

SAN DIEGO COUNTY GRAND JURY PROCEDURES MANUAL

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PREFACE

This Procedures Manual is offered as the Rules of Procedures for the San Diego County Grand Jury. This manual and its accompanying appendix will serve as a road map of the activities, responsibilities and powers of the grand jury. It sets forth the legal authority under which you operate, the laws which govern your activities and the resources available to you during your term of office. The manual covers such areas as suggested procedures for your meetings and investigations, the duties of officers and the role of suggested committees. Sample correspondence and record keeping formats are presented to allow for minimal organizational effort and to permit the grand jury to concentrate on the principal tasks of investigation and reporting. In addition, selected provisions of state law are included for your review.

You are urged to read through this manual before beginning your year's work. The sooner the grand jury knows its functions, the quicker it can get started. You should also review this manual periodically (every 1-2 months) throughout your term as matters change and develop. If you have any questions regarding your functions, you are encouraged to seek the advice of the County Counsel through your Foreperson.

INTRODUCTION TO THE SAN DIEGO COUNTY GRAND JURY PROCEDURES MANUAL

As citizens of the United States of America, we enjoy many rights and privileges not common in most countries of the world. One of our rights is that we may be involved with and become a part of our governmental process. One of the most profound means of participation in our country can be as a juror on the grand jury.

The grand jury is an adjunct of the Superior Court, and in California it is endowed with broad powers, as an instrumentality of the judicial system.

The grand jury, accessible to all citizens of the County, acts as an ombudsman by receiving and investigating citizen complaints pertaining to the actions and performance of local public officials, and is an avenue of appeal independent of the usual public channels. The grand jury may instigate its own investigations, even in the absence of a complaint. In addition, the grand jury has important criminal responsibilities.

In order to function efficiently and productively, grand jurors should be willing and able to attend the meetings of the grand jury as a whole, as well as those of the committees of which they are members. The number of hours committed to this work may vary anywhere from twenty to forty each week, depending on the work load at any one time.

The grand jury is charged with an important responsibility that calls for diligence, impartiality, dedication, and strict confidentiality.

Grand jury duty is unlike anything you have ever done before. Orienting yourselves to working within a diverse group of 19 people will be a major part of your first month. Some people are outspoken; others are quiet. Some want to move immediately; others want to collect a lot of data. Some work harder than others. Establish and enforce ground rules for behavior at meetings. Provide a positive atmosphere. Above all, *be tolerant of differences.*

To be selected to serve on the grand jury is one of the greatest honors a citizen can receive -- one that provides an opportunity to make a contribution of unequalled value to the community.

Getting Started

It is important for you to know what lies ahead during this next Grand Jury year. In the beginning, the jury concerns itself with internal organization. This should occupy your first three to four weeks. Thereafter, and for the remainder of the year, your time will be devoted to investigations and report writing. The following are suggestions of activities that might be included in the new grand jury's first few weeks:

- Get acquainted; organizations work best when the members know each other. The use of name plates could prove helpful at the beginning of the term.
- Discuss with the Foreperson how the grand jury will operate, the role of its officers and committees, and the practices employed by the preceding grand jury. Discuss and clarify information received during the training and orientation program.
- **Review this Procedures Manual, and adopt it with any initial modifications to it, by a supermajority vote (12 jurors), before taking any other official actions. (Chapter IV)**
- Review attendance requirements with all jurors. (Chapter II) The San Diego County Grand Jury work week is Monday through Thursday, 9am to 3pm. On occasion, the jury may be asked to work on Fridays and/or to arrive before 9am or stay later than 3pm to facilitate the scheduling of interviews, tours and inspections. *Also note that once the business of the Grand Jury is substantially completed (April, May, June), working days may be reduced to 1 or 2 days a week (or less) as necessary.*
- Establish a regular meeting schedule. (Chapter IV) Historically, the full grand jury meets once a week for its Business Meeting; standing action committees meet 2 to 4 times per month as necessary; and internal administrative committees meet only as needed. Some juries have elected to conduct tours and inspections on Fridays.
- Talk about the duties of the Social Committee, establish a kitchen schedule, decide how to pay for water and kitchen supplies and discuss whether to collect dues for a Social Fund. (Chapter III)
- Discuss thoroughly the possibility of conflicts of interest and establish a procedure to identify conflicts and excuse jurors from involvement in any discussion, investigation or voting related to such a conflict. (Chapter II) The procedure could include routinely posing the question to jurors of potential conflicts of interest for each complaint received and each potential investigation considered by the jury.
- Examine the duties of each officer (Chapter III). The Foreperson should solicit the names of those jurors interested in serving as officers, and interview all potential candidates. Thereafter, the Foreperson shall nominate a Foreperson Pro Tem, Secretary, Sergeant-at-arms and Treasurer, and submit the names of those officers to the grand jury for approval.

- Discuss committee structure and the duties of each Committee – Action and Internal (Chapter III). Jurors’ committee preferences should be solicited, and considered during the committee assignment process. Conduct a few committee meetings to allow all interested jurors an opportunity to “try out” the various committees before deciding which ones they wish to join. All jurors should pay special attention to joining any committee which may pose a potential conflict of interest.
 - After holding a few committee meetings, the Foreperson should interview and then select the Committee Chair for each committee. This gives everyone, including the committee members, an opportunity to identify the best candidate(s).
 - Thereafter, the Foreperson in close collaboration with the Committee Chair(s) should confirm final committee assignments.
- Read through the carryover complaints and address how new complaints will be handled by the various committees (Chapter V).
- Establish policies for use of the grand jury meeting room(s) and equipment. They could include: no food, drinks or gum; turn off cell phones. Learn how to use the laptop, display screens, microphone, speakers and recording devices. (Chapter III; also duties of Sergeant-At-Arms)
- Talk about the ground rules for your meetings. (Chapter IV) They could include: raise your hand to be recognized by the Foreperson before speaking; speak so that everyone can hear you; keep it brief; focus on the issue; never undermine other jurors, either directly or indirectly; strive for consensus; work to resolve conflicts; etc.
- Review the Annual Timeline of Grand Jury Activities. (Appendix A1) The timeline and due dates should be reviewed by the entire jury on a regular basis so that any adjustments can be made as needed.
- Invite senior members of City and County agencies to talk to the Grand Jury about how their respective departments operate. Past presenters have included representatives from the County Administrator’s Office, San Diego Sheriffs’ Department (SDSO), Probation Department, District Attorney, County Counsel, Department of Education, Health and Human Services Agency, City Auditor, County Auditor, LAFCO (Local Agency Formation Commission), CLERB (Citizen’s Law Enforcement Review Board), San Diego Housing Commission, etc.
- Schedule informational tours of County and City facilities, such as the Central Detention Facility, Sheriffs’ Communication Center, Registrar of Voters, Office of the Medical Examiner, SDSO Crime Lab, SDPD Crime Lab, Unified Port District of San Diego, etc,. Note that these are informational *tours* attended by all members of the Grand Jury. Detention facility inspections (see discussion *infra.*) and investigational site visits should be requested later in the term.

I. THE GRAND JURY SYSTEM

The grand jury system has been in existence since 1166, and can be said to have "celebrated" its 800th birthday in 2015, because a precursor to the Grand Jury is defined in Article 61 of the Magna Carta (circa 1215). This chapter provides a brief background and historical context to civil grand jury service, as well as details regarding qualifications and selection of jurors, and an overview of the grand jury's statutory duties and powers.

A. History

A grand jury is a jury – a group of citizens empowered by the law to conduct legal proceedings, investigate potential criminal conduct and determine whether criminal charges should be brought. The grand jury originated in medieval England during the reign of Henry II (1154-1189). Although today it is a statutory body, it owes much of its development to the common law: that is, law based on judicial decisions as evolved in England and America. Historically, the grand jury has had two functions: the evaluation of the prosecution's evidence to determine if the state is justified in bringing the accused to trial and independent investigations of offenses committed by public officeholders.

Only two countries still employ the grand jury system – the United States and Liberia. In the US, 42 states have some form of grand jury, with at least ten states today having grand juries with a civil investigative function. Of those, only California and Nevada impanel grand juries on an annual basis with the mandate to conduct civil investigations and audits of local governments, to insure efficient and proper operation of all local government, and to detect and expose fraud and malfeasance. The California statutes that prescribe the powers and duties of the grand jury are found in sections 888 through 945 of the California Penal Code.

In San Diego County, weighing criminal charges is handled by impaneling a separate criminal grand jury (Penal Code §904.6) selected from the petit jury pool. The regular (Blue Ribbon) grand jury is a civil oversight body. Its primary role is to assess the performance of local governmental agencies and officials and to publish findings and recommendations. It also investigates complaints concerning agencies and officials. In rare instances, it issues Accusations when it finds willful or corrupt misconduct in office.

B. Responsibilities and Powers

As part of the judicial branch of government, the grand jury does not have the functions of either the legislative or administrative branches, and it is not a police agency. The grand jury is an inquisitorial and an evaluative body, a part of the machinery of government whose object is the detection and correction of flaws in government (its civil function) and the exposing of willful misconduct in office or criminal conduct (its accusation and criminal functions) among its public officials.

Today, the primary function of the California grand jury is the examination of statutorily designated aspects of city governments, county government, special districts, local agency formation commissions, housing authorities, joint powers agencies, and non-profit agencies established by or

operated on behalf of a public entity: and the determination that monies of local governmental agencies are handled properly and that all accounts are properly audited -- in general, assuring honest, efficient government in the best interests of the people (Penal Code §925, et seq.).

The Grand Jury has three ways to exercise its powers:

- (1) Reports: Written reports evaluating the actions of governmental agencies with recommendations for improvement, when no crime is charged (Penal Code § 925, et seq.).
- (2) Indictments: Formal written complaints charging a person with a crime.
- (3) Accusations: Formal written complaints accusing a government officer or deputy officer of misconduct. These are similar to indictments except that conviction would result in removal of the public officer from office rather than criminal penalties.

These functions were described by the California Supreme Court in a case called *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162 at 1170, as follows:

The California Grand Jury has three basic functions: to weigh criminal charges and determine whether indictments should be returned (§ 917); to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office (§ 922; see Gov. Code § 3060, et seq.); and to act as the public's 'watchdog' by investigating and reporting upon the affairs of local government (e.g., §§ 919, 925, et seq.). Of these functions, the watchdog role is by far the one most often played by the modern Grand Jury in California. (citation omitted [estimating 85 percent of average grand jury's time spent investigating county agencies]; citation omitted [estimating 83 percent of California Grand Jury proceedings spent in the watchdog role].) As noted by the California Supreme Court, "In California, unlike some other American jurisdictions, the grand jury's role as a vigilant 'watchdog' over the operations of a variety of local governmental activities has a long and well respected heritage. (People v. Superior Court (1973 Grand Jury) (1975), 13 Cal.3d 430, 436, fn. omitted.)

The grand jury's responsibilities and powers are expressed in Chapter 4 of the California Penal Code, Sections 3060 et seq. of the California Government Code and Section 17006 of the California Welfare and Institutions Code. There are four responsibilities specifically required of the grand jury and a wide scope of permitted ones.

1. Required Responsibilities

The grand jury is required by statute to inquire into the following areas. These required responsibilities all begin with “*the grand jury shall ...*”

1. **Penal Code §919(b):** “... inquire into the condition and management of the public prisons within the county.”
2. **Penal Code §919(c):** “... inquire into the willful or corrupt misconduct in office of public officers of every description within the county.”
3. **Penal Code §925:** “... investigate and report on the operations, accounts and records of the officers, departments, or functions of the county including those operations, accounts and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year.”
4. **Penal Code §933(a):** “... submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters.”

2. Permitted Areas of Action

Permitted areas of action all begin with the words “*the grand jury may...*”:

1. **Penal Code §919(a):** “... inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.”
2. **Penal Code §920:** “... investigate and inquire into all sales and transfers of land and into the ownership of land which, under the state laws, might or should escheat to the state of California.”
3. **Penal Code §925(a):** “... examine books and records of any incorporated city or joint powers agency located in the county... (and may) investigate and report upon the operations, accounts and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.”
4. **Penal Code §927:** “... may, and when requested by the Board of Supervisors shall, investigate and report upon the needs for increase or decrease in salaries of the county elected officials. A copy of such report shall be transmitted to the Board of Supervisors.”

5. **Penal Code §928:** "... investigate and report upon the needs of all county officers in the county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices."
6. **Penal Code §932:** "... order the district attorney of the county to institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county."
7. **Penal Code §933.5:** "... examine the books and records of any special purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and ... may investigate and report upon the method or system of performing the duties of such district or commission."
8. **Penal Code §933.6:** "... examine the books and records of any nonprofit corporation established by or operated on behalf of a public entity, the books and records of which it is authorized by law to examine, and may investigate and report upon the method or system of performing the duties of such nonprofit corporation."
9. **Welfare & Institutions Code §17006:** "... inquire into welfare records pertaining to the investigation, supervision, and relief and rehabilitation of welfare recipients."
10. **Government Code §3060:** "... (present) an accusation in writing against any officer of a district, county, city, including any member of the governing board or personnel commission of a school district, for willful or corrupt misconduct in office ..."

To assist the grand jury in carrying out the above mandated and permitted activities, the Penal Code contains the following additional provisions:

1. **Penal Code §921:** "Is entitled to free access, at all reasonable times, to the public prisons, and to the examination without charge, of all public records within the county."
2. **Penal Code §926(a):** "May (with the approval of the court) employ one or more experts for the purposes of Sections 925, 925(a), 928, 933.1 and 933.5 or any of them ..."
3. **Penal Code §926(b):** "May (with the approval of the Board of Supervisors) employ expert auditors and appraisers to assist in the examination of the books, records, accounts, and documents, maintained and processed by the county assessor."
4. **Penal Code §934:** "May at all times, ask the advice of the court, or the judge thereof, or district attorney, or of the county counsel."

C. Selection of Grand Jurors

Grand jurors in each county of California are selected by judges of the Superior Court. In San Diego County, announcements are run in local newspapers, and on local radio and television stations, inviting applications. Members of the current Grand Jury may be asked to participate in recruitment drives at each of the County courthouses, and to conduct preliminary interviews of interested candidates.

After interviews and a check to determine background, competency and proper qualifications, at least 30 names are selected by the court for the final candidate pool. By state law, the candidates must be apportioned by population from each supervisorial district and a concerted effort is made to apportion the panel on the basis of sex, race and age from among the applications received. From the pool of candidates, names are chosen at random to fill the final panel of 19 grand jurors. In addition, up to 11 alternates' names are also drawn.

The grand jurors take their oath of office before the Presiding Judge of the Superior Court. If, during a juror's term of office, the Presiding Judge determines that a grand juror is no longer competent to serve, or if a juror chooses to resign, the Presiding Judge may order the removal of the grand juror and appointment of an alternate in his or her stead.

D. Qualifications for Grand Jury Service (Penal Code §893)

1. Competency:

A person is competent to act as a grand juror only if he or she possesses each of the following qualifications:

- (a) He or she is a citizen of the United States of the age of 18 years or older and has been a resident of the state and of the county or city and county for one year immediately before being selected.
- (b) He or she is in possession of his or her natural faculties and is of ordinary intelligence, of sound judgment, and of fair character
- (c) He or she is possessed of sufficient knowledge of the English language.

2. Incompetency:

A person is not competent to act as a grand juror if any of the following apply:

- (a) The person is serving as a trial juror in any court of this state.
- (b) The person has been discharged as a grand juror in any court of this state within one year.
- (c) The person has been convicted of malfeasance in office or any felony or other high crime.
- (d) The person is serving as an elected public officer.

E. Juror's Oath

Penal Code §911 sets forth the juror's oath of office:

I do solemnly swear (affirm) that I will support the Constitution of the United States and the State of California, and all laws made pursuant thereto and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which the grand jury shall have or can obtain legal evidence. Further, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, or the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court.

F. Charge of the Court

A copy of the charge that grand jurors receive from the Presiding Judge of the Superior Court will be provided for your reference and review.

II. CONDUCT OF GRAND JURORS

The grand jury is charged with an important responsibility that calls for diligence, impartiality, dedication and strict confidentiality. This section provides the specific rules and procedures which generally govern grand jury service, including the proper conduct of a grand juror, avoidance of bias and conflict of interest, the need for secrecy and confidentiality and the potential resignation or removal of jurors.

A. The Code of Ethical Conduct

Following empanelment, each grand juror is given a copy of the San Diego County Code of Ethical Conduct [See Appendix A2], and required to read and execute a copy. The coversheet states:

My signature indicates that I have received and read the San Diego County Grand Jury's Code of Ethical Conduct. I am fully aware of my responsibilities as a Grand Juror and agree to abide by the standards of ethical conduct as described in the San Diego County Grand Jury Code of Ethical Conduct. I understand that my failure to comply with the Code of Ethical Conduct could result in my removal as a Grand Juror.

My signature further indicates that I was afforded the opportunity to inquire as to anything in the Grand Jury's Code of Ethical Conduct that was not clear to me. The person witnessing my signature on this form is the person who made him/herself available to me for any questions that I had during my review and before my signature.

1. Confidentiality

Members of the grand jury are sworn to secrecy. All grand jury proceedings are secret. This secrecy guards the public interest and protects the confidentiality of sources. The minutes and records of grand jury meetings cannot be subpoenaed or inspected by anyone. Matters before the grand jury should never be discussed outside the grand jury, even with closest relatives or associates.

The grand juror's promise or oath of secrecy is binding for life. By law, it is a misdemeanor to violate the secrecy of the grand jury room. Successful performance of grand jury duties depends upon the secrecy of all proceedings.

A grand jury must not divulge any information concerning the testimony of witnesses or comments made by other grand jurors. "Leaks" concerning grand jury proceedings inevitably impair or even destroy the effectiveness of the entire grand jury and might be evidence in a libel suit against the grand juror and possibly the entire grand jury. The confidentiality of interviewees and complainants is critical. Reports should be written so that an interviewee cannot be identified. Interviewees probably will not volunteer sensitive information if they have fears about being identified.

While conducting interviews or making field trips, grand jurors must not discuss or reveal any information regarding grand jury business, plans, or investigations.

To preserve privacy and confidentiality, the grand jury room should be locked at all times when it is not in use for meetings. Sensitive, unwanted documents should be shredded. Documents should never be taken and/or removed from the Grand Jury room for any purpose other than to approved site visits.

2. Libel

The grand jury's statements are not privileged. Members of the grand jury are not immune from suits for libel or defamation of character, except when a grand jury indicts a person. Before publication, reports are submitted by the grand jury to the County Counsel and the Presiding Judge to review for compliance with the law.

3. Collegiality

In all deliberations, grand jurors have equal rights and responsibilities. No juror may discourage other jurors from satisfying themselves fully with the evidence before casting a vote. Jurors should not exert undue pressure on others to change their minds. A juror should express his/her opinions and views calmly, emphatically, and reasonably, without interference. Only one juror should speak at a time during general meetings. While a speaker has the floor, jurors must not engage in side conversations.

Grand jury meetings should allow sufficient time for all members to express their opinions. All members may request a motion on any topic being discussed. Each juror should carefully consider the views and opinions of fellow jurors.

An attempt to resolve personal differences should first be made by the grand jurors involved. If they cannot resolve their differences, they should request that the foreperson, or some other mutually acceptable third grand juror, mediate the problem. If the differences become disruptive in any way to the work of the grand jury, the foreperson should intervene. If the differences persist, the foreperson should bring the conflict to the attention of the Presiding Judge.

B. Bias, Conflicts of Interest and Disclosures

It is essential that grand jurors preserve the credibility of the grand jury by scrupulously avoiding any real or perceived conflict of interest or bias.

Having an educated opinion on an issue should not be considered the same as having a bias. Bias is defined as either (1) prejudgment of essential facts that prevents the grand juror from considering the issue on its merits, or (2) publicly expressed support or opposition to specific aspects of a matter before the grand jury. The grand jury should take care to avoid any appearance of bias. Any member who could reasonably be perceived as having a grudge against or a special sympathy for a public official or agency should refrain from any investigation involving that official or agency, as well as

from any grand jury discussions regarding that investigation or voting on accepting or rejecting the report.

It is the responsibility of each grand juror to advise the Foreperson and/or the entire grand jury of any bias or present or potential conflicts of interest which exist at the beginning of the term of service or which may later develop during the year of service in connection with issues that come before the grand jury. [See *Declaration of Interest* form in Appendix A3]

Potential or perceived conflicts of interest could be caused by a grand juror's earlier employment with the public agency that is under investigation or the current employment by the public agency of a relative or close friend. Penal Code §916.2 requires a juror to advise the court and Foreperson if he or she has been employed by a local agency within the past three years and to recuse if that agency comes under review. For the purposes of §916.2, "agency" includes a department or operational unit of a county or city.

Another cause of a conflict could be a contractual relationship with the agency, or a recent or anticipated financial connection. In addition, a juror may be perceived as having a conflict if he or she has been engaged in litigation for or against the entity or official under investigation or has actively campaigned for or against the elected official in question. A juror who is known as a staunch advocate of a particular position, or who has repeatedly and publically criticized an official or entity might be seen as biased.

In addition to the statutory basis for recusal, the state's "common law" (case law) also requires recusal when an official, such as a grand juror, has a real or perceived conflict of interest or is biased for or against the entity or official.

A grand juror must not have an identifiable bias regarding any actions that the grand jury may take. Bias is the prejudgment of essential facts that prevents a member of the grand jury from considering an issue objectively, including publicly expressing support or opposition on a specific matter. Having an educated opinion on an issue should not be considered as having a bias. The same disclosure and recusal that applies to a potential conflict of interest should apply to preexisting bias.

The test for determining common law bias is to ask, "Would a reasonable person knowing of the juror's relationship or activity related to the entity, function, or official conclude that the juror might have a bias for or against the entity, function, or official?" If the answer is yes, there is a perceived conflict of interest and the juror should recuse.

In addition to the *Code of Ethical Conduct*, each juror is asked to review and sign a *Conflict of Interest Statement* (See Appendix A3). The *Statement* is an acknowledgement that each juror has read and understands the Grand Jury's policy on conflicts and agrees to abide. Both forms shall be retained by the Grand Jury Coordinator throughout the term of Grand Jury service.

1. Recusal

A grand juror shall immediately recuse [disqualify] themselves from any proceeding because of bias, prejudice and/or a real or perceived conflict of interest. (See Penal Code §916.2) Once a grand juror has been recused from a committee or a particular investigation, that grand juror is permanently recused and his or her recusal cannot be revoked. The recused juror must abstain from both discussion and voting on any aspect of the matter during committee meetings or in meetings of the entire grand jury. The juror must leave the grand jury room whenever that matter is under consideration, including during the review of draft reports. He or she may not see the resulting report until after the end of the term. If any grand juror expresses concern that any other grand juror may have a perceived conflict, it should be brought to the attention of the Foreperson, who will bring it to the full grand jury.

2. Status as Grand Juror; Financial Disclosures

In addition, no member of the grand jury should use his or her office for any kind of personal gain or advantage. Grand jurors must not identify themselves as grand jurors in matters other than those directly connected with grand jury business. They must not use their status as grand jurors to influence or obtain favors during grand jury service. When conducting inspections, members of the grand jury should not accept gifts except for token gifts and other such mementos given to all visitors as a matter of standard procedure.

The Fair Political Practices Commission (FPPC) has advised that grand jury members are public officials and thus are subject to financial disclosure requirements contained in the Government Code and the regulations promulgated thereunder. **Therefore, each grand jury member must file a Statement of Economic Interest [Form 700].** A statement is to be filed at the beginning of the term, one at the end of the calendar year, and another upon discharge. (For additional information, see https://www.sandiegocounty.gov/content/sdc/cob/conflict_interest)

3. Political Activities

No grand juror should use the name of the grand jury in endorsements of or in opposition to any candidate for public office or any ballot measure. Grand jurors should exercise appropriate discretion to be sure there is no possibility that the grand jury can be construed to have an opinion on any election issue.

C. Secrecy, Confidentiality, and Security

There are both legal and practical reasons for secrecy of grand jury activities. Only fellow grand jurors, the presiding or supervising judge and the jury's authorized legal counsel are entitled to information about grand jury investigations, correspondence and deliberations. **These matters must never be discussed** with friends, relatives, business acquaintances or the news media, either during the grand jury's term or at any time thereafter. A grand juror who willfully discloses, at any time, any evidence

presented to the grand jury, or anything any grand juror has said, or how any grand juror has voted is guilty of a misdemeanor. (Penal Code §924.1) Grand jurors who happen to see each other outside the grand jury room, should take care that they do not discuss grand jury business where they might be overheard.

While conducting interviews or making field trips, jurors must never discuss or reveal any details regarding grand jury business, plans or investigations except to the extent necessary to conduct the investigation. There should be no reference made as to whether an investigation will result in a report, as this will be determined later by the full jury. Statements of approval or disapproval of departments or agencies must come only from the entire grand jury and appear only in official reports which legal counsel has reviewed before release.

Names or identifying information of complainants and informants may not be revealed in reports. (Penal Code §929)

Unauthorized disclosure of the evidence presented to the grand jury or the vote of any grand juror is a misdemeanor (Penal Code §924.1) and is likely to result in the offending juror's discharge from the grand jury.

1. Computers; Investigative Files

The grand jury's computers contain confidential information and for security reasons, should never be removed from the grand jury's room, or used for any purposes other than those of the grand jury. If one of the computers is taken out of the grand jury room, it would be subject to loss, damage, or theft. Data might be lost if the computer is used by a person unfamiliar with its operations. Data, evidence, or reports could be stolen by copying to a thumb drive.

Investigative Files: Each committee chairperson must ensure that an investigative file is compiled and maintained on each investigation conducted by that committee. This file should contain one copy of all interview notes and documents related to the investigation and will be placed in the Grand Jury file cabinet. The investigative file will be retained for 2 years following completion of the term. All duplicate copies of documents should be securely destroyed at whatever time they are no longer needed, but no later than the end of the grand jury term.

An individual grand juror should not retain any copies of any confidential material after the conclusion of his or her term of service. The materials can be brought to the grand jury meeting room for shredding.

2. Media; Press Releases

The Grand Jury by law functions in an atmosphere of secrecy, and the Penal Code requires that jurors keep secret most of their transactions. Because of the interest and the enterprise of news media representatives, jurors must be on guard against discussing any matters of Grand Jury concern. **Only**

the Foreperson is authorized to speak to the media or release any publicity. (see additional discussion in Chapter 6, Section C “Publicity”)

D. Compensation; Budget; Spending Limitations

Compensation for San Diego County Grand Jury service is \$25.00 per diem (regardless of the number of meetings and activities attended in any one day). The per diem is paid for attendance at regular grand jury meetings, committee meetings, site visits, inspections and interviews authorized by the full grand jury. (Penal Code §§ 890 and 890.1) The County reports the per diem to the Internal Revenue Service as taxable income to the grand juror.

In addition, grand jurors receive round-trip mileage from their place of residence or business to the meeting place at the same rate as San Diego County employees. As of January 1, 2019 the rate is 58.0 cents per mile.

Grand jurors should be mindful that the grand jury’s activities, like the activities of the courts, are limited by its budget. Appropriate routine expenditures each year include costs of printing and publishing the grand jury’s consolidated Final Report, grand juror mileage and per diem, training of grand jurors and alternates, rent, and the purchase of office and cleaning supplies. Payment for most expenses of the grand jury, including a juror’s per diem and mileage, is obtained through the submission of claims to the County Administrative Office. A copy of the form used to record the juror’s per diem and mileage can be found in the Appendix (A4).

County funds may only be used by the grand jury to conduct its official business. Note that the grand jury cannot use its budget to pay for snacks or for coffee, creamer or sweetener. It cannot purchase gifts for jurors or anyone else. [See discussion of Social Fund in Chapter III, *infra*.] Any questions about whether a particular expenditure can be reimbursed from County funds should be directed to the Grand Jury Coordinator.

E. Orientation and Training

It is essential that each new grand jury promptly acquire a basic knowledge of its responsibilities. Grand jurors must gain a familiarity with public officials, departments, agencies and the court as soon as possible so they can begin conducting investigations within a few weeks of empanelment.

Prior to the new grand jurors being sworn in, one week is devoted to orientation and training, presented by the current Grand Jury and guest speakers. The training is based on this manual. The first alternate juror from each Supervisorial District should participate in this training. Thereafter, and within the first few weeks of service, the grand jury should expect to receive a presentation by the County Administrative Officer concerning County government; a presentation by a city official concerning city governments; a presentation by the County Counsel on the laws related to the civil law functions of the grand jury, confidentiality, the availability of legal counsel, ethics, and conflicts of interest.

Informal training sessions should be scheduled for the grand jury during the early part of its term to cover such topics as the role of the jury's administrative committees, the contents of the grand jury library; and the computer skills needed by jurors. These topics can usually be covered by one or more of the jurors.

Jurors should also consider attending one or more training seminars conducted by the California Grand Jurors' Association ("CGJA"). Since 2004, CGJA has conducted regional training seminars throughout California. CGJA also provides a one-day report writing workshop in the fall; jurors should attend that workshop if the budget allows. [Refer to www.cgja.org for additional information]

Finally, it is strongly recommended that portions of this manual and be regularly reviewed during grand jury meetings.

F. Attendance Requirements

It is of great importance that attendance be regular and prompt, both for panel meetings and for committee meetings. Grand jurors are allowed to attend all committee meetings, even if not a member of the committee. In this way, the committee can have the benefit of more jurors' input. The importance of the work requires that each juror be present at, and on time for, all sessions, except for the most significant reasons, such as illness, unavailability because of the infringement of serious personal demands, or family vacations. In addition, grand jurors should refrain from scheduling vacation during the months of March, April, and May so as to permit maximum attendance to complete the grand jury's reports.

Formal work days and hours, and notice of absences and vacations, are necessary for the proper scheduling of meetings and interviews. **The Grand Jury has established working days (a minimum of 4 days per week, Monday through Thursday) and working hours (a minimum of 6 hours per day, 9am to 3pm).** These are the necessary CORE HOURS that have been established in concert with the Superior Court, and to accommodate the needs of commuters, City and County employees and other witnesses. On occasion, the jury may be asked to work on Fridays and/or to arrive before 9am or stay later than 3pm to facilitate the scheduling of interviews, tours and inspections. Final decisions regarding work days and hours are made by the Presiding Judge in consultation with the Grand Jury Foreperson.

Once investigatory work is concluded, final reports have been forwarded to the Presiding Judge for review and the business of the Grand Jury substantially completed (April, May, June), working days may be reduced to 1 or 2 days a week (or less) as necessary. Jurors asked to participate in training and those who have work to complete before the term ends may be asked to work more frequently.

If a juror is unable to attend a session or desires to be excused, he or she must give the Foreperson, committee chair, and Coordinator as much advance notice as possible. In addition, San Diego County presently allows fifteen (15) vacation days for the full year. A *vacation tracker* (See Appendix A5) is also provided for the use of every juror to schedule time off during the term. Jurors are also required

to complete and submit a monthly *Timesheet* (see Appendix A5) which sets forth the dates worked and miles traveled on official Grand Jury business.

The Foreperson will discuss absences with any juror whose attendance does not appear adequate for a fair contribution to the work of the jury. Three unexcused absences from a panel meeting may be considered cause to recommend that the Presiding Judge remove the member from the grand jury. The Foreperson can independently remove a member from a committee after three unexcused absences from committee meetings. The unexpected lack of a quorum causes a great loss of time and money to the individual grand jurors affected, as well as to witnesses and other invitees.

G. Resignations and Removals

Any grand juror who wishes to resign from the grand jury must do so in writing, addressed to the Presiding Judge, with a copy to the Foreperson.

The Presiding Judge may remove any juror for misconduct or failure to diligently undertake the duties of a grand juror. What constitutes sufficient grounds for removal is within the sole discretion of the court, but could include a statutory disqualification of a juror (for example, if a juror is convicted of a felony or moves out of the county), a violation of a provision of the Penal Code applicable to jurors (such as § 924.1, which makes it a misdemeanor for a juror to disclose any grand jury evidence or vote), a juror's abandonment of his or her office, or any conduct by a juror which significantly disrupts the efficient operation of the grand jury.

Although not mandated by state or county law, it is the practice in this county to replace a juror who leaves, resigns or dies, with one of the alternate jurors as soon as possible. The Presiding Judge ordinarily appoints replacement jurors from the alternates in the order their names were drawn at the time of empanelment, or if there are no remaining alternates, in the manner prescribed by the Penal Code. However, if the vacancy occurs near the end of the term, the vacancy is usually not filled.

H. Discharge of the Grand Jury

The grand jury has a one-year term, beginning when the jurors are sworn in and ending when they are discharged by the Presiding Judge. The ceremony for the empanelment of the new grand jury and discharge of the old ordinarily takes place in late June or the first week in July.

At or before the last meeting of the term, the members must turn in all keys, badges, lanyards, parking passes and similar items issued to them during their term of grand jury services. (For a complete list, see Appendix A6)

III. STRUCTURE OF THE GRAND JURY

To a large extent, the success of the jury will be dependent upon the skill of its officers and its committees. The jury must function as a body rather than as individuals. Since jurors have diverse experience, interests, and philosophies, this is not an easy task. This chapter describes the general operating structure of a typical grand jury, including the officers and their suggested duties and the various investigative and administrative committees. Each grand jury can choose to appoint some or all of the officers, change the duties (except those required by law) and organize their committees as necessary by amending this manual.

A. OFFICERS

1. Foreperson (by statute appointed by the Presiding Judge)

To a large extent, the success of the jury will be dependent upon the Foreperson's skill in organization and teamwork. The jury must function as a body rather than as individuals. Since jurors have diverse experience, interests, and philosophies, this is not an easy task. It is the Foreperson's responsibility to try to prevent contentious factions from forming among jurors. If such should occur, he or she must devote every effort to maintain a friendly "unity of spirit." The Foreperson should strive to preside with tact, restraint, consideration, common sense, firmness, and a sense of humor, always keeping open communication between himself or herself and the other jurors. The following are some, but not all, of the duties of the Foreperson:

- Calls Business Meetings of the grand jury; presides at such meetings.
- Prepares and distributes the agenda for Business Meetings.
- Nominates officers for jury's consideration and vote.
- After considering personal juror preferences, proposes committee assignments and appoints Committee Chairs. The Foreperson should take time at the beginning of the Grand Jury term to interview and identify the best candidates to serve as Committee Chairs. Chairpersons should be organized and possess the same or similar skills as the Foreperson.
- Serves as an *ex officio* member of all committees; however, the Foreperson shall not usurp the duties of the committee chairperson.
- Ensures committee coordination through on-going consultations with committee chairs. This can be done by establishment of an Executive Committee.
- Brings all correspondence to the grand jury's attention at Business Meetings; and signs all communications approved by the grand jury.

- Consults with the Presiding Judge, County Counsel and the District Attorney when desirable or at the direction of the grand jury. Individual grand jurors shall not communicate with the Presiding Judge, County Counsel or the District Attorney, unless accompanied by the Foreperson.
- Seeks input from County Counsel as to each draft report and when the grand jury has questions regarding legal matters, using the grand jury's shared drive.
- Submits all reports to the Presiding Judge for review and approval prior to release.
- Except as provided in Penal Code §933, subdivision (a) (which requires the Foreperson and his or her designee to be available for 45 days after the end of the term to clarify recommendations in the jury's reports), acts as the *only* official spokesperson for the grand jury. However, the Foreperson cannot reveal any confidential information, including any evidence adduced before the grand jury, how any juror votes, or what any juror said during any grand jury proceeding.
- Administers oaths and admonitions. Only the Foreperson, or in his/her absence, a designee can administer an oath that the witness tell the truth (PENAL CODE §939.4). Any juror can administer admonitions to maintain the secrecy of the investigation.
- Requests subpoenas of the Presiding Judge when needed.
- Provides orientation for replacement jurors throughout the year. Can be asked by the Presiding Judge to conduct or assist in training for incoming jurors for the next term.
- Consults with the Presiding Judge regarding any changes to established work days and hours.
- Oversees the scheduling and coordinating of meeting space as needed for all grand jury meetings, committee meetings, and interviews.

Some of the above responsibilities may be delegated to the Foreperson Pro Tem if deemed appropriate by the Foreperson.

2. Foreperson Pro Tem

The Pro Tem, in the temporary absence or recusal of the Foreperson, assumes the duties of the Foreperson. In case of prolonged or permanent disability or ineligibility of the Foreperson, the Pro Tem will undertake all of the duties listed above, until a new Foreperson has been named by the court. The Pro Tem assists and counsels the Foreperson on matters concerning meeting procedures, personnel problems, committee needs and the well-being of the jury. The Pro Tem assists the Foreperson in any other way, at the Foreperson's request.

3. Secretary

a. Meeting Records and Minutes

It is the duty of the Secretary to keep an accurate record of every grand jury meeting in the form of minutes. These minutes should show:

- The hour and minute of convening.
- Call and recording of the roll.
- Jurors absent from the meeting. This may include the name of any juror entering or leaving the jury meeting and the exact time of such entrance and exit at any time during the meeting.
- A record of all motions made and seconded and the jury's action thereon, omitting names of jurors making and seconding such motions. The minutes should not reflect the votes of individual members, nor the number of votes cast for or against any matter, thereby permitting absolute secrecy as to the votes of each and every juror.
- That a quorum of at least 12 is present at all times.
- A record of reports submitted by the various committees and the jury's action thereon.

The Secretary should provide an electronic (or paper) copy of the minutes before the next regular meeting to each grand juror for review and approval. The minutes of a meeting, properly recorded, will be the best evidence that the procedure followed by the grand jury is a proper one. (A sample set of an agenda and meeting minutes is contained in the Appendix A7.)

b. Complaint Log

The Secretary may be asked to maintain the log of all complaints which will include the assigned complaint number, the date of receipt, the name of the complainant, the date and nature of any correspondence related to the complaint, and the disposition of the complaint. (See sample Complaint Log in the Appendix.)

4. Treasurer

a. Timesheets

The Treasurer collects the monthly Timesheets from each juror, checks to make sure that all information is included and that the form has been signed. On the last day of each month, the Treasurer then delivers all the collected Timesheets to the Coordinator for processing. (Appendix A4)

b. Collections, Contributions, Social Fund

Throughout the Grand Jury year, jurors may be asked to voluntarily contribute money for supplies, commemoratives (coffee cups, etc.), gifts and/or charitable causes. Some of these requests will occur on "as needed" basis, and others may be regular monthly collections. In either case, funds will be

collected and maintained by the Treasurer. (See also discussion under *Social Committee, infra.*) This duty includes:

- Collecting and noting the contribution from each juror (sample Tracker in Appendix A9);
- Making disbursements from the fund for all authorized expenditures;
- Maintaining the records for the collection(s), including entering all credits and debits on the balance/spreadsheet; and
- Reporting to the full grand jury on the current financials.

5. Sergeant-at-Arms

The Sergeant-at-arms sees that no unauthorized person is present in the grand jury room during jury sessions, and that no one other than jurors is present during deliberations and voting. The Sergeant-at-arms admits authorized persons, including witnesses, when summoned by the Foreperson, seats such persons and, when they are dismissed, escorts them from the room. When a grand juror is recused from a discussion during a grand jury meeting, the Sergeant-at-arms will escort that person to and from the grand jury room.

The Sergeant-at-arms is responsible for maintaining security in the grand jury room during and after meetings. The Sergeant-at-arms will secure the exterior door to the grand jury office during an interview of a witness. No juror will be allowed to enter the office until the interview has been completed. The Sergeant-at-arms will turn off all electrical devices after a meeting, including lights, and lock all doors. The Sergeant-at-arms is responsible for assuring that all confidential material is securely destroyed (shredded) when appropriate.

The Sergeant-at-Arms assists in collecting and counting votes/ballots, if needed.

6. Parliamentarian (optional)

The Parliamentarian responds to inquiries concerning procedural rules and parliamentary procedure when the need arises.

7. Librarian/Historian (optional)

The Librarian maintains the library of the grand jury, including certain records compiled by former grand juries. At a minimum, the grand jury library shall include the following:

- Copies of the final reports of at least the 15 preceding grand juries.
- Copies of the responses to those final reports.
- An Index of Grand Jury reports going back at least 15 years. The index will indicate the issue investigated and identify the agency or department. This index may be in chart form.

- Public documents such as ordinances, policies and procedures manuals, by-laws, audit reports, budgets, etc. concerning matters not related to current investigations. These materials will be maintained for a minimum of three years, and until outdated.

In addition to organizing and maintaining the grand jury’s library, the Librarian shall, in conjunction with members of the jury, compile a “Yearbook” for the Foreperson and other jurors to commemorate significant events throughout the term.

8. Committee Chair(s)

- Schedules, prepares agendas for, and presides over the meetings of the committee.
- Drafts outgoing letters to be approved by the committee and/or grand jury and signed by the foreperson.
- Reports on progress of the committee’s work to the grand jury.
- Oversees the report-writing process and presents draft report to the committee for approval prior to submitting the report to the editorial committee.
- Reviews comments/suggestions of the editorial committee and oversees any needed revisions with the committee before submittal to the full grand jury.
- Consults with the foreperson about any problems obstructing the work of the committee.
- Designates a committee secretary who is responsible for the following:
 - Records the attendance and places it in the foreperson’s file for signature.
 - Records all minutes and distributes copies into the appropriate members’ mailboxes before the next meeting.
 - Maintains a master file of all committee agendas and minutes.
 - Ensures that all relevant correspondence/research results are placed in the applicable master complaint file folders.

B. COMMITTEES

1. In General

State law does not refer to grand jury committees. However, the grand jury cannot be effective if everything is handled by the jury as a whole, so the grand jury ordinarily establishes committees. The accomplishments of the grand jury as the watchdog of local government will depend to a great extent upon the work of its committees.

Because the chairperson of a committee is responsible for that committee, no one person should chair more than one standing committee. Chairpersons should be willing and able to serve and have the time to devote to this leadership position.

All grand jury members should serve on more than one committee during the term of the jury, but they should ordinarily not serve on more than three standing committees at the same time. The Foreperson is a member of each committee, but may not usurp the duties of the committee chairperson. The chairperson is responsible for presiding over the committee's meetings. The Foreperson's most important responsibility is to make sure that the grand jury as a whole and each of the committees function effectively and efficiently. To this end, the Foreperson should be in frequent consultation with the various committee chairs and should require regular progress reports as to the work being handled by each committee. This can best be accomplished through an Executive Committee (see discussion, *infra*.)

Grand jury members should not serve on a committee on which there is likelihood of a potential conflict of interest or appearance of bias.

a. Selection and Membership

At the beginning of the term, the Foreperson should distribute copies of the Officer/Committee Assignment Questionnaire to each juror. (See sample in Appendix A9) Using the questionnaires, the Foreperson will propose committee members based on what he or she believes will be the best use of jurors' talents and experience. Consideration should be given to the potential for conflicts of interest when making committee assignments. To the extent possible, assignments shall conform to the wishes of the member.

A juror desiring a change in assignment should discuss the matter with the committee chairperson who will discuss the matter with the Foreperson. A change in membership status can be granted by the Foreperson, with the agreement of the committee chair(s), when a juror has a substantial interest or can make a material contribution to the committee's work.

Committee Chair: The Foreperson will appoint a Chair from the members of each Committee. It is best to allow two or three weeks and multiple meetings of each Committee before nominating a chairperson, to be better able to pick the best juror for that position. At times, it may be beneficial to change the chairperson for a committee. The replacement will be made by the Foreperson and is final.

b. Duties of Committees

The functions of the ACTION (investigative) committees are to:

- Review any complaints or potential investigation topics, conduct any necessary general research and recommend to the full jury which complaints and topics, if any, should be accepted for investigation (acceptance requires a supermajority vote of 12 jurors).
- Conduct the investigations assigned to the committee by the full grand jury. Which ones are selected by the grand jury for investigation will depend upon juror interest, past grand jury reports and recommendations, or current developments. The jury should prioritize

investigations according to the importance of the topics and the likelihood that the jury will be able to offer recommendations that can improve the local government it investigates.

- Prepare a summary report of its activities to be presented at each regular grand jury meeting and keep the full jury aware of all committee activities.
- Draft reports of the committee's completed investigations for grand jury approval. Report writing should commence immediately and well before the investigation is complete, to help focus the committee members on what additional evidence may be needed.

When committees have overlapping concerns, each chairperson should serve as a member of the other committee(s) or should designate a committee member as liaison.

c. Organization and Operation of Committees

Each committee should be structured with a chairperson, vice chair, and a secretary, who will keep attendance and written notes or minutes of each of its meetings, a copy of which should be provided to the Foreperson. The chairperson should be responsible for informing absent committee members of the next meeting and should notify the Foreperson of scheduled meetings and interviews.

Each committee should structure its meetings in the same general format as the meetings of the full grand jury. Action should be taken only after a motion has been made, seconded, discussed and voted upon. A quorum is more than fifty percent of the full committee membership. Action can only be taken if a quorum is present and a favorable vote shall be considered anything approved by a majority of the committee members present.

In the event that a vote of the quorum results in a tie, the matter under consideration by the committee may be reconsidered by the committee or brought to the full grand jury for consideration.

All investigations by committees must be approved in advance by the full grand jury and all action taken by committees shall be reported to the full grand jury.

Committees should establish regular meeting times and should ordinarily meet with greater frequency than the grand jury as a whole. Although committee meetings usually are more informal than those of the entire grand jury, they should be conducted by the chairperson in such a way as to assure order.

When matters concern more than one committee, members of the other committees, or the entire grand jury should be invited to attend such meetings. Any grand juror should be free to attend any grand jury committee meeting in which he or she is interested.

Any committee may create sub-committees of at least two people from among its own members to facilitate the carrying out of assigned tasks.

Each committee should create and maintain a file on every project, complaint, and matter assigned to it. Written records should be kept of inspections, tours and interviews and all matters pertaining to a complaint. Each member is to take notes; those sets of notes should promptly be reviewed for accuracy and compared with the notes of the other jurors in order to determine further action.

2. Suggested Action (Investigative) Committees

It is recommended that the grand jury establish one or more of the Action (Investigative) and Internal (Administrative) committees listed below. However, the grand jury can, without amending this manual, modify or combine committees as desired or necessary and can form subcommittees and Ad Hoc committees to satisfy additional needs as they arise.

Penal Code §925 requires the grand jury to investigate and report on “the operations, accounts and records of the officers, departments or functions” of **the County** (but not cities or districts) every year. §925 allows the investigation to be on a selective basis each year. **This is the jury’s only mandatory investigation and report.** The committee should review the Final Reports of the past five years or so to help determine which County departments should be investigated.

a. Administration and Audit (A&A) Committee

The Administration and Audit Committee investigates matters pertaining to sound administrative and financial practices as they apply to county and governmental agencies, including governing bodies, such as:

- County Departments: Auditor-Controller, Assessor-Recorder, County Clerk, Treasurer-Tax Collector, Registrar of Voters, Human Resources, Sheriff, Probation, General Services, Public Works, Health and Human Services
- County Board of Supervisors
- Cities/Municipalities
- Community Service Districts
- Joint Powers Agencies
- Recreation and Parks Districts

Penal Code §925 requires the grand jury to annually examine the accounts and records of the County. In addition, Government Code §25250 requires the Board of Supervisors to conduct an annual audit of all County accounts. These audits are conducted under the supervision of the County Auditor and Controller.

The Administration and Audit Committee has access to the Office of the Auditor and Controller, and may request additional audits of county agencies within the applicable laws and contract restrictions. The Committee may be responsible for retaining outside firms to conduct a county audit, if such outside audit is deemed necessary. Because of its broad interagency scope, it coordinates its activities with other jury committees. It is suggested that the grand jury Foreperson, in concert with the

Administration and Audit Committee, obtain legal advice from County Counsel prior to addressing additional audit requests.

b. Education (EDU) Committee

The Education Committee concerns itself with the administrative functions of educational institutions and public libraries within the county, such as:

- School Districts and Community College Districts
- County Office of Education; Superintendent of Schools
- County Library Department
- Public Libraries
- Special schools, such as day care centers and juvenile educational facilities, which may be coordinated through the county schools and/or the Probation Department

Some restrictions apply to school investigations per Penal Code § 933.5. The scope of any investigation into school districts cannot involve the review of the district's policy decisions (fundamental decisions requiring the exercise of the discretion by the district's board or officials) such as the evaluation or assignment of personnel or school district curriculum decisions. (*Board of Education v. Leach* (1968) 258 Cal. App.2d 281). County Counsel can assist the jury in determining if an investigation would involve an improper review of policy matters.

c. Environment and Public Works (EPW) Committee

The Environment and Public Works Committee considers all matters having an impact on the environment, including areas of public works, roads, levees and property access and agencies such as:

- Animal control
- County Agricultural Commissioner
- County airports
- County Farm Advisor
- Environmental health
- Fire Districts
- Parks and Recreation
- Public Works Department
- Sanitary Districts
- Sheriff Department
- Office of Emergency Services
- Water Districts
- Air and Water Quality
- Transportation
- Urban concerns including planning and land use.

The committee should consider conducting a fiscal review of any district or agency that it investigates.

d. Health and Human Services (HHS) Committee

The Health and Human Services Committee concerns itself with all aspects of health care and social services operations in the county, including:

- Adult and child welfare services: Adoptions, Adult protective services, Child protective services, Day care centers, Foster care licensing, In-home services
- County health programs
- Commission on Children, Youth and Families
- Drug and alcohol programs
- Emergency medical services
- Health and Human Services Agency
- Housing and Community Development
- Job development and training
- Medical treatment centers
- Mental health
- Public Guardian/Public Administrator
- Area Agency on Aging
- Senior citizens programs
- School health
- Veterans' services

e. Law and Justice (L&J) Committee

Penal Code §919(b) requires that the grand jury investigate the condition and management of public prisons within the county and to investigate any possible misconduct by county officers. Although the statute does not require (or authorize) a report on prisons, grand juries traditionally include a section on prisons in their final reports. Penal Code § 919(a) allows the grand jury to inquire into the case of every person imprisoned in the county jail on a criminal charge and not indicted.

The Law and Justice Committee considers all matters concerning civil and criminal justice, law enforcement and penal institutions, such as:

- Medical Examiner
- Complaints by inmates
- Detention Facilities
- District Attorney
- Juvenile Hall
- Police conduct
- Probation
- Public Defender
- Sheriff
- Complaints by citizens pertaining to governmental discrimination and bias
- Juvenile Justice Commission
- Citizen Police Review Boards
- Animal Control
- Disaster Preparedness
- City Attorney Offices
- City Police and Fire Departments in the County Including emergency services and dispatch operations

This committee investigates and reports on all detention facilities located within the County, including all adult and juvenile facilities, as well as city jails. Penal Code § 921 provides that the grand jury is entitled to free access at all reasonable times to all such facilities. (See Section V - B. *Detention Inspections* for additional information.)

f. Ad Hoc Committees

Ad Hoc Committees should be formed as needed with members nominated by the Foreperson in consultation with other officers and with the concurrence of the grand jury as a whole.

3. Suggested Internal (Administrative) Committees

Internal Committees are committees that support and expedite the work of the grand jury. They involve no investigative function and their work is generally not reported publicly. Each grand jury should determine its own need for internal committees. It should form only those committees needed for its operation, so that diminished resources will not adversely affect the investigative committees. Some examples of internal committees include:

a. Executive Committee

The grand jury should establish an Executive Committee made up of the Foreperson, Pro Tem, the other officers, and the committee chairpersons.

The purpose of the committee is to ensure that information is freely shared among all committees and groups within the jury, that tasks are being completed in a timely manner, and that any internal issues are being properly addressed.

New Complaints: In addition, this Committee processes all new Complaints, maintains the Complaint Status log and presents complaints to the full Grand Jury for acceptance or rejection.

The Executive Committee should meet for 30 minutes immediately before each full panel meeting, and at other times when necessary.

b. Editorial Committee

The Editorial Committee acts as editor for all drafts of the investigative committees' reports, making changes for ease of reading, uniformity of style and organization, grammar and punctuation, and coordination of the report as a whole. When warranted, the committee suggests further investigation or confirmation of facts if it has questions as to the accuracy of the facts or findings. Although the purpose of Editorial is not to change the substance of a report, it is an opportunity for fresh eyes to provide insight, balance and perspective.

The Editorial Committee should be established 30 to 60 days after the Grand Jury has been impaneled. This will allow sufficient time for jurors to know one another, establish working relationships and assume critical duties within their respective Action Committees. Members of the Editorial Committee should not be lead investigators or primary report writers on any other committee as those duties will conflict with their editorial responsibilities. The Foreperson should solicit interest and interview all jurors interested in serving on the committee; however, selection of the Chair and members of the Editorial Committee rests with the Foreperson.

As soon as possible, the Editorial Committee should establish a format for the "consolidated final report," which will be recommended to the full grand jury for approval. This *Approved Report Format* (see sample in Appendix A10) should be adopted well before the first reports are drafted and in no event later than mid-September. In addition, the Editorial Committee should suggest appropriate

photographs and graphics for the consolidated final report. All members of the Editorial Committee should attend the *CGJA Report Writing Workshop* held in the fall.

Each report will go through several drafts. Once the investigative committee has completed its first full draft of a report, and as major revisions are made thereafter, the report will be sent to the Editorial Committee for editing. The Editorial Committee will monitor the progress of each report, keeping an accurate record of author(s), editor(s) and fact checker(s) who participate throughout the process, and dates of completion of each stage in the process.

c. Continuity Committee

The Continuity Committee is responsible for ensuring, to the extent possible, the seamless transition from the current grand jury to the succeeding grand jury. The committee does not have the urgency to begin functioning that is required of the other working committees and so may be appointed later; however, it is recommended that the committee be appointed by the end of September, so that as issues arise, the committee can identify and recommend changes for the enhancement of grand jury operations. Committee responsibilities are to:

- In conjunction with the Foreperson and the Coordinator, monitor the filing of responses to the previous year's Grand Jury Reports, and advise the grand jury if those responses are complete and legally sufficient or if additional follow-up appears to be required;
- If the responses are not posted on the grand jury's website by the end of October, have the Coordinator contact County IT;
- Interface with the San Diego County Past Grand Jurors' Association (PGJA), particularly if the jury wants the PGJA to assist in the review of the responses to the prior jury's reports.

d. Computer Resources/IT Committee

Members of this committee will assist grand jury members in creating, transmitting and receiving information necessary to support its daily operations. Committee tasks include:

- Insure that all electronic equipment is functioning properly. Report discrepancies to the Coordinator for action.
- Assess the computer training and mentoring needs of the grand jurors and with the Foreperson, arrange for training and mentoring.
 - In October, provide training for all jurors in MSWord functionality, including review, references, track changes, footnotes, end notes, etc – all critical components to effective report writing.

- The grand jury IT chairperson will periodically review grand jury files stored on the grand jury computer and flash drives. The IT Committee should ensure that the grand jury computer is routinely backed up. Discuss questionable storage issues with the Foreperson and the responsible chairperson. Delete all information deemed inappropriate.
- Insure that jurors are properly trained in the use of assigned equipment. When necessary conduct training or obtain training from county resources if available.

e. Social Committee (optional)

Social functions such as birthdays, luncheons, and dinners which may include invitations to staff and other guests add to the overall compatibility of the jurors. For these functions, the Social Committee should discuss with all jurors their preferences and costs. Most functions are on a no-host basis by the Social Committee. If a Social Committee is formed, it will be responsible to:

- Plan and organize social events for jury members and resource personnel.
- Organizes kitchen and lunchroom responsibilities and assignments.

Social Fund: Historically, the San Diego County Grand Jury has collected a monthly contribution for the Social Fund [\$10-\$20/month]. The fund would then pay for: bottled water, kitchen supplies (cups, plates, napkins, etc) coffee, tea and monthly birthday cakes. In addition, depending upon the amount of contributions, the fund has also paid for the Holiday luncheon (December), the year-end luncheon (May), new jury snacks (June) as well as gifts for the Coordinator and a Year-End Legacy Gift.

In its first weeks, the Grand Jury should decide whether or not a Social Fund is appropriate, what will be the monthly contribution and what expenditures will be covered by that Fund. Participation must be strictly voluntary. The fund is collected and maintained by the Treasurer.

f. Legislative Committee (optional)

- Monitors state, county and city legislation that affect the operations of the GJ. Review GJ action to see if affected by pending legislation, in close connection with the Foreperson and any action committee that may be concerned.
- Distributes or posts general legal legislation material such as dockets, agendas, and minutes from County governments, not otherwise routed by Foreperson/Coordinator.

g. Public Relations & Recruitment Committee (optional)

- Organizes speaking engagements to civic, fraternal, school, and college groups. Extend outreach to groups who are less represented on the grand jury.
- Reviews all informational material sent to the general public and recommend revisions where necessary. Current information available on the Grand Jury is on the Grand Jury website at:

<http://www.sdcounty.ca.gov/grandjury>, in a pamphlet *“Yes: You can make a difference! Be a part of the San Diego County Grand Jury”* and on a 5-minute video entitled *“Your San Diego County Grand Jury”*.

- Coordinates, through the Foreperson, with the Jury Coordinators at County Courthouses to implement recruiting activities for prospective Grand Jury candidates.

IV. RULES OF PROCEDURE

The grand jury functions lawfully only as a body. Decisions are made by taking a vote, or achieving consensus. The vehicle for achieving that consensus is through proper organization, agreed upon rules and procedures and the effective conduct of meetings. This Procedures Manual constitutes the San Diego County Grand Jury's rules of procedure. It is important that each juror review and understand its contents, and bring it to each grand jury meeting to use as a reference.

A. Adoption and Amendment of these Rules

California Penal Code §916, requires each grand jury to “determine its rules of procedure.” That section also requires that the jury’s adoption of the rules, and any subsequent amendment to them, must be accomplished by a supermajority vote (12 or more affirmative votes exclusive of absences and recusals).

This Procedures Manual constitutes the San Diego County Grand Jury's rules of procedure. Once the manual has been adopted, it can be amended any time should 12 or more of the jurors decide to do so. Any proposed amendment(s) should be reviewed with County Counsel to confirm that the change would be legally proper. These rules cannot be amended to allow jurors to exceed their jurisdiction or relieve them of duties imposed on them by law, and County Counsel can ensure that the proposed amendment will not violate the law.

The grand jury cannot amend this manual in a way that would be inconsistent with any of the following provisions of the California Penal Code:

- The jury cannot exceed its budget, unless the proposed expenditure is approved in advance by the court, after giving notice to the board of supervisors (Penal Code §914.5).
- The grand jury’s “rules of procedure” (this manual) can only be amended by a supermajority vote (Penal Code §916).
- All “public actions” of the jury (such as the determination to conduct a particular investigation, or the release of a report) require a supermajority vote (Penal Code §916).
- The grand jury must choose its own officers, except the Foreperson (Penal Code §916).
- At least two jurors must attend each interview (Penal Code §916).
- Each finding (conclusion) in a report must be supported with documented evidence (Penal Code §916).

- All problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable (Penal Code §916).
- The jury must inquire into the condition and management of “public prisons” within the county, and any credible evidence of willful or corrupt misconduct of any public officer, but need not write a report on either type of inquiry (Penal Code §919).
- The jury must investigate and report on at least one county officer, department or function each year (Penal Code §925).
- A juror may not disclose evidence, the discussions or votes of any juror, or the identity of witnesses, particularly whistleblowers (Penal Code §§924.1, and 929).
- A report cannot disclose evidentiary material unless approved by the court (Penal Code §929).
- Only the Foreperson (or in the Foreperson’s absence, the Pro Tem or designee) can administer an oath to a witness (Penal Code §939.2).
- The jury must meet with the subject of the investigation, unless relieved by the court, and must give the official or the agency referred to in the report the relevant portions of the report two business days before its release to the public (Penal Code §933.05).
- The grand jury cannot adopt the findings or recommendations of another grand jury or adopt an outsider’s report as its own (Penal Code §939.9).
- No one other than jurors may be present during deliberations or the taking of a vote (PENAL CODE §939).

B. The Grand Jury as One Body

Each individual grand juror has the right and the duty to speak and vote according to the dictates of his or her own judgment and conscience. It is also important that each juror fully and fairly states to fellow grand jurors what information he or she possesses about actual or possible subjects of inquiry, so that subjects may be discussed, appraised, and further investigated according to their relative importance, or, if of little or no consequence, discarded. One of the strengths of the grand jury is that people from different backgrounds and with a variety of skills can bring their knowledge forward to contribute to the group’s work.

The grand jury functions lawfully only as a body. Decisions are made by taking a vote, or achieving consensus. ***An individual grand juror acting alone has no power or authority.*** Further, all interviews, contacts with agencies or individuals, or attendance at board meetings must be conducted by at least two grand jurors. (Penal Code §916)

The grand jury represents the public. Therefore, it is each juror's duty to think at all times, not in terms of his or her own or any particular group interest, or in terms of any personalities, but always in terms of the general public interest. Violation of the letter or the spirit of the grand juror's oath by any individual juror will endanger the integrity and the effectiveness of the grand jury as a whole.

C. Grand Jury Meetings

1. Meeting Format

The Grand Jury should consider adopting the following meeting format:

- Convene promptly at the appointed time and place. Have the roll call taken (or the attendance noted) by the Recording Secretary.

The Grand Jury should, in the interest of time, agree to waive the reading of the Agenda and Minutes as a normal procedure.

- Vote to correct or approve the Agenda for the current meeting.
- Vote to correct or approve the Minutes of the previous meeting.
- Attend to new business.
 - Review any new complaints
 - Determine if any juror needs to recuse (see Section 2.B, above)
 - Read any correspondence sent to the jury and take any necessary action.
 - Review draft reports as needed and provide input to the committee.
- Attend to any unfinished business.
- Hear reports of committees, and discuss each committee's progress.
- Announce, if possible, the agenda for and the date of the next meeting.
- Adjourn.

No witnesses or guest speakers should be present during any of the discussion or handling of grand jury business (Penal Code §939).

2. Meeting Procedures

- **Agenda:** The Foreperson or Pro Tem should prepare an agenda for each panel (full jury) meeting. Any juror may add an item to the agenda by contacting the Foreperson at least 48 hours before the meeting. The agenda will be distributed to the jurors by the Foreperson before the meeting.
 - The jury should only consider those items properly noticed on the circulated Agenda. This gives all jurors an opportunity to consider relevant topics, review necessary materials and prepare for meaningful discussion during the Business Meeting.
- **Quorum:** A quorum for conducting business consists of 12 grand jurors (Penal Code §940).
- **Supermajority:** Twelve affirmative votes are required for the adoption or amendment of this Procedures Manual and for all “public actions” of the grand jury. (Penal Code §916 and §940.) “Public actions” includes authorizing an investigation or approving a report for public release. The number of votes needed for a supermajority is always 12, even if the number of jurors falls below 19, jurors are absent or have been recused.
 - The actual number of votes cast for or against any action is never recorded.
 - Other less formal business (like setting the next meeting) may be conducted by obtaining consensus unless the Foreperson or an individual juror requests a vote on a motion, which will require a super-majority vote to pass.
 - No “proxy votes” are allowed. Only members who are present at a meeting may vote.
 - Private, written ballots are allowed on any issue properly before the jury. However, a supermajority vote is still required for the adoption of any action, even if by written ballot. The Sergeant-at-Arms assists in the collection and tallying of written ballots along with the Secretary and Foreperson.
- Cell phones must be turned off or silenced during meetings. Jurors shall refrain from texting or working on desktop computers during sessions and meetings.
- The Foreperson must preserve harmony in meetings. He or she may speak on points of order and will decide all questions of procedure, subject to appeal. Voting is the Foreperson’s choice; he or she may choose to vote on all motions, some motions, or can choose not to vote.
- When any juror is about to speak, he or she must stand if able to do so, address the Foreperson, and confine his or her comments strictly to the question under discussion.

- No grand juror may speak on the same subject more than once, except by consent of the Foreperson or consensus of the jury, and then only when all other jurors who wish to speak have done so. When a juror is allowed to speak a second time, this privilege is then extended to all members.
- After every juror who wishes to speak on a motion has had the chance to speak at least once, and the discussion is becoming unnecessarily prolonged, any juror may “call for the question,” that is, ask that the motion be voted on.
- A motion may be amended by the juror who made the motion; but he or she may decline to amend it and may instead call for a vote on it.

It is not the intention of these rules that meetings be conducted in such a rigid form that matters cannot be informally discussed. There is no reason why meetings cannot be without ceremony, as long as business is transacted with efficiency and reasonable decorum. If, however, things repeatedly get out of hand, the grand jury should consider adopting specific ground rules aimed at maintaining efficiency and limiting personal conflicts or disputes.

For additional information, refer to *Parliamentary Procedure for Meetings* as adapted for Grand Juries from *Robert's Rules of Order*. (Appendix A11)

V. CIVIL INVESTIGATIONS AND INTERVIEWS

The primary duty of the grand jury is to inquire into the operations of local governments (cities, the county, special districts, school districts, etc.) and the conduct of the officials who run or oversee those local agencies or their divisions or departments. It is important to conduct these civil investigations confidentially and with extreme caution.

A. INVESTIGATIONS

All grand jury investigations, inspections and reviews must be based on valid and truthful observations, reflecting no personal bias. A committee member must be excused from participation in any investigation in which he or she has any real or perceived conflict of interest or bias. A juror's recusal is mandatory from an investigation of an agency which employed him or her within the past three years (Penal Code §916.2; see Chapter 2, Section B regarding juror conflicts).

Many citizens do not understand that it is the statutory responsibility of the grand jury to examine the conduct of city and county governments and other local agencies, and that such civil investigations do not necessarily imply malfeasance by government officials. Similarly, the appearance of public officials before the grand jury does not in itself suggest wrongdoing. Because of this misunderstanding, it is important to conduct civil investigations confidentially and with extreme caution.

When a juror takes the oath of office, he or she becomes not only a responsible officer of the court, but also an accountable critic of local government. **Consequently, grand jurors should examine governmental operations as seriously, efficiently and scrupulously as they expect their government to be administered by its officers and employees.** The result of such investigations is ordinarily a formal public report with recommendations and instructions to the public entity's administrator or governing body to respond in a timely manner to the findings and recommendations in the report. In cases of actual misconduct, an accusation may be brought against the public official who is responsible. (See Chapter 5, Section B, Accusations.)

Penal Code §921 provides that the grand jury is entitled to examine, without charge, all **public records** in the possession of any local governmental entity within the county. If a public officer or employee claims that a document prepared by his or her agency is not a "public record," the Foreperson should seek the advice of County Counsel regarding access to the document.

The grand jury alone decides which governmental entities and issues to investigate within the statutory limits (although it must investigate at least one aspect of county government each year). The grand jury library contains files of previous investigative subjects and complaints, which can be a good source of background information. Grand jurors themselves might suggest possible issues for investigation, but if the juror's personal experience or perception has led to the suggestion, the juror should remove himself or herself from participating in any part of the actions of the grand jury with respect to the issue.

Approval of at least 12 members of the grand jury (a supermajority) is required to begin an investigation. While some background research (including complainant interview) can be done by a committee before the grand jury approves an investigation, no substantive interviews, site inspections or records requests can be undertaken until the investigation is formally approved.

An action committee assigned to an investigation should gather and study background information and organize how the investigation will be conducted before commencing site inspections or interviews. Interviewing techniques should be reviewed by the committee (see Section C of this chapter). In addition, the committee members should refer to the requirements for Reports and Responses (see Chapter 6) when planning its investigation, as that chapter lists all the components that will be included in any report that might be written about the investigation.

The grand jury alone decides what governmental entities and issues to investigate within the statutory limits set forth in the "Responsibilities and Powers" section of this Manual.

1. Choosing the Subject

Committees should brainstorm possible issues for investigation. Evaluate and rank the list. Which issues are overanalyzed? Which are overdue for consideration? Which are important? Which have strong committee interest? Then select a few for preliminary investigation. There is an Index of Final Reports, updated yearly by the San Diego County Grand Jury. This lists all reports by subject, committee and year since 1984. It allows grand jurors to determine what issues have been investigated in the past. Final Reports from 1928 to the present are on file in Coordinator's office. Many of these are also on file in the grand jury file room.

Some additional sources of investigation subjects include:

1. Investigations required by the Penal Code.
2. Citizens' Complaints.
3. The news media.
4. Extension of the work of previous grand juries. Usually these stem from previous grand juries' Final Reports and/or responses to previous grand jury reports that do not adequately address findings and recommendations.
5. Current grand jury members' concerns. A juror may propose an issue derived from personal experiences or perceptions. If the juror's involvement is such that there is, or appears to be, personal bias, the juror should remove himself or herself from participating in any part of the study and/or actions of the grand jury with respect to the issue.

NOTE: There is a much higher potential of the appearance of impropriety when a grand juror initiates a complaint and then remains involved in the investigation, conducts interviews and/or

writes the report. AVOID THIS SITUATION by requesting the interested juror recuse him/herself from the study topic at the outset.

Factors to be considered when contemplating subjects:

- **Jurisdiction:** Is this issue within the grand jury's jurisdiction? (If in doubt, seek the advice of the Presiding Judge, County Counsel or District Attorney.)
- **Importance or urgency:** What are the benefits to be derived? Is the issue generic or specific only to an isolated situation or constituency?
- **History:** Has the issue been sufficiently studied and investigated by prior grand juries and/or other interested groups? If so, when, how many times, and what was the outcome?
- **Practicality:** Is the issue really practical or "doable"? Does it involve expertise present in the grand jury? Is the size and/or complexity manageable? Is there sufficient time to pursue it? Define your subjects as narrowly as possible.

Grand jury members may occasionally find that a specific goal can be achieved through discussions with county officials without writing a formal report. This approach warrants consideration since it may save many hours of grand jury time.

2. Citizens' Complaints

Every grand jury receives numerous communications from citizens, civic groups and government employees. The grand jury may, and frequently does, look into grievances and complaints in areas over which it has jurisdiction.

Complainants should be urged to submit their complaints in writing on the Citizen's Complaint form (see Appendix A13 for a sample copy). However, the grand jury may accept a complaint in any form, even verbally, and/or anonymously. Anonymous complaints can be considered based upon the merit of the information provided.

Signed complaints are always placed on the agenda of the next Executive committee meeting. They are then assigned to the appropriate Action Committee for consideration. An ad hoc Committee is appointed by the foreperson if the complaint falls outside the scope of the constituted Committees. Executive Committee recommendations on complaints are always placed on the agenda of the next business meeting.

Unsigned complaints are usually disregarded since there are limited ways to obtain further evidence or follow-up interviews. If the complaint is of a serious, criminal nature, the foreperson should consult the Presiding Judge or District Attorney for advice on how to proceed.

The Coordinator numbers the complaints consecutively as they are received and sends out a letter of acknowledgement to the complainant. The Executive committee secretary enters it into a Complaint Log. (See Appendix A14 for sample copy) The Log should be kept as a record of frequency of various complaints. The Coordinator also sets up and maintains a Complaint File containing the original complaint and all correspondence related to it. This Complaint File should be kept in the grand jury room at all times. Any Complaint File that is two years old or older should be shredded.

The Committee evaluates the complaint using criteria it would apply to any potential investigative subject, and proceeds according to steps in Section 4 *Conducting an Investigation*. As always, the complaint must be held confidential.

When a Committee receives a complaint for study it must first decide whether or not an investigation is warranted. The grand jury is not required by law to accept or act on every complaint or request. Rejection of a complaint may be for many reasons, including:

- Complaint is outside the grand jury's jurisdiction.
- Complaint is pending before another agency.
- Complainant should seek legal advice or a resource through other channels.
- Complaint has no merit.
- Complaint may currently be subject to either criminal or civil litigation.
- Complaint requires more resources than the grand jury has at its disposal.

If the Committee decides to reject the complaint, it so advises the full grand jury, and prepares a final response letter to the complainant for the foreperson's signature. (See the sample letters in Appendix A15).

The Committee's decision to reject a complaint can be over-ridden by a vote of 12 grand jurors, in which case, usually, an Ad Hoc Committee is appointed to continue the inquiry.

When an investigation is completed a letter is sent or an official grand jury report is released. The closing letter is issued over the foreperson's signature.

3. Initiating an Investigation

Subjects for investigation usually originate within an Action Committee. When a subject falls outside the scope of Action Committees, an ad hoc Committee is appointed by the foreperson. An ad hoc Committee is also formed if two or more members of the appropriate Action Committee need to remove themselves from consideration.

Two or more members are asked to analyze whether a suggested study is within the scope of the grand jury's jurisdiction and the steps that will be needed if the study moves forward. Members who have the most background and interest in the issue should perform the analysis.

After completing the analysis the two members present their research and conclusions to the Committee. If the Committee, by majority vote, agrees to continue the process, a written *Investigation & Report Summary* is completed and presented to the full grand jury for approval. (See Appendix A12 for a sample copy) The key elements of any investigation are:

- Topic of Investigation: A description of the problem or concern
- Source: Where did this topic originate?
- Jurisdiction: Is the subject matter within the Grand Jury's jurisdiction?
- Prior History: Has this topic been studied before?
- Current Status: Media or political attention?
- Logistics: Plan of action. What resources will be needed?
- Final Consideration: What the study is expected to accomplish?

Approval of at least 12 members of the grand jury is required to begin an investigation.

4. Conducting an Investigation

The following procedure applies to all investigations, including those arising from complaints.

A study team of at least two members is appointed by the Committee to lead the investigation. The members of the study team should be those grand jurors most interested in the subject, but not subject to possible recusal. The study team must begin every investigation with an open mind. Starting with a preconceived conclusion will always taint the investigation.

Elements in the investigation should include:

1. Develop a detailed list of questions that will produce the information needed to complete the study, e.g.,
 - What is the reason for the department or agency's existence?
 - Under what laws or codes does it operate?
 - Who or what is it designed to serve?
 - What are the users' needs? Are they met? Can they be better met by enlarging the scope of the agency? By narrowing the scope? By the private sector? By public/private partnership? By contracting with non-profit organizations?
 - Is there value to this function? Has it become outmoded? Unnecessary? Preempted by another agency or department?
 - Is it cost effective? Is that important? Does it contribute enough to the public interest so that cost effectiveness is of secondary consideration?
 - Does the entity generate income? Does it or should it charge market rates? Does the income go into its budget, or into the general fund? Which is preferable?

- Are the needs of the department being met? What would be needed for optimum performance?
 - Is there sufficient interaction, cooperation and coordination between this and other departments? Between it and its supervisory body?
2. Research the subject entity thoroughly:
 - Examine state statutes and local ordinances prescribing the authority, responsibilities, and constraints relating to the subject official, department, office, organization or group.
 - Request and review current mission statement, procedures, manuals, organization charts, job descriptions, budgets, supervisory reports, current activities reports, and other applicable documents and related correspondence.
 - Review newspaper and other media references, while recognizing that the information presented therein may not be factually accurate.
 - Examine grand jury archives and reports.
 3. Penal Code §926 authorizes the grand jury to employ experts and assistants, if needed, to carry out some of its duties.
 - For example, a performance audit may be needed to determine if an agency's or department's resources are being used efficiently. The County Administrative Office has allocated a certain number of audit hours to the Grand Jury to perform this task. Audits must be requested early in the Grand Jury's term to allow sufficient time for completion.
 4. The Coordinator will schedule interviews with key personnel and, when appropriate, other knowledgeable persons. It is wise protocol to interview Department Heads first. (See Section C *Interviews*) **Penal Code §933.05(e) requires the grand jury to meet with the subject of an investigation regarding the investigation, unless the court determines that such a meeting would be detrimental.**
 5. Attend Board and Commission meetings related to the work of the entity.
 6. Analyze the information gathered and develop findings (conclusions) based solely on the facts that have been accumulated.
 7. Develop recommendations that are based on the findings and which are relevant to the agency in question, specific, and can realistically be implemented.
 8. Review factual information with the agency involved before finalizing the report. (See Section 6 *Exit Interviews* for additional information) Unsupported, refutable findings undermine the credibility of the entire Final Report.

5. The Investigative File

The Chair of each Action Committee should maintain an **Investigative File** for each investigation conducted by their respective committee. While some portions of the file may be electronic, copies of critical information should be printed and filed in the official Investigative File. The file should contain:

- The Complaint and all attachments
- Correspondence regarding the complaint and investigation
- Relevant research notes, newspaper clippings, internet searches
- External Resource Requests
- Interview notes, transcripts (if any) and summaries
- Document requests and responses
- Investigation & Report Summary forms
- List of Evidence (will help with report writing and Logic Matrix)
- Individual committee members' notes
- Report Tracking Sheet
- Report draft (if any)
- Report Logic Matrix; fact checking summary
- Correspondence with County Counsel, District Attorney and/or Presiding Judge (if any)
- Final Report (if any)

This file, including every individual's notes, must be kept until the end of the term, or if a report is released, for at least two years. A file should also be turned in for any investigation that did not result in a report.

B. Detention Inspections

Penal Code §919(b) mandates that each year, the Grand Jury "inquire into the conditions and management of the public prisons within the county." In San Diego County, the adult detention facilities managed by the San Diego Sheriff include the following:

- East Mesa Reentry Facility
- Facility 8 Detention Facility
- George F. Bailey Detention Facility
- Las Colinas Detention & Reentry Facility
- South Bay Detention Facility
- San Diego Central Jail
- Vista Detention Facility

The juvenile detention facilities managed by the Department of Probation include:

- San Diego Juvenile Hall
- East Mesa Juvenile Detention Facility
- Facility 8 Juvenile Detention Facility

The Law & Justice Committee is primarily tasked with conducting inspections of the adult and juvenile detention facilities. While any member of the grand jury may participate in any inspection, all members of the committee should attend every inspection.

These inspections should include a walk-through of the facility, discussions with management personnel, and a review of procedures and documents related to each facility. The jurors should observe the condition of each building and discuss the management of each facility with its staff. Where appropriate, the jurors should inspect the medical/infirmiry, kitchen and recreational facilities for any insufficiencies or hazardous conditions. Educational and vocational programs as well as discipline and inmate grievance procedures should be examined. Policies for inmate classification, orientation, and visitation should also be discussed.

Prior to scheduling any inspection, the committee should review previous Grand Jury reports on the facilities, in addition to recent inspection reports issued by the BSCC (Bureau of State and Community Corrections) and San Diego County Juvenile Justice Commission. In order to focus the inspection, the committee should develop an *Inspection Worksheet* (see example in Appendix A16) and designate two committee members to take notes and document observations during the visit.

Immediately following each inspection, the full committee should meet to analyze the visit by reviewing the *Inspection Worksheets*, comparing notes, and reviewing any documents provided during the tour. In addition, the committee should evaluate the inspection. Was the objective achieved? Were all questions answered? What might be changed in future inspections? Also, the committee should outline a plan to follow new leads. Is more information needed? Should interviews be conducted to collect evidence “on the record?”

Finally, the committee should start organizing its thoughts and drafting a preliminary report outline after each detention facility inspection. It may be months before all inspections are completed, and memories may fade. Collecting critical information while still fresh will greatly improve the reporting writing process.

C. Accusations

The grand jury may conduct a civil proceeding to remove a public officer by grand jury Accusation (Government Code §3060). This power, along with the power to subpoena witnesses, are the “teeth” the legislature has provided to assure grand jury effectiveness. Although seldom used, grand jurors should be aware of it.

An accusation, in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer is accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors

Penal Code §919(c) requires that “The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county.”

Charges of misconduct are easily made and may be unwarranted. Investigation based upon rumor, suspicion or conjecture will often interfere with the normal functioning of the public offices and unjustifiably undermine the public’s confidence in government. Investigation into such charges must proceed with extreme caution and discretion. If misconduct is found, the grand jury may file an Accusation leading to a trial. If the official is convicted, he is thereby removed from office. Very few Accusations are filed.

The courts have never clearly defined what type of conduct will allow removal from office. They have clearly said that the conduct does not have to be criminal; it need only be willful. The courts have also said that any act of malfeasance, misfeasance or nonfeasance in office is sufficient to support removal from office.

Examples of non-criminal acts sufficient to support removal are:

- Exercise of official power in a malicious, arbitrary or oppressive manner.
- Unauthorized use of public property.
- Failure to keep required records.
- Destruction or withholding of records.
- Failure to perform duties of office.
- Neglect of duty due to intoxication or due to any other reason over a period of time.

The procedure for an Accusation is similar to that of an indictment, with the main difference being that the public official is not charged with a crime but rather with willful or corrupt misconduct in office. The grand jury will need legal advice from the District Attorney about what constitutes willful or corrupt misconduct justifying such an Accusation.

During a grand jury Accusation hearing, the rights of the accused are protected by the same safeguards regarding sworn testimony and secrecy as in an indictment proceeding. An Accusation is followed by a civil trial; a conviction results in removal from office.

Before beginning an investigation, the grand jury should check with the District Attorney to verify the investigation is within the realm of authority. Exceptions to the grand jury's right of Accusation are:

- Except in unusual situations involving criminal conduct, grand juries do not investigate complaints brought against judges. Any such complaints should be referred to the Commission on Judicial Performance, 101 Howard Street, Suite 300, San Francisco, CA 94105, (415) 904-3650.
- Removal from office for intoxication is processed under the provision of Government Code §3001.
- The grand jury is not permitted to bring Accusations against public officials in chartered cities or counties where the charter provides an exclusive method for the removal of public officials.

Form of Accusation

"The accusation shall state the offense charged in ordinary and concise language, and without repetition." (Government Code §3061)

Delivery of Accusation to District Attorney

"The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, unless he is the officer accused." (Government Code §3062)

Judgment of Removal, Entry, Contents

"Upon a conviction and at the time appointed by the court it shall pronounce judgment that the defendant be removed from office. To warrant a removal, the judgment shall be entered upon the minutes, and the causes of removal shall be assigned therein." (Government Code §3072)

D. INTERVIEWS

After the grand jury gives its approval for an investigation and the subject has been researched thoroughly, the next step is to conduct interviews with agency personnel and other knowledgeable persons. The purpose of interviews is to obtain information, to verify information, and to acquire new leads and sources.

The committee usually appoints a team to conduct interviews and report back. In some instances the committee or the grand jury may decide to interview as a whole. The Penal Code (Penal Code Section

916) clearly states that interviews are to be attended by no fewer than two grand jurors. For some interviews it is desirable to have three or more jurors, to provide more perspective on what was said and done during the interview.

1. Selecting Persons to Interview

The committee determines what person or persons might be the best source of information about the subject or issue. People on all sides of the issue should be interviewed. The team should interview people at various levels with different perspectives. The following observations about agency or department staff should be considered:

Top management: Often, it is wise to interview Department Heads first. They can advise grand jurors about key personnel to interview and the best sources for information. Moreover, putting them in the loop makes them accountable for providing the information that the grand jury needs. Circumventing top management sets up the investigation for conflict, animosity and defensiveness.

Middle management: Middle managers are usually further away from county or city politics than top management, and involved more directly in management specifics.

Workers, clerks, lower level employees: These employees often have the most detailed knowledge about the subject. They can provide information about regulations and procedures, and can describe the actual level of service and any bottlenecks in procedures. The interviewers must be exceptionally careful to protect the anonymity of these employees and the confidentiality of the information provided by them.

2. Developing Interview Questions

The entire committee should suggest questions, even though a smaller team usually conducts the actual interview. Most interviewees will respond candidly but will not volunteer information. You should anticipate this when drafting questions.

Questions should be logically planned to help maintain focus and move the interview along efficiently. They should be carefully screened to avoid revealing confidential material. Keep them short and simple; multi-part questions should be avoided.

The list should include both "open-ended" and "close-ended" questions. Open-ended questions are general and broad in scope. Close-ended questions are more specific. They are used to obtain specific facts, such as what, whom, when or where. Questions that are answered yes or no should mostly be avoided.

3. Preparing for the Interview

- Arrange to interview each person separately. This allows them to speak candidly.

- With public employees, interview separately more than one person at the lower levels (e.g., three file clerks) to protect any one individual from being linked to specific information in the final report.
- Select the most appropriate physical location and arrangement for the interview. The grand jury meeting room provides a private, but formal, atmosphere that may create tension in the interviewee. The interviewee's office furnishes a relaxed atmosphere with access to records but there may be interruptions, disruptions or lack of privacy.
- Decide on the responsibilities of each grand jury interviewer. For example, one person should take the lead on asking questions.
- Interviews should be recorded. Always ask for permission from the interviewee first, and remind him/her that the tapes are strictly confidential. Never tape-record an interview without the interviewee's permission. Test the equipment and batteries beforehand.
- The Committee Chair should complete the *External Resource Request* (See Appendix A17) and forward to the Foreperson for approval. The coordinator will then schedule the interview and confirm the date, time and place in writing.
- Do not send specific questions in advance, or give the list of questions to the interviewee during the interview.

4. Conducting the Interview

a. Oath and Admonition

The San Diego County Grand Jury administers an oath and admonition to almost all interviewees. The foreperson, or his/her designee, administers the oath and reads the admonition at the start of the interview. [See Appendix A18] At the end of the interview, the witness is asked to sign and date two copies of the Admonition, one is given to the interviewee, the other is retained for the record.

b. Responsibilities of Grand Jurors during the Interview

1. Be on time! The interviewee's time is just as valuable as yours. Once the conference room door has been closed, do not enter.
2. Dress appropriately. Wear your grand jury badge for identification.
3. Do not eat, drink or chew gum during an interview. Leave all food and drink outside the interview room. Do not bring cell phones into the interview room.

4. Be professional and courteous. Try to establish rapport.
5. Remain open-minded and neutral. Do not jump to conclusions.
6. Listen actively, thoughtfully and carefully. Listen for ideas and leads about topics unrelated to the original intent of the interview. Let the person talk. Many people can't stand silence, and will open up in unexpected ways if you allow them to.
7. Make no comments, offer no opinions, nor express, either verbally or with body language, your agreement or disagreement with an interviewee's answer.
8. Reveal no information. Do not say who else has been or may be interviewed.
9. Committee members should not feel the need to ask questions just because they are present in the interview room. Only ask questions to solicit necessary information, clarify an answer or expand upon information already discussed.
10. Request supporting data or names of additional witnesses whenever appropriate.

c. Interview Procedure

1. If the interview is to be taped, the tape should contain the date, time, place and names of all present. On the record, request permission to tape the interview.
2. The interview leader should introduce the interview team members. Ask the interviewee to give her or his name and position and to talk about her or his background and experience.
3. State the reason for the meeting in general terms, e.g., to become more acquainted with the work of the agency or office.
4. Ask what experience the interviewee has had with a grand jury in order to determine whether to speak briefly about the grand jury's function.
 - If the interviewee's experience with grand juries is very limited, start with a general, neutral open-ended question that will be easy for the person to answer.
 - If she or he is a department head who is used to being interviewed, start right in with the prepared interview questions.
5. Ask prepared questions. If the answer is not clear and complete, ask follow-up questions.
 - Ask questions to verify information and develop new leads and sources.
 - Ask questions that encourage an interviewee to suggest solutions, e.g., "What do you see as a solution? Have you considered other alternatives?"
 - Retain control of the interview: maintain focus, move the interview along, and obtain complete answers.

- Do not suggest answers to the questions; allow the witness to give his or her own answer
6. After the final question, ask other grand jurors if they have additional questions. This provides an opportunity to clarify incomplete answers or to approach a fact from a different direction. Here again it is important for the lead person to maintain control and determine when to end the interview.
 7. Conclude the interview by asking the interviewee if he or she has anything more to say.
 - Request and obtain copies of any written documents referred to during the interview. If you accept originals, give the interviewee a receipt for them (copy and return them as soon as possible).
 - Thank the interviewee for his or her cooperation.

5. After the Interview

1. Write up detailed notes of the interview immediately after it ends. This is crucial! Accuracy and recollection fade quickly.
 - The recorders have counters that will allow you to note the exact location of critical information. Do this as soon as possible after the interview is complete so that you can easily locate this information at a later date. This will also assist in validating crucial facts and findings during the report writing process.
2. As soon as possible after the interview, the interview team should meet:
 - to analyze the interview by reviewing detailed minutes, comparing notes, listening to tape recordings and reviewing obtained documents.
 - to evaluate the interview. Was the objective achieved? How well did the interview team work together? What might be changed in future interviews?
 - to agree upon the information received.
 - to outline a plan to follow new leads obtained in the interview.
3. The interview leader should give a summary of the interview to the committee and report any relevant information to other appropriate committees.
4. Determine what other sources can be used to verify the information gained in the interview. Use the **Principle of Triangulation** to verify the information from three different sources, such as documents or records, interviews with other people, or actual observation. When verified it becomes a fact on which findings or conclusions can be based.

Triangulation: All facts should be verified by at least three different sources. This is the process called “triangulation” and it has a vital role in grand jury investigations. It involves using more than one source to verify the accuracy of any information obtained during an investigation. “Raw

evidence” is unverified evidence; it often takes the form of a statement in a report that a particular witness gave information to the grand jury. The statement is not supported by other interviews, observations or official documents – so it is raw evidence, and its inclusion in a grand jury report is improper.

In order to properly execute its duties, the Grand Jury must weigh the credibility of any witness statement and verify its accuracy through several sources (triangulation) to ensure that the information constitutes a *fact* before including it in a report.

Exit (Verification) Interviews

After the full grand jury and its legal advisors have approved the report, the grand jury committees may conduct “exit or verification interviews.” Verification interviews are used to confirm or correct facts discovered during investigation. Proper use of verification interviews guards against later charges that the Jury’s information is outdated or its facts are inaccurate. (*See full discussion in Chapter VI, section B.*)

VI. REPORTS and RESPONSES

Penal Code Section 933 (a) requires the grand jury to “....submit to the presiding judge of the superior court a final report of its findings and recommendations....Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury....”

A. REPORTS

Not every investigation will result in a report. In fact, only one report is required each year: a report about some aspect of County government. While many San Diego County grand juries have issued a dozen or more reports during their terms, it should be kept in mind that a small number of important reports is preferable to a larger number of inconsequential ones.

If it appears that a report would be appropriate, the committee that conducted the investigation will prepare its first draft of its report. The draft should be started as soon as the investigative committee has a fairly clear picture of the facts and issues. The findings and recommendations must be based on the committee’s own inquiry and research. There should be “evidence” to support each of the reports’ findings and recommendations; “evidence” can be direct, circumstantial, or hearsay—there is no standard spelled out in the statutes regarding civil grand jury investigations.

1. Writing the Report

The committee members who conducted the research and investigation usually write the first draft of a recommended report. The following suggestions will help:

- The committee should track progress of the report through drafting, editing and fact checking. Every juror who participated in the report process should sign the *Report Review and Verification* form, and it should be placed in the Investigative file, with a completed copy delivered to the Grand Jury Coordinator for the final record. (See form in Appendix A19)
- Write in a clear, concise style. You are writing for the public as well as the subject agency or official. Define acronyms and technical words the first time they are used. Avoid jargon.
- Be logical. Each statement must make sense to anyone reading the report, even if they have little background in the subject. Arrange statements in a coherent sequence.
- Be accurate. Specify dates and times of events. Cite relevant codes, statues, policies and/or ordinances.
- Protect sources! Be certain that interviewees and others providing information cannot be identified.
- Check spelling, punctuation and grammar. Remember that spell check and grammar check programs are not infallible.

Always remember that a report represents a committee’s thinking, not just the thinking of individual committee members.

Effective Findings and Recommendations

The essential logic of a grand jury report is:



The job of the grand jury is to make the essential logic of the investigation clearly and convincingly apparent to the reader. The best way to present the logic of any report is to organize the facts, findings and recommendations in a *Report Logic Matrix*. (See Appendix A20 for example)

Report Logic Matrix		
Facts and Source	Finding	Recommendation

The fact and evidentiary sources are listed in the first column, the finding summarized in the second column and the recommendations noted in the third column.

Facts and Sources

Every report should contain an objective accounting of the relevant facts. Findings (conclusions) must be based upon verified facts that are articulated, proven and documented in the body of the report. Penal Code §916 requires that all findings be supported by documented evidence, as follows:

Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors and that all problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable.

In the first column of the *Report Logic Matrix*, reciting a fact requires the inclusion of the various sources used to support that fact and document the evidence. As an example, your verified fact may be supported by two interviews and the page from an official, agency procedure manual – this is *triangulation*. All three items are contained in your evidence file and can be easily reviewed by others. Not only does this step establish the credibility of any findings, but it will assist the other committee members and independent “fact checkers” in reviewing the report and verifying the accuracy of the facts and findings contained therein.

Raw Evidence Prohibited

Penal Code §929 prohibits a jury from including evidentiary material in its reports except with approval of the presiding judge. “Raw evidence” is unverified evidence – information that the grand jury has not triangulated. Raw evidence often takes the form of a statement in a report that a particular witness gave information to the grand jury. This is raw evidence, and its inclusion in a

grand jury report is improper. The jury must weigh the credibility of the witness statement and verify its accuracy through several sources (triangulation) to ensure that the information constitutes a *fact* before including it in the report.

Findings

A finding is a conclusion or judgment based upon the facts, not just a restatement of fact. Penal Code §933 implicitly calls for the grand jury to distill its conclusions from the evidentiary materials before it by determining the credibility of testimony, drawing inferences and resolving conflicts – a process implicit in the word “findings.” (*McClatchy Newspapers v Superior Court* (1988) 44 Cal.3d 1162)

Each finding should be concise, usually consisting of a single declarative sentence, and it should contain only one idea. No new facts should be included in any finding. While one or more facts can be referenced in a finding, all facts should be introduced and fully developed in the Discussion section of the report. Findings should be consequential and relate to something important.

Recommendations

Pursuant to Penal Code §916 each recommendation must be based upon at least one finding. Each recommendation should describe a single action, directed to an official or entity within the grand jury’s jurisdiction, requiring specific, measurable action. It must be financially feasible and as cost effective as possible. The County Counsel will conduct training on the proper construction of Grand Jury reports and recommendations, and should be consulted whenever questions arise.

A recommendation must be a logical consequence of a set of findings and conclusions. Always offer a recommendation with enough evidence in terms of findings and conclusions to make the need for the recommendation compelling.

While some authorities strongly suggest that every recommendation include an assigned time frame, this has been shown to provide a convenient excuse to responding agencies to avoid dealing with the substantive recommendation by asserting that the “time frames are unrealistic” or “not feasible.” Therefore, recommendations should be carefully phrased, direct and precise without a specific due date.

Further, because a grand jury can only suggest courses of action, the report must be very careful in the wording of recommendations. The words *shall* and *must* are not advisable. A grand jury does not have the power to demand action or direct how recommendations will be implemented..

Do not recommend an impossible course of action (such as doubling the budget of one department while maintaining funding for other departments). Even one such recommendation may render the entire report meaningless in the eyes of the readers.

Typical Criticisms of Reports

In drafting reports, the grand jury should keep in mind some of the common criticisms made about grand jury reports. A poorly drafted report can provide public officials with an excuse to evade or ignore the recommendations that are contained in the report. Typical criticisms of reports are that the:

- Agency was already implementing or considering implementing a similar approach;
- Recommendations are impractical;
- Recommendations are trivial;
- Recommendations are too costly;
- Recommendations would be illegal to implement;
- Report reflects an incomplete or erroneous grasp of the facts;
- Grand jury failed to understand the background or history of the problem;
- Grand jury failed to talk to a particular person or group of people, and therefore, the findings and recommendations failed to take into consideration the information these people could have provided (see also Penal Code §933.05) ; and
- Recommendations are redundant; they have already been tried, and they did not work.

Although many of these criticisms may be considered to be overstatements, defensive remarks, or generalizations, they nonetheless suggest pitfalls to avoid in drafting reports.

2. Other Recommended “Reports”

Status Reports: There are certain mandatory, non-investigative reports that are required of the grand jury. Penal Code §925 requires, among other things, that the grand jury report on the fiscal matters of the county; and §919 requires that the grand jury inspect the detention facilities. If the grand jury chooses not to issue an investigative report on either fiscal matters or the detention facilities, then a status report is required. These reports can be brief.

Continuity Reports: The grand jury, through its Continuity Committee, should monitor the responses to the prior year’s reports to determine if each of the boards and elected officials has responded on time and in accordance with §933.05. In recent years, the grand jury has usually prepared, as one of the reports contained in the consolidated Final Report, an analysis of the responses to the reports of the prior grand jury. That report discusses whether the board or elected official has responded as required by Penal Code §933.05. The grand jury report should include an evaluation of the responses to the previous jury’s final reports. It becomes a responsibility of the new grand jury to review the responses of the various agencies to the prior year report, and determine if any follow-up is required. It is also incumbent upon the current grand jury to report on the status of implementation of any prior recommendations. [See discussion of Continuity Committee, *infra*.]

3. Defamation

Defamation is a false statement about an identifiable person or corporation, which damages the person's or corporation's reputation. Written defamation is referred to as "libel" and oral defamation as "slander." Penal Code §930 states, "If any grand jury shall, in the report above-mentioned, comment upon any person or official who has not been indicted by such grand jury, such comments shall not be deemed to be privileged."

In *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, the court held that §930 meant that grand jury members were not immune from a suit in which the plaintiff claimed that he was defamed by statements in the grand jury report that he had been negligent, incompetent and wrong in performance of his duties for county and special districts.

A more recent case, *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, held that a grand jury's comments regarding any person or official who had not been indicted were not deemed to be privileged and, therefore, an action for libel was possible against individual grand jurors for statements made in the grand jury report.

Grand jurors can be held personally liable for damages for defamation of persons or corporations wrongly disparaged in grand jury reports, so it is critical that the grand jury be certain of the accuracy of any statement which accuses a person of a crime (such as a violation of the Brown Act or the violation of a Penal Code provision) or a claim that a person investigated by the grand jury is corrupt or incompetent. While there are some legal safeguards (defenses and immunities) which protect grand jurors, it is best to avoid claims of defamation whenever possible.

As the truth of the supposedly libelous statement is always a defense, the best way for the grand jury to avoid a defamation lawsuit is to make sure that every sentence in its report is true. Every fact must be verified (triangulated), and every finding must be based on verified facts.

In addition, litigation is more likely if the plaintiff feels insulted. Reports should not be sarcastic in tone. Jurors should avoid making sweeping condemnations of any identifiable person (or corporation). Do not mention a person's supposed motives, morality or personal life, or his or her "professionalism." Do not label anyone's conduct. Stick to the facts; let the reader draw his or her own conclusions.

4. Report Format

Every final report should adopt the following or similar format:

Summary: This section contains a brief overview of the most important issues, findings and recommendations. It might explain why the Grand Jury chose to investigate the particular topic. This is the one § that everyone who sees the report will read, so it should "tell the story" to encourage the reader to read the entire report.

Background: This section describes the issues in more detail. It describes the circumstances and events that led to the investigation. It answers the unspoken question, “Why was the investigation done?”

Methodology: This outlines the steps taken by the Grand Jury to develop the facts, findings and recommendations contained in the report, by listing the documents relied upon, number of persons interviewed, and any site visits made. However, neither the names nor titles of interviewees should be included, in order to protect the identity of the interviewees.

Discussion: This section contains the verified facts as determined by the investigative committee, clearly organized in a logical order by topic. Except for reliable government information (such as data from an adopted budget or a published report) all information must be triangulated. If the evidence from various sources is in conflict, credibility must be assessed (the jury can choose to believe one source’s information over that from another source). The jury may wish to set out each of the critical **Facts** that support the validity of each of the findings in a separate section.

Findings: Findings are the conclusions or judgments that flow from the verified facts. This is where the Grand Jury describes what the agency is doing wrong (or right), and the impact that has on the agency or on its customers or the general public. The findings confirm or refute the issues identified in the Introduction or Discussion. Every report must have findings (Penal Code §916). Findings should be numbered F1, F2, etc.

In the Penal Code, the word finding is synonymous with fact, which seems to imply that the facts shown are those learned by the investigation and found to be true. For purposes of this Manual, the grand jury distinguishes report “facts” which are documented evidence and material gathered during the investigation, from report “findings” which are conclusions based upon one or more facts. Findings should only be included if they relate to the investigation, are supported by documented evidence, and that all problems identified are accompanied by suggested means for their resolution. [Penal Code section 916]

Recommendations: Recommendations are required only when the findings identify a problem. Each recommendation must be based on and flow logically from one or more findings. It should state what should be done, by whom, and within what time frame in order to mitigate or fix the problems identified in the findings. The recommendations must be specific, practical and financially feasible. Recommendations should be numbered R1, R2, etc.

Responses: This section is needed whenever the report contains recommendations. Here, the report will identify who must respond to specified findings and recommendations, which are referred to by number. Only governing boards and elected officials can be required to respond; the report might indicate that so-and-so “shall respond to findings F1 and F2 and recommendation R1” (for example). However, the jury can “invite” appointed department heads and other top administrators to respond to specific findings and recommendations (i.e., “The Chief Probation Officer is invited to respond to findings F4 through F7 and to recommendations R5 and R6.”). “Invited” officials almost always submit responses.

Appendix (Optional): This section can contain data, maps, excerpts from statutes, a glossary, or other information not essential to the text of the report. However, it may not contain “raw evidence” (unverified information, such as a transcript of an interviewee’s testimony). The Appendix could also contain a disclaimer, if one or more jurors recused from participating in the investigation due to a real or perceived conflict of interest.

Glossary (Optional): The Glossary defines terms that may not be familiar to the public.

Bibliography (Optional): This section lists the materials, e.g., books, articles, reports, websites, etc. that were examined for the purposes of the study. The citations should be as accurate and complete as possible to permit readers to locate the same information for further review.

Style Details

Early in the term, the Grand Jury should decide on the printing style and details of the Final Reports. By reviewing past Grand Jury Reports from San Diego and other California counties, the jurors can develop ideas on how they want their report to look. (See Appendix A10 for examples) Keep in mind that reports are both printed and posted to the County website so readability is critically important. Decisions on font type and size, paragraph style and justification, spacing, indentation, bulleting and/or numbering are critically important. The jury must also decide whether to use footnotes or endnotes, captions and references, and adopt a uniform style of citations.

Once a style and format has been decided, it is the responsibility of the Editorial Committee to make sure that all reports conform to that style before any report is finalized and submitted to the full Grand Jury for final review and vote.

5. Review and Approval of Reports

After a first draft of a report is complete, the following steps are usually taken:

1. The draft is submitted to each member of the action committee for review and comment. All committee members should take an active role in questioning statements and checking facts. Each member has the responsibility to challenge assertions and to ask for more evidence if the proposed report does not make a clear case.
2. The report is submitted to the Editorial Committee. The Editorial Committee’s primary function is to make recommendations about readability and copy editing of the report.
3. The authors revise the draft, if necessary, based on comments from all sources. The revised draft is then submitted to each member of the action committee for review and comment. This process is repeated until the committee votes for/against approval of the report. Approval is by majority vote.

4. Following committee approval, the report should go back to the Editorial Committee for final polishing. The committee chairperson asks the foreperson to place consideration of the report on the next business meeting agenda.
5. Each grand jury member should read the report carefully, and provide comments, corrections or objections before the business meeting. At that business meeting the grand jury decides what action to take on the report. At least 12 grand jurors must approve the report. If there is substantial opposition, it might be advisable to work toward a consensus – even if 12 grand jurors approve the report.
6. Once approved by the grand jury, the foreperson forwards the report to the County Counsel. County Counsel reviews it for compliance with the law as well as for liability and consistency with statutory authority.
7. After County Counsel’s review of the final version of the report, the action committee should conduct an “exit interview” with the “subject of the investigation.” (See Discussion, *infra*.)
8. After the exit interview and once the grand jury is satisfied that the report is finished, the report must be submitted to the Presiding Judge for review. Once the Presiding Judge approves the report for distribution, the grand jury coordinator finalizes the report, adds findings and recommendation numbers as well as the distribution list to the report.
9. Before publishing the report, the grand jury must provide the affected agency a copy of the portion of the grand jury report relating to that agency, two working days prior to public release. The affected agency is prohibited by Penal Code §933.05(f) from disclosing “...any contents of the report prior to the public release of the final report.” The ban prevents press leaks during the 2-day period when the grand jury cannot publicly comment on the contents of the report.
10. The foreperson initiates publication of the report by sending it to the Coordinator, who handles the report distribution and/or printing. Grand jury reports should be installed on the County’s web site as soon as the report is made public. The web site address is: www.sdcounty.ca.gov/grandjury.

B. EXIT INTERVIEWS

While not required, it is highly recommended that the grand jury conduct an exit interview with a member of the affected agency prior to the public release of a final report. This will prevent any claim that the investigation was incomplete or the findings unsupported. A single report that is publicly discredited could impair the entire years’ worth of work.

Why conduct an Exit Interview

Penal Code §933.05(d) provides:

A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

This is referred to as the **Exit Interview**. It is an exception to the rule of confidentiality and is the only time that a grand juror may discuss with a non-juror (other than legal counsel) what the draft report contains. This exit interview is the final opportunity for a grand jury to ensure that its findings – and the facts that support them – are accurate.

Conducting an exit interview also demonstrates that the jury has been thorough and even-handed, and has heard all sides of the issue prior to releasing its report. It prevents any claim that the investigation was incomplete or the facts were incorrect, and it is also a defense against any claim of defamation. (See discussion on defamation, *above*)

The exit interview should not be confused with the process of providing a copy of the final report to the responsible entity two working days prior to its public release (Penal Code §933.05(f), see discussion *infra*.)

1. Who to Interview

The Penal Code allows the jury to reveal a report's relevant findings to the "subject person or entity" of the investigation. There is no statutory or legal explanation of what the legislature intended by this terminology, but it is thought that the "subject" is that official in charge of the agency or function who would be accountable for implementing the grand jury's recommendations. This can be the department head reporting to the governing board, or a member of the governing board – whichever official is most knowledgeable and ultimately responsible for the function investigated by the grand jury. Sometimes more than one person can be considered a subject (such as when the grand jury's recommendation is addressed to a department head and a governing board); the jury can choose to interview both or just the one considered most knowledgeable.

If two or more separate affected agencies are named in a report, and the findings and recommendations are directed at more than one of them, the jury should conduct an exit interview with someone from each agency / entity.

2. When and How to Conduct the Exit Interview

The exit interview should take place (a) after the final report has been reviewed by County Counsel; (b) well before the end of the jury's term to allow adequate time for any needed report revisions that may result from the interview; and (c) before the report is sent to the presiding judge for approval.

At least two grand jurors should attend the exit interview (Penal Code section 916) and they should, ideally, be members of the investigating committee. The interviewers should prepare by reviewing the final report and highlighting the major facts and relevant findings that pertain to the subject person or entity.

The exit interview should be conducted in the same manner as all other grand jury interviews: to wit, under oath and subject to the same admonition for secrecy and confidentiality. Most officials will respect the admonition not to reveal the findings to others before the final report is released.

The lead interviewer should read the relevant findings, one by one, asking the interviewee if the finding is accurate, and, if not, to explain why. The questioning should seek to verify significant facts as needed but without revealing confidential information. Committee members in attendance should ask as many follow-up questions as are needed to fully understand the basis for the interviewee's position. They should also ask for a copy of any document or the name of any witness that supports the interviewee's disagreement with the finding(s).

The report itself is never shown to the interviewee. Recommendations or other conclusions in the final report should not be discussed. The committee members may not give a list of findings to the interviewee nor allow them to take any notes during the interview, to preserve confidentiality.

The exit interview should not be particularly time-consuming as it is limited to confirming the relevant findings of the report. If, however, the findings are disputed, it may take some time to explore the areas of disagreement.

Following the exit interview, the investigating committee determines that the facts initially relied upon were in error or have subsequently changed, the committee should conduct the necessary follow-up research and/or interviews to confirm the new information. The report should then be amended, and, if necessary, recirculated to County Counsel and the full grand jury for review and approval. There is usually no need to conduct another exit interview after modifying the report.

If improvement or change has already been made by the entity, a positive finding to that effect can be added to the report, or, the report can be withdrawn in its entirety.

C. REVIEWING AND RELEASING REPORTS

1. *Judicial Review and Approval*

The grand jury is required to submit each report to the presiding judge for approval prior to public release. The report(s) can be submitted “at any time during the term of service of the grand jury.” (Penal Code section 933) Most judges limit their review of a report to its legality, i.e., that the matter is within the jury’s jurisdiction and is based upon the jury’s own investigation. The judge may allow or redact raw evidence as needed. (Penal Code section 929)

The judge may also question all or any part of a report, provide comments on the content and recommend changes where he/she feels they are appropriate. The Court cannot force the grand jury to change a lawful report, nor can it seal a report because it disagrees with its conclusions, believes that the recommendations are not justified, or is concerned that the report may be libelous. (*People v Superior Court of Santa Barbara County* (1975) 13 Cal.3d 430)

The grand jury should be aware of the McClatchy decision (see Chapter 1) which describes the Superior Court’s right to refuse to release nonconforming reports. (*Unnamed Minority Members of the 1987-1988 Kern County Grand Jury v. Superior Court* (1989) 208 Cal.App.3d 1344.) The judge may also prohibit the grand jury from releasing in its report “raw evidence” such as a District Attorney’s legal memorandum to the grand jury, or transcripts of witnesses’ testimony; the rationale is that the jury is obligated to sift through the evidence and verify the facts and develop findings, rather than just give untested evidence to the public. The judge may also refuse to accept a minority report or a report that adopts the recommendations of some other, perhaps partisan organization (Penal Code § 929). Although the court cannot quash or alter a report except to the extent that it exceeds the grand jury’s powers as set forth in the Penal Code, the judge might offer suggestions, to which the grand jury should give due consideration.

2. *Release of the Report to the Entity*

Penal Code §933.05(f) requires the grand jury to:

...provide to the affected agency a copy of that portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

The report is hand-delivered to each affected agency. ***

3. *Public Release and Distribution of Reports*

The grand jury is authorized to release one or more individual reports earlier than at the completion of its term (“mid-term reports”) in order to encourage more serious consideration of its findings and

recommendations. Grand jury reports can be released at any time during the term of service of the grand jury. The jury is encouraged to submit individual reports for approval and release as soon as they are completed. In this way, each report will be timely and subject to more media attention than if released as part of a consolidated report.

The Consolidated Final Report: The grand jury releases all of the individual reports together at the end of the term in a “Consolidated Final Report,” by handing a bound copy of it to the Presiding Judge during the empanelment ceremony (at which time the “old” jury is then discharged).

Final reports issued during the year are included, without change, with all other final reports in a consolidated Final Report issued at the end of the term. Wording changes are not permitted. Formatting changes may be made to give a consistent appearance. While there is no standard format for the consolidated Final Report, a suggested format is:

- Introduction
- Foreperson’s Letter
- San Diego County Grand Jury Officers and Committees
- Requirements and Instructions
- Investigation and Study Reports
- Appendix

The Grand Jury Coordinator handles distribution of the Consolidated Final Report. The required distribution is:

- Presiding Judge
- Governing bodies of the departments and agencies affected by the reports
- Heads of all departments and agencies affected by the report
- State Archivist

Courtesy copies are provided to the Board of Supervisors, County Administrator, districts and cities affected by the report, public libraries, schools, and the media.

4. Publicity

The news media are always interested in what the grand jury is doing. The perspective of the media is that everything of public interest is newsworthy. In contrast, the grand jury operates in secrecy and under cover of confidentiality. The release of a thoroughly investigated, well-written grand jury report is a newsworthy event that transcends these competing interests.

Public Statements

The Final Report of completed investigations is the avenue through which the public will know the grand jury is performing its civil "watchdog" duties. It is the grand jury's means of educating the public. Except for the purpose of "clarifying recommendations," neither the Foreperson nor any other grand juror should comment in the news media (or to anyone else) as to anything that is not explicitly contained in the consolidated Final Report, nor as to any aspect of the grand jury's investigations.

Many matters requiring grand jury action can be successfully completed only if absolute secrecy is maintained throughout the inquiry. With regard to watchdog investigations, whistle-blowers will not come forward unless they can be confident that their identities will be safeguarded.

Two statutes allow for public statements by the grand jury. Penal Code §939.91 allows a grand jury to issue a statement, at the request of a witness before the grand jury, which would state that an indictment was not found against such person, or that the person was called only as a witness in an investigation that did not involve a charge against such person.

Penal Code § 933(a) provides that the Foreperson, and his or her designee, must be available for 45 days after the end of the term to "clarify the recommendations of the report." § 933 does not indicate to whom these clarifications may be made, so presumably the Foreperson and designee can discuss the recommendations (but not the findings or the investigation generally) with any person who requests clarification. § 933 does not authorize the release of background information, votes or information about deliberations, or evidence adduced by the grand jury.

The Foreperson and designee may not "clarify" the facts or findings in the report.

It is important to remember that a grand juror who willfully discloses any evidence presented to the grand jury, or anything any grand juror has said or how any grand juror has voted, is guilty of a misdemeanor. (Penal Code §924.1)

Media Releases

There is no statutory authority for "press releases" or other types of public statements. Should the grand jury wish to publicize the release of a grand jury report, it should consult with the County Counsel to prepare the press release and discuss how to handle media questions.

The foreperson or a designated spokesperson speaks for the grand jury. All questions from the media should be referred to the foreperson. Media releases are written by the most appropriate member, with input from the Action Chairman and Foreperson.

Media copy should be clear and concise and may be prepared as follows:

- Use the journalist's checklist: who, what, when, why, where, and how.
- Answer all questions in the first paragraph.

- Typewritten and double-spaced copy on one side on white 8½ x 11 paper.
- Identify the contact person, usually the foreperson, in the upper right-hand corner of the first page. Give the name, address, and phone number.
- Use short sentences, simple words, and brief paragraphs.
- Identify persons mentioned by first and last names, correctly spelled.
- Avoid grammatical errors, spelling errors, and abbreviations.
- Be irrefutably factual and keep statistics to a minimum.

D. RESPONSES TO REPORTS

1. *Deadlines for Responses*

Penal Code §933 allows the grand jury to require only *elected officials* and *governing bodies* to respond to the grand jury's reports. The elected officials to whom the grand jury directs its recommendations are required to respond to the reports' findings and recommendations within 60 days. The governing bodies have 90 days to respond. Responses are submitted to the Presiding Judge.

The grand jury may not *require* department heads or other officials who are appointed (rather than elected) to respond to reports. However, nothing prohibits the grand jury from *inviting* a response from an appointed department head or official, and most grand juries do this. The "invited" officials almost always respond.

When both an elected county department head and the Board of Supervisors are directed to respond to the same report, the Board may address only those budgetary or personnel matters over which it has some decision making authority; the elected department head must respond to all aspects of the findings and recommendations. (Penal Code § 933.05(c))

2. *Content of Responses*

Findings: Penal Code Section 933.05 provides that for each grand jury finding, the responding person or entity shall indicate one of the following:

- * The respondent agrees with the finding.
- * The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Recommendations: For each grand jury *recommendation*, the responding person or entity shall report one of the following actions:

- * The recommendation has been implemented, with a summary regarding the implemented action.

- * The recommendation has not been implemented, but will be implemented in the future, with a time frame for implementation.
- * The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- * The recommendation will not be implemented because it is unwarranted or unreasonable, with a supportive explanation.

If a finding or recommendation addresses budgetary or personnel matters of a county agency or department headed by an elected officer, then both the agency/department head and the Board of Supervisors shall respond if requested by the grand jury. However, the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has decision-making authority. (Penal Code Section 933.05(c)).

3. Analyzing Responses

Penal Code § 933.05 requires that responses contain specific information. The responder must state whether he or she agrees or disagrees with each finding. Disagreement with all or part of a finding must be explained. Further, the responder must state, with regard to each recommendation, the extent to which the recommendation has been implemented, or when it will be implemented, or why the department or public entity will not implement the recommendation. See Penal Code § 933.05 for a more thorough description of the information that must be contained in the response.

If a board or elected official fails to respond to one or more findings or recommendations, the jury should send a letter advising the board or official of the requirements of § 933.05.

A board's or official's responses, if inadequate, may prompt the succeeding grand jury to conduct a follow-up investigation of the agency. The succeeding jury must conduct its own investigation, and cannot rely on any of the facts or findings of the original jury, but must instead conduct its own research and interviews. [Continuity Committee Reports, See discussion, *infra*.]

4. Processing Responses

Each response should be filed by the Coordinator and Continuity chairman and kept on the grand jury's bookshelf. The records are kept by committee and each individual report is followed by its responses and the analysis.

When responses to the reports are received from governing bodies and elected officers and agency heads, and are deemed by the grand jury to comply with the Penal Code (whether or not they are considered inadequate), a copy of each response should be put on the grand jury's website. Although the Penal Code specifies that one copy of the responses are to be sent to the County Clerk for filing and transmission to the California State Archivist, that duty has been transferred to the Court Executive Officer by rule of the court pursuant to California Government Code §68114.6.

Responses are public-access documents and copies must be maintained by the grand jury, the public office affected, the mayor when applicable, the Court Executive Officer, and the State Archivist. The grand jury must maintain a copy of the responses with the applicable reports for a minimum of five years (Penal Code §933(c)). The State Archivist is required to retain copies of all reports and responses in perpetuity.

5. Failure to Respond

Occasionally, agencies or individuals that are required to respond fail to do so. Ordinarily, a follow-up letter from the foreperson is sufficient to obtain statutory compliance. A complete failure to respond can be referred to the Presiding Judge for follow-up.

6. Monitoring Implementation

When a responder has agreed to implement grand jury recommendations, the Penal Code requires a time frame for implementation. A time frame is also required if the responder states that further analysis is required. The San Diego County Chief Administrative Officer's Chief of Staff has assumed the responsibility of reporting to the County Board of Supervisors progress within the agreed-upon time frames in response to reports on departments and agencies over which the Board has oversight. The grand jury should keep abreast of the progress being made in meeting all agree-upon timeframes. The grand jury should use whatever resources are available for assistance in this monitoring. A prime resource for the County is the Past Grand Jurors Association Implementation Review Committee.

The Independent Budget Analyst Office for the City of San Diego has assumed the responsibility of tracking and reporting progress made on accepted Grand Jury Recommendations to the San Diego City Council, for all departments and agencies for which the City of San Diego has oversight. Progress is reported on the Independent Budget Analyst's webpage at <https://www.sandiego.gov/iba/reports/gjr>

VII. APPENDIX

The following forms are provided for your reference. Electronic copies are available from the Grand Jury Coordinator.

- A1 Annual Timeline of Grand Jury Activities
- A2 San Diego County Grand Jury Code of Ethical Conduct
- A3 Declaration of Interest; Conflict of Interest Statement
- A4 Grand Juror Timesheet – *Approved Form*
- A5 Grand Juror Vacation/Days Off Tracker
- A6 Departing Juror Letter
- A7 Sample Meeting Agenda and Minutes
- A8 Sample Social Fund Tracker; Average Annual Expenses
- A9 Officer and Committee Interest Questionnaire
- A10 Sample Report Format; Style Details
- A11 Parliamentary Procedure for Grand Juries
- A12 Investigation & Report Summary - *Approved Form*
- A13 Grand Jury Citizen Complaint - *Approved Form*
- A14 Sample Complaint Log
- A15 Sample Letters - Acknowledgement; Rejection
- A16 Sample Detention Inspection Worksheets – Adult and Juvenile
BSCC Jail Inspection Handbook for Grand Jurors
- A17 External Resource Request – *Approved Form*
- A18 Grand Jury Oath and Admonition – *Approved Forms*
- A19 Report Review and Verification – *Approved Form*
- A20 Report Logic Matrix