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Investigation of Local Government by the Grand Jury: Notes from Santa Clara County

In California, as in many other states, a grand jury is not only an arm of the judiciary for purposes of criminal accusations, but is also charged by statute with responsibility for conducting investigations into the organization and operation of county government and its subsidiary agencies. That such extra official inquiry is desirable will be assumed for present purposes. The question on which these notes are intended to shed some light is the adequacy of the grand jury as an instrument for this purpose, as may be indicated by the experience of grand juries of Santa Clara County during the period from 1949 to 1961. Substantial reasons exist for suspecting that these grand juries have been less than completely effective in their performance of the inquisitorial function. At least, that seems to be the opinion of several former jurymen whose views were sought for this study.¹

The requirements for investigating effectively the organization and operation of county government logically would seem to be a function of the character of the subject compared to the skills and instruments used for the task. A measure of the success achieved would be found most readily in the effect, positive or negative, produced by the work.

That the government of Santa Clara County is and has been for the period under review an operation of substantial magnitude becomes apparent from even a cursory look at the record. Santa Clara County has an area of 1,328 square miles.² In 1950, the population was 290,547, and in 1960, it was 642,315.³ This represents an increase in population during the decade of 351,768. During the same decade, the assessed valuation of taxable property in the county rose from \$349,502,885 in 1950 to \$1,266,359,970 in 1960.⁴ In 1950, the county employed 1,193 persons in classified civil service

¹ Oral interviews were conducted with several former jury members, including foremen and jury committee chairmen, to ascertain their views on the effectiveness of the grand jury's work. In the interest of promoting frank responses, their names will not be revealed.

² BIGGER, IVERSON, JAMISON, KITCHEN, & STANIFORD, *COUNTY GOVERNMENT IN CALIFORNIA* 116 (3d ed. 1958).

³ Research Department, Greater San Jose Chamber of Commerce, *San Jose Data Sheet* (1961).

⁴ *Ibid.*

positions and in 1960 the same service included 2,642 persons.⁵ In 1958, the variety of functions performed by county governments in California had grown to over nine hundred in number.⁶ In 1960-61, these persons were employed in performing these functions at a cost of \$53,253,553, more than twice the cost of a decade earlier.⁷

During a comparable period there have been in existence in the county an average total of about seventy special districts,⁸ of which those under direct county control added to the cost of local government in 1960-61 some \$7,899,137.⁹ Since this kind of special district seems quite clearly to be within the investigative jurisdiction of the grand jury, this brings the total funds subject to such review for 1960-61 to \$61,152,690. If special districts with ex-officio or locally elected governing boards are added to these figures, as being within grand jury purview, they add for the 1960-61 fiscal year some \$107,895,790.82 to the public funds.¹⁰ This brings the total public monies open to grand jury inquiry for that year to \$169,048,480.82.

If the government of Santa Clara County is indeed a large and complex institution, as is suggested above, then logic, to say nothing of experience, would indicate that complex and refined analytical skills are needed to conduct successfully a useful inquiry into the organization and operation of this machinery. This is not meant to suggest that the untrained layman cannot comprehend the activities of government and criticize them intelligently. But to investigate the organization and methods of large agencies for the purpose of discovering any such subtle aberrations as administrative inefficiency, ineffective organizational patterns, or inadequate economy, requires more talent and training than even the intelligent layman normally possesses. When administrative managers wish to know whether such phenomena exist in their organizations, they normally employ the services of specially trained administrative analysts. Many large administrative agencies employ such persons as permanent full-time staff members. Such professional assistance is particularly necessary when the subject of investigation is financial records. Normally, also, effective administrative analysis requires the kind of thorough familiarity with the internal workings of an agency which can be acquired only by the expenditure at very close range of considerable amounts of time.

⁵ County of Santa Clara *Merit System Annual Reports* (1950-1960).

⁶ BIGGER, IVERSON, JAMISON, KITCHEN & STANIFORD, *op. cit. supra* note 2, at 2.

⁷ County of Santa Clara *Final Budget* (1950-1961).

⁸ State Controller, California, *Annual Report of Financial Transactions Concerning Special Districts of California* (1954-1959).

⁹ County of Santa Clara, *Final Budget* (1960-1961).

¹⁰ *Ibid.*

In order to assess the adequacy of a grand jury for the performance of investigative functions as these are statutorily described, a comparison must be made between the requirements of the task, the authority of the grand jury to investigate, and the abilities and characteristics grand juries bring to the task. The magnitude of the job has been suggested by the figures and discussion above.

AUTHORITY TO INVESTIGATE

The authority of the grand jury to investigate various aspects of government rests upon statutory direction, most of which is found in the California Penal Code. The area of authority to investigate is confined to county officers,¹¹ special purpose assessing or taxing districts located wholly or partly in the county,¹² and hospital districts organized within the county.¹³ A reasonable construction of the statutory language would appear to exclude cities and their subsidiary agencies from the general investigative jurisdiction of the grand jury, except for criminal matters.

The statutes confer upon the grand jury authority to look at the books, records and account of all county officers and of all hospital districts organized within the county.¹⁴ Authority is also given to inquire into the "needs" of all county officers, including the abolition or creation of offices and the methods, systems and equipment for performing the duties of the several offices.¹⁵ Special authority is given to investigate the salaries of county supervisors, the district attorney and the auditor.¹⁶ The grand jury is also empowered to investigate the ownership, sale or transfer of lands which might or should escheat to the state.¹⁷

The statutes are not explicit on the question of what the grand jury is to look for in conducting its inquiries. Malfeasance is, of course, an obvious object of discovery.¹⁸ Beyond this point, however, the statutory language is ambiguous and provides no clear prescription of the purposes to be achieved by investigation. For example, there is no statutory direction to the grand jury to look for evidence of extravagance in the expenditure of public funds, nor for administrative incompetence or inefficiency. Only in the broad language of direction to investigate the organization, methods, and needs of

¹¹ CAL. PEN. CODE §§ 925, 928.

¹² CAL. PEN. CODE § 933.5.

¹³ CAL. PEN. CODE § 925.

¹⁴ CAL. PEN. CODE §§ 925, 933.5.

¹⁵ CAL. PEN. CODE § 928.

¹⁶ CAL. PEN. CODE § 927.

¹⁷ CAL. PEN. CODE § 920.

¹⁸ CAL. PEN. CODE §§ 919, 921.

county officers is there any special hint that something other than criminal offenses may be the object of inquiry.¹⁹

Since most of the Penal Code sections dealing with grand juries were revised by the legislature in 1959,²⁰ there is as yet little judicial interpretation of the meaning and application of the ambiguities. Nor does a survey of the case law prior to 1959 help much, since almost all of it relates to the functions of criminal accusation. In a charge to the Los Angeles County Grand Jury in 1952, Richards, P. J. asserted that "You will not institute or prosecute an investigation on the chance or speculation that some crime may be discovered. . . . From the time of adoption of our Constitution to the present, the accepted practice has been to leave the detection of crime in the hands of sheriffs and district attorneys."²¹ Thus the grand jury "is not to act as a supervising administrative agency over the public officers in the county by inquiring into any of their activities it may choose; it is only to inquire 'into the willful or corrupt misconduct in office' of such officers."²² How a grand jury is to inquire into corrupt misconduct (presumably a crime) but leave the investigatory detection to others, is a point not made clear.

Grand juries, including Santa Clara County's, have largely ignored in practice the admonitions delivered by Judge Richards, as a casual perusal of their reports clearly demonstrates. They have acted as "supervising administrative agencies" and have inquired frequently into any activities they chose. Whether the statutory revision of 1959 was intended to rationalize this situation by conferring upon the grand jury a power of administrative supervision is not clear from the statutory terms. The inclusion of the 1959 legislation in the Penal Code, rather than the Government Code, may or may not be indicative of what the legislature intended, assuming the legislature had any discernible intention.

Summarily, the inquisitorial jurisdiction of the grand jury pretty clearly does not include municipal affairs, intergovernmental relations as such, or the operations of state agencies. Precisely what is included cannot be stated with any such clarity. If the grand jury is supposed to be a kind of small scale, annually-renewed Hoover Commission on county government, this intention does not emerge unequivocally from the language of the Penal Code.

¹⁹ CAL. PEN. CODE § 928.

²⁰ *Cal. Stats.* 1959, c. 501.

²¹ As quoted in Kennedy & Briggs, *Historical and Legal Aspects of the California Grand Jury System*, 43 CAL. L. REV. 251, 264 (1955).

²² *Id.* at 265.

QUALIFICATIONS FOR JURORS

Assuming that a grand jury can inquire in some fashion into most of the broad spectrum of county and special district government, what qualities of competence, money and time is it able to bring to bear on this task? Again, the statutory prescriptions are vague. A person is competent to serve as a grand juror if he is a citizen of the United States who has resided in California and in the county for one year immediately before being selected and returned, is at least 21 years old, is in possession of his natural faculties, is of ordinary intelligence, is of fair character, is of approved integrity, is of sound judgment, and is possessed of sufficient knowledge of the English language.²³ He is disqualified for service if he has been discharged as a grand juror in any court in the state within one year previous, if he is currently serving as a trial juror in any court in this state, if he has been convicted of malfeasance of office or any felony or other high crime, or if he is infirm or decrepit.²⁴ The pattern of exemptions provided for trial jurors also applies to grand jurors.²⁵ It might be useful to note summarily that the defining adjectives used with the personal qualities prescribed — natural, ordinary, sound, fair, approved, sufficient — are distinctly imprecise. Almost any reasonably normal, healthy adult can meet these criteria.

The statutes provide that the judges of the superior court shall select names of persons they deem qualified to compose an eligibility list. The only restraint on judicial discretion is that names shall be selected from different wards or judicial districts of the county in proportion to their population.²⁶ Then, by a slightly complex and unsystematic procedure, which is not relevant to this discussion, a grand jury of 19 members is impanelled from this list. The important point here is that the procedure allows a wide range of discretion to the judges in selecting the "venire" for the jury.²⁷

In the statutes, then, there is no assurance that grand jurors need or will have any competence logically prerequisite for the formidable inquisitorial tasks they are evidently supposed to perform. Judicial discretion must provide such assurance, if it is to be provided at all.

SELECTION IN SANTA CLARA COUNTY

The actual practice in Santa Clara County may shed some light on the judges' view of the competency required. Data were available on 211

²³ CAL. PEN. CODE §§ 893, 897; CAL. CODE CIV. PROC. § 198.

²⁴ CAL. PEN. CODE §§ 893, 897.

²⁵ CAL. CODE CIV. PROC. §§ 200-202.

²⁶ CAL. PEN. CODE § 899.

²⁷ CAL. PEN. CODE §§ 896, 903.3, 903.4.

persons listed as eligible jurors during the period from 1949 to 1960. Of these, 132 were classifiable occupationally as business people, 30 as housewives, 19 as professionals, 17 as retired (previous occupation unknown), and 12 as farmers. One juror was listed as a former government employee. Included in the above figures are 9 representatives of labor organizations. There were no persons classified primarily as clerical or hourly wage-earners. These figures probably do not prove much, except to indicate the prevalence of a business-type competence in grand juries.²⁸

While the grand jury is not designed or intended to be a representative body, the geographical distribution of the jurors may be of some interest. About two-thirds of the jurors during the period 1949-1961 were listed as residents of San Jose. The remainder were distributed among eleven other cities in the county, with no apparent relation to their population. The statutes of 1959²⁹ require distribution among wards or judicial districts mentioned above, but it is too early to discover whether the prescription is being followed. The data available also indicate that of the 13 foremen of the grand juries (who are appointed by the court), from 1949 to 1961, 6 were from San Jose.³⁰ Apparently, the chances of being selected for grand jury service are considerably higher for San Jose businessmen than for any other group.

Since the evidence heretofore cited lends no particular support to the idea that grand jurors in Santa Clara County necessarily have any special competence for their tasks when selected, perhaps it can be assumed that time on the job and the experience thus acquired would compensate for such deficiencies. But in California, at least, such can hardly be. The law prescribes the impanelling of a grand jury at least once each year.³¹ It does not prescribe how long the jury will sit during that year, nor how much time they will spend investigating. It also forbids a jury to hold office more than one term, and forbids jurors serving on consecutive juries.³² Since service on the grand jury is not a full-time job, this means the jurors necessarily have such portion of about one year (or, in a few cases, eighteen months) as they can and will commit to learning their job and performing it. Of the several foremen of Santa Clara County grand juries interviewed for this study, all agreed that the jury's job is a formidable one, and that the time available to them was inadequate. The job was deemed too much to be

²⁸ Data compiled from analysis of records of jury commissioner and Superior Court of Santa Clara County.

²⁹ CAL. PEN. CODE § 899.

³⁰ From records of Santa Clara County.

³¹ CAL. CONST., art. I, § 8.

³² CAL. PEN. CODE §§ 893, 905; CAL. CODE CIV. PROC. § 199.

learned quickly, and no experience could be carried over into the subsequent year. There was general agreement among them that statutory provision for some holdover service was highly desirable.

INDEPENDENT EXPERTS

If, then, there is no assurance that a grand jury has pertinent competence, and no reasonable basis for believing that such competence can be acquired during a jury term, perhaps the defect can be met in part by employing competent assistance outside of the jury's ranks. Statutes provide authority for the grand jury to employ experts for the purpose of making an annual examination of the books, records, and accounts of all officers of the county and of the hospital districts organized within the county.³³ The court is given authority by the same code section to approve the employment and rate of compensation of such experts. The funds for such expert assistance are made a charge on the county general fund, to be paid by the treasurer upon warrants drawn by the auditor upon the written order of the judge of the superior court.³⁴

A reasonable construction of this statutory language would indicate that authority to employ experts is limited by several factors. First, it is limited apparently to authority to hire persons to examine books, records, and accounts (auditors and/or accountants). Second, it is limited by the discretionary power of the judge to approve or disapprove such employment and to control the funds needed to pay for it. Third, it is limited by the implied power of the board of supervisors, from whom all moneys flow, to refuse or inhibit the appropriation of funds for this purpose.

The extent to which such limitations are more real than apparent is difficult to determine. In practice, in Santa Clara County, the experts actually employed have been almost exclusively accountants during the period under study. Only one case is known in which the presiding judge refused to order an expenditure for expert services employed by a grand jury, and that one was eventually settled (not, however, without some acrimonious discussion). There is no evidence that the board of supervisors has ever refused to appropriate funds for the grand jury or has exerted any seriously inhibitive budgetary restraint. While it is clear that the grand jury is far from independent in financial matters, money has not been a serious problem. Actual expenditures during the period since 1951, for example, have ranged from \$671.27 to \$6,363.91 per year. Because the records do not reflect such an item, it is not possible from the evidence available to indi-

³³ CAL. PEN. CODE § 926.

³⁴ CAL. PEN. CODE § 931.

cate precisely how much of this money was requested or spent for expert assistance. Whether the funds available were sufficient to support adequate investigations is not known, since the scope and depth of the investigations planned or conducted are also unknown on any basis adequate to support conclusion.

It is doubtful that a conclusion could be supported by the evidence that grand juries in Santa Clara County during the period 1949-1961 have had or could acquire the level of competence required to perform the tasks set for them by statute, whatever the ambiguities of the law may be held to mean.

The product of the grand juries in this county has consisted of reports varying in length from 26 to 134 pages. These reports have been submitted to the court and to the board of supervisors, in most cases including a wide variety of recommendations for action. Most of the former jurors and foremen interviewed seemed to believe that their reports were largely ignored by county government, and they complained that the reports were often filed and forgotten. While the code requires the board of supervisors to comment on the grand jury's recommendations,³⁵ it does not require any action on them. Analysis of the record indicates that while the grand jury is listened to respectfully, its advice is not very often followed.

From the foregoing data, two conclusions seem justifiable. First, the statute law relating to the selection and responsibilities of the grand jury for investigatory purposes is excessively vague and imprecise. Second, the grand jury as presently constituted is ill-designed and poorly equipped for the tasks the law appears to intend to have performed. These conclusions suggest that perhaps the whole concept of amateur citizens' inquiry into the organization and operations of county government needs to be seriously re-examined. They also suggest that whatever mode of inquiry is chosen, a high degree of precision in defining statutory authority and responsibilities is essential if an adequate job is to be done.

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³⁵ CAL. PEN. CODE § 933.