

AN OVERVIEW OF THE GRAND JURY

INTRODUCTION

The Grand Jury is a judicial body comprised of a number of citizens as specified by the California Penal Code. It is empanelled to act as an element of the judicial system authorized by the State Constitution for the protection of society and enforcement of the law. The Grand Jury is not accountable to elected officials or governmental employees. The Grand Jury findings and recommendations are to be unbiased and impartial. Each Grand Juror is sworn not to disclose the source of evidence obtained through any investigation.

The primary duty of the Civil Grand Jury is to investigate the functions of City and County government agencies, schools, and districts. Committees are formed to study citizen complaints and to visit various City and County facilities. Law mandates certain functions of the Grand Jury. The Grand Jury selects additional areas it wishes to study. At the end of its term, the Grand Jury publishes recommendations in a report that is distributed to public officials, libraries, and the news media. Individuals, agencies, or departments investigated are required to respond to the findings and recommendations within 60 or 90 days per the California Penal Code.

The Grand Jury may also be empanelled for criminal cases. The District Attorney may ask the Grand Jury to hear evidence to determine if an individual should stand trial. Criminal inquiries are also conducted in the strictest secrecy. An indicted individual still must be tried in Superior Court because a Grand Jury does not pass judgment upon the guilt or innocence of the person accused.

HISTORY

One of the earliest concepts of a Grand Jury may date back to Ancient Greece where the Athenians used an accusatory body. Others claim the Saxons initiated the Grand Jury system. From 987 to 1016 AD, one of the Domesday (laws) stated that for each 100 men, 12 shall be named to act as an accusing body: "They shall not accuse an innocent man nor spare a guilty one."

The Grand Jury can also be traced back to the time of the Norman Conquest of England in 1066. There is evidence that the Courts of that time summoned a body of sworn neighbors to present crimes which had come to their knowledge. The members of that accusing jury were selected from small jurisdictions. Thus it was natural, and

indeed expected, that the members would present accusations based on their personal knowledge.

Historians generally agree that the Assize of Clarendon in 1166 was the beginning of our present Grand Jury system. During the reign of Henry II (1154 - 1189), in an effort to regain for the crown the powers usurped by Thomas Becket, Chancellor of England, twelve good and lawful men in each village were assembled to reveal the names of those suspected of crimes. It was during this same period that juries were divided into two types: civil and criminal, with the development of each influencing the other.

Originally, an "assize" meant a Court session or assembly. As used today, it refers to the accomplishment of enactments of such groups; thus, the "Assize of Clarendon," in which the use of the jury was for the purpose of discovery and presentation to Royal officials those persons suspected of crime. Additionally, they were asked to report on other matters relating to the maintenance of order and good government in their district.

The oath taken by these jurors was that they shall "do this faithfully, that they will aggrieve no one through enmity nor defer to anyone through love, and that they will conceal those things, which they have heard."

By the year 1290, we find that the accusing jury was given the authority to inquire into the maintenance of bridges and highways, the defects of jails, and whether the sheriff had kept in jail anyone who should have been brought before the Justices.

"Le grand inquest" evolved during the reign of Edward III (1368) when the "accusatory jury" was increased in number from 12 to 23, with a majority vote necessary to indict an accused.

In 1635, the Massachusetts Bay Colony, in Colonial America, had the first Grand Jury that considered the cases of murder, robbery, and wife beating. As early as 1700, the value of the Grand Jury was recognized in opposing the Royalists. These Colonial Grand Juries expressed their independence by refusing to indict leaders of the Stamp Act (1765), and a Boston Grand Jury refused to bring libel charges against the editors of the Boston Gazette (1765). A union with other Colonies to oppose British taxes was supported by a Philadelphia Grand Jury in 1770.

By the end of the Colonial period the Grand Jury had become an indispensable adjunct of government: they proposed new laws, protested against abuses in government, and wielded tremendous

authority in their power to determine who should and should not face trial.

Originally the Constitution of the United States made no provision for a Grand Jury. The Fifth Amendment, ratified in 1791, added this protection:

“...no person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except for cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger...”

Public support of Grand Juries began to wane in the early 1800's. Adoption of the Fourteenth Amendment in 1868 made it illegal to “deprive any person of life, liberty or property without due process of law.” As interpreted by some States, this amendment meant that prosecution of crimes no longer mandated a Grand Jury indictment.

HISTORY OF THE GRAND JURY IN CALIFORNIA

The first California Penal Code contained statutes providing for a Grand Jury. Early Grand Juries investigated local prisons, conducted audits of County books, and pursued matters of community concern. The role of the Grand Jury in California is unique in that by statutes passed in 1880, the duties include investigation of County government.

Except where separate civil and criminal Grand Juries are authorized, the California Grand Jury system provides for one Grand Jury for each County.

The functions of the Grand Jury are:

- Civil: to inquire into and review the conduct of local government, and
- Criminal: to inquire into public offenses committed or triable within the County.

The Grand Jury system in California is unusual in that Federal and County grand juries in most states are concerned solely with criminal indictments and have no civil responsibilities.

California is one of the States to initiate criminal prosecution by either indictment or complaint.

California is one of only seven States that provide for the investigation of County government by a Grand Jury, beyond alleged misconduct of public officials.

Authority for the Grand Jury system is found in the Fifth Amendment of the U.S. Constitution and in Article 1, Section 23 of the California Constitution, which state:

ARTICLE 1, Section 23 "... One or more Grand Juries shall be drawn and summoned once a year in each County."

Grand Jurors generally serve for one year and are usually empanelled in the first week of the fiscal or calendar year to coincide with the County's budget year. Up to 10 Grand Jurors may be held over for a second term.

GRAND JURY SYSTEM TODAY

As constituted today, the Grand Jury is a part of the judicial branch of government and is an arm of the Court. The Grand Jury does not have the functions of either the legislative or administrative branches and it is not a police agency or political group. It is an investigative body having as objective the detection and correction of flaws in government.

The primary civil function of the Grand Jury, and the most important reason for its existence, is the examination of all aspects of County and City government, including special districts and joint powers agencies, seeing that the public's monies are handled judiciously, and that all accounts are properly audited - in general, assuring honest, efficient government in the best interest of the people.

The Grand Jury has three ways to exercise its powers:

- By reports and recommendations regarding County government, cities, special districts, and joint powers agencies;
- By indictment, bringing charges against an individual for a criminal offense;
- By civil accusation of an official or employee where the result, on conviction, would be removal from office.

A large portion of the public wrongly believes that an individual, particularly a public official, appearing before the Grand Jury suggests guilt of malfeasance, misfeasance, or nonfeasance. It is the Constitutional responsibility of the Grand Jury to review the conduct of government each year. This entails having public

officials appear before the Jury for the purpose of providing information relative to their departments or offices.

While it is a part of the judicial system, a Grand Jury is an entirely independent body. The Presiding Judge of the Superior Court, the District Attorney, the County Counsel, and the State Attorney General act as its advisors, but cannot prevent the actions of the Jury except on issues of legality.

Due to the confidential nature of a Grand Jury's work, most, if not all, must be conducted in closed session. Members of a Grand Jury are sworn to secrecy, thus assuring all that appear before it that their testimony will be handled in strict confidence. No one may be present during the sessions of a Grand Jury except those specified by law, and the minutes of its meetings may not be inspected by anyone, nor can its records be subpoenaed.

The Grand Jury serves as an ombudsman for citizens of the County. The Grand Jury may receive and investigate complaints by individuals regarding the actions and performances of County or other public officials. Additionally, the California Penal Code specifies that the Grand Jury shall inquire into the conditions and management of the public prisons, jails, and juvenile detention facilities within the County.

The members of the Grand Jury are collectively granted special powers and privileges to aid them in carrying out their duties. The Grand Jury in its official capacity is permitted, with limited exceptions, access to and the right to inspect government facilities, and to review official books and records to which other citizens are denied access. The Grand Jury may issue subpoenas as necessary.