

Modoc County
Grand Jury Procedures Manual
July 1996

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PREFACE

This manual is a compendium of laws and suggested practices, procedures, and guidelines. It has been developed by Superior Court Judge John P. Baker to assist you in the performance of your duties. Each Grand Jury may adopt its own practices and procedures as desired. The appendices contain those laws that must be followed.

Frequently within this Manual readers will find references to people by the use of masculine titles or pronouns. This has been done for general ease of reading only; such references should be construed to mean also the equivalent feminine title or pronoun.

The reader of this manual may find "*" at the end of portions of the text which refer to more detailed information. Please refer to the Table of Contents to locate this additional information if specific page numbers are not indicated.

INTRODUCTION
to the
MODOC COUNTY GRAND JURY

As citizens of the United States of America we enjoy many rights and privileges not common in most countries of the world. We, as a people, tend to forget that with each of these rights and privileges we take for granted, we have an inherent responsibility. 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 Court, and in California it is endowed with broad powers, as a branch of the judicial system.

The Grand Jury, available to all citizens of the County, also acts as an ombudsman by receiving and investigating citizen complaints pertaining to the actions and performance of public officials, and is an avenue of appeal independent of the usual public channels.

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 depending on the workload at any one time.

The Grand Jury is charged with an important responsibility which calls for diligence, impartiality, dedication, and strict confidentiality. It is not intended to be a means to carry out a personal vendetta, nor may it be so abused.

Grand jury selection procedures in California currently range from personal selection by individual Superior Court Judges to random selection. The Modoc County Grand Jury is selected by the Superior Court Judge. All prospective Jurors are interviewed to the extent deemed necessary by the Judge to determine that they are legally qualified to serve on the Grand Jury and that they are willing to give the time required for that duty. Thirty of those nominated are selected by the Judge and subpoenaed to appear in Superior Court. The Clerk of the Court then draws nineteen of the thirty names by lot.

One who has been chosen to serve on the Grand Jury but whose service would entail undue hardship on that person or the public shall be excused by the Court. If any Grand Jurors are excused, additional names are drawn until nineteen persons have been selected who can serve. Those not chosen by lot are alternates who can be selected to fill any vacancy on the Grand Jury that occurs during its term.

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.

I. THE GRAND JURY

A. History

The Grand Jury originated in medieval England; it was in use by 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. Initially, the Grand Jury both accused and tried suspects, but the functions were later separated. Its purpose was to prevent oppression by the English crown through a citizens' hearing prior to actual prosecution.

The Constitution of the United States, in the Fifth Amendment, declares that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. Many American states provide for some form of Grand Jury, and of these at least ten execute the civil investigative function. California and Nevada have similar Grand Jury statutes: i.e., they are mandated to conduct civil investigations and audits of city and county government, to insure efficient and proper operation of all local government, and to detect and expose fraud and malfeasance.

Although the Grand Jury concept was abolished in England in 1933, it has established itself in America as an important component of our judicial system. Nonetheless, over the years the Grand Jury system has had its critics and dilution of prestige, and in some ways its significance has waned. It is of concern that some critics of the Grand Jury condemn it without understanding it.

As it exists today, the Grand Jury is a reporting institution, not an acting institution. It is, moreover, a reporting institution with many deliberately-planned limitations and controls. As one reviews Grand Jury achievements in American history and its achievements in California since statehood, it is surprising what it has accomplished, rather than what it hasn't accomplished. No other local institution has been created with so many barriers to its effectiveness; it is composed of lay persons who, in a year's time, must carry out complex tasks, often in ambiguous, unfamiliar circumstances with few resources.

If one fair-mindedly examines its statewide achievements, year after year, one has to infer that the watchdog function of the Grand Jury is an important reason why California local government services and employees are highly regarded nationally. One must conclude that it is difficult to do other than argue for the Grand Jury's fuller development and retention when the American system of representative government depends so critically on the constructive involvement of citizens in public affairs.

B. Duties 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.

A primary function of the Grand Jury is the examination of statutorily designated aspects of city governments, county government, special districts, redevelopment agencies, LAFCO, housing authorities, joint powers agencies, and non-profit agencies established by or operated on behalf of a public entity, ([Penal Code § 933.6](#)); seeing 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.).

It is an inquisitorial and an evaluative body, part of the machinery of government whose objective is the detection and correction of flaws in government (civil) and the exposing of crime (criminal) among its citizens.

The Grand Jury has three ways to exercise its powers:

- (1) Reports: Written reports evaluating conditions 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 employee or officer of misconduct. Similar to indictments except that conviction would result in removal of "Public Officers" from office rather than criminal penalties.

In regard to (1) "Reports," it is suggested that every Grand Jury review the responses to the last Grand Jury's recommendations.

As a matter of courtesy, the sitting Grand Jury should notify the past Grand Jury through its former Foreman or Foreman protem when the responses are received and offer to make them available for review by any of the previous committee chairs. If a former Grand Jury member finds deficiencies in the responses, he may make a formal complaint through the complaint process. The current Grand Jury can then, if it chooses, pursue the matter.

C. Qualifications for Grand Jury Service ([Penal Code § 893](#))

Competency:

- (1) A person is competent to act as a Grand Juror only if he possesses each of the following qualifications:

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

Incompetency:

- (a) A person is not competent to act as a Grand Juror if any of the following apply:
- (b) The person is serving as a trial juror in any court of this State.
- (c) The person has been discharged as a Grand Juror in any court of this State within one year.
- (d) The person has been convicted of malfeasance in office or any felony or other high crime.
- (e) The person is serving as an elected public officer.

D. Compensation for Grand Jury Service

Compensation for Modoc County Grand Jury, service shall be \$10.00 per diem (regardless of the number of meetings attended in any one day). Such per diem payments shall be paid for regular Grand Jury meetings, including indictment or accusation hearings, or for committee meetings or any special assignments authorized by the Grand Jury Foreman or committee chairmen ([Penal Code § 890](#), [§ 890.1](#)).

In addition, Grand Jurors shall receive round-trip mileage from their place of residence to the meeting place at the same rate as Modoc County employees (\$0.31 per mile), pursuant to [Penal Code § 890](#) and [§ 890.1](#).

II. ORGANIZATION

A. Orientation

Each new Grand Jury should acquire a basic knowledge of its responsibilities promptly. An intensive orientation should immediately follow the new Jury's impanelment to enable Jurors to embark upon their duties more easily and capably. Attendance by all members should be mandatory.

The incoming Grand Jury should meet early in its first week in office in order for the members to become acquainted with one another, thus facilitating choices for officers and committee appointments, and to discuss and adopt procedures and rules for its own term.

The Grand Jury should devote time during this period to discussing in detail the Grand Jury Procedures Manual and the outgoing Jury's Final Report. Close attention should be paid to the Summaries of the "Lake County" Case, the "McClatchy" Case, and the "Unnamed minority members Etc. Grand Jury vs. Superior Court" Case, as well as to the conditions of the Ralph M. Brown Act*, which are found in the Appendix of this Manual. Discussions should follow regarding the necessity of alertness to their provisions. Copies of the complete appeals and the full text of the Brown Act are available from the court executive officer.

It would be beneficial to the new Grand Jury at this early time to request information or assistance from the retiring Jurors who are available to meet with them. A good understanding of their newly-assumed duties and responsibilities will result in more effective service rendered by its members.

B. First Meetings

The following are suggestions of activities that might be included in the first few meetings:

1. Get acquainted.
2. The Foreman should select a temporary Vice-Foreman, Secretary, Sergeant-at-arms, and Librarian, with permanent selections made within a month.
3. If possible, establish a regular meeting schedule.
4. Schedule meetings with individuals who can assist the Grand Jury in evaluating its role. Such meetings might include:
 - Outgoing Grand Jurors
 - District Attorney/County Counsel
 - Representative of the Bar Association
 - Members of the Board of Supervisors
 - Other Elected County Officers or Department Heads

- City Officer

A representative of the District Attorney/County Counsel's office may be asked to appear before the Grand Jury to provide information on the requirements of the Modoc County Conflict of Interest Code as it relates to Grand Jury members, such as the filing of Form 730 (Statement of Economic Interest).

The Court Executive Officer may be invited to appear at a meeting to clarify the method of completing the Modoc County Expense Voucher*. At least monthly, claim forms shall be submitted to the Secretary for review, to then be delivered to the Court Executive Officer.

The office of Director of Administrative Services is established by Modoc County. He is an agent of the Board of Supervisors and has general authority and control over all the County departments and functions. He and his staff are a good source of information and of existing data in which the Grand Jury may be interested. In addition, the Director of Administrative Services is intimately familiar with existing policies of the Modoc County Board of Supervisors and other County officers and can often provide Jurors with information which they may need concerning the basic motivations and purposes inherent in the general operation of County government. Often his training and skill in general administration can be utilized by the Jury to great advantage in the course of its investigations. The Director of Administrative Services, when appearing before the Jury, is a witness rather than an advisor.

Everything in the paragraph above also pertains to the City of Alturas. It may be helpful to invite an appropriate city agent, to speak regarding city departments and city functions.

5. Grand Jurors should discuss the possibility of conflicts of interest arising and should establish a procedure to excuse Jurors from involvement in any investigation and voting related to such a conflict.
6. Also discussed should be the possibility of conflicts of interest raised by participation in political campaigns during the Jury's term of service; and that members should be careful not to use the name of the Grand Jury in personal endorsements.
7. Attention should be called to the benefits of attendance at the Annual Grand Jury Exchange Seminar and the necessity of the timely procuring and returning of preference lists of workshops for attendees.
8. Discuss committee structure and determine what standing committees may be appropriate, and members' committee preferences. Through discussions, a consensus should be

arrived at for the objective of initial committee efforts. Five or six committees should be formed in order to get started.

C. Meeting Format

Regarding procedure for those meetings at which the Grand Jury is not considering a special investigation, an accusation or criminal indictment, the following is suggested:

1. Convene promptly at the appointed time and place.
2. Roll call by the Secretary.
3. Read and correct or approve the minutes of the previous meeting.
4. The Foreman will determine what communications should be read, and when indicated, make assignments to committees for necessary action.
5. Hear reports of special committees.
6. Hear reports of standing committees.
7. Attend to unfinished business.
8. Attend to new business.
9. Announce, if possible, the agenda for the next meeting.
10. Presentation of items for the Good of the Order.
11. Adjournment.

As a courtesy to guest speakers, it is suggested that matters to be presented by them should be considered and concluded before proceeding to regular business, whenever this is possible. No witnesses or guests should be present during any of the discussion or handling of Grand Jury business ([Penal Code § 939](#)).

D. Rules of Procedure

1. A quorum consists of at least 12 Grand Jurors ([Penal Code § 940](#)).
2. Twelve (12) affirmative votes are required ([Penal Code § 916](#)):
 - a. to adopt all procedural rules.
 - b. to adopt all final reports.
 - c. for all public actions of the Grand Jury, whether concerning criminal or civil matters unless otherwise prescribed in law.

3. Grand Jury response to correspondence is determined by a majority vote.
4. The Foreman shall preserve harmony in meetings; he may speak on points of order in response to members; and he shall decide all questions of procedure, subject to appeal, as is usual. Voting on any civil or criminal matter is the Foreman's choice. He may choose to vote only when a tie occurs, but the Foreman may always choose not to vote.
5. If at any meeting a member doubts the decision of a vote, he may call for a roll call.
6. When any member is about to speak, he shall address the Foreman, and confine himself strictly to the question under discussion.
7. No Grand Juror shall be allowed to speak on the same subject more than once, except by consent of the Foreman, and then only when all of the members who wish to speak have done so. The Foreman may then allow a Juror to speak a second time, and this privilege is then extended to all members.
8. When a question is under debate, no motion or proposal shall be received but to adjourn, to amend, to lay on the table - for the previous question, to postpone indefinitely, to postpone to a given time, or to commit to a committee. The several motions last mentioned shall take precedence in the order as here arranged. A motion to adjourn shall always be in order, except when a member is speaking, and shall be put without debate.
9. The reader's attention is called to the section "Criminal Junctions," and under subsection "J," "Procedure in Criminal Indictments or Accusations," for -procedure in reconsidering voting in indictment matters.
10. Rules of procedure must be adopted by every Grand Jury and they must contain, at the- minimum,.- guidelines to ensure ([Penal Code § 916](#), [§ 939.9](#)):
 - a. that all findings included in a Final Report are supported by evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two Grand Jurors; and
 - b. that all problems identified in a Final Report are accompanied by suggested means for their resolution, including financial, when applicable.
11. If at any meeting, questions should arise that are not treated above, they shall be decided in accordance with Robert's Rules of Order Newly Revised.

12. During regular meetings of the Jury, including sessions at which guest speakers may be present, Jurors may wear casual clothing, and have beverages and food at their desks. If the status of the guest so requires, these privileges may be restricted by the Foreman.

No rule is intended which will keep the proceedings of the Grand Jury in such a rigid form that matters cannot be informally discussed. There is no reason why meetings cannot be without ceremony, as long as the business is transacted with efficiency and reasonable decorum.

E. Attendance Requirements

It is of great importance that attendance be regular and prompt, both for Grand Jury membership meetings, and for committee meetings. The importance of the work requires that each one be present at all sessions, except for most significant reasons, such as illness or unavailability because of infringement of serious personal demands. If a Juror is unable to attend a session or desires to be excused, he may ask permission. Three consecutive unexcused absences from any meeting may be considered cause for removal of a member from the Grand Jury. The unexpected lack of a quorum causes a great loss of time and money to the individual Jurors affected, as well as to authorities, witnesses, and other invitees.

The Foreman will discuss absences with any Juror whose attendance does not appear adequate for a fair contribution to the work of the Jury. It is well to remember, also, that the public is depending on The Grand Jury to do its job well.

Grand Jurors should schedule the month of May so as to permit maximum attendance

III. OFFICERS

The following are the Grand Jury Officers and their duties:

A. Foreman (by statute appointed by the Presiding Judge)

1. Calls meetings of the Grand Jury; presides at such meetings.
2. Prepares the agenda for each session.
3. Appoints standing and special committees and their chairmen; makes changes in committee assignments when deemed advisable.
4. Acts as ex-officio-member of all committees.
5. May appoint officers. If the Grand Jury so desires, temporary officers may be appointed and reaffirmed by the Jury later in the term. The Foreman fills officer vacancies when necessary.
6. Brings all correspondence to the Grand Jury's attention at business meetings; signs all communications approved by the Grand Jury, with the exception of committee correspondence requesting information.
7. Consults with the Presiding Judge and/or District Attorney/County Counsel when desirable or at the direction of the Grand Jury.
8. Invites the Presiding Judge of the Superior Court to appear before the Grand Jury, as requested by the Grand Jury.
9. Signs all official reports of the Grand Jury, including the Final Report.
10. Ensures committee coordination through consultations with committee chairmen and requests progress reports.
11. Acts as the official spokesman for the Grand Jury.
12. Administers oaths and admonitions.
13. Requests subpoenas of Judge or District Attorney when needed.
14. Signs all indictments and accusations and presents them to the Court.
15. Submits to the Court for review and approval all Final Reports prior to release.

The Foreman must recognize that his 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, he 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.

To a large extent, the success of the Jury will be dependent upon the Foreman's skill in organizing and conducting meetings. The Jury must function as a body rather than as individuals. Since Jurors have diversified experience, interests, and philosophies, this is not an easy task. It is the Foreman's responsibility to try to prevent contentious factions from forming between Jurors. If such should occur, he must devote every effort to maintain a friendly "unity of spirit." He should strive to preside with tact, restraint, consideration, common sense, firmness, and a sense of humor, always keeping open communication between himself and the other Jurors.

B. Vice-Foreman

1. The Foreman pro tempore, in the temporary absence or disqualification of the Foreman, assumes all of the duties of the Foreman, including the authority to administer oaths and admonitions, and to sign indictments. In case of prolonged or permanent disability or ineligibility of the Foreman, the Vice-Foreman will act as Foreman pro tem until a new Foreman has been named by the Court.
2. Assists the Foreman in any other way, at his request.

C. Secretary

1. Minutes

- a. 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:
 - (1) The hour and minute of convening.
 - (2) Call and recording of the roll.
 - (3) Jurors absent from the meeting.
 - (4) Names of persons other than Jurors who may be in the room at any time during meetings, such as speakers, witnesses, the District Attorney, or the Court Reporter.
 - (5) The name of a person entering the Jury meeting and the exact time of such entrance and exit at any time during the meeting.
 - (6) The exact hour and minute when tardy Jurors may appear. The hour and minute any Juror leaves the meeting and time of his return.

- (7) A record of all motions made and seconded and the Jury's action thereon, omitting names of Jurors making and seconding such motions.
- (8) That only members of the Jury remained in the room during deliberations on or voting of indictments.
- (9) That a quorum of at least 12 is present at all times.
- (10) Whether the witnesses called were sworn and advised of their rights as witnesses, if appropriate. Also, whether the witnesses were admonished not to repeat or discuss any of the Grand Jury proceedings after leaving the Grand Jury room.
- (11) A record of reports submitted by the various committees and the Jury's action thereon.
- (12) A record of attendance at all Grand Jury meetings, separate from the regular minutes.
- (13) Every resolution reduced to writing, and adoption or rejection by the Jury.

The minutes of a meeting, properly recorded, will be the best evidence that the procedure followed by the Jury is a proper one.

The Secretary should not keep a record of the votes of individual members. No unanimous vote on any matter should be recorded in the minutes of any meeting, thereby permitting absolute secrecy as to the votes of each and every Juror.

2. Responsibilities

- a. It is the Secretary's responsibility to inform members absent from a Grand Jury meeting of the date of the next meeting.
- b. The Secretary should inform the Foreman
 - (1) Of the presence of anyone other than the Grand Jurors during deliberations or voting.
 - (2) If, at any time, the number of Jurors present is less than twelve.
 - (3) If the swearing of witnesses and advising them of their rights as witnesses, and giving the admonishment not to repeat or discuss any of the Grand Jury proceedings after leaving the Grand Jury room, has been overlooked.

- c. The Secretary should ensure that the Court Reporter is present during all phases of the indictment proceedings except during Jury deliberations and voting; and should also see that each count on an indictment bill is considered separately and that each Juror is polled individually for discussion during an indictment deliberation.

3. Correspondence

- a. A flow chart of correspondence should be maintained by the Secretary.*
- b. The Secretary shall acknowledge receipt of all letters.
- c. At the Foreman's request, a copy of any correspondence shall be supplied to him.
- d. Upon receipt of a letter of complaint or telephoned request for a complaint form, the Secretary shall mail a Grand Jury Citizen Complaint Form* to the complainant- and ask that he please submit his grievance, using the supplied form. Thereupon, after it has been returned and reviewed by the Grand Jury panel, a form letter should be sent to the person advising him that the matter has been referred to the proper committee for attention*. A copy of each complaint should be given to the committee concerned with its investigation, with the original retained for the correspondence file.
- e. All correspondence with complainants should be mailed in plain envelopes which do not identify the Grand Jury, but which do include a return address.

4. General

Many Grand Juries will have no member with secretarial skills. Secretarial responsibility should be assumed by a capable person who is willing to devote extra time to this office. The Secretary need not become a clerk- typist to the Grand Jury. This work may be performed by the Court's executive office's personnel, provided staff resources are available, who shall assure confidentiality. The Secretary can serve on substantive committees.

The Secretary and Librarian should see that the complete and updated file is in order for the succeeding Grand Jury at the conclusion of the Grand Jury's term. The Secretary, together with the assistance of the Foreman and Librarian, should review all Grand Jury records to carefully distinguish between those papers that are relevant and useful to the succeeding Grand Jury, and those that must be destroyed to protect confidentiality of testimony or are irrelevant and of passing interest. Minutes of Grand Jury meetings should be destroyed.

D. Sergeant-at-Arms

The, Sergeant-at-Arms sees that no unauthorized person is present in the Grand Jury room during Jury sessions; that no one other than Jurors are present during deliberations and voting. During presentation of a request for indictment by the District Attorney, no persons other than Jurors, the District Attorney, Court Reporter, witness, and under special circumstances, an interpreter and/or guard for the witness, shall be present. An assistant to the District Attorney should only be present with the approval of the Grand Jury.

E. Librarian

1. The Librarian maintains a record of the work of past Grand Juries.
2. He ascertains whether responses have been received to the former Grand Jury's recommendations.
3. He recommends to the Grand Jury the resubmission of those items for which a reply has not been received:
4. He assists the Foreman and Secretary in reviewing files for destroying or retaining.
5. The Grand Jury files are a part of the Grand Jury Library under control of the Grand Jury Librarian. He will update items in the Grand Jury files on a month-to-month basis.

IV. COMMITTEES

A. General

The Grand Jury cannot be effective if everything is handled by the Jury as a whole. Therefore, the accomplishments of the Grand Jury will depend to a great extent upon the work of its committees. Committees can investigate a great variety of subjects. They can investigate the operations, accounts, and records of the officers, departments, or functions of the County ([Penal Code § 925](#)), but if they attempt too broad an area of investigation, their findings will probably be of little value.

Because the Chairman of a committee is responsible for that committee, no one person should chair more than one standing committee. Chairmen 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 be advised not to attempt serving on more than two standing committees at the same time.

Committee members should feel free to suggest matters of investigation or interest.

B. Selection and Membership

The Foreman, on behalf of the Jury, will appoint committee chairs and assign committee members, based on what he believes will be the best use of their talents and experience. To the extent possible, assignments will conform to the wishes of the member. A Juror desiring a change in his assignment should discuss the matter with the Foreman. A change in chairmanship may be found desirable in some instances. The Foreman should seek the approval of the individual involved and the committee chairman before making any change.

A Juror desiring to be associated with a committee of which he is not a member, may be given status as an associate member, permanently or for a single action or complaint. Permanent status can be given when a Juror has a substantial interest or can make a material contribution to the committee's work.

C. Civil Duties

The responsibility for handling a matter should be placed entirely upon the committee to which it is assigned.

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

Each committee should perform those duties it deems necessary and those referred to it by the Grand Jury.

All committees should:

1. Promptly act upon citizens' complaints referred to them by the Grand Jury. The confidentiality of citizens who bring complaints to the Grand Jury and of witnesses who are called, should be ensured.
2. Interview personnel and users of the public entity under study.
3. Attend meetings, obtain and review minutes, review state and local laws, ordinances and resolutions of entities under study. During their investigations and review of governmental agencies and bodies, Grand Jurors should be alert to possible violations of the Ralph M. Brown Act.

D. Organization, Operation and Policy

Each committee should be structured with at least a chairman and secretary, or designate one of its members to keep written notes or minutes of each of its meetings. Such designee should also be responsible for informing absent committee members of the next meeting.

Committees should establish regular meeting times and should meet with greater frequency than the Grand Jury as a whole. 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 is interested.

Each committee should keep a file on every project, complaint, and matter assigned to it.

A committee may request to have members of the previous Grand Jury meet with it regarding last year's work, particularly in respect to continuing concerns.

Each committee should study the Final Reports of previous Grand Juries. These can be of great aid in determining what aspects of each department bear investigation or review. Responses to previous Grand Jury Reports should also be studied in detail.

Any committee may create sub-committees from among its own members to facilitate the carrying-out of assigned tasks. The creation of a new committee or a change in title or functions may be desirable when it permits a more efficient operation of the committee involved.

E. Inspections, Interviews and Investigations

All Grand Jury investigations, inspections and reviews must be based on valid and truthful observations, reflecting no personal bias. All fact-finding forays shall be made in groups of two or more members in accordance with the law.

Written accounts of these visits made at the time will lead to accurate reporting and provide a further basis for the committee's Final Report.

As a self-educational device, committees will want to arrange tours to various county, city, or district facilities to see first-hand their nature of operation and problems. This should be scheduled early in the term of the Jurors, as such visits often indicate areas requiring greater depth of study or investigation. Suggestions as to improvement of the department should be solicited from both supervisors and staff. It is recommended that all committee members take notes.

Whenever possible, committee chairmen should coordinate inspections so that the same department or physical plant will not be visited by several committees.

A committee member should be excused from participation in any investigation in which he has any conflict of interest.

All committees should maintain an attitude of open-mindedness toward statements made during interviews. All fact-based statements should be independently verified or substantiated.

In order to ask meaningful questions committees should obtain as much knowledge as possible prior to any interviews.

In the questioning which inevitably accompanies Grand Jury investigations, new Grand Jurors may be reluctant to ask questions for fear that they may be interpreted as inconsequential or irrelevant; no such hesitation should be felt if the question is based on a Grand Juror's genuine desire to ascertain the answer. "There is no such thing as a dumb question."

F. Committees' Final Reports

Committees' reports will be submitted to the full Grand Jury in draft form. The Grand Jury will discuss and either approve or refer the draft back to committee for additional work. If approved, the draft report will be submitted to the appropriate editing committee. The edited report will be referred back to the full Grand Jury for discussion/amendment/adoption as a Final Report. Approval as a Final Report requires an affirmative vote by at least twelve (12) members.

G. Suggested Committees

The committees suggested below are examples only. The Grand Jury can modify them as desired or necessary.

1. Audit and Finance

The Audit and Finance Committee should provide for the completion of all of the audits of the County required by law

([Penal Code § 925](#)). The performance of this duty generally requires the employment of an accountant or auditor. The Audit and Finance Committee should work closely with the contract auditor and should concern itself with the accurate and most efficient conduct of County government, and should review the contract auditor's report and make recommendations with these concerns in mind. The audit reports are considered to be part of the Grand Jury's Final Report.

2. Local Government

The Local Government Committee should concern itself with any investigations of the offices of city and county government:

Special Districts -- Redevelopment Agencies -- Joint Powers Agencies -- Housing Authorities -- LAFCO -- Non-profit Organizations/Corporations established by or operated on behalf of a public entity over which the Grand Jury has jurisdiction.

3. Criminal Justice/Public Safety

The Criminal Justice/Public Safety Committee should investigate and report on matters concerning:

Detention Facilities -- District Attorney -- Municipal and Superior Courts -- Court Officers -- Criminal Complaints -- Police Conduct -- Probation -- Public Defender -- Sheriff/Coroner -- Animal Control -- City Police Department -- Fire Departments -- Emergency Services.

4. Editorial Committee

The Editorial Committee acts as editor for all draft, reports, including draft Final Reports, making changes for ease of reading, uniformity-of --style and organization, and coordination of the report as a whole, without changing the content thereof. Court staff and resources are available to assist. The draft report is submitted to the Grand Jury for approval as edited.

5. Education

The Education Committee should concern itself with the public school districts, the County Office of Education and public libraries within the County.

Subject to the provisions of [Penal Code § 933.5](#) the education committee may investigate the books and records of any county, school district, or county office of education. Under [Penal Code § 917](#) and § 919, a school district may be investigated if there is cause to believe that the district's officials are guilty of crimes or other misconduct in office.

The scope of any investigation into public schools may not include the evaluation of teachers and principals by officials of the school district nor policy or curriculum decisions.

6. Grand Jury Review and Procedures

The Grand Jury Review and Procedures Committee should keep itself informed of legislative proposals which would affect the Grand Jury. The Committee should arrange with its legislative representatives to receive copies of all bills introduced in the State Assembly and Senate which pertain to the Grand Jury. It should keep the Grand Jury Procedures Manual current by incorporating legislative changes, Committee recommendations and suggestions for Grand Jury reform or improvements. This information is generally available from the local legislator's office. This Committee may also consider and suggest, as appropriate, any needed revision in Grand Jury selection and orientation procedures.

This Committee should be responsible for maintenance of a current file of materials pertinent to Grand Jury activities, which should include complaints and investigative reports and Law Review articles. This file should be available to all jurors and be passed on to future Grand Juries. It should be brought up to date annually. The Grand Jury Review and Procedures Committee should critique and distribute all important materials of this kind.

This Committee may, at the direction of the Grand Jury, communicate with other California Grand Juries in order to discuss common problems, issues and procedures, to expand research capabilities and reference sources, and to coordinate efforts in matters of common interest.

The Librarian is an ex-officio member of this Committee, and in the event that no Procedures Committee is created, the Librarian fulfills the essential duties thereof.

7. Health

The Health Committee should concern itself with all aspects of health care operations in the County; including:

County Health Programs -- Mental Health -- Public Health.

Liaison should be established with the Social Services Committee.

8. Planning and Environment

The Planning and Environment Committee should consider all matters, departments and agencies having an impact on the environment, such as:

Agricultural Commissioner -- Airport -- County Service Areas -- Environmental Aspects Regarding Pollution -- Flood Control Districts -- Local Agency Formation Commission -- Parks and Recreation Department -- Planning Commission -- Planning Department -- Planning Program -- Roads -- Special Districts (water, lighting, sanitation, cemetery, etc.).

9. Public Buildings and Properties (Public Works)

The Public Buildings and Properties Committee should conduct inspections to determine the maintenance and physical quality of as many City and County properties as they can visit during their term.

10. Social Services

The Social Services Committee should concern itself with facets of public social services of the County and cities including:

Adult and Child Protective Services -- Occupational Programs -- Senior Citizens' Programs -- Veterans' Service -- Welfare Programs -- Public Administrator/Public Guardian -- Public Assistance.

11. Ad Hoc Committees

Ad Hoc Committees should be formed as needed with members appointed by the Foreman in consultation with other officers with the concurrence whenever practical, of the Grand Jury as a whole.

It may be advantageous to combine certain committees, such as Education and Health.

V. CIVIL FUNCTIONS

A. Investigations

One of the first duties of the Grand Jury is to inquire into any charges of willful or corrupt misconduct in office by public officials within this County. However, a Jury should not engage in indiscriminate meddling. The scope of inquiry should be limited to those subjects that are founded upon knowledge, which come to its attention, not by rumors and reports, but by knowledge acquired from the evidence before them, or from their own observations. If the Grand Jury has reason to believe that willful or corrupt misconduct in office exists, it should investigate the matter swiftly, fairly and fearlessly. 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. The appearance of public officials before the Grand Jury does not in itself suggest malfeasance. 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 becomes not only a responsible officer of the court, but also an accountable critic of City/County 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 a report to the public entity concerned, with recommendations and instructions to respond in a timely manner to such findings and recommendations in the report.

B. Accusations

According to [Penal Code Section 919\(c\)](#) "the Grand Jury shall inquire into the willful or corrupt misconduct of public officers of every description within the county."

The penalty for willful or corrupt misconduct in public office is removal from office. Just what constitutes willful or corrupt misconduct justifying removal from office may present a rather technical question upon which the Grand Jury should seek legal advice.

If the Jury finds such misconduct, it may make the charge in the form of an accusation. An accusation is a written statement presented by the Grand Jury, charging a public official with willful or corrupt misconduct in office. (See [Penal Code § 922](#) and [Government Code § 3060](#).) It is to be distinguished from an indictment, which is a written accusatory statement charging either a private citizen or government official with a public offense or crime. The penalties differ. Conviction under an indictment may result in either incarceration or fine, or both. But a conviction under an accusation

can result only in the defendant's removal from office. (Refer to Criminal Functions of the Grand Jury for indictment explanation.)

In addition, Grand Jurors are entitled to access without charge to any and all public records within the county for definition of public records, refer to the Public Records Act, Government Code § 6250, et seq.

C. Right to Hold Public Session ([Penal Code § 939.1](#))

Whenever the subject matter of an investigation affects the general public welfare and involves the alleged misconduct in office of government officials or employees, the Grand Jury, together with the Attorney General or the District Attorney, may make a joint written request to the Superior Court for an order directing that a public hearing be held. Though such an event would be unusual, if so ordered, the Grand Jury shall conduct the examination of witnesses in open sessions. All deliberations of the Jury, including the discussions and voting upon such investigation shall be held in private.

D. Grand Jury's Civil Liability Risk

[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 Gillette-Harris-Duranceau & Associates, Inc. v. Kemple (1978) 83 Cal.App.3d 214, the court held 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 was not deemed to be privileged and, therefore, an action for defamation was possible against individual grand jurors for statements made in the grand jury report.

It must be kept in mind that any privilege of immunity that may exist exists only as to matters occurring within the scope of Grand Jury authority. However, particular comments in reports about particular people can be actionable by such persons against individual grand jury members.

E. The Grand Jury as One Body

Although each individual Grand Juror has the right and the duty to act and vote according to the dictates of his own judgment and conscience, he should do so only after consultation and deliberation with his fellow Jurors. It is important, therefore, that each Juror fully and fairly states to his fellow Grand Jurors any, information received by him touching upon 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.

There are distinct limitations as to what the Jury may do in the course of its investigations and reporting. The Grand Jury functions lawfully only as a body. An individual Grand Juror acting alone has no power or authority. And the body of the Grand Jury itself is not intended to be a super-government for this county, nor is it intended that it should interfere with the discretionary policy making or operational powers of government officials.

The Grand Jury represents the public. Therefore, it is each Juror's duty, to think at all times, not in terms of his own or any particular group interest, or in terms of any personalities, but always in terms of the whole 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.

Grand Jurors should strive not to be influenced by sentiment, conjecture, sympathy; public feeling, passion or prejudice, but they should seek to apply the same objective standard of conduct and responsibility to all persons, regardless of race, color, creed, or economic status.

F. Investigatory Assistance

The Grand Jury is authorized to employ auditors to aid in its examination of County financial records, and is empowered to examine books and records of any incorporated city, special district or school district pertaining to fiscal matters. The Grand Jury shall not spend money nor incur indebtedness in excess of the amount budgeted for its investigation activities by the County Board of Supervisors, unless the proposed expenditure has been approved in advance by the Presiding Judge of the Superior Court, after which it shall be presented to the County Board of Supervisors.

The District Attorney/County Counsel and staff are available to aid and advise the Grand Jury in its investigations. The Grand Jury may not, under our laws, use either private or public funds to employ special counsel or special investigators. In the event that the employment of special counsel or special investigators appears necessary, a request should be made to the Attorney General of the State of California.

G. Investigative Procedures

1. Before asking the District Attorney/County Counsel's office for assistance in investigating complaints about public officials, the Grand Jury should answer the following questions:

- a. Is the complaint a civil or a criminal matter? If it is a civil matter, the Grand Jury would be consulting the District Attorney/County Counsel in the capacity of County Counsel -- if criminal, in the capacity of District Attorney.
 - b. Can permission be obtained from the complainant to involve the District Attorney/County Counsel's office in the investigation, using the complainant's name? If the complainant refuses, the Grand Jury may proceed with the investigation through either office without releasing the complainant's name.
 - c. Has there been an identical complaint made to the District Attorney/County Counsel?
 - d. Are there any pending political decisions which might be influenced by public knowledge of the investigation?
 - e. Would it be preferable to meet in private with the complainant to avoid any undue publicity which might have unintentional political influence?
2. The Grand Jury should talk to the District Attorney/County Counsel and staff as early in the Jury's term as possible to ensure effective cooperation between that office and the Grand Jury.
 3. Each Grand Jury should inform the District Attorney/County Counsel that no files of investigations in which the Grand Jury has taken part can be released to any other office or person by them without first informing and seeking the advice and consent of the Grand Jury Foreman.

VI. CRIMINAL FUNCTIONS

A. Jurisdiction

Jurisdiction in matters is limited to persons and organizations within the boundaries of Modoc County and to crimes committed or triable within the County, with certain exceptions.

The California Supreme Court has held that the Jury does not have inherent power to establish its own investigatory apparatus for the detection of crime. Both practice and statute have left this function to law enforcement officials.

B. Secrecy of Proceedings

The proceedings of the Grand Jury must be conducted in the utmost secrecy unless, in the exceptional circumstances provided for by law, the Court should order a public hearing.

In criminal proceedings, the rule of secrecy requires that only the following persons should be allowed in the Grand Jury hearing room: Grand Jury members, the Court Reporter (who must be present during the taking of all testimony), the witness testifying, an interpreter, if appropriate, the officer having custody of a prisoner witness, and the District Attorney or his deputy, who are entitled to be present to question witnesses and to give information and advice to the Grand Jury. More than one member of the District Attorney's office may be present as long as he is assisting in the presentation. The Judge of the Superior Court is entitled to be present to give advice to the Grand Jury, even during an indictment proceeding, but only upon request of the Grand Jury.

All of the foregoing-listed individuals must retire while the jury deliberates, discusses the matter, and votes upon the question before it. Permitting a person not legally entitled to be present, to remain during the testimony given by a witness can result in the indictment being quashed.

C. Rights and Privileges of witnesses/Suspects

A witness called upon to testify before a Grand Jury has certain rights and privileges which the Jury should understand and respect. A Grand Jury, like a Court, may ask only those questions pertinent to the matter immediately under consideration.

The privilege against self-incrimination is manifested by various principles. For example, in a criminal trial the defendant may not be called as a witness without his consent. Likewise, in the Grand Jury's examination of an offense, a person who has already been accused or charged with the commission of the crime, may not be called as a witness, except at his own request. If there is no case pending at the time the matter is presented to the Grand Jury, the witness is not a defendant, but only a suspect. As such, he can be

required to appear before the Grand Jury and be sworn. He should then be admonished that he has a privilege and is a competent witness only at his request.

Thereafter, the suspect, as any other witness, may refuse to answer questions on the ground that his answer may tend to incriminate him.

Broadly speaking, it should be pointed out that if a suspect does assert the privilege of refusing to answer, that statement cannot be held against him when an indictment is being considered, nor can it be considered evidence in support of an indictment.

If the question is of such a nature that an answer to it may or may not tend to incriminate him, the answer must rest with the witness, who alone knows what the answer would be, whether he shall answer the question. The motive for claiming the privilege of self-incrimination is immaterial. The privilege must be protected without consideration of motive or interpretation of guilt. However, if a witness asserts the privilege against self-incrimination, the District Attorney may cite him before the Superior Court to determine if the privilege has been properly invoked.

An accused is not entitled, as a matter of law, to be heard by a Grand Jury and is not entitled to have witnesses examined by the Grand Jury, unless it calls for them. An accused who offers himself as a witness voluntarily may be examined after proper admonition as to his rights, regarding all matters brought out in his testimony. The accused may not claim the privilege against self-incrimination during cross-examination. If a witness voluntarily gives testimony of an incriminating nature, an indictment may be founded on it.

Under no circumstances is an accused person to be accompanied by his attorney into the Grand Jury room.

D. Granting of Immunity

No statement should be made to a witness that might be construed as granting immunity for any action he may have taken and concerning which he has testified. Under the law, the Grand Jury does not have this authority. The power to grant immunity to any witness who might later appear as a witness for the People against an individual, is vested in the Judge of the Superior Court.

It is, however, within the Grand Jury's province to recommend that immunity be granted to a witness whose testimony is vitally needed, but fears such testimony, would be self-incriminating, but the Court is not duty-bound to follow such recommendation.

E. Credibility of Witnesses

The Grand Jury, in its deliberations, should discuss the credibility of the witnesses. The credibility of testimony given by any witness is a question solely for the Grand Jury to determine.

F. Evidence

In the investigation of a charge, the Grand Jury can receive no other evidence than that given by witnesses produced and sworn, or furnished by writings, material objects, or other things presented to the senses. The evidence should be legally competent and should not consist of inadmissible hearsay or secondary evidence. The Grand Jury may receive none but that evidence which would be admissible over objection at the trial of a criminal action.

As stated above, the Grand Jury is not required to hear evidence for the accused person. However, if it wishes, it may permit the accused person to appear before it and testify under oath, if he so desires. The Grand Jury is not expected to hear all of the witnesses as fully as would a trial jury. But the Grand Jury should make a full and fair inquiry. An incomplete deliberation may result in a false criminal accusation of an innocent person and may involve a needless trial at considerable expense.

The rules of evidence are voluminous. It is suggested that if the Jury becomes confused with regard to evidentiary rules as applied to a specific case, it should require clarification from the District Attorney.

After considering all of the evidence presented,; the Grand Jury has the right to amend the charges against the accused by making the charges either more or less serious. The Jury should seek the District Attorney's advice as to possible amended charges.

G. Subpoenaed Evidence

The Grand Jury cannot issue a subpoena. This is the function of the Court and the District Attorney. However, on request of the Grand Jury, either the District Attorney or any Judge of the Superior Court may issue a subpoena. Thus, the Grand Jury is empowered to compel the attendance of witnesses and to require the production of books, records, documents and other physical evidence.

The power of subpoena can be used to show innocence. Thus, when there is reason to believe that other evidence will explain away a charge, the Grand Jury may require the District Attorney to issue a subpoena for that other evidence.

H. Indictment Proceedings vis-a-vis Preliminary Hearings

The Grand Jury indictment proceeding is an alternative to a preliminary hearing before a Judge. In this State, a felony prosecution may be initiated by an accusatory pleading referred to as an "information" filed by the District Attorney, or by an indictment found by the Grand Jury. The District Attorney conducts the prosecution of the vast majority of felonies by the filing of an information. Both proceedings are designed to prevent the accused from incurring charges unsupported by the evidence, and to protect against groundless felony trials. Although a defendant in an indictment hearing enjoys substantial constitutional rights, he does not have the rights inherent in a preliminary hearing, such as an informed and detached magistrate who is knowledgeable of the rules of evidence, and the right to review testimony, and confront and cross-examine witnesses.

I. Indictment Proceedings

Historically, members of a Grand Jury have experienced doubts as to the nature of their exact responsibilities and duties in criminal proceedings. It is not the function of the Grand Jury to determine the issue of guilt or innocence. After the indictment is returned, a trial jury decides upon the acquittal or conviction of the indicted person

The District Attorney or his deputy will bring the majority of cases before the Grand Jury, but the State's Attorney General or a special prosecutor may, on occasion, present a case.

If the investigation involves the District Attorney or any of his deputies or employees, none of them may be present unless called as a witness. During such a proceeding, the Attorney General is empowered to employ special counsel and special investigators to investigate and present the evidence.

Reasons cited by the District Attorney for using the indictment proceeding rather than a preliminary hearing are:

1. It allows the prosecution to toll the statute of limitations in the case of an absent defendant. The statute of limitations is automatically tolled when it can be proven that the defendant has fled the local jurisdiction for purposes of avoiding prosecution.
2. It saves time in narcotics cases when a single agent has made many purchases; in complex fraud cases; in cases involving multiple defendants; in murder and kidnap cases, because the Grand Jury hearing is not open to the defense counsel for cross-examination.
3. It permits the continuation of a complex indictment hearing over a long period of time.
4. The District Attorney can use Grand Jury subpoenas, although no formal court proceedings have been started.

5. The secrecy and non-adversary nature of the Grand Jury hearing protects witnesses from embarrassing cross-examination, which would occur during a preliminary hearing, e.g., children, rape victims (however, witnesses will be subject to cross-examination during jury trial); protects an informant or undercover agent's identity; protects witnesses from harm and intimidation (however, this protection is granted only until delivery of the indictment transcript to the defendant, which includes a list of witnesses and their testimony); and protects an innocent defendant when no indictment is returned or accusation presented.

The District Attorney should notify the Grand Jury Foreman of the bringing of an indictment hearing, with as much advance notice as is possible, and should give a realistic estimate of the time it will require.

The District Attorney has made it a practice to explain to the Grand Jury his reason for proceeding through the Grand Jury rather than issuing a complaint and conducting a preliminary hearing. This information has been valuable for the Jurors.

He should explain to the Grand Jury the elements of the crime charged and all principles of the law that they must know in order to discharge their duties, and whether or not there is material evidence which tends to prove innocence.

J. Procedure in Criminal Indictments

At a meeting of the Grand Jury to consider a criminal indictment, the Secretary of the Grand Jury should initially take a roll of the Jury members and keep it in its permanent records to ensure that a quorum of at least twelve, of the same Grand Jurors is present at all proceedings. Should additional meetings be required, the same twelve must be present.

The Sergeant-at-Arms is situated by the entrance of the courtroom to ensure that only permitted persons are present during the meeting. .

Should it be desirable or necessary, the Grand Jury is entitled to have a deputy Sheriff stationed outside the Jury room to preserve order.

The Secretary should:

1. Call the Foreman's attention to the presence of anyone other than Grand Jurors during deliberation and voting.
2. Tell the Foreman if there are fewer than 12 Grand Jurors present at any time during any hearing or investigation.
3. Make sure that witnesses are sworn, advised of their rights and admonished not to repeat or discuss any Grand jury proceedings after leaving the Grand Jury room.

4. Make sure that the Court Reporter is present during all phases of indictment proceedings, except the Grand Jury's deliberation and voting.
5. Make sure that each count of an indictment is considered separately and that each Juror is polled individually for discussion during an indictment deliberation.

The Foreman of the Grand Jury will first swear in the Court Reporter. (See OATHS AND ADMONITIONS)

The Foreman then addresses the Jury as to the provisions of P.C. § 939.5. (See OATHS AND ADMONITIONS.)

The District Attorney will then present witnesses and the Foreman will ask each witness, before he testifies, to raise his right hand and be sworn. (See OATHS AND ADMONITIONS.)

If an interpreter is necessary, the Foreman will swear in the interpreter. (See OATHS AND ADMONITIONS.)

If the investigation of the matter before the Grand Jury may result in a criminal indictment against a witness, the District Attorney should so advise the Foreman, and the Foreman should then admonish the witness as to his privilege against self-incrimination. (See OATHS AND ADMONITIONS.)

If the investigation of the matter before the Grand Jury involves the testimony of a witness, appearing voluntarily, and who is accused or charged with a felony, the District Attorney should so advise the Foreman, and the Foreman should then admonish the witness that any statement he may make may be used for or against him at the time of trial. (See OATHS AND ADMONITIONS.)

If any witness is called before the Grand Jury more than once in connection with the same matter, the Foreman- need not administer a new oath to him, but need only advise him that he is still under his former oath. This rule will not apply in connection with any other matters for which the same witness may be called before the Grand Jury, even though both matters may be heard at the same session of the Grand Jury. Every witness should be sworn in connection with each separate matter for which he is called to testify. (See OATHS AND ADMONITIONS.)

When presenting physical evidence in the Grand Jury room, such as narcotics or marijuana, the District Attorney should have the evidence marked by the Foreman and when legally admitted into evidence, he should request the Foreman to admit such evidence.

In cases involving drugs where the chemist opens the envelopes containing the drugs, the District Attorney should recite the fact that he is unsealing each of the containers and when the chemist concludes his testimony, the District Attorney should reseal the envelopes and recite this fact for the record. The

envelopes should then be delivered to the Foreman and physically attached, if possible, to the proposed indictment.

A motion to reconsider a vote (other than a vote on whether an indictment should be returned) can be made only by a person who voted with the prevailing side. Reconsideration of a question can only be had at the first subsequent meeting, notice having been given at the previous one.

As to a vote on whether an indictment should be returned, only a member who voted for the return of the indictment may make a motion to reconsider an indictment not yet brought before the Court as to which 12 or more of the same persons voted to return the indictment.

As to a vote on whether an indictment should be returned, only a member who voted against the return of an indictment may make a motion to reconsider an indictment as to which less than 12 voted for the return.

K. Examination of Witnesses

Initially, only the District Attorney should examine the witness. After the witness has testified, the District Attorney should ask if any members of the Grand Jury have any further questions of that particular witness. It is advisable for Jury members to funnel questions in writing through the Foreman to the District Attorney to ensure that the questions are legally admissible.

"Off-the-record" questions or discussions between Jurors in the presence of the witness, or with the witness, should be entirely eliminated. When such discussions are held, this appears on the transcript as a notation that an "off-the-record" discussion took place. This notation provides material for argument for the lawyers at the time of trial. Furthermore, such "off-the-record" discussions are* not proper evidence, may not be used upon the trial of the case, and frequently disclose to the witness present the frame of mind of the Grand Jury and the purpose of its entire inquiry.

When a Juror feels that an "off-the-record" discussion is desirable, he should state this fact in writing to the Foreman; then the Foreman, at the conclusion of the testimony of the witness, can ask the witness to leave the Grand Jury room, but to remain upon call in the immediate vicinity.

All proceedings in a death penalty case must be reported. No "off-the-record" discussions are permitted.

When the witness finishes with his testimony, the Foreman will admonish the witness not to discuss his testimony with' any other persons. (See OATHS AND ADMONITIONS.)

Regarding the examination of witnesses coming before the Grand jury, such persons usually do so for the first time. Therefore, to put each witness at his ease (particularly when

there is no possibility of criminal action against him), the District Attorney, if present, or the Foreman, should make such statement as will put the witness at his ease.

Every witness called by the Grand Jury to testify in connection with any matter involving the question of criminal indictment, or an investigation of a nature serious enough to require that the testimony be recorded, should be required to take an oath to tell the truth, to be administered by the Foreman.

L. Duty and Responsibility of Grand Jurors When Voting an Indictment

The Grand Jury must remember that it has the duty to protect the innocent as well as to indict those against whom evidence weighs heavily.

The Grand Jury should take a separate vote each count alleged in the proposed indictment. There may be a case where the Grand Jury feels there is sufficient evidence to warrant an indictment with respect to one count and not sufficient evidence to warrant an indictment on another count under consideration.

The law provides that an indictment should be found on a particular count when a-11 of the evidence before the Grand Jury, taken together, if unexplained or uncontradicted, would, in the judgment of the Jury, warrant a conviction by a trial jury. Only when the evidence before the Grand Jury on a matter under consideration measures up to the standard so fixed by law should it return an indictment, for to do otherwise would be a violation of the oath of the Grand Jurors.

During deliberations and voting on each indictment, only members of the Grand Jury may be present in the Grand Jury room. Each Juror has an equal duty and responsibility and is entitled to be satisfied with the evidence before being called upon to vote. The voting should be open and oral, and it should be conducted by a roll call, and not by secret or written ballot.

The Grand Jury will vote on each case as it is presented prior to the consideration of any evidence in the next succeeding case. The Foreman should sign each indictment at that time and retain it with any evidence relating to that case in his possession.

M. Finding a "TRUE BILL" Or a "NO BILL"

To find an indictment requires the concurrence of at least twelve Grand Jurors, each of whom has heard all of the evidence. A Juror who has not so heard the evidence, is disqualified from participating in the Jury deliberations or voting.

When an indictment has been voted, it must be endorsed "A TRUE BILL," and the endorsement must be signed by the Foreman.

When a "NO BILL" has been voted, the Foreman shall so notify the District Attorney and the Court.

N. Presentation of an Indictment

After the Grand Jury has voted on the last indictment, it shall notify the District Attorney and he will secure the presence of the Superior Court Judge and the Clerk of the Court. All members of the Grand Jury who have participated in the indictment hearing shall be present in the courtroom at the time the indictments are presented. For each indictment, the Foreman will present the original and the appropriate number of copies, together with the exhibits pertaining to each indictment, to the Judge, upon his request.

The Court will then ascertain from the Foreman whether twelve of the same persons have voted in favor of each of the indictments presented to him. The Judge will then cause the indictments to be filed and direct the Clerk to retain the evidence or to return it to the appropriate law enforcement agency.

The District Attorney will usually, at this time, request the amount of bail to be set on each of the bench warrants issued by the Court. The District Attorney will present -the form of bench warrant to the court.

O. Grand Juror Responsibility in Secrecy of Indictments

A Grand Juror cannot be compelled to testify how he or any other member of the Grand Jury voted or spoke. upon any indictment; and a refusal to so testify is not a contempt.

It is a misdemeanor for any Grand Juror willfully to disclose the fact of an indictment having been made for a felony until the defendant has been arrested; and it is also a misdemeanor for any Grand Juror, except when required by a Court, willfully to disclose any evidence adduced before the Grand Jury, or anything which he, himself, or any other member of the Grand Jury has said, or in what manner he has voted or any other Grand Juror has voted on a matter before him. A Juror cannot be questioned by anyone for anything he may say or any vote he may give in the Grand Jury except in the event a charge of perjury is brought against such Juror.

The importance of this rule of secrecy cannot be over-emphasized. It is designed to guard the public interest as well as for the protection of each individual Grand Juror. Any Juror who violates this rule of secrecy is guilty of a misdemeanor and must be dealt with appropriately by the Court. In following this rule, no halfway measures are advisable. Half statements or innuendos by a Grand Juror lead to speculation, rumor, and violations of the rule. The only safe procedure is not to make comments to anyone.

P. Avoiding Libelous Comments

A Grand Juror is not liable for damage resulting to a person to indicted or accused by the Grand Jury. However, this immunity extends only to matters occurring within the scope of Grand Jury proceedings. Any comments in Grand Jury reports upon a person or public official not indicted or accused are not privileged and can, if libelous, be the basis for a charge of civil or criminal libel. (Lake County case, supra.)

Q. General Decorum and Conduct

Although routine meetings may be conducted with a certain degree of informality, those at which witnesses appear should be conducted with as much dignity as would be expected in a court of law. Trial jurors are requested to maintain a proper appearance and demeanor, and a Grand Jury should be equally careful in this regard. Audible expressions on the part of any Grand Juror denoting either approval or disapproval of any witness or testimony presented before the Grand Jury, or in the presence of any guest of the Grand Jury violate appropriate decorum. Approving or disapproving gestures of head, hands or body also violate proper conduct.

When witnesses are called before the Grand Jury to testify, Jurors should not have coffee cups or similar articles in the room.

VII. LEGAL ADVISORS TO THE GRAND JURY

In the performance of its duties, the Grand Jury may, at all times, ask the advice of the Court or of the District Attorney/County Counsel. Unless such advice is asked of the Judge of the court, or County Counsel as to civil matters, they shall not be present during the sessions of the Grand Jury.

A. The District Attorney/Attorney General

The District Attorney of the County may at all times appear before the Grand Jury for the purpose of giving information or advice relative to any matter pertinent to the Grand Jury, and may interrogate witnesses before the Grand Jury whenever he thinks it necessary.

At any time the Grand Jury concludes that money is due to the County and not collected, it may order the District Attorney to institute legal action for its collection.

The Attorney General of the State of California is also available for advice and assistance. A request for his aid may be made by the Grand Jury in writing directly to him.

B. The District Attorney/County Counsel

If at any time the Grand Jury has questions regarding the legality of an investigation, the District Attorney/County Counsel's opinion should be sought before starting an investigation. The Grand Jury should treat these written opinions from either office as confidential unless authorized to release the contents by the District Attorney/County Counsel.

The Jury should say in any correspondence that "it has been advised by legal counsel that...." By saying "legal counsel," the Jury does not indicate to the correspondent who rendered the opinion. The Jury may allow the County Counsel, to be present during sessions pertaining to a question about the legality of the investigation.

C. County Counsel

The District Attorney, as County Counsel, is the civil legal advisor to the County and all of its departments, officers, and commissions, to all school districts in the County, and to a number of other special districts. The Penal Code authorizes the Grand Jury to request the advice of the County Counsel.

The County Counsel is familiar with many of the transactions which may be the subject of inquiry by the Grand Jury. Consequently, in addition to giving general legal advice on County matters, the County Counsel may be able to assist members of the Grand Jury in reviewing special certain matters. County Counsel is available to the Grand Jury and

its committees, to provide assistance in drafting resolutions, preparing reports and related matters.

Inasmuch as the County Counsel acts as legal advisor to the Grand Jury, he is bound by the secrecy restrictions on Grand Jury matters and the confidentiality of the attorney-client relationship.

VIII. REPORTS AND PUBLICITY

A. Reports

A standard format should be used for all reports.

The Foreman signs all official reports of the Grand Jury.

All committee correspondence, reports and press releases must be presented in typewritten draft form to the Grand Jury as a whole for approval. Such material shall be typed in the proper Grand Jury format.

The reader's attention is also referred to the Section entitled "Committees', Final Reports" under "Committees."

The Grand Jury is responsible for issuing a Final Report on the needs and operations of city and county departments as stated by law; also, to report and make recommendations on its own audit of city and county records and accounts; and to report on city and county officials' records and accounts as ex-officio officers of any district; and at all times to literally, interpret Grand Jury authority in investigating matters of civil concern.

Reports on any appropriate subject may be submitted to the Presiding Judge at any time during the term of service of a Grand Jury. "Appropriate" subjects are discussed in the 1988 McClatchy vs. Superior Court decision, with which all sitting Juries should become thoroughly, knowledgeable before attempting investigations or writing reports.

If the Grand Jury finds it practical to release a report at an earlier date than at the completion of its term in order to encourage more serious consideration of its recommendations, it is entitled to do so. All reports must be submitted to the Presiding Judge no later than the end of the fiscal or calendar year of the County during which the Grand Jury was impaneled.

Rules of procedure must be adopted by every Grand Jury and they must contain, at the minimum, guidelines to ensure (a) that all findings included in a report are supported by evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two Grand Jurors and (b) that all problems identified in a Final Report are accompanied by suggested means for their resolution, including financial, when applicable. Every Grand Jury should ensure that any report meets the above criteria. It should be aware of the McClatchy decision, which includes the judicial right to refuse nonconforming Final Reports. The court has held that a minority report which has not been submitted and approved by the full Grand Jury shall not be issued. (Refer to Unnamed Minority Members of the 1987-1988 Kern County Grand Jury v. Superior Court (1989) 208 Cal.App.3d 1344)

Many Grand Juries have a tendency to comment upon local government officials, functions, and services in highly laudable terms in their reports. Whether positive or negative, comments must be clearly justified with substantiating evidence.

A time table and procedure for release of the final Report should be established. It should go to the printer at least by June 1st in order to be ready by June 30th.

The County Counsel should review all reports and advise of any legal concerns. A draft of the Final Report should be submitted to the Presiding Judge of the Superior Court for his review. The Judge cannot alter or recommend any changes other than those of jurisdiction. The report should then be typed in final form, carefully proofread and then taken to the printer for production. Interim Reports should be in final form when submitted to the Judge and have a title page or cover page, must be dated, and signed by the Foreman.

All reports must be kept confidential and in safe storage until they are released by the Court.

One copy of official comments on Final Reports shall be placed on file with the applicable Grand Jury Report by, and in the control of, the currently impaneled Grand Jury where it shall be maintained for a minimum of five years.

B. Release of Interim and Final Reports

The Grand Jury will deliver an Interim or Final Report to the Superior Court. By custom, the Foreman presents the bound Final Report to the Presiding Judge of the Superior Court on the day the next Grand Jury is impaneled. The Grand Jury shall indicate the number of reports to be reserved for each master agency.

Master agency contacts: Modoc County Administrative Services Director; the City Manager; the County Superintendent of Schools and the Administrator of Independent Special Districts. (Master Agency List is attached)

The Court Executive Officer will send a letter, and notify by telephone, each master agency which is the subject of the report. Each department that is a subject of a report will receive a copy of the letter to the master agency. Reports should be made available simultaneously to all news media representatives.

The Court Executive Officer will hold copies of the reports for pick up by the master agencies and/or the affected departments, as well as for purchase by the public. The master agencies will sign for their reports:

The agency or head of the department that is the subject of the report will send its original response to the Presiding Judge of the Superior Court.

The Superior Court will file the original response with the Court Clerk immediately. The Court Executive Officer will provide copies of the report for the Grand Jury.

C. Publicity

The only statute providing for public statements by the Grand Jury is [Penal Code § 939.91](#), which allows a Grand Jury to issue a statement, at the request of a witness before the Grand Jury, which would provide that an indictment was not found against such person, or that the person was called only as a witness in an investigation which did not involve a charge against such person.

Grand Jurors must be on guard against undue publicity. Many matters requiring Grand Jury action can be successfully completed only if absolute secrecy is maintained throughout the inquiry. It is considered a breach of oath for a Grand Juror to discuss any, case after an indictment has been returned, prior to or during the trial of any person indicted. Any such public utterances can prejudice the defense of the defendant when his case comes to trial. Also, any such statements made by a-Grand Juror can properly be ruled as contempt of the trial court which is endeavoring to guarantee the defendant a fair and impartial trial.

Periodic reports of completed investigations are the only avenue through which the public will know the Grand Jury is performing its civil "watchdog" duties other than by issuing a Final Report.

Grand Jury Master Agency List

County of Modoc
Director of Administrative Services
114 East North Street, P.O. Box 1728
Alturas, CA 96101
(233-6426)

City of Alturas
City Clerk
200 North Street
Alturas, CA 96101
(233-2512)

Modoc County Office of Education
Superintendent of Schools
908 West 4th Street
Alturas, CA 96101
(233-7201)

The total number of copies to be printed will depend upon the number of reports, the number of departments that are the subject of reports, the extent of public interest and other factors. Members attending grand jury, seminars should take copies for exchange with other grand juries. Copies also should be mailed to other randomly selected grand juries in the state.

MODOC COUNTY GRAND JURY
GRAND JURY CITIZEN COMPLAINT FORM

The Modoc County Grand Jury receives and, when appropriate, investigates citizen complaints of official misconduct. The following procedures are to be followed in connection with such complaints:

1. All complaints should be in writing and on the form provided. Forms are available from the Grand Jury. Assistance in filling out the form is available when necessary.
2. All forms should be filled in completely and signed by the complainant. All complaints will be treated confidentially. The complainant may be asked to appear as a witness, if necessary.
3. The Grand Jury will review all submitted complaints and will investigate, if appropriate. Acceptance of a complaint does not mean that further investigation will be undertaken or formal action taken.
4. All complainants will be advised of the action taken on their complaint.

Modoc County Grand Jury
205 S. East Street
Alturas, CA 96101
(233-6222)

MODOC COUNTY GRAND JURY

CITIZEN COMPLAINT FORM

DATE: _____ 19____

YOUR NAME: _____

HOME ADDRESS: _____ ZIP: _____

WORK ADDRESS: _____ ZIP: _____

TELEPHONE NO.: (HOME) _____ (WORK) _____

1. PERSON(S), OFFICIAL, DEPARTMENT, OR AGENCY ABOUT WHOM (WHICH) YOU ARE MAKING THE COMPLAINT:

NAME: _____

ADDRESS: _____ ZIP: _____

TELEPHONE NO.: _____

DIRECTOR OF AGENCY, IF APPLICABLE:

2. BRIEF SUMMARY OF PROBLEM (include dates of events and names of persons, officials, departments, and agencies involved. Attach additional sheets, if necessary.)

3. PLEASE LIST THE PERSONS, OFFICIALS, DEPARTMENTS, AGENCIES, OTHER GRAND JURIES OR MEDIA WHOM YOU HAVE CONTACTED ABOUT THIS PROBLEM:

| <u>ENTITY</u> | <u>ADDRESS</u> | <u>APPROXIMATE DATE OF CONTACT</u> |
|---------------|----------------|------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

4. WHO DO YOU THINK THE GRAND JURY SHOULD CONTACT ABOUT THIS PROBLEM?

| <u>NAME</u> | <u>ADDRESS</u> | <u>TELEPHONE NO.</u> |
|-------------|----------------|----------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

5. REASON TO CONTACT THE ABOVE: _____

6. WHAT RESULT DO YOU WANT FROM A GRAND JURY INVESTIGATION?

PLEASE ATTACH ANY CORRESPONDENCE OR SUPPORTING DOCUMENTATION THAT WOULD BE PERTINENT TO THIS COMPLAINT.

Among the many powers and responsibilities of the Grand Jury is the investigation of citizen complaints to assure that all branches of County government are being administered efficiently, honestly and in the best interests of it's citizens. .

All complaints submitted to the Grand Jury will be treated in the strictest of confidence.

Signature of Complainant _____ Date _____

SAMPLE LETTERS

Suggested wordings for letters to complainants:

The 19____ MCGJ has studied the allegations contained in your complaint dated (OR) The 19____ MCGJ has considered the matter of your complaint dated _____.

It is the opinion/judgment of the 19____ MCGJ that the topic of your complaint is not properly within the authority conferred upon it by the California Penal Code; hence, we are taking no further action in this matter.

The 19____ MCGJ has made preliminary inquiries into the circumstances relating to your complaint and considers that no action by the Grand Jury is warranted at this time.

The 19____ MCGJ has no jurisdiction over matters before the courts. Where there have been irregularities in court proceedings or erroneous actions, the person who has been aggrieved is limited to remedial procedures within the court system.

It is with regret that the limited time available to the 19____ MCGJ and the duty placed upon it under California law require the establishment of priorities. In view of other remedies available to you, (name), the Grand Jury is not taking further action on your complaint at this time. It will, however, bear in mind your statements its consideration of related matters.

Your complaint alleging certain charges contains insufficient evidence to warrant study by the 19____ MCGJ. Unless you can support these allegations by specific information including dates, names and acts or occurrences, the Grand Jury will consider this matter closed.

The 19____ MCGJ will bear in mind your statements/complaint in its consideration of related matters. (OR) It will bear in mind your statement in future contacts with the Department. (OR) Although the 19____ MCGJ cannot assist you in your personal complaint, be assured that the information you have provided will be given due consideration in connection with general inquiries in, the related area of government.

CORRESPONDENCE FLOW CHART

| # | DATE OF COMMUNICATION NAME, ADDRESS, AND PHONE OF CORRESPONDENT | SUBJECT MATTER (in brief) | Action Taken BY GRAND JURY; <u>COMMITTEE ASSIGNED</u> | DATE MATTER CLOSED |
|---|---|------------------------------|---|--------------------------|
|---|---|------------------------------|---|--------------------------|

Page ____ of ____

MODOC COUNTY GRAND JURY COMMITTEE REPORT

COMMITTEE: _____

DATE OF VISIT/MEETING _____

COMMITTEE MEMBERS PRESENT: _____

REGARDING DEPARTMENT: _____

LOCATION: _____

PERSONS INTERVIEWED (name and title): _____

PURPOSE OF VISIT/MEETING:

BACKGROUND (attach pertinent materials):

TESTIMONY TAKEN:

FINDINGS:

RECOMMENDATIONS:

SUBMITTED BY:

DATE:

JAIL INSPECTIONS

1. NOISE LEVEL
2. SANITATION
 - (1) BEDDING
 - (2) TOWELS
 - (3) CLOTHING FREQUENCY OF CHANGE
 - (4) RAZORS
3. VERMINOUS PRISONERS
 - (1) PESTICIDE AVAILABLE
 - (2) INFECTED CLOTHING
4. PERSONAL PROPERTY
 - (1) PROPERLY PACKAGED
 - (2) MONEY COUNTS VERIFIED AS REQUIRED
 - (3) ADEQUATE CONTROL OF CASH RECEIVED
5. FIRE SAFETY
 - (1) SMOKE DETECTORS/ALARM SYSTEM
 - (2) FIRE EXTINGUISHERS
6. LOCK UP SECURITY
7. ADEQUATE PERSONNEL
8. SPECIAL CONFINEMENT
 - (1) PROPER USE OF CELL
 - (2) GUN LOCKER
9. EVACUATION PLAN DATE REVISED
10. PROTECTIVE CUSTODY
11. VISITATION
12. TELEPHONE
 - (1) NUMBER OF FREE CALLS ALLOWED AND LOGGED
 - (2) OTHER PHONE AVAILABLE FOR PRISONERS' USE
13. REQUIRED SIGNS POSTED
 - (1) BONDSMAN AND ATTORNEY REFERRAL SERVICE
 - (2) FREE TELEPHONE CALLS
14. FOOD
 - (1) STORAGE
 - (2) PREPARATION
 - (3) SPECIAL DIET
15. EXERCISE
 - (1) OUTDOOR
 - (2) INDOOR
 - (3) LOGGED
16. MEDICAL
 - (1) A. EXAMINATIONS
 - (2) B. AIDS
 - (3) C. EMERGENCIES
17. EDUCATION/JOB TRAINING
18. SUBSTANCE ABUSE PROGRAMS
19. GENERAL APPEARANCE
 - (1) LIGHTING
 - (2) STRUCTURE
20. DATE OF LAST DISTURBANCE
 - (1) A. REASON AND PREVENTIVE MEASURES
 - (2) B. ESCAPES
21. PROCEDURES MANUALS
22. LOG BOOK INSPECTION
23. ADDITIONAL COMMENTS

SUMMARIES OF RELEVANT CASES

GILLET-HARRIS-DURANCEAU & ASSOCIATES, vs. ROBERT C. KEMPLE et al., 83 Cal. App. 3d, 214 (1978)

SUMMARY

"An engineering, land surveying, and architectural services firm brought an action for defamation against individual members of a grand jury. In its report on its investigations of local government affairs (P.C.'s §925-931), the jury had charged that the firm had been negligent, incompetent, and wrong in the performance of its duties. The firm alleged that the statement in the report was untrue. No indictment was returned against the firm, any of its employees, or against any elected or appointed officials mentioned in the report. The trial court ruled that though P.C. §930 attempted to remove civil immunity from grand jury functions, the statute was unconstitutional because the grand jury was a judicial body entitled to be protected in its functions in the same way as courts and the statute constituted an impermissible invasion of the jury's judicial prerogatives.

"The Court of Appeal reversed, holding that, while the grand jury's criminal indictment function was clearly judicial in nature and provided for in the state Constitution, its function in investigating and reporting on local government was a task imposed solely by statute. The court noted that the procedural safeguards available to a defendant in a criminal proceeding were not available to individuals mentioned in the jury's reports on civil matters and held that, under those circumstances, the removal of civil immunity of jury members was justified and not in conflict with the state Constitution."

McCLATCHY NEWSPAPERS vs. SUPERIOR COURT 44 Cal. 3d, 1162 (1988)

SUMMARY

"After reviewing a grand jury's proposed report of alleged irregularities in a county's award of a computer service contract, the superior court found a portion of the report declaring the grand jury's intention to disclose raw evidentiary materials gathered during a secret watchdog investigation, including transcripts of testimony, summaries and analyses of testimony, and documentary exhibits, to be in violation of P.C.'s §939.1 (public sessions of grand jury) and §939.9 (grand jury's actions to be based on direct investigation). The superior court ordered that portion stricken from the report and those named items sealed and marked confidential until further order of the court. On three consolidated petitions, the Court of Appeal, Fifth Dist., ordered the issuance of a writ of mandate directing the superior court to release the materials it had sealed.

"On petitions for hearing filed by an unnamed county employee and an executive of the computer firm, the Supreme Court denied the petitions for writ of mandate or prohibition and discharged all alternative writs. It held that the proposed grand jury report exceeded established legal limits, since such disclosure would be fundamentally inconsistent with governing legislation setting up the parameters of proper grand jury reporting and providing for the secrecy of grand jury proceedings which is essential to the effective functioning of the grand jury system. Accordingly, the court held that the superior court acted properly in striking that portion of the proposed report announcing the intended disclosure and in sealing the evidentiary materials involved."

As regards the secrecy of Grand Jury proceedings, Headnote (6), Page 1164 of the case states:

"The encouragement of candid testimony and the protection of witnesses and their reputations through the secrecy of grand jury proceedings are best achieved when secrecy is maintained even after the conclusion of a grand jury investigation."

Further, on Page 1175 is this statement: "'The grand jury as a public institution serving the community might suffer if those testifying today knew that the secrecy of their testimony would be lifted tomorrow.'"

UNNAMED MINORITY MEMBERS ETC. GRAND JURY, vs. SUPERIOR COURT 208
Cal. App. 3d, 1344 (1989)

SUMMARY

"The Court of Appeal denied a petition for writ of mandate sought by a minority of members of a county grand jury (Kern County), to compel the superior court to order the filing and publication of their separate minority report as part of the grand jury's final report. It held that, since the minority report was never-submitted to the full membership of the grand jury for approval, it was not an authorized report of the grand jury. Accordingly, it held, the superior court properly refused to accept the report for-filing and publication."

RALPH M. BROWN ACT

During their investigations and review of governmental agencies and bodies, Grand Jurors should be alert to possible violations of this Act. Following are pertinent highlights of the Ralph M. Brown Act:

Purpose and Scope

1. The purpose of the Act can be briefly stated. It has been enacted to ensure that all deliberations as well as the actions of local agencies are performed at meetings open to the public and to which the public has been given adequate notice. It is designed to prevent government from being conducted in secret.

Notice of Meetings

2. Depending upon the type of meeting, notices of a meeting must be posted anywhere from 72 hours in advance to immediately, in the case of a continued meeting. There are some exceptions, such as emergencies involving disaster and work stoppages, for example.

Definition of Meetings

3. Almost any gathering where business affairs are conducted constitutes a meeting. This would also include a series of telephone calls. In any event, if a quorum does not exist, there can be no violation. Closed meetings may be held to discuss lawsuits, personnel matters, labor relations, and real estate purchases.

Penalties and Legal Recourse

4. Violations of the Act can result in a misdemeanor charge. Recent legislation also provides for any decisions which are made -in violation of the Act to be set aside. Attorney's fees incurred by the complainant may be reimbursed by an order of the Court.

A copy of the Attorney General's Handbook on Open Meeting Laws is available through the Court Executive Officer.

[GOVERNMENT CODE SECTIONS 54950 \(et seq.\)](#)

OATHS AND ADMONITIONS

1. OATHS

The Oath to Grand Jurors is administered by the Court to all Grand Jurors on the occasion of their impanelment. All others are administered by the Foreman.

(At the request of the person being sworn, an oath may be modified to change the word "swear" to "affirm," and omitting the phrase, "so help me, God.")

a. Oath to Grand Jurors

"I do solemnly swear (affirm) that I will support the Constitution of the United States and of the State of California, and all laws made pursuant to 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, nor 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."

b. Oath to the Court Reporter

When matters involve the question of criminal indictment, or an investigation is of a nature serious enough to require that the testimony be recorded, the Court Reporter should be required to take the following oath:

"Do you solemnly swear that you will faithfully perform the duties of stenographic reporter for this Grand Jury, and that you will well and truly report the proceedings had before this Grand Jury, and when called upon to do so, will furnish a full, true and correct transcript of your notes within the time prescribed by law, and that you will not divulge any of the matters concerning which the Grand Jury is conducting an investigation, the names of any witnesses, or the testimony given by them, until you have been ordered to do so by this Grand Jury?"

c. Oath to Reporter's Transcriber

"Do you solemnly swear that you will not divulge any of the matters concerning which the Grand Jury is conducting an investigation, the names of any witnesses, nor the testimony given by them?"

d. Oath to Bailiff

"Do you solemnly swear that you will support the Constitution of the United States and the Constitution of

the State of California, and that you will faithfully perform the duties of Bailiff for this Grand Jury, and that you will not divulge any of the matters concerning which the Grand Jury is conducting an investigation, the names of any witnesses, or the testimony given by the same, until you have been ordered to do so by this Grand Jury?"

- e. Oath to Officer Charged With Custody of Prisoner Witness While Prisoner is Testifying

"Do you solemnly swear that you will perform the duties required of you for this Grand Jury, and that you will not reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your attendance here unless and until such time as the transcript of this grand jury proceeding is made public?"

- f. Oath to Witness

"Do you solemnly swear that the testimony that you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth?"

(a) Before testifying, an Accused or Charged witness must be given Admonition "b".

(b) Before testifying, a witness Whose Testimony May Result in Criminal Indictment must be given Admonition "c".

- g. Oath to Interpreter

"Do you solemnly swear that you will well and truly interpret (foreign language) into English and English into (foreign language), in the cause now pending before this Grand Jury with your best skill and judgment?"

- h. Oath to Child Witness

"Do you promise that you will tell the truth and nothing but the truth?"

- i. Reminder of Oath (When Person Has Been Previously Sworn in the Same Case in an Extended Proceeding, After a Recess, Or the Witness Retakes the Stand)

"You are reminded that you are still under oath in this matter."

2. ADMONITIONS

a. Admonition to Grand Jurors Before Consideration of a Charge

Before considering a charge against any person, the Foreman shall state to those present:

"I am required by Section [939.5 of the Penal Code](#) to make the following statement, and to inform you that any violation of this Section is punishable by the Court as a contempt:

"The Grand Jury is about to consider the matter of a charge of _____ made by _____ . I direct any member of the Grand Jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party, to retire."'

The Foreman then asks if there is anyone present with such a state of mind. A Juror should disclose any prejudice that might prevent him from being fair and impartial to either the accused or the People of the State of California. If no Juror has such a state of mind, the Foreman should recite this fact into the record. If a Juror states he does have such a state of mind, the Foreman should ask such a Juror to retire and should then recite into the record how many Jurors have retired.

b. Admonition to Witness (Accused or Charged) Before He Testifies

"You have a right, at your own request, but not otherwise, to be sworn and make any statement on your own behalf that you may desire. You are informed, however, that if you are sworn and make any statement, such statement, together with any questions that may be asked of you by the District Attorney, will be taken down in shorthand and become a matter of record, and in the event an indictment is filed against you on this charge, that record may be used either for or against you at the time of your trial. You are not obliged, however, to make any statement whatever, unless you desire to do so. Any statement that you make must be completely voluntary on your part, and with this admonition in mind."

c. Admonition to Witness Before He Testifies (Whose Testimony May Result in a Criminal Indictment)

"You are advised that you have a privilege against self-incrimination; that is to say, you do not have to answer any questions which may tend to incriminate you or subject you to punishment for any crime, and you can refuse to answer any such questions, stating that the answer may tend to incriminate you."

"You also are advised that anything you say can and will be used against you in a court of law; that you have the right to talk to a lawyer; and that, if you cannot afford a lawyer, one will be appointed to represent you before any questioning, if you wish one.

"Do you understand each of these rights? Having these rights in mind, are you willing to testify at this time?"

d. Admonition to All Witnesses Except "b" or "c" Before Being Excused

"You are admonished not to reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury unless and until such time as the transcript of this grand jury proceeding is made public. Violation of this admonition is punishable as contempt of court."

e. Admonition Given. Before Excusing Witnesses "b" or "c" Under These Admonitions

"You are admonished not to reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury unless and until such time as the transcript of this grand jury proceeding is made public. Violation of this admonition is punishable as contempt of court. This admonition, of course, does not preclude you from discussing your legal rights with any legally-employed attorney, should you feel that your own personal rights _ are in any way in jeopardy."

f. Admonition to Child Witness

"You should not discuss anything about this matter with anyone unless your" (mother), (father), or (supply name of guardian), "tells you it is all right."

g. Admonition to Other Persons Authorized to be in Grand Jury Room During Hearing

"You are directed not to discuss or disclose at any time, anything you may have seen or heard during this hearing. Do you understand?"

AN ABBREVIATED LISTING OF BASIC STATUTES GOVERNING THE
INVESTIGATIVE FUNCTIONS AND RESPONSIBILITIES
OF THE CALIFORNIA GRAND JURY

[The new laws added since July 1996 are added in *italics*.]

Penal Code

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| 892 | May | proceed against | a corporation. |
| 914.1 | Shall | ascertain | provides for recovery by the District Attorney of illegal payments of county funds by instituting suit in the name of the county. |
| 917 | May | inquire into | all public offenses committed or triable within the County and present them to the Court by indictment. |
| 918 | (a member) May | declare | to fellow jurors knowledge or reason to believe, that a public offense, triable within the county, has been committed. |
| 919(a) | May | inquire into | the case of every person imprisoned in the jail of the county on a criminal charge and not indicted. |
| 919(b) | Shall | inquire | into the condition and management of the public prisons within the county. |
| 919(c) | Shall | inquire into | .) |
| 920 | May | 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. |
| | Shall | | direct that proper escheat proceedings be commenced when, in the opinion of the Grand Jury, the evidence justifies such proceedings. |
| 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. |
| 925 | Shall | 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, but the Grand Jury shall not duplicate any examination of financial statements which has been performed by or for the Board of Supervisors pursuant to of the Government Code. |
| 925(a) | May | examine | the books and records of any incorporated city or joint powers agency |

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| | | | located in the county. |
| | May | investigate and report | upon 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. |
| | May | investigate and report | upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. A copy of any such report shall be transmitted to the governing body of any affected agency. |
| 926(a) | May | employ | , or any of them. |
| 926(b) | May (with the Board of | Employ consent of the Supervisors) | expert auditors or appraisers to assist in the examination of books, records, accounts, and documents maintained and processed by the County Assessor. |
| 926(c) | May not | contract | for services pursuant to to be performed later than six months after the end of the fiscal year during which the Grand Jury was impaneled. |
| 926(d) | Such contract for expert services | shall stipulate | that the product of that contract shall be delivered on or before a time certain to the then-current Grand Jury of that county for such use as that Jury finds appropriate to its adopted objectives. |
| 927 | May, when requested by the Board of Supervisors, shall | investigate and report | upon the needs for increase or decrease in salaries of the county's elected officials. A copy of such report shall be transmitted to the Board of Supervisors. |
| 928 | May | 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. |
| | Shall | cause | a copy of such report to be transmitted to each member of the Board of Supervisors of the county. |
| 932 | May | order | the District Attorney to institute suit to recover any money that may from any cause be due the county following investigation of books and accounts of the various officials of the county. |
| 933(a) | Shall | submit | no later than the end of each fiscal or calendar year of a county, a Final Report of its findings and recommendations that pertain to county government matters other than fiscal matters, to the Presiding Judge of the |

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| | | | Superior Court. |
| 933(b) | Shall | submit | no later than the end of each fiscal or calendar year of a county, a Final Report of its findings and recommendations that pertain to fiscal matters of county government of the previous fiscal year, to the Presiding Judge of the Superior Court. |
| 933(c) | <i>Respondents Shall</i> | <i>comment</i> | <i>to the presiding judge</i> <ul style="list-style-type: none"> • <i>public agencies within 90 days</i> • <i>elected county officer or agency / department head within 60 days</i> |
| 933.05(a) | <i>Respondents Shall</i> | <i>Indicate one of the following</i> | <i>for each finding:</i> <ol style="list-style-type: none"> <i>(1) agrees with the finding</i> <i>(2) disagrees wholly or partially with the finding...specify the portion of the finding that is disputed and shall include an explanation</i> |
| 933.05(b) | <i>Respondents Shall</i> | <i>Indicate one of the following</i> | <i>for each recommendation:</i> <ol style="list-style-type: none"> <i>(1) has been implemented, with a summary regarding the implemented action.</i> <i>(2) has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.</i> <i>(3) requires further analysis, with an explanation and the scope and parameters of an analysis or study, ... shall not exceed six months from publication of the grand jury report.</i> <i>(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.</i> |
| 933.05(c) | <i>Board of Supervisors and agency or department head shall</i> | <i>submit</i> | <i>if requested by the grand jury, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer</i> |
| 933.05(d) | <i>May</i> | <i>request</i> | <i>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.</i> |
| 933.05(e) | <i>shall</i> | <i>meet</i> | <i>with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.</i> |
| 933.05(f) | <i>Shall</i> | <i>provide</i> | <i>to the affected agency a copy of the portion of the grand jury report</i> |

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| | | | <i>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.</i> |
| 933.1 | May | examine | at any time the books and records of any redevelopment agency, housing authority, or joint powers agency. |
| | May | investigate and report | upon the method or system of performing the duties of such agency or authority. |
| 933.5 | May | examine | at any time the books and records of the Local Agency Formation Commission (LAFCO) or any special-purpose assessing or taxing district located wholly or partly in the county. |
| | May | investigate and report | upon the method or system of performing duties of such districts or LAFCO. |
| 933.6 | May | examine | at any time 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. |
| | May | investigate and report | upon the method or system of performing the duties of such nonprofit corporation. |
| 939.1 | May | request | the court to determine whether to conduct a grand jury investigation in public session if the matter affects the general public welfare. |
| 939.2 | May | request | issuance of subpoena(s) by the Superior Court requiring attendance of witnesses whose testimony is material to an investigation. |
| 939.3 | May | compel | proceedings under , if Fifth Amendment protection is claimed. |
| 939.4 | <i>The foreman May</i> | <i>administer oath</i> | <i>to any witness appearing before the grand jury.</i> |
| 939.5 | <i>The foreman Shall</i> | <i>direct</i> | <i>Before considering a charge against any person, the foreman of the grand jury shall state to those present the matter to be considered and the person to be charged with an offense in connection therewith. He shall direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire. Any violation of this section by the foreman or any member of the grand jury is punishable by the court as a contempt.</i> |

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| 939.6 | Shall | receive | only such evidence in the investigation of a charge as would be given by witnesses produced and sworn, or furnished by writings, material objects, or other things presented to the senses, or contained in a deposition that is admissible under Subdivision 3 of ; or only evidence admissible over objection in trial of a criminal action, unless such evidence is sufficient to support the indictment. |
| 939.7 | Shall | weigh | all the evidence submitted to it and when the Grand Jury believes that other available evidence will explain away the charge, it shall order the evidence to be produced. May Require the District Attorney to issue process for the witnesses. |
| 939.8 | Shall | find | an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would warrant a conviction by a trial jury. |
| 939.9 | Shall | make | no reports, declaration, or recommendation on any matter except on the basis of its own investigation |
| 939.91(a) | Shall | report and declare | at the request of a person charged and investigated in a criminal matter based on insufficient evidence, that no grounds for indictment exist. |
| 939.91(b) | Shall | report and declare | at the request of a person called as a witness in an investigation which did not involve a charge against such person, that he was called only as a witness in the matter. Reports and declarations of (a) and (b) shall be issued by the end of the Grand Jury's term. |
| 940 | Shall | find and return | an indictment, with the concurrence of at least 12 Grand Jurors, which must be endorsed "A True Bill," and the endorsement must be signed by the Foreman of the Grand Jury. |

Government Code

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| 3060 | May | present | 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. |
| 3061 | Shall | state | the offense charged in ordinary and concise language, and without repetition. |

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| 3062 | Shall | be delivered | by the Foreman of the Grand Jury to the District Attorney of the county, an accusation voted by the Grand Jury. |
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Welfare and Institutions Code

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| 17006 | May | inquire | into welfare records pertaining to investigation, supervision, relief and rehabilitation of welfare recipients. |
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A MORE EXTENSIVE LISTING OF
PERTINENT PROVISIONS OF THE LAW

This Procedures Manual is not all-inclusive of the Codes quoted. Areas not directly pertinent to Modoc County are not included. For the Codes in their entirety, see the appropriate Code Book.

[The laws have changed since July 1996. This page has been completely changed except for general organization]

CONSTITUTION OF CALIFORNIA

ARTICLE 1, § 23

One or more grand juries shall be drawn and summoned at least once a year in each county.

CODE OF CIVIL PROCEDURE

§193 DIFFERENT KINDS OF JURIES

Juries are of three kinds:

- (1) Grand Juries *established pursuant to Title 4 (commencing with Section 888) of Part 2 of the Penal Code.*
- (2) Trial Juries
- (3) Juries of Inquest

EXCUSE FROM JURY DUTY

§204b. An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council.

§218. The jury commissioner shall hear the excuses of jurors summoned, in accordance with the standards prescribed by the Judicial Council. It shall be left to the discretion of the jury commissioner to accept an excuse under subdivision (b) of Section 204 without a personal appearance. All excuses shall be in writing setting forth the basis of the request and shall be signed by the juror.

§219. (a) Except as provided in subdivision (b), the jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire.

(b) (1) Notwithstanding subdivision (a), no peace officer, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivision (a) of Section 830.33, of the Penal Code, shall be selected for voir dire in civil or criminal matters.

(2) Notwithstanding subdivision (a), no peace officer, as defined in subdivisions (b) and (c) of Section 830.2 of the Penal Code, shall be selected for voir dire in criminal matters.

PENAL CODE

§888. JURY DEFINED

A grand jury is a body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

§893a PERSONS COMPETENT TO ACT AS JURORS

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

- (1) He is a citizen of the United States of the age of 18 years or older who shall have been a resident of the state and of the county or city and county for one year immediately before being selected and returned.
- (2) He is in possession of his natural faculties, of ordinary intelligence, of sound judgment, and of fair character.
- (3) He is possessed of sufficient knowledge of the English language.

§893b PERSONS NOT COMPETENT TO ACT AS GRAND JURORS

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

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

Note: The code sections originally appended here to the original version of this Procedures Manual have been replaced with the current downloaded versions from the California Legislative web site

<http://www.leginfo.ca.gov/>.