Judge, is what I say sound right. I mean I know that there have been the references of criminal cases to the A.G., I have just forgotten whether the Judge can compel the A.G. to take over. Do you have any recollection?

Terry Van Oss: I haven't had any experience with that.

Clark Kelso: My recollection was that - and I know the constitutional provision that specifies the A.G.'s power to take over an investigation says it's the A.G.'s powers.

Terry Van Oss: The only time I've ever run into that is where somebody makes a recusal motion against the D.A. That is a conflict of interest, then all the court does, under those circumstances, is just either grant the motion or not, recusing the D.A. If the D.A. is recused then, of course, the A.G. has to step in and there's no one else to represent the people, but that is usually the way that comes up.

Jack Zepp: The Statute 934 says the Grand Jury may at all times request advice of the court, the judge thereof, the District Attorney, the County Counsel, or the Attorney General. Then in subsection B, it says the Attorney General may grant or deny a request for advice from the Grand Jury.

Terry Van Oss: If I could just add something to this discussion because I've been involved in this Grand Jury from two different aspects. One I was a District Attorney before I became a Judge - P.J. - and it is true that there is very little training as such for Grand Jury issues. I do think it is important that whoever advises the Grand Jury. That person has to a real good sense of balance and perspective, and I don't know whether it would be such a hot idea to have someone who's trained as - to just advocate on behalf of her client, to advise the Grand Jury. The problem that you often get into in a Grand Jury, and god bless them, we need the Grand Jury, as an institutional thing. I am certainly supportive in that regard. But occasionally you do get run-away Grand Juries. I know we have seen a couple of examples of that across the state, and I was involved with a potential run-away Grand Jury one time as a District Attorney. So you need somebody that is not just going to advise the Grand Jury, and just go out there and do whatever they want. You know, treat them like a client in that respect; to just act as a sword for the Grand Jury and allow them to call the shots. You have to have somebody, I think, with some perspective. Now, I think that is probably why the statute is set up the way it is. So that the Grand Jury if they are unhappy with the County Counsel, if they are unhappy with D.A., or they are unhappy with the Judge, they can go to the A.G. or something like that. Because hopefully the A.G. is a person who gets picked the same regardless of what he does on it. You know, he doesn't have to worry about billing, or anything like that. He's hopefully would be a little more neutral. But you're right. Point is well taken, I think there are lots of times where there are conflicts, either with the County Counsel's Office or the District Attorney, because of politics involved, and even the Judge. You have to realize, I want to be candid about this without getting quoted again, but remember that the Grand Jury is a blessing and a curse in a lot of respects. It is an absolutely essential part of our democratic institutions. But on the other hand, from a Presiding Judge's point of view, and I think this is probably true in most of the courts, the thing that you pray for is a Grand Jury that doesn't find anything wrong, that doesn't create any controversy. Because you don't want to have to be involved in that. You don't want to have to worry about "god is somebody going to get sued for libel here." Because you have to approve those things, those reports. You don't want to reign them in, you don't want to tell them what to say. On the other hand, you have to worry about what they are, if they are getting way out of hand. We in our county, we have had a couple of examples. We have had Grand Jury that one time, as a matter of fact, one of our Presiding Judges had to actually terminate one Grand Juror's service, because it turned out she had really, badly misused her powers to benefit herself. Her husband had a business and she went in and tried to use the power of the Grand Jury, use the Grand Jury, and sort of pried into some county offices, getting information that would benefit their own business. So we finally had to get rid of her. You can have things like that, but even a Presiding Judge, I think, probably has an interest in the sense that he or she doesn't want a controversy, so is inclined to keep throwing oil on those troubled waters. So then you probably tend to reign in the Grand Jury a little bit in that respect. There probably is a time when the Grand Jury needs advice from another source, and I think that is

part of why the A.G. is in that statute. I just think it is really a questionable idea though for the Grand Jury to be able to hire an outside litigator to give them advice.

Clif Poole: Picking up on what you are saying I have to agree that that possibility always exists, and it is an extreme, strong possibility. If it happens it can create some damage real quick. I think out of the three, County Counsel, District Attorney, or the P.J., the least likely political pundit, is the P.J. Even for term length and the canons of ethics. The P.J. actually is the one that is the least likely to have a crystal agenda, or political agenda to go along in there. Now don't get me wrong it can happen obviously. If a counsel was hired by the P.J. to represent the Grand Jury, and the P.J. had some input into that counsel, I would see that less obtrusive than I would the District Attorney, or the County Counsel doing it.

Jack Zepp: I wonder if the Judge's comments about hiring a litigator were you referring to the possibility of the Grand Jury being able to represent its interests in a court proceeding where it is being attacked?

Terry Van Oss: Actually that was a bad choice of words. I am talking about just getting legal advice. I think that depending upon, and your point is well taken, if the P.J. hires somebody to give outside legal advice, he or she would probably hire somebody that has a more moderate view of things and has a better balance and perspective, so that is probably true. And maybe that might solve that problem, but no, I am worried about a Grand Jury choosing counsel that is simply going to do the bidding of the most aggressive Grand Jurors on the - because that's whose going to run that show. Because I have had this experience where I have been involved now with, or have watched anyway, a couple of potential run-away Grand Juries. Because you get somebody with an ax to grind on that jury. They can easily lose perspective. You know the Grand Jury has a lot of power, obviously, and it can really do some harm as well as good. If it doesn't use that power properly, and so that's I think what you have to worry about, a little bit. And you don't want somebody advising the Jury that just wants to say, "well this is as extreme as you can go. This is as far as you can go. Let's push the envelope on this one. I think you can do this. You want to do this? Fine, here's the support for you." I think that's some real trouble.

Dan Taranto: Whether the pro bono vehicle that El Dorado put together some years ago, in consultation with the Court, and working with the Bar Association, the method that was developed there was that the court reviewed the candidates from the Bar Association that expressed interest in participating, and then the Judges selected from that list who they would approve for that vehicle of alternative counsel. That kind of pro bono basis so the cost issue didn't come in, so that kind of attempts to address part of your concern, it's just not grabbing legal advice at random from the community and darted to the directory, but trying to select from those that maybe are the better balance, or broader experienced attorneys. That is why we were very interested in the discussion of the feasibility of involving say retired Judges as a community of legal expertise that might come out of retirement temporarily to provide some alternative counsel to the Grand Juries that's more rooted in the wisdom of a broader experience.

Sherry Chesny: I think the Grand Jury's function rests on a working relationship between the Judge and the Grand Jury. The three different times I served, one Judge was really hands-on. Possibly a little bit too much so, for that particular Grand Jury. Each of the three Grand Juries had a different group dynamic. You put nineteen people together and they are not going to be the same. We had more leaders that year than we did followers, probably too many, and they resented that hands-on.

Another Judge was very much hands-off. His attitude was, I'm here if you need me, but if not you are intelligent people, you can do your own work. Which, I respected that. A lot of the people in that group were followers. They felt very uncomfortable because the Judge wasn't really giving any support, even though they really didn't know what they really wanted. They just felt he should be more involved. The other one was sort of in between those two. That was the year I was foreman.

We had a very good working relationship. I took the initiative early on in the year, with him. Once we had determined what we were going to study, I said these are the areas that the Grand Jury has chosen to study, and I just want you to be informed this is what we are going to be looking into. It was a way of verifying, again, that it was within our legal jurisdiction, but also he appreciated that, you know, I didn't want to bother him, but periodically we met, and I would give him an update as things were going. Our first interim report that went to him, I could see exactly, he expressed that - you get these reports and you want to start changing and editing, and I could just see it, that this is what he wanted to do. He was asking me a lot of questions. How do you know this? What documentation do you have to support this? I said how about coming to the Grand Jury and tell them your expectations for a final report. He did. He came in early one morning and talked to all the nineteen Grand Jurors on what he expected, and finally what would meet his criteria. After that I really appreciated all of his comments. He would take our reports and in the margins... Because he served very much of the devil's advocate and questioning the documentation, the verification, and things. It wasn't just editorial comments, but boy I think if we didn't have something punctuated properly he prevented them, too. It was healthy, it was very much a healthy a (*inaudible*) because if its not clear and understandable to someone who hasn't been involved, how is it going to find the public? You need that. At least be edited for clarity and for documentation as well, and I think that judges can do that.

Dan Taranto: I have a question too. How many Judges really do a thorough job of reviewing the Grand Jury final report? The report goes out becomes some of the loose cannon, or the maverick Grand Juries often, the report is rubber stamped, and things that could have been caught in that review, got out before they were caught, and created a problem that could have been prevented because the Judges tend to be very busy and they may presume that County Counsel's already reviewed it. Maybe not. Again, the problem is that not all Judges perform the same way. Part of that is this lack of continuity because there is no bench marks been established anywhere. That is where I come back to the Law Schools and say could it somehow be a generic part of makeup of future officers of the courts= educational experience. There would be less maverick Grand Juries doing goofy things that end up or not.

Clark Kelso: That does bring us to the last topic dealing with unmet training needs. Now we did in our letter of invitation, I sent a letter out earlier this year asking for training materials, and got a very good response back from, at this point I think, a majority of the counties. Which suggested to

me that the legislation that had been enacted dealing with training, actually had been taken to heart in quite a few counties. I guess what I would like to focus the discussion on is: what's your perception about how well the legislation was tracked and the training is working? Is there a need for additional legislation or - I will say frankly my impression was there is actually a lot now going on. My guess was that had not been going on before in terms of manuals, training programs. I am certain there could be more that could be done. I guess I am wondering what's your sense of how big a change you have seen in the last couple of years as a result of the legislation?

Clif Poole: My own experience with watching the Grand Juries, as I mentioned yesterday, was the mushroom Grand Juries prior to that legislation. And since that legislation is the first time that the Solano County Grand Juries have left the county and gone out and got some training outside of, "Gees it's nice, it's a thankless job, thank you for being here, and you're on your way, and no you can't do that." It was an eye opener to our particular juries.

Sherry Chesny: Speaking of what I know about Grand Jury training, and you know there's two types in-house, the county program, usually put on by the county. That often is orientation, training combination, a lot of orientation of the Grand Jurors, from their legal advisors, and other county officials, city officials and other things. Often there is some actual training done maybe by some of the past Grand Jurors, you know, whoever, sometimes a D.A. investigator might give an interviewing, or investigatory techniques. But those vary tremendously from absolutely none, some counties don't have any, to some very good ones. So those vary a lot. As far as a regional training seminar, where you go to a training seminar outside your county, I think it goes back to about the early 80's or so. A lady by the name of Elaine Adamson, who had served on the San Francisco Grand Jury, I believe, had been involved in training in the medical field. She had served as a Grand Juror and felt what a shame it was that Jurors weren't trained. So she got the idea, and consulted, got a few times involved and they started joining together and expanding from that point. It was just, basically, former Grand Jurors training other Grand Jurors. Eventually we heard about Dr. Olson. They got him involved with their training. He had done a doctoral thesis on Civil Grand Jury. I do not believe he had ever served on a Grand Jury.

Dan Taranto: It was a Master's Thesis.

Sherry Chesny: He uses his PhD all the time.

Dan Taranto: Yeah, but PhD was on something else.

Sherry Chesny: Oh it was his Master's Thesis, okay I'm sorry. I didn't realize that, but anyway he got involved in a...I went to one of their seminars in '84 and I can't say it really helped me an awful lot. It was definitely better than nothing, but there wasn't a lot of focus on the basics, or what I consider the basics. We didn't really learn how to investigate, how to interview, the "how to's" that I feel is so important. Then I did work with Dr. Olson, Dan did also, several of our trainers have in the past. His seminars cost anywhere from \$250 - \$300 per person to attend. They range from 2 days to 2 1/2. I think one was even a 3 day. [inaudible]. Anyway the attendance started falling way

down, it was mainly a cost thing. You know it was a time when counties were feeling the crunch, you know, the budget crunch more, and they couldn't afford - like the county I am from never sent more than 2 people. Then 1 year they had 4 there, and I was amazed, they had doubled their numbers. They had gone from 2 grand jurors to 4, and I found out the other 2 had paid their own way. Paid \$250 bucks out of their own pockets to go get trained, which I thought was kind of a shame that people would have to feel the need to do that. But anyway, his seminar attendance dwindled and that's left of various assundry reasons that we were all volunteers and none of us were ever paid, the Grand Jurors that participated in training. One of us, Alan Marrow in Yuba County, called me one day and said Sherry you think you could do it for \$50. I said yes, I know we can, because I had been on the Board of Directors, Treasure of the Corporation, I knew what the costs were for putting on a seminar. I said, "Yes, we can." This was for Dr. Olson's non-profit corporation. I had seen him, and helped him organize some seminars. So I said, "Yes Alan it can be done for \$50." So Al took the initiative, got the YCCA seminars going - the Yuba County Citizens Alliance - that started in '94, I believe. For a couple of years, I don't think anything was available. I think '94 because it went six years.

*(End of Side 1)*

Sherry Chesny: ... and I, and several others that had worked with Olson, and knew Al and volunteered our time at Al's, so we didn't want to compete with YCCA, they had a good thing going. We did our first one at Laverne, last year. Al notified us early this year that he was not going to do this anymore. He and his wife were going to retire from it, and so CGJA has kind of jumped in to fill his shoes. We're doing two up here this year, one in Concord and one in Yuba. To give you an idea of the Yuba County attendance, you know, that seminar had. It started in '94 with 88 people, from 11 counties and I have the attendance records. '99 had 213 people from 21 counties. We had an additional 9 counties at Laverne, that did not attend YCCA's. So we are looking at 30 counties total sending somebody for training last year. So it has grown over the years. The jump from '97 to '98, '97 total was 183, '98 was 246. Now the legislation mandating training came in '97, so possibly there has been an increase. However, and I do feel from the feedback I get from people there, since the legislation has gotten people tuned into training, and there is much more interest in it. I don't know if the statistics are there quite yet. I think we will know more after this August.

Mike Vitiello: What's the basic training package that is now provided?

Sherry Chesny: The CGJA package? Well ours differs a little bit from the YCCA's in that he would have County Counsels, and District Attorneys talk about criminal and they would do like mock criminal indictment. We decided that 2 days wasn't long enough to cover everything, and so we dumped out the criminal side altogether. We designed our package to deal more with being a compliment and a supplement to the County provided training programs. The main core of our training program, which is how to conduct an investigation, how to conduct a Grand Jury interview, how to write a Grand Jury final report, and the fourth one is catch-all, that is Grand Jury organization, continuity, and independence. Those are all done in a workshop setting, where we can stress those things. We spend about 2 hours on each one. For the interviewing one, there is a

presentation, plus I will use a video that we made up of a mock Grand Jury interview. It is purposely written with a lot of mistakes in it, it's done well. That we can critique it, and analyze it. It can be used as a segue into investigations.

Mike Vitiello: Do you have time for the participants to actually do a mock interview themselves?

Sherry Chesny: No. We've never - we use the video. It would be nice to have more time, but with a 2 day seminar we squeeze in a lot. We do have outside presenters come, and topics vary from anything like this year we are going to have someone on management auditing. The techniques, and practices that management auditors use because it is probably one of the professions out there that is more closely related to Grand Jury work than a criminal investigator, or other types of professions. And we also would like to get someone from the news media that, you know, [*someone coughs*] news media, Grand Jury relationships. These are the outside interests to all Grand Juries, the basic type things is what we are looking for. So that's, you know, where we are at this year. We are planning our training team. Jack and Dan are both members of that. Our committee is trying to put together a proposal for our Board of Directors at the September annual conference that will deal with expansion training and what I would like to see, I think all of us would like to see is we would like to see seminars, regional training seminars, done, like in Southern California. In Southern California, one maybe like in Tulare, part way up in the Central Valley. One here in the Sacramento area, one in Redding, you know, that type of thing, and maybe the bay area. So that no one Grand Jury has to incur a lot of cost. Our costs range from \$55 to \$75 for a two day seminar, which is quite a bit less than, you know, what people paid prior, the \$250-300. We are basically doing it at minimal cost. We feel good, if we don't go in the hole. We try and break even, or if we come out with \$5, \$10, or \$1,000 left over that can go for the next one that might go in the hole or something.

Clark Kelso: In terms of legislation is it fair to say that it may be premature to think about doing anything further in the training area at this point until we see how the 1997 legislation plays out?

Sherry Chesny: Well, I think all of us are dedicated to the concept that we need additional training.

Clark Kelso: I understand that, I am just talking about the need, if any, for further legislation. My impression was that the '97 act has actually had some impact. I am looking for some sense of confirmation that that may be true. It may be it ends up not being enough, maybe there needs to be more.

Sherry Chesny: I think it needs to play out.

Clark Kelso: It's too early to look at it?

Sherry Chesny: I think after this August we will see something.

Clark Kelso: My impression is your efforts, combined with the legislation, and the way you...is right; has brought focus to training as an important aspect of this. Maybe we need to turn that wheel a little further. Of course, I know, L.A. they undoubtedly bring in people from UCLA to train.

Gloria Gomez: No, no we don't have special training. I heard about one county that uses a local D.J., and I never figured out just exactly what it was that a local D.J. could do the training program for a small rural county.

Jack Zepp: We had thought, at a very preliminary level - about whether it would make sense to ask the Judicial Council to take on looking at training, and whether or not there ought to be some standardized guidelines to go to the judges. You know, saying giving people a manual isn't enough, having a DA come in isn't enough. Minimum standards of what training should be. But that's not legislation, it's on the Counsel side.

Dan Taranto: I am looking at a lot of handbooks myself over the past ten years. You've got a real range of...You ask the Grand Jurors, you know, one of my standard routines in workshops that I have been involved in, as I start while I have all this captive audience I want some information, so okay, how many of you got training in your own county? We get so many hands raised up. Of that training how many were trained for more than a week, hold your hands up. Half of the hands drops down, or more than half. How many got the training for one day? How many got no training at all? About half of them got no training at all, or at least what they considered, you know they get what I fondly refer to as the parade of bureaucrats. The officials come in, say I am the head of the Department X. Department X is in such and such a building. I've got thirty staff, and five cars, and so many typewriters, and everything is running smooth. You're welcome to come down any time, the coffee pot is always on. Then the next one gets up and does the similar routine, but there is not enough information of how you conduct an interview, how do you do follow-up questions, what's a finding, what's a fact, what's an opinion, how do they differ. None of this kind of nuts and bolts kind of information, but they get an education. They get familiar with various departments, but that isn't training, that's more of an orientation. I think to some extent this bill has been, or the provision in that bill has been misinterpreted by some counties to presume that orientation is the equal to actual training, and they are pretty hard to flush out which is which. But if you look at the handbook, depends upon who wrote the handbook, and how old the handbook is. You can tell, you can sort out the handbooks written by Jurors, and the ones written by County Counsels, from the ones that are written by District Attorneys, from the ones that are written by some other county that were plagiarized, and scratched out the name, and put in their county name, because you see other figures are not right. You see you get quite a mix of handbooks, so I always recommend to the Jurors that they don't depend on any one handbook. It's not uncommon to have a handbook that just got revised be a better handbook than the new one. Because there is this tendency to try to, if you are revising something you got to change it, and a lot of times they change something that was really good into something that isn't quite as good. That happens too. So its real hard, there is no quality control vehicle here to determine to what extent - You'll ask, "Well, did the D.A. talk about the criminal indictment process?" and they will say, "Oh yeah." But some of them are answering they got two

minutes worth, the others got two hours worth, so qualitatively what was there training is been hard to determine as well.

Sherry Chesny: There's one benefit, I think, of Regional Seminars. I think that Grand Juries don't know if their handbook is poor. They don't know if they have received any more training, they have no basis of comparison. What we find at the Regional Seminars is, as to the general, you know, organizational type things, such as training programs, your handbooks, your forms that you use, that type of things. There is a lot of interchange of ideas that come out from different Grand Juries. All of a sudden they realize, hey there's other ways to do this. We thought our handbook was good, but- and we tell them bring a sample of your handbook, bring a sample of your reports to show other jurors. We have a lot of like open forum type sessions where this can be done. A lot of question and answer sessions where things come up. From the feedback I've heard from people who have attended, they said they benefited a lot from hearing about different things that different Grand Juries have done. Not the confidential states, but just the way in which they are organized, or what they have done to help facilitate the Grand Jury work in their county. They pick up these good ideas from other counties. In fact, I remember when I was foreman, I assumed that all Grand Jury Foreman were brand new. Our Judge felt very strongly that you should be a fresh, objective person, and it wasn't until I went to a Regional Seminar and I found out that there were people who had been carry over that serving as foreperson. I thought, isn't that a conflict? And they told me it worked. There are just things like that that you pick up, different ways. I think that is a benefit, that they don't have when all the training is done in-house. Especially when, I think it is healthy to have former Grand Jurors involved in the training, but sometimes they perpetuate their own mistakes, and their own misunderstandings to the new recruits. I have seen that, it almost becomes incestuous situation, as Dan called it. No cross-pollination of ideas.

Amelia Burroughs (Research Assistant): Do you have any sense about whether or not county budget dedication for training has increased since...

Sherry Chesny: I don't know. I think that would be very interesting. The trend that I have seen in looking at attendance is, sometimes these counties will start out with them being a few.

Amelia Burroughs: Are the counties paying for them?

Sherry Chesny: Yes. You know they send a few people, maybe to see what it's like. A few adventurous souls say, "oh we heard about this training, so now I want to go see." After that they start sending more. There are very few counties that send a lot. There's, I think, I think I counted these up once, but maybe out of the twenty-one counties that came, I would say, it would be less than six, or possibly six sent, you know, more than ten people. So it isn't like everyone is getting trained. My concern is they send one or two, I think that is the step in the right direction, but then that's dependent on how well those two go back and relay that information to the others, and that is going to vary an awful lot.

Jack Zepp: One or two supporters.

Sherry Chesny: I know in the county I am from, Placer, they have made it known that it has been typical every year that anyone on the Grand Jury, out of nineteen, that can make the seminar that wants to go, that they will send them. So they build it in. I am not sure how many other counties are actually doing that.

Clif Poole: Solano did the same thing.

Sherry Chesny: A couple of counties I have talked to, you know, about the issues of training, have called with questions, some have said, "Well we will send one or two, that is all we can afford." Many counties they say, "We don't have the money to send people." All of us as trainers, many have donated time out of our own, to go to some of these counties. Shasta was one, they never sent more than one, they sent the foreperson. Again, the Shasta Jury foreperson asked me if I could come up to do my presentation there. I said sure. So just for the cost of mileage I drove all the way up to Shasta. We've all done it. Everyone does that, and just donates their time to get out to those counties that are too poor to come. But they still don't get as much. They miss a lot by - they might get one aspect, but they are not getting it all.

Dan Taranto: But in all the Juries they are hungry for information. They want information from where ever they can get it, as much as they can get. Every year after the new Grand Jury is impaneled I get lots of phone calls, and there are more e-mails, and people asking where they can find information about various things. They want the information, it's just not necessarily readily available. I think Amelia brought up a good point, about budgeting. I think one way of getting some index is to see if there's been any significant shift in budgets for Grand Jurors since 1997. I would wager that the budgets have all gone down since 1997 as opposed to gone up at all. Myself, I think there's been a general decline in Grand Jury budgets over the past ten years. Because I've got the copy of a list of the budgets that were intact in 1991 and every time I get a chance I talk to the Grand Jurors, what's your budget now. It's less than it was listed in 1991.

Clif Poole: One thing we found with our budget which was very cute, our audit committee decided to take a look at our own budget and the county was billing us about \$40,000 a year for support. We couldn't find out what that support was. When we started questioning it, it's down to about \$2,500, but they have been billing the Grand Jury about \$40,000 a year for support for years.

Mike Vitiello: Well, on that note... I take it that'll be the subject of the whole new report. Listen I want to thank all of you for coming. I think that we have gotten an enormous amount of information over 5 1/2 - 6 hours. I really appreciate it, and I hope that we can come up with a decent product that you will all see as an interim report. Thanks again for coming.