

Stanislaus County Civil Grand Jury Operations & Issues
Grand Jury Case No. 02-24-GJ
July 25, 2002

REASON FOR INVESTIGATION

The 2001-2002 Civil Grand Jury (CGJ) initiated an investigation regarding the following issues:

1. Confidentiality of Grand Jury information.
2. Grand Jury procedural issues.
3. The independence of the Grand Jury system in Stanislaus County being compromised.

The investigation of these issues was prompted by:

1. Letter of complaint from a former Grand Jury member.
2. Letter of complaint from a local elected official.
3. A request by a Superior Court Judge for the CGJ to "examine itself".

During the course of investigation the CGJ:

Discovered the CGJ may have been subjected to undue influence by non-CGJ members in an attempt to manipulate the CGJ process.

BACKGROUND

The grand jury is the guardian of public trust in local government. The Stanislaus County Civil Grand Jury is comprised of nineteen (19) citizens, as authorized by the State Constitution, to be a voice of the people and the conscience of the community. This is commonly known as the "Civil Watchdog" function.

The grand jury exists to assure honest, efficient government. While the grand jury is a part of the judicial system, it is an entirely independent body. Whereas, the State Attorney

General, the Presiding Judge of the Superior Court, the District Attorney, and County Counsel may act as its advisors, they cannot control the actions of the grand jury except to ensure legality. The grand jury is an institution not answerable to any administration, politician, or legislator.

According to the Grand Jury Handbook, "In all proceedings and investigations a grand juror is sworn to maintain secrecy. A grand juror should apply an objective standard of conduct and responsibility to all people. Grand jurors are charged to avoid being influenced by sentiment, conjecture, sympathy, public feelings, passions, or prejudice."

PROCEDURES FOLLOWED

1. The Civil Grand Jury interviewed:
 - a. Two (2) former Grand Jury Foreman
 - b. Eight (8) former Grand Jury Members
 - c. Grand Jury Staff Person (GJ staff person)
 - d. District Attorney, Stanislaus County (DA)
 - e. Senior Deputy District Attorney, Stanislaus County (Deputy DA)
 - f. Mayor, City of Modesto (Mayor)
 - g. Chief Executive Officer, Stanislaus County (CEO)
 - h. County Counsel, Stanislaus County (County Counsel)
 - i. Auditor/Controller, Stanislaus County (Auditor/Controller)
 - j. Deputy Executive Officer, Stanislaus County Human Resources
 - k. Two (2) Supervisors, Stanislaus County Board of Supervisors (BOS)
 - l. Court Administrator, Superior Court of California, County of Stanislaus (Court Administrator)
 - m. Two (2) secretaries, Mayor's office
 - n. Two (2) employees, Clerk-Recorders Office
 - o. Student at U.C. Berkeley
 - p. Former local radio talk show host

2. The CGJ reviewed the following documents:
 - a. Letter from one (1) complainant to a 2001-2002 Grand Jury member received September 19, 2001.
 - b. Letter from Court Administrator to the 2001-2002 Grand Jury foreperson and Presiding Judge, dated November 1, 2001.
 - c. Letter from Mayor to 2001-2002 Grand Jury foreperson and Presiding Judge, dated November 16, 2001.

- d. Facsimile letter from Mayor to 2000-2001 Grand Jury foreperson, dated May 16, 2001.
- e. Letter from 2000-2001 Grand Jury foreperson to Mayor, dated May 18, 2001.
- f. Letter from Presiding Judge to Mayor, dated November 20, 2001.
- g. Copy of statement marked 02-240GJ-1, prepared by GJ staff person regarding confidential grand jury business, faxed to Grand Jury Foreperson.
- h. Letter from Mayor to 2001-2002 Grand Jury foreperson, dated January 2, 2002.
- i. Letter from CEO to GJ staff person regarding job description, position, and duties, dated December 19, 2001.
- j. Letter from CEO to Presiding Judge, dated January 2, 2002.
- k. Letter from Presiding Judge to CEO, dated January 9, 2002.
- l. E-mail from Court Administrator to 2001-2002 Grand Jury foreperson regarding three (3) previous letters as described above (i, j, and k), dated January 9, 2002.
- m. Memo from the American Grand Jury Foundation regarding the 2000-2001 Stanislaus County Civil Grand Jury Handbook, received January 25, 2002.
- n. Memo describing the training qualifications of the Executive Director of the American Grand Jury Foundation, received January 25, 2002.
- o. Letter from Co-Chair of Miramax Films to representative of Anti-Defamation League, dated June 8, 2001.
- p. Letter from U.C. Berkeley student to prior Stanislaus County Clerk-Recorder (Clerk-Recorder), dated July 24, 2001.
- q. Memo from prior Grand Jury member regarding the GJ staff person and the 2000-2001 Grand Jury Handbook, dated and received on January 25, 2002.

- r. Letter from DA to CEO regarding DA Investigation #01-DA-0288, dated December 3, 2001.
- s. Letter from DA to County Counsel regarding 2000-2001 Civil Grand Jury Final Report Part Six, dated October 9, 2001.
- t. Letter from DA to CEO regarding 2000-2001 Civil Grand Jury Final Report Part Six, dated August 13, 2001.
- u. E-mail to Presiding Judge from Deputy Executive Officer, Superior Court dated February 20, 2002.
- v. Letter from Court Administrator to CEO replying to letters described in j. and k. above, dated January 10, 2002.
- w. Memo from 2001-2002 Grand Jury member regarding employees at the Clerk-Recorder office, dated March 7, 2002.
- x. Letter from Mayor to Grand Jury with attachments regarding mayoral elections, dated March 11, 2002.
- y. Copies of records and time cards regarding two employees in the Clerk-Recorder office dated and received March 25, 2002.
- z. Letter from Clerk-Recorder to CEO regarding recommendations for the Assistant Clerk-Recorder position, dated February 3, 2001.
- aa. Letter from Stanislaus County Human Resources to employee in Clerk-Recorder's office regarding Assistant Clerk-Recorder position, dated January 16, 2001.
- bb. Memo from Clerk-Recorder to CEO reiterating the request for appointment of a particular employee to the Assistant Clerk-Recorder position, dated March 19, 2001.
- cc. Memo from Clerk-Recorder to a Senior Administrative Staff person in the office regarding violation of county policy, dated March 26, 2001.
- dd. Memo from employee in the Clerk-Recorder's office to the Acting Assistant Clerk-Recorder regarding a hostile work environment complaint, dated June 4, 2001.
- ee. Letter from a Confidential Assistant IV in the Clerk-Recorder's office to Clerk Recorder resigning from the position, dated March 26, 2001.
- ff. Letter from CEO to Clerk-Recorder regarding her resignation and his office

- assuming the responsibilities of the office, dated April 13, 2001.
- gg. E-mail from Presiding Judge to the GJ staff person regarding staff's attendance during full panel meetings, dated October 21, 1999.
 - hh. E-mail from Presiding Judge to the GJ staff person regarding attendance at full panel meetings, dated July 25, 2000.
 - ii. E-mail from Court Administrator to Presiding Judge regarding the 2001-2002 Grand Jury Handbook, dated August 1, 2001.
 - jj. E-mail from Court Administrator regarding GJ staff person position, supervision, and payroll processing, dated September 15, 2001.
 - kk. Letter from Presiding Judge to 2001-2002 Foreperson regarding confidentiality issues violated by GJ staff person, dated October 22, 2002.
 - ll. Letter from Presiding Judge to CEO regarding job description of GJ staff person, dated December 7, 2001.
 - mm. Memo from Court Administrator to Presiding Judge and 2001-2002 Grand Jury foreperson regarding GJ staff person position, job description, and duties, dated November 1, 2001.
 - nn. Memo from 2001-2002 Grand Jury foreperson to County Counsel regarding reclassification of GJ staff person, dated November 20, 2001.
 - oo. Letter from 2001-2002 Grand Jury foreperson to CEO regarding GJ staff person, dated April 10, 2002.
 - pp. Letter from DA to 2001-2002 Grand Jury foreperson regarding a resource contact in the Attorney General's Office, dated February 23, 2002.
 - qq. Memo from the GJ staff person to County Counsel dated December 11, 2001 regarding the production of brochures for new grand juror recruitment.
 - rr. Memo to Presiding Judge regarding acceptance of brochures for the grand jury, dated January 2, 2002.

- ss. 2000-2001 Government Committee notes and information from Grand Jury case file 01-10-C (investigation of the Clerk-Recorder), retrieved April 8, 2002 including:
- (1) Notes taken during a committee meeting dated October 31, 2000.
 - (2) A document from Superior Court of the State of California, County of Stanislaus (Superior Court), regarding case number 252695.
 - (3) Letter from Clerk-Recorder to staff person, dated January 31, 2000.
 - (4) An undated memo outlining five (5) questions pertaining to a committee case, with the name of the addressee blacked out.
 - (5) E-mail from County Counsel to GJ staff person regarding Grand Jury case file 01-10-C advising to proceed with the investigation, dated January 31, 2001.
 - (6) Hand written note, with the name of the addressee blacked out; referencing County Counsel's calls regarding the progress of Grand Jury case file 01-10-C.
 - (7) Copy of Grand Jury staff person computer file listing two (2) complainants in the Grand Jury case file 01-10-C.
 - (8) Letter from 2000-2001 Grand Jury foreperson to the two (2) complainants in Grand Jury case file 01-10-C acknowledging receipt of the complaint, dated September 19, 2000.
- tt. E-mail from 2001-2002 Grand Jury foreperson to Ad Hoc IV Committee regarding confidential information received by a 2001-2002 Grand Jury member from a BOS member, pertinent to Grand Jury case file 01-10-C.
- uu. Job classification study report conducted by Melson and Boggs on the GJ staff position, dated June 24, 1997.
- vv. Memo from CEO to Court Administrator regarding Melson and Boggs classification study results, dated August 13, 1997.
- ww. Job description and salary range for Stanislaus County Executive Assistant (Confidential Assistant IV) classification dated April 2, 2001.
- xx. Letter from 2001-2002 Grand Jury foreperson to Deputy Executive Officer, Stanislaus County Human Resources regarding GJ staff person employment records, dated April 10, 2002.
- yy. Original statement prepared by GJ staff person regarding confidential CGJ business, located in the CGJ computer files and not yet edited by County Counsel, retrieved on May 1, 2002.
- zz. Letter from County Counsel to 2001-2002 Grand Jury Foreperson regarding interview with Ad Hoc IV Committee, dated April 30, 2002.

- aaa. Copy of Penal Code Sections 925 through 933.6 governing Grand Jury procedures.
- bbb. Copy of Penal Code Sections 914 through 924.6 governing Grand Jury procedures and expenses.
- ccc. E-mail from the Attorney General's Office to 2001-2002 Grand Jury Foreperson regarding employee labor relations, dated May 8, 2002.
- ddd. Five (5) documents and three (3) black binders from Auditor/Controller regarding CGJ expenditures, received June 6, 2002.
- eee. Copies of 2000-2001 Grand Jury Agendas and Minutes dated March 15, 2001 to March 24, 2001, all signed by GJ staff person as recording secretary.
- fff. Copies of documents received from Deputy Executive Officer, Stanislaus County Human Resources regarding GJ staff person job description and performance, received April 23, 2002.
- ggg. Grand Jury Handbook, dated June 2001.
- hhh. Grand Jury Handbook, dated August 2001.
- iii. Letter from County Counsel to 2000-2001 Grand Jury foreperson regarding the proper format of Grand Jury reports, specifically "findings are facts", dated December 19, 2000.
- jjj. *Modesto Bee* article dated November 20, 2001.
- kkk. Letter from DA to Grand Jury regarding 2000-2001 case file 01-10-C, dated June 18, 2002.

COMPLAINT #1:

A letter of complaint from a former Grand Jury member alleging the Grand Jury staff person has usurped the independence and compromised the integrity of the Stanislaus County Civil Grand Jury.

1. The GJ staff person:
 - a. "...alone screens all the applicants for grand jury duty before any of them meet the Presiding Judge."
 - b. "...has written the Grand Jury Handbook (the procedures manual for each grand jury) even though the California Penal Code, Section 916, assigns this task to each newly formed grand jury. In this book she describes herself as an officer of the grand jury..."
 - c. "In this capacity she functions as its recording secretary; she prepares and controls its agenda, attends all full-panel meetings, records and distributes the minutes, and participates in grand jury deliberations."
 - d. "...opens all mail addressed to the grand jury, makes all appointments for all committee investigations and interviews, and transcribes the tape-recorded testimony of most of the people interviewed."
 - e. "...considers it her function to assist the foreperson in appointing committee chairpersons and to make alterations to committee memberships (including the chair) as she sees fit."
 - f. "...has assumed the entire responsibility of training each new grand jury in how it should do its work."
 - g. "...presence in full-panel meetings during deliberations and voting constitutes a violation of the California Penal Code, Section 939, which says, 'No persons other than grand jurors shall be permitted to be present during expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.' In short, the grand jury may be illegally constituted, their integrity violated."
 - h. "...insists on teaching that a finding is a fact...that the County Counsel has told her to keep the same wording...What may appear as a mere difference in style may actually be part of a deliberate attempt to undermine the grand jury's effectiveness."
2. "The control of every aspect of Grand Jury service is in this County in the hands of only one person, who now is called the Grand Jury Administrator. No Grand Jury needs to be administered."

FINDINGS

1. The screening process for Grand Jury applicants is based on random selection, independent applications and recommendations by public officials in Stanislaus County. All persons interested in serving on the Grand Jury may return an application form. The Presiding Judge interviews all applicants who meet the

- minimum statutory requirements. The Presiding Judge then chooses thirty (30) applicants from these interviews who participate in the final step; a random lottery where nineteen (19) names are drawn as the new jurors and four (4) additional names are drawn to serve as alternates. Penal Code Section 912 allows the Presiding Judge to select the Foreperson.
2. The Grand Jury's nineteen (19) member panel changes significantly every year. The staff person is the only constant in the office.
 3. The GJ staff person has written and subsequently updated the Stanislaus County Grand Jury Handbook. The original 2000-2001 Grand Jury Handbook gave staff person the title of Grand Jury Administrator whose role is described as an advisor.
 4. The GJ staff person prepared and refined the Grand Jury Handbook over the years based on personal experience with the Grand Jury and researching other Grand Jury Handbooks throughout the state.
 5. The 2000-2001 Grand Jury Foreperson testified that the full panel did not "review the handbook. We accepted it for what it was and used it the best we could."
 6. County Counsel testified to having reviewed the Grand Jury Handbook written by the Grand Jury staff person, reporting it was reviewed by Deputy County Counsel as well. County Counsel does not recall the section describing the staff person attending full body meetings.
 7. County Counsel then testified to not reviewing the Grand Jury Handbook, but signed that he had.
 8. A 2000-2001 former grand juror testified, that while in a full panel meeting, he remarked it was inappropriate for the GJ staff person to write the handbook. Full panel disagreed and voted to keep the handbook "as is".
 9. The GJ staff person's duties are to assist the grand jury in its day to day business including: retrieving and opening correspondence, scheduling appointments at the direction of the committees, transcribing testimony, and compiling the agenda and minutes of the meetings as directed by the foreperson and/or the grand juror designated as the recording secretary.
 10. The GJ staff person testified her formal training in Grand Jury secretarial duties was non-existent.
 11. A 2000-2001 Grand Juror testifies the Foreperson had no active role in distributing cases to her as a committee chair, nor did he interact with her at any time as a member or a chair. All interaction was with the GJ staff person.
 12. The GJ staff person was involved in the holdover process.
 13. GJ staff person asked a 1999-2000 Grand Juror to hold over.

14. A 1999-2000 holdover juror testified to being asked by the GJ staff person to become committee chairman of a new case prior to the empaneling of the next jury. The GJ staff person denied this.
15. The 2000-2001 Foreperson testified the GJ staff person participated and gave input during committee and committee chair selections.
16. Five (5) 2000-2001 Grand Jurors recall GJ staff person having participated in the choosing of committees and chairs.
17. The GJ staff person was responsible for in-service grand jury training.
18. The Court Administrator testified he was asked by the GJ staff person if she could sit in during grand jury full panel meetings and was told "No".
19. At the request of the 1999-2000 Grand Jury, GJ staff person asked and received permission from the then Presiding Judge to attend full panel meetings as a resource person only.
20. Eight (8) prior Grand Jurors testified the GJ staff person was present during deliberations and voting in full panel meetings, functioned as the recording secretary, and prepared and distributed the agenda and minutes.
21. GJ staff person attendance in full body meetings was later brought to County Counsel's attention. His office sent a letter recommending this section be stricken from the Handbook.
22. A 2000-2001 Grand Juror testified the GJ staff person delayed him in making a presentation before the full panel regarding report writing procedures.
23. The 2000-2001 Foreperson testified the GJ staff person tried to dissuade him from allowing a juror to address the full panel regarding Grand Jury procedures.
24. The GJ staff person was not questioned regarding the issues in #23 and #24 above.
25. GJ staff person prompted County Counsel to write a letter to the Grand Jury Foreperson insisting that the current methodology viewing a finding as a fact was to be kept intact.
26. Berkeley graduate student interviewed GJ staff person and testified that GJ staff person told him she:
 - a. attended full panel meetings
 - b. controlled agendas for upcoming meetings
 - c. wrote the Grand Jury Handbook
27. Berkeley graduate student testified GJ staff person showed him a confidential document from case file 01-10-C.
28. In testimony, GJ staff person denied sharing a confidential document, and remembers only discussing the selection process and the final report with the Berkeley graduate student.

29. GJ staff person then testified the confidential document might have been on her desk, and the student could have looked at it when she left the room.
30. Court Administrator testified the Assistant DA gave the GJ staff person permission to use the title of Grand Jury Administrator.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. The GJ staff person reviews all applications to ensure minimum statutory requirements are met. All applicants meeting these requirements are invited to interview with the Presiding Judge. No indications of improprieties were found.
2. GJ staff person assumed the responsibility for writing, editing and formatting the Grand Jury Handbook.
3. The GJ staff person cannot legally function as the recording secretary.
4. At the direction of the Grand Jury, staff opens all mail, prepares minutes and agendas of meetings, makes appointments and transcribes interviews, which are necessary and appropriate job functions.
5. The GJ staff person was involved in choosing committees and committee chairs.
6. GJ staff person had assumed the primary responsibility for in-service Grand Jury training.
7. Former Presiding Judge approved 1999-2000 Grand Jury's request to allow staff person to attend full panel meetings as a resource. She was not to offer direction, advice or guidance.
8. The current Presiding Judge reaffirmed restrictions on the GJ staff attendance during discussions, deliberations, and voting.
9. An error was made by allowing GJ staff person to be present during full panel meetings in violation of Penal Code Section 939. This error resulted in allowing the GJ staff person to have access to the discussions, deliberations and voting of the CGJ.
10. The GJ staff person led the members of the 2001-2002 CGJ to believe she was the Recording Secretary.
11. In a memo to GJ staff person, County Counsel insisted that the correct methodology of report writing (a finding is a fact), should be retained.

12. The GJ staff person used improper discretion when handling confidential CGJ information.
13. GJ staff person did not receive adequate training or supervision regarding day-to-day grand jury secretarial duties.
14. GJ staff person exceeded authority in seeking advice and direction from outside counsel on behalf of the CGJ without their knowledge or permission.

RECOMMENDATIONS

1. The 2001-2002 Grand Jury has taken the following corrective actions. The GJ staff person:
 - a. no longer has input in selection of committee members and chairs.
 - b. has been removed from full panel meetings.
 - c. no longer edits handbook without the direction of the Grand Jury.
 - d. no longer prepares agendas and minutes without the direction of the Foreperson or Recording Secretary.
2. In accordance with Penal Code Section 916, future Civil Grand Juries must receive training on statutory grand jury procedures. This should be done prior to being empaneled.
3. Future Grand Juries must understand they alone have full authority to make decisions concerning
4. The section of the Grand Jury Handbook pertaining to GJ staff person should be edited to read: The
5. Future Grand Juries need to immediately:
 - a. review the Grand Jury Handbook—edit and revise as necessary.
 - b. establish the methods and procedures for selecting committees and committee chairs.
 - c. elect one member as the Recording Secretary for full panel meetings.
6. The 2002-2003 CGJ should conduct a study of the final report writing methodology “a fin

COMPLAINT #2:

A Letter of Complaint from a local elected official asking:

1. Which grand juror or other person(s) authorized the release of the Mayor’s letter to a member of the BOS?
2. Has such a release violated any section of the California Penal Code and/or the Oath of Grand Jurors pertaining to secrecy in Grand Jury proceedings?
3. What will be done to make certain that the Stanislaus County Grand Jury functions according to the

spirit and intent of the statute?

FINDINGS

1. The Mayor's letter regarding case 01-10-C was faxed to the CGJ office.
2. A fax of the Mayor's letter was received on May 16, 2001 addressed to the Grand Jury Foreperson regarding case 01-10-C.
3. The 2000-2001 CGJ had a regularly scheduled full panel meeting on May 17, 2001 in which they were reviewing CGJ case 01-10-C.
4. In the full panel meeting of May 17, 2001, the Mayor's letter was discussed, deliberated and voted on. For this reason it became, and remains a confidential document. A consensus was reached that the Mayor had no information germane to the investigation.
5. Two (2) prior jurors and the GJ staff person testified that the CGJ tried to keep politics out of the 01-10-C investigation.
6. The GJ Foreperson drafted a reply to the Mayor declining his request to appear as a witness. The contents of this letter were also approved and voted on by the full panel.
7. The Foreperson's reply letter was mailed to the Mayor on May 18, 2001 by the GJ staff person.
8. A current BOS member testified that on May 18, 2001, he found a copy of the Mayor's letter on his desk in an un-stamped City of Modesto envelope.
9. The report on Grand Jury case 01-10-C was released on May 30, 2001.
10. Two (2) prior grand jurors testified they were confronted by the Mayor who threatened a civil lawsuit. This occurred at two (2) separate social functions in July 2001.
11. GJ staff person testified that she spoke to County Counsel about a rumored civil law suit against the CGJ.
12. GJ staff person testified County Counsel informed her the Mayor's letter was a public document and asked her to fax him a copy.
13. GJ staff person testified she faxed a copy of the Mayor's letter and the Foreperson's reply to County Counsel.
14. GJ staff person testified she released the letters to County Counsel on the basis that he was her legal advisor.
15. Court Administrator testified County Counsel's role is simply to advise CGJ about libelous statements; but at some unknown point the role became one of primary advisor.
16. GJ staff person testified Court Administrator reviewed final reports for legal content and liability in previous years.
17. GJ staff person testified she did not consult with the Presiding Judge, the Foreperson, or the Grand

Jury prior to the release of the letters to County Counsel.

18. GJ staff person testified she felt her job possibly could be in jeopardy if she refused a request from County Counsel.
19. A 2000-2001 Grand Juror testified that County Counsel and the GJ staff person had a close working relationship.
20. County Counsel testified the Grand Jury is custodian of all Grand Jury documents.
21. In testimony, County Counsel agreed the GJ staff person exerted influence over the CGJ.
22. County Counsel testified he requested a copy of the Mayor's letter in his capacity as legal advisor, absolutely believing he had legal authority to do so.

23. County Counsel testified another motivation for requesting the documents was his concern for the health of an involved party.
24. The 2000-2001 CGJ deliberated and voted to bypass the County Counsel as legal advisor on case 01-10-C.
25. County Counsel recused himself from case 01-10-C prior to requesting a copy of the Mayor's letter.
26. A current BOS member testified he asked County Counsel for a legal opinion regarding posting the Mayor's letter on his personal website.
27. The BOS member testified County Counsel declared the letters public documents.
28. The BOS member testified that, acting on advice from County Counsel that the Mayor's letter was a public document, he posted the letter on his personal website.
29. The BOS member testified upon finding that he had misplaced the first copy of the Mayor's letter, he requested County Counsel to send him an additional copy.
30. County Counsel testified he faxed a copy of the Mayor's letter as well as the CGJ's reply to the BOS member.
31. The 2000-2001 Grand Jury Foreperson testified that the Mayor's letter was a privileged document and should not have been released.
32. County Counsel testified to requesting and receiving a copy of Mayor's letter as well as the Foreperson's response from GJ staff person.
33. County Counsel testified he should have asked the Foreperson rather than the GJ staff person for a copy of the Mayor's letter.
34. County Counsel testified he agreed with the following statements in a *Modesto Bee* article dated November 20, 2001 in which he was quoted:
 - a. The Mayor's letter to the Grand Jury was not confidential and was subject to the Public Records Act because:
 - (1) The Mayor's letter was on City of Modesto letterhead.
 - (2) The letter had been discussed in numerous public conversations and on the radio.
 - b. He had not released a copy of the letter to a current BOS member.
35. The Mayor testified that his letter was already printed in the *Modesto Bee* prior to his discussing it on a radio program.

36. The Mayor testified he called the Court Administrator and the DA to ask if his letter was confidential.
37. County Counsel testified he called the BOS member suggesting the letter be removed from his website due to public controversy.
38. County Counsel testified in retrospect he wished he had not advised the Supervisor to place the letter on the website.
39. County Counsel testified to the following eight (8) points as the basis he used to declare the Modesto Mayor's letter to the 2000-2001 Civil Grand Jury and response to the Modesto Mayor by 2000-2001 Foreperson of the Civil Grand Jury as public information "...under the Public Records Act":
 - a. "First and foremost, California Law is very clear under the public records law that release of documents should be released to the public." [sic]
 - b. "Second, these two letters were discussed publicly by the Mayor ... on a public news radio station."
 - c. "Third, by Mayor... publically discussing the letters and their contents in public on at least two occasions, any claim of confidentiality was eliminated in my opinion." "...there's a Government Code Section 6254.5 that talks about if the documents are made public, they lose their confidentiality."
 - d. "Fourth, Mayor ... further discussed these two letters in the public forum on July 9th during the Civil Grand Jury orientation, once again placing these letters in the public domain."
 - e. "Five, to the best of my knowledge, no laws in the State of California that apply...or clearly state that these two letters were confidential. The letters were not a part of a Civil Grand Jury investigation."
 - f. "Six, the fact that Mayor...used City of Modesto letterhead and that the document was signed as Mayor makes the May 16, 2001 letter to the Grand Jury foreperson a public document which is subject to release under the Public Records Act. The response that was sent back from the Grand Jury foreperson to Mayor ... at the city address at City Hall then became part of the public record and those documents were subject to disclosure under the public records law."
 - g. "Seven, Mayor ... letter of May 16th, as indicated earlier, did not rise to the level of a Grand Jury complaint or Grand Jury matter where confidentiality attaches."
 - h. "Number Eight, and last, I applied the appropriate balancing test also that is prescribed under California law in favor of not having secret communication and having all documents that are not specifically exempted under the Public Records Act or other applicable laws made available to the public."
40. The Presiding Judge, Superior Court suggested that the 2001-2002 Civil Grand Jury might wish to investigate the matter of confidentiality.

CONCLUSIONS

The Civil Grand Jury concluded that:

1. The CGJ is the “Custodian of Records” for all documents in its possession.
2. After the Mayor’s letter was received, discussed, deliberated and voted upon by the full panel of the CGJ, it became and still remains a confidential document. For the same reasons the CGJ response letter is also a confidential document.
3. Release of these letters was in violation of Penal Code Section 929 which requires the approval of the Presiding Judge to “...make available to the public part or all of the evidentiary material, findings, and other information relied upon by, or presented to, a Grand Jury for its final report in any Civil Grand Jury investigation.”
4. As this letter became a confidential Grand Jury document, it is not a public document as described by the Public Records Act.
5. Neither the Mayor’s letter nor the Grand Jury response should have been released to County Counsel by the GJ staff person.
6. County Counsel should not have released copies of the letters to the BOS member.
7. The BOS member should not have posted the letters on his personal website.
8. GJ staff deemed herself obligated to comply with request for release of letters by County Counsel, because it came from her “legal advisor”.

9. GJ staff person assumed County Counsel was correct in declaring the letter a public document since he is an attorney.
10. County Counsel is not the “legal advisor” to the GJ staff person. County Counsel’s only obligation to the CGJ is to simply provide “legal advice” if requested by the Grand Jury pursuant to Penal Code Section 934(a).
11. The GJ staff person released confidential CGJ documents without required authority.
12. The 2000-2001 Grand Jury’s vote to exclude County Counsel as an advisor and from reviewing case 01-10-C was appropriate due to County Counsel’s recusal in the case.
13. County Counsel continued to act as legal advisor after recusing himself from the investigation.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

1. All requests for CGJ documents and information must be addressed to the Presiding Judge of the Superior Court as prescribed in Penal Code Section 929.
2. According to Penal Code Section 934(a), County Counsel **may** be an advisor to the CGJ and should only respond with a legal opinion(s) if requested from the CGJ Foreperson.
3. Future CGJ’s maintain control over their activities and the direction of their investigations.

COMPLAINT #3:

The CGJ may have been subjected to undue influence by non-CGJ members in an attempt to manipulate the CGJ process.

FINDINGS

1. DA testified that Grand Jury case 01-10-C was filed as a result of information discovered by County Counsel in a deposition taken from the Clerk-Recorder in a civil matter.
2. Prior to the formation of the 2000-2001 Grand Jury, County Counsel alerted GJ staff person regarding an impending case being brought by the County against the Clerk-Recorder.
3. 2000-2001 Grand Jury Foreperson testified the CGJ was divided on the merits of case 01-10-C; some believing it to be politically motivated.
4. County Counsel testified that he was a witness in CGJ case 01-10-C.
5. County Counsel testified that he recused himself from case 01-10-C due to a conflict of interest.
6. Deputy DA testified that County Counsel questioned him about the investigation of CGJ case 01-10-C.
7. County Counsel testified that recusing himself from Grand Jury case 01-10-C did not prevent him from requesting and receiving documents pertaining to the case.
8. Case 01-10-C committee chairperson testified County Counsel brought unsolicited analysis and information to the committee.
9. County Counsel responded via e-mail to GJ staff person, that the CGJ should continue with investigation of 01-10-C; even if the employment status of the individual, who was the focus of the investigation, changes.
10. GJ staff person testified that County Counsel specified the witnesses and the order in which they should be called regarding case 01-10-C.
11. An Executive Assistant in Clerk-Recorder office testified she was told by County Counsel that she would be called as a witness in the case 01-10-C.
12. GJ staff person testified that County Counsel requested updates on the status of case 01-10-C and whether particular witnesses had been called to testify. County Counsel also complained the case was proceeding too slowly.
13. Deputy DA testified that in his conversations with the chairperson of case 01-10-C, the chairperson

- deemed the investigation a “witch hunt”.
14. The committee chairperson of case 01-10-C testified being “fed” only certain information by the County, and felt the complaint was initiated to eliminate the Clerk-Recorder.
 15. GJ staff person testified she left phone messages for the committee chairperson on case 01-10-C from County Counsel.
 16. Deputy DA testified the chairperson on case 01-10-C called and e-mailed him requesting his opinion regarding “someone” instructing her to call certain witnesses, and in what order.
 17. Committee chairperson testified that County Counsel applied pressure to expedite the investigation on Grand Jury case 01-10-C by making repeated calls to the CGJ office and to her home.
 18. 2000-2001 Grand Jury Foreperson testified he was aware that Grand Jury chairperson had talked with County Counsel regarding Grand Jury case 01-10-C.
 19. County Counsel testified he “has no recollection, no direct recollection, and/or does not recall” the following facts regarding Grand Jury case 01-10-C:
 - a. Calling Grand Jury committee members inquiring why an investigation was not proceeding expeditiously.
 - b. Calling Grand Jury committee chairperson at home regarding the slow progress of calling witnesses, and listing particular witnesses that needed to be called in and in what order.
 - c. Calling GJ staff person regarding the pace of the investigation.
 20. DA testified, while out of state, he received an estimated twelve (12) to fourteen (14) phone calls from County Counsel about the urgency of making Grand Jury case 01-10-C public.
 21. County Counsel testified he made out of state telephone calls to the DA regarding Grand Jury case file 01-10-C.
 22. The DA testified that County Counsel attempted to persuade his office to approve and release CGJ report 01-10-C prior to his (DA’s) return because the content of the report might exacerbate health problems of the party involved.
 23. The DA testified this event raised the question in his mind: “ How did County Counsel know that the report would be critical of the Clerk-Recorder?”
 24. GJ staff person testified she was aware of pressure and issues going back and forth from County Counsel to the DA, specifically the release of report 01-10-C.
 25. GJ staff person testified County Counsel requested the status of the final report on case 01-10-C because he was anxious to have the report released. GJ staff told him the report would be heard before the full panel on May 17, 2001.
 26. Deputy DA testified that while the DA was out of state, County Counsel repeatedly contacted the Assistant DA for the release of the report.
 27. DA testified he believed County Counsel reviewed Grand Jury case 01-10-C prior to release.

28. In testimony, County Counsel made the following statements in regards to Grand Jury case 01-10-C final report:
 - a. He knew nothing about the investigation until he received a copy of the report the day before it was released to the public.
 - b. He might have seen it the day before its release to the public, when the CEO received a copy.
 - c. He did not see a copy of the report until after it had been released to the public.
29. DA testified the CEO and County Counsel continued to pressure his office to file criminal charges in reference to Grand Jury case 01-10-C.
30. DA testified the County never requested his office review CGJ case 01-02-C for criminal violations.
31. County Counsel denies interfering with any CGJ investigation at any time.
32. GJ staff person testified that County Counsel directed her to write a statement pertaining to case 01-10-C to present to the BOS in a public hearing.
33. The GJ staff person testified she drafted said document and forwarded it to County Counsel for review. County Counsel made changes to the document and returned it to the GJ staff person.
34. A former Grand Juror testified the GJ staff person showed him this modified document and expressed her concern about making the presentation before the BOS.
35. In testimony, County Counsel admits requesting GJ staff person to write down some "concerns" regarding case 01-10-C in a document, but denied the document was ever intended to be presented to the BOS.
36. County Counsel testified he has the authority to solicit information from the GJ staff person as a County employee.
37. The Deputy DA testified the GJ staff person voiced her concerns and reluctance in preparing a document for release in a public forum that would contain highly confidential CGJ information.
38. Deputy DA testified he requested a copy of this document but his request was denied by County Counsel through the GJ staff person.
39. On October 4, 2001 CGJ Foreperson (2001-2002) became aware the GJ staff person was going to make a verbal presentation to the BOS and he specifically told her not to make the presentation.
40. County Counsel directed the GJ staff person to fax a copy of the document to the CGJ Foreperson.
41. After reviewing this document, CGJ Foreperson expressed his concern and annoyance to County Counsel that he (County Counsel) would make such a request of the GJ staff person without his knowledge or that of the Presiding Judge.

42. In testimony, County Counsel denied that he received calls from 2001-2002 CGJ Foreperson voicing concerns regarding the presentation of this statement.
43. In testimony, County Counsel then recalled the conversation, but could not remember if he told the Foreperson there was or was not going to be a presentation to the BOS.
44. CGJ Foreperson notified County Counsel that since the document contained confidential grand jury information he was opposed to the presentation.
45. CGJ Foreperson informed the Presiding Judge who subsequently notified County Counsel of his opposition to said document in writing.
46. County Counsel later informed CGJ Foreperson (by calling his home that weekend) the presentation had been reconsidered and would not occur.
47. County Counsel testified that GJ staff person has the right as a citizen to appear before the BOS during public comment period and make any statements she wants.
48. County Counsel then testified GJ staff person has no legal right to make public statements if it would reveal confidential Grand Jury business.
49. CEO testified that he was aware that the GJ staff person wanted to make a presentation to the BOS regarding case file 01-10-C.
50. Two (2) 2000-2001 CGJ members testified that GJ staff person released confidential information to them regarding the reopening of Grand Jury case 01-10-C.
51. In testimony, GJ staff person denied sharing with anyone the fact that the 2001-2002 CGJ was reopening a 2000-2001 Grand Jury case.
52. In testimony, 2000-2001 Grand Jury member admits calling a current Grand Jury member regarding the reopening of CGJ case 01-10-C.
53. GJ staff person testified to sharing with prior grand jurors that she was under investigation.
54. Four (4) 2000-2001 Grand Jurors testified receiving information from the GJ staff person that she was being investigated by the 2001-2002 Grand Jury.
55. A 2001-2002 Grand Juror committee chairperson states that the GJ staff person tried on three (3) occasions to dissuade him from continuing an investigation regarding a County agency.
56. The GJ staff person questioned a 2001-2002 Grand Juror regarding the progress of an ongoing investigation which involved her.
57. A former local radio talk show host testified to a conversation with GJ staff person during which she told him that everything she did was approved by County Counsel.

58. The 2001-2002 Foreperson stated that on January 23, 2002, GJ staff person questioned and challenged him after being instructed to retrieve previous grand jury records.
59. In testimony, GJ staff person admitted questioning the Foreperson on January 23, 2002 regarding his need for requested Grand Jury records.
60. Approximately two (2) hours after the request for records, County Counsel called Foreperson to inform him that GJ staff person had filed a hostile work environment complaint due to interference in performing her job.
61. County Counsel testified GJ staff person forwarded a written hostile work environment complaint to the CEO.
62. CEO testified that the GJ staff person met with Deputy Executive Officer and County Counsel regarding a hostile work environment complaint, but to his knowledge a formal complaint was not filed.
63. Deputy Executive Officer testified she was on leave from December 7, 2001 through January 22, 2002 when the purported complaint was made. She had no contact with the GJ staff person until early April 2002, and has never received a hostile work environment complaint from GJ staff.
64. Court Administrator and GJ staff person had disagreements over the secretarial position; the staff person wanted the position to be considered full time.
65. The DA testified that the GJ staff person, a Confidential Assistant IV, informed him that she was working out of class and should be a management employee.
66. The most recent formal job classification study of the GJ staff position was conducted by Melson and Boggs on June 20, 1997.
67. Melson and Boggs' report regarding the GJ staff position job classification study, dated June 24, 1997, concluded the position should remain as a Senior Executive Secretary (now known as Confidential Assistant IV).
68. GJ staff person was promoted to Manager II position on September 22, 2001. Job description has changed and now staff person is reporting to the Deputy Executive Officer for administrative purposes.
69. CEO testified Deputy Executive Officer is assigned to work with GJ staff person regarding issues of budget, personnel and administrative matters.
70. CEO testified that GJ staff person was previously under direct supervision of the Presiding Judge and the Court Administrator.
71. In testimony, GJ staff person reported as of January 2001, after a Legislative change was made to court employees, a letter by Presiding Judge told her she would remain a County employee.
72. GJ staff person testified she is aware she reports to the Grand Jury foreperson, the

- Presiding Judge, and the Court Administrator.
73. A prior Grand Juror testified that GJ staff person discussed being intimidated by the Court Administrator.
 74. A prior Grand Juror testified she spoke with DA and Superior Court Deputy Executive Officer regarding the GJ staff person not wanting to work for the Court Administrator.
 75. Court Administrator testified that CGJ needs the staff person reporting to CGJ Foreperson, not the County.
 76. GJ staff person testified she would prefer to report to the DA rather than the Court.
 77. The GJ staff person testified that she was informed by the Court Administrator to report directly to him instead of the Presiding Judge.
 78. County Counsel testified “the Court and the Grand Jury made a mistake” in its recommendation to the CEO to reassign the GJ staff person.
 79. County Counsel testified had he been present when the CEO was notified of the Grand Jury request for reassignment of the GJ staff person, he would have advised him against taking this action.
 80. After reviewing documents received from Auditor-Controller's office, dated January 2001 through June 2001, regarding Civil and Criminal Grand Jury expenditures, the names of confidential witnesses were discovered on invoices.
 81. The 2001-2002 CGJ members discovered that archived CGJ records were stored in a poorly secured area shared with another Stanislaus County agency.
 82. The 2001-2002 CGJ was not kept informed of, nor had input into, Grand Jury budget matters.

CONCLUSIONS

The CGJ concluded that:

1. After more than ten (10) years of dedicated service, the GJ staff person became synonymous with the CGJ.
2. GJ staff person positioned herself to influence and direct activities, procedures
3. GJ staff person was the primary provider of resources and training of the CGJ.
4. County and Court administrations and previous CGJs allowed GJ staff person to exercise too much independence and control over Grand Juries and their proceedings.
5. GJ staff person compromised the independence of the CGJ by improperly assuming its duties and responsibilities.

and investigation

6. CEO took appropriate corrective action in reassigning GJ staff person per CGJ request.
7. County Counsel provided unsolicited legal advice to the CGJ.
8. County Counsel requested and received confidential CGJ information from GJ staff without approval of the Presiding Judge.
9. County Counsel directed the GJ staff person to draft a document containing confidential information for a presentation in a public forum.
10. County Counsel participated in the taking of a deposition of a witness in a civil case and used this information to formulate a CGJ complaint.
11. After testifying as a witness in CGJ case 01-10-C, County Counsel interfered and attempted to manipulate the CGJ investigation.
12. A political tug of war between the County and the Court over control of CGJ procedures and staff person has been detrimental to the effectiveness of the entire CGJ system.
13. Confidential information has been disclosed on billing invoices sent to the Auditor-Controller's office for payment.
14. Archived CGJ records have been improperly stored.
15. The CGJ has a statutory right and obligation to protect complainants, witnesses, and the CGJ process from improper and unsolicited legal advice and outside manipulation.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

1. Prior staff person should not be re-assigned to Grand Jury office.
2. GJ staff person needs to be under auspices of the Court rather than the County. An inherent conflict of interest exists when the CGJ investigates departments and officials of the County.
3. GJ staff position should remain Confidential Assistant IV or equivalent.

4. GJ staff person must not perform duties that are statutorily reserved for Grand Jurors. GJ staff person must provide secretarial support only, performing duties as directed by the CGJ.
5. Future grand juries need to monitor and closely examine County Counsel's advisory capacity.
6. BOS should consider disciplinary measures for the improper actions by County Counsel relative to CGJ matters.
7. This report be referred to the California State Attorney General's office to review for possible criminal violations.
8. All billings and invoices must be screened for redaction or masking of names or other confidential evidentiary information prior to their release.
9. The Court locate a secure CGJ storage facility for archived Grand Jury records. Access to this location should be controlled by the Presiding Judge.
10. Outgoing CGJs should have input into the preparation of the budget for the following year's CGJ.

RESPONSE REQUIRED

per Section 933 [c] and 933.05 of the California Penal Code:

Stanislaus County Chief Executive Office.

Stanislaus County Board of Supervisors.

2002-2003 Civil Grand Jury

This Final Report will be available for public review on the Civil Grand Jury website located at: <http://www.co.stanislaus.ca.us/COURTS/courts/grandjury/index.html> and at the Stanislaus County Main Library 1500 I Street, Modesto, California 95354.

§933. Comments and Reports on Grand Jury Recommendations

- [c] No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge

of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elective county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All such comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

§933.05 Response to Grand Jury Recommendations--Content Requirements

- A. Section 933.05 of the California Penal Code requires that a responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding(s); or
 - (2) The respondent disagrees wholly or in part with the finding(s). If this response is chosen, the respondent will specify that portion of the finding(s) which is disputed and shall include an explanation of the reasons for the disagreement.

- B. As to each Grand Jury recommendation, the responding public officer or agency shall indicate one of the following:
 - (1) The recommendation has been implemented and set forth a summary of the implemented action;
 - (2) The recommendation has not been implemented but will be implemented in the future with a time frame for implementation;
 - (3) The recommendation requires further analysis with an explanation as to

the scope of the analysis and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department or governing body being investigated. The time frame shall not exceed six (6) months from the date of publication of the Grand Jury report; and

- (4) The recommendation will not be implemented because it is either not warranted or not reasonable with an explanation as to why the recommendation will not be implemented.
- C. If a finding or recommendation addresses budgetary or personnel matters of a department headed by an elected official, both the Department Head and the Board of Supervisors will respond. The Board of Supervisors response shall be limited to those budgetary or personnel matters over which it possesses decision making authority.

RESOLUTION

WHEREAS, the 2001-2002 Stanislaus County Civil Grand Jury has conducted an investigation and has reached certain conclusions and made recommendations; and

WHEREAS, the Stanislaus County Civil Grand Jury desires to make its *FINAL REPORT* thereof;

THEREFORE BE IT RESOLVED, by the Stanislaus County Civil Grand Jury that the report is hereby adopted as *FINAL REPORT, PART NINE*.

Robert E. Johnson
Civil Grand Jury Foreperson
Fiscal Year 2001-2002
Released on July 26, 2002