

1997-1998
LOS ANGELES COUNTY

GRAND JURY



Final Report

1997-1998

LOS ANGELES COUNTY

GRAND JURY



Final Report

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Foreperson's Statement and Introduction

The 1997-1998 Los Angeles County Grand Jury was unique in many ways. Guided by a serious commitment to serve for a full year, twenty two of the original twenty three members of this Grand Jury were still serving at the end of their term.

The foreperson's duties and responsibilities include the chairing of meetings, selecting chairpersons for the various committees, and the handling of personnel issues that occur during the Grand Jury's tenure. Without exception, every juror responded with enthusiasm for whatever assignment was given to them and maintained that level of excellence throughout the year. Each and every juror served on a minimum of three separate assignments and maintained an outstanding attendance record. Their response and dedication made the job of foreperson a truly enjoyable experience. For those qualities and their professional demeanor, I want to express my heartfelt appreciation.

The Los Angeles County Grand Jury has two principal functions: to hear criminal indictments and investigations brought before the Grand Jury by the District Attorney's Office and to provide civil oversight of government activities within Los Angeles County.

During the past year, this jury heard the testimony of hundreds of witnesses and a wide variety of serious criminal matters. Their ability to understand and interpret the law as it applied to the evidence presented to them was outstanding.

In the area of civil oversight, this jury was required to prioritize those agencies it selected for review, since the budget was inadequate for pursuing all the areas the Grand Jury felt would be good candidates. Therefore, only four major investigations were assigned. Five more were investigated only by the grand jurors themselves, without the assistance of the Grand Jury's consultants. Other requests to conduct additional specific investigations were rejected due to the lack of funds. It was the Grand Jury's decision to only conduct investigations that we felt could be completed with a high degree of professionalism.

This jury has succeeded in bringing to the attention of the Board of Supervisors, and others, the importance of the content and completeness of the grand jury report. With the persistence of the Grand Jury's Government Operations Committee, legislation has already been proposed and approved in committee¹ that could have a significant impact on this and future grand jury reports.

We are grateful for the outstanding guidance of the Grand Jury Legal Advisor and the Supervising Judge of the Superior Court, both of whom made every effort to help us become an important and viable agency that performed with a sense of accomplishment. It has been an honor for all of us to be able to serve our government in this important mission.

¹Senate Bill 2100 (Polanco) as amended March 23, 1998

Introduction

Welcome to the Los Angeles County Grand Jury. The Grand Jury is a volunteer body of 23 Los Angeles County citizens charged and sworn to conduct criminal indictments, respond to citizen complaints, and inquire into matters of civil concern within the boundaries of Los Angeles County and incorporated cities within these boundaries. In addition, the Grand Jury is required to inquire into alleged public offenses committed or triable within the County. Grand Jury duties, powers, responsibilities, qualifications, and the selection process are set forth in the California Penal Code section 888 et seq.

The Grand Jury reviews and evaluates procedures, methods, and systems used by governmental agencies to determine whether they comply with the stated objectives of the agency and if their operation can be made more efficient and effective. It may inquire into any aspect of county/city government, including special legislative districts and joint powers agencies, to ascertain that the best interest of Los Angeles County residents are being served.

The Grand Jury functions lawfully only as a body; no individual grand juror acting alone has any power or authority. Meetings of the Grand Jury are not open to the public. All matters discussed before the Grand Jury and votes taken are required, by law, to be kept private and confidential. The end result of inquiries into civil matters are released to the public via a final report which is approved, prior to release, by the Supervising Judge of the Superior Court.

The Penal Code requires the Grand Jury to:

- Inquire into the condition and management of jails within the County,**
- Investigate and report on the operations, accounts, and records of county officers, departments, and functions,**
- Inquire into the willful or corrupt misconduct in office of public officers,**
- Submit a final report of its findings and recommendations, no later than the end of its term, to the Supervising Judge of the Superior Court. Agencies to which these recommendations are directed are required to respond to the Los Angeles County Board of Supervisors within 90 days after the final report is released.**

Introduction

The Grand Jury also conducts indictment proceedings wherein the Los Angeles County District Attorney's Office presents evidence and witnesses, under oath, in criminal matters. The Grand Jury must determine whether there is sufficient evidence, i.e. a strong suspicion that a criminal offense was committed and the alleged suspects were involved, to bring an indictment. It requires a vote of 14 members of the Grand Jury to indict.

Grand juror candidates must meet all of the following qualifications:

- **be a citizen of the United States.**
- **be at least eighteen years old.**
- **be a resident of California and Los Angeles County for at least one year immediately prior to selection.**
- **possess ordinary intelligence, sound judgment, and good character.**
- **possess sufficient knowledge of the English language to communicate, both orally and in writing.**

In addition, a candidate cannot;

- **be serving as a trial juror in any California court.**
- **have been discharged as a grand juror in any California court within one year of the beginning date of service, July 1.**
- **have been convicted of malfeasance in office, any felony or other high crime.**
- **be serving as an elected public officer.**

Grand Jurors are paid per diem based on actual days worked (currently \$25.00 per day) and provided free parking. Holidays, vacation and other time off are taken without remuneration. Mileage is reimbursed for travel between jurors' residences and the Grand Jury office and for travel on Grand Jury business (currently 26 cents per mile).

An interested person who meets the required qualifications should request further information from:

**The Los Angeles County Grand Jury
13-303 Criminal Courts Building
210 West Temple Street
Los Angeles, CA 90012
(213) 974-3993**

Introduction

In addition, the Los Angeles County Grand Jury can now be reached on its new website. Information regarding serving on the grand jury and the executive summary of the final report for 1997-1998 is available at:

[HTTP://www.Co.La.Ca.US/GrandJury](http://www.Co.La.Ca.US/GrandJury)





LEFT TO RIGHT

BACK ROW: Veïma Moore (Secretary), Ralph Villani, Herbert Badler, Leo Celniker, Stephen Licker (Legal Advisor), Gilbert Rodgers, David Seale, Jack Bernal, Karl Reinecker, Jacob Spillman, Jane Ann Grossman, Juan R. Rhcon, Jolyn Rudelson

FRONT ROW: Tim Fox (Bailiff), Patricia Locher, Lupe Valenzuela, Shizie Taira, Ellis Fields, Richard Colby (Court Reporter), Phyllis Barbato, Roslyn Klein, George Pederson, John Hayes, Grace Nichols, Wade Chiu, David Glickberg, Belem Asaad

1997-98 LOS ANGELES COUNTY GRAND JURY

BELEM ASAAD	Lakewood
HERBERT L. BADLER	Studio City
PHYLLIS H. BARBATO	Sherman Oaks
JACK BERNAL	Montebello
LEO CELNIKER	Woodland Hills
WADE CHIN	Los Angeles
ELLIS S. FIELDS, DDS	Studio City
DAVID GLICKBERG	Woodland Hills
JANE ANN GROSSMAN	Los Angeles
JOHN W. HAYES	Long Beach
ROSALYN S. KLEIN, PH.D.	Beverly Hills
PATRICIA R. LOCHER	Sierra Madre
GRACE C. NICHOLS	San Pedro
GEORGE L. PEDERSON	Valencia
KARL R. REINECKER	Castaic
JUAN R. RINCON	Pico Rivera
GILBERT R. RODGERS	Glendale
JOLYN F. RUDELSON	Beverly Hills
DAVID SEALE	Burbank
JACOB SPILLMAN	Glendale
SHIZIE KOHNO TAIRA	Manhattan Beach
LUPE VALENZUELA	Los Angeles
RALPH R. VILLANI, ED.D.	Santa Monica
HEWLETTE R. BROWN	Los Angeles July 1, 1997 - Oct 6, 1997

OFFICERS

Foreperson	George L. Pederson
Foreperson, Pro Tem	Ralph R. Villani
Secretary	Patricia R. Locher
Sergeant-at-arms	Juan R. Rincon
Sergeant-at-arms, Pro Tem	Gilbert R. Rodgers
Treasurer	Karl R. Reinecker
Parliamentarian	Jack Bernal

ADVISORS

Honorable John H. Reid, Superior Court	
Shellie Samuels, Deputy District Attorney	July 1997 - March 1998
Stephen Licker, Deputy District Attorney	March 1998 - June 1998

STAFF

Richard Colby	Court Reporter
Velma Moore	Secretary
Tim Fox	Bailiff

Executive Summary

2-

Executive Summary - Section 2

Intended for the busy executive, this Summary highlights the Findings and Recommendations of the principal management audit investigations conducted by the 1997-1998 Grand Jury in pursuit of its civil oversight responsibility. A complete report of each investigation can be found in the respective Sections of this report which immediately follow this Summary.

Section 3 Workers' Compensation Program

Section 4 Group Homes Follow-up

Section 5 Grand Jury Reporting

Section 6 9-1-1 Response

Section 7 Voter Registration

Please note that each Finding and Recommendation in this Summary is identified by a number, such as 3.III.4.8, which keys it to the Section, and Subsection if applicable, of this report as listed above, where the results of each investigation are reported in detail.

Workers' Compensation Program - Section 3

Purpose: The purpose of this investigation was to inquire into the administration of the Los Angeles County Workers' Compensation Program. During the past 15 years, Los Angeles County has operated its Workers' Compensation Program on a self-insured, pay-as-you-go basis with no funded reserve to cover its growing liability for existing and future claims. Review of the County's most recent (1997) actuarial report indicates the County's total estimated unfunded liability for open workers' compensation claims is \$1.5 billion. On a pay-as-you-go basis, the County's cost for compensation benefits and associated administrative expenses is about \$150 million annually.

Findings and Recommendations:

Finding 3.II.1 Los Angeles County can reduce the cost of the Workers' Compensation Program by an estimated \$4.9 million annually.

An outside consultant, hereinafter referred to as "Consultant A", hired by the Chief Administrative Officer (CAO), prepared a report in May 1996 for the County which contained recommendations for improving the Workers' Compensation Program. The recommendations contained in this report were approved by the Board of Supervisors on 6/4/96. In September 1996, a project implementation team formed by the County recommended an action plan to implement a number of these recommendations.

The majority of Consultant A's recommendations have been implemented or are in the process of being implemented. However the implementation of a comprehensive managed care program, estimated by the County to have potential net cost savings of \$4.9 million annually, had been delayed at the CAO's suggestion, because the CAO was evaluating the feasibility of converting to a privately insured Workers' Compensation Program.

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Therefore, it is recommended that:

- 3.II.1 The Los Angeles County Board of Supervisors approve the two managed care contracts, which are currently before the Board, as soon as possible.

Finding 3.III.2 Financial Projections of potential cost savings through the purchase of commercial Workers' Compensation Insurance are suspect.

The staff of the Chief Administrative Office, in evaluating a proposal to purchase private insurance for workers' compensation claims, has conducted a variety of financial analyses using data provided by the County's actuary and independent financial advisor. Their analyses demonstrate that significant savings can be realized over the next thirty years, using certain financing assumptions.

In reviewing the CAO's financial analyses, it was found that results are highly sensitive to variation in certain key assumptions: specifically assumptions concerning the spending growth rate for the County's self-insurance program, interest rates in future years and projected costs of private insurance premiums.

A review was also made of an alternative to the proposed privately insured program. This alternative was put into effect by San Bernardino County. The County issued bonds to finance existing and future workers' compensation liability, and has reported significant savings.

It must be noted the Los Angeles County was insured by a private insurance carrier from 1939 to 1969. In 1969 it transitioned to a fully funded self insured program and in 1978 to a pay-as-you-go program with a \$50 million reserve. In 1983, the reserve was used to fund other County programs. To now revert back to insurance coverage will probably require debt financing. That is, the issuance of one or more bonds which must be paid for by Los Angeles County taxpayers.

Executive Summary

Therefore, it is recommended that the Chief Administrative Officer:

- 3.III.2.1 Request that the Auditor-Controller and Treasurer-Tax Collector obtain a third party expert review of all financial forecasts and projections prior to final determination that the County should proceed with the debt financing approach to funding private insurance premiums. The third party expert should also evaluate the impact on County costs of a subsequent County decision to return to a self-insured program, after the private insurance program had been implemented. Any independent or third party consultant referred to in the recommendations in this report should be knowledgeable of finance and the workers' compensation industry, but should have no business or brokerage connection to that industry.
- 3.III.2.2 Request that the Auditor-Controller and Treasurer-Tax Collector evaluate the alternative benefits, as compared to the current pay-as-you-go program, of creating a Joint Powers Authority to issue bonds to fund the existing and future self-insured workers' compensation program costs and realize savings through the attainment of investment income in excess of interest expenses. The financial risk of such a program and the impact on county financial operations in general of the resulting indebtedness must also be evaluated.

Finding 3.III.3.1 The legal feasibility of reversion to a private, workers' compensation insurance carrier, as proposed must be determined.

The Chief Administrative Officer intends to request a formal legal opinion from the County Counsel on the proposal to convert to a privately insured workers' compensation program. The primary legal issues are;

- 1) Could the County transfer the "tail claim" and future liability for workers' compensation claims from the County to the private insurance carrier?
- 2) Could the County issue bond debt to finance payments to the private insurance carrier?

Executive Summary

- 3) Would the issued bond debt be exempt from Federal taxation?
- 4) Would the bonds require two-thirds voter approval?

Therefore, it is recommended that the County Counsel, upon request of the Chief Administrative Officer:

- 3.III.3.1 Issue a formal opinion regarding the proposal to convert the County to a privately insured workers' compensation program as soon as possible to facilitate the evaluation of the proposal.

Finding 3.III.4 Proposed agreement with Consultant A for workers' compensation services duplicates existing County procedures and services.

The CAO is considering recommending Board of Supervisors approval of a draft agreement with Consultant A for various Marketing and On-Going Consulting Services related to the proposal to convert to a privately insured workers' compensation program. Under the proposed contract, Consultant A would conduct a solicitation process for a private insurance carrier to assume the old and new workers' compensation liabilities. A fee would be paid to Consultant A if they deliver a private insurance carrier based on parameters described in this section, whether or not the County decides to proceed, or an adjusted fee if a modified program is implemented.

Many of the Marketing Services that are proposed in the contract are standard procedures in the Request for Proposal process typically administered by County departments, therefore it may be unnecessary to retain a consultant for some of those services.

Executive Summary

The draft agreement also includes various On-Going Services. For these services, the Consultant would receive a varying fee over a period of up to five and one-half years based on results achieved by Consultant A. Many of the services included in the contract under On-going Services may be unnecessary since they have already been implemented or will be implemented by the County in the very near future.

Therefore, it is recommended that the Chief Administrative Officer:

- 3.III.4.1 Request that the Auditor-Controller oversee an independent analysis to determine if the Agreement for Consulting Services should be negotiated based on a one or three year guaranteed premium;
- 3.III.4.2 Request that the Auditor-Controller oversee a determination of whether services that are to be provided by Consultant A contained in the Agreement for Consulting Services can be performed by the County;
- 3.III.4.3 Determine if Consultant A should be paid the same fee whether or not the County decides to proceed with the private insurance proposal. Instead, determine if the contract should include agreement on estimated hours and fees for marketing services with a cap on these fees if the County decides not to move forward with the proposal;
- 3.III.4.4 Retain a third party independent consultant to: (a) assist in the preparation of the data for the new actuarial valuation; and (b) evaluate the Request for Proposal responses;
- 3.III.4.5 Require that the chosen third party independent consultant, referred to in any of the recommendations in this report, work with both the CAO's and DOP's staff to make the results more effective;
- 3.III.4.6 If the County elects to enter into the Agreement for Consulting Services with the Consultant, the consulting service fee should be amended to reflect the services performed by others as a result of Recommendations 3.III.4.2, 3.III.4.3 and 3.III.4.4 above, and 3.III.4.7 below;

Executive Summary

- 3.III.4.7 Request that the Auditor-Controller oversee a review of the open claims of County Third Party Administrators for possible closure prior to performance of a new actuarial valuation;
- 3.III.4.8 If the County elects to enter into the Agreement for Consulting Services with Consultant A, request that the Auditor-Controller oversee an analysis to determine the effect of previous program improvements on the proposed on-going services that are provided. The On-Going Consulting fees should be adjusted to reflect any reduction in services provided as a result of previous implementations.

Finding 3.III.5 Actuarial Valuation needs updated, more accurate measurement

The review of the County's workers' compensation actuarial report determined that the current projected unfunded liability estimate of \$1.5 billion may not be accurate. Based on the County's concern for this growing liability, and the proposal of transferring the unfunded liability to a private insurance carrier, an updated, more accurate measurement of the County's unfunded liability should be obtained.

Therefore, it is recommended that the Chief Administrative Officer:

- 3.III.5.1 Request that the Auditor-Controller oversee retaining a third party independent consultant to: (a) separate the data prior to 1995 for workers' compensation loss payments into indemnity and medical losses; and (b) implement Recommendation 3.III.4.4 to assist in preparation of the information for the revised actuarial valuation;
- 3.III.5.2 After Recommendation 3.III.5.1 is accomplished, an independent actuary should be retained to complete a new actuarial valuation.

Group Homes Follow-up - Section 4

Purpose: The purpose of this inquiry was to investigate the implementation of recommendations made by the 1996-1997 Los Angeles County Grand Jury to improve the monitoring of group home services. The recommendations of the 1996-1997 Grand Jury resulted from a management audit and special study of the Contract Review Section of the Department of Children and Family Services (CRS/DCFS) with special emphasis on their activities related to group homes. The investigation of the 1997-1998 Grand Jury was initiated as a Follow-up to last years effort to evaluate the degree to which last years recommendations have been implemented. The status of each recommendation is reported in the full report which follows this summary. However, during this years investigation, additional areas needing improvement were noted. Visits to 22 randomly selected group homes resulted in the following finding and recommendations.

Findings and Recommendations

Finding 4.V.1 Procedures for issuing program reports are inadequate.

During the visits to the 22 group homes, procedural problems were noted within CRS/DCFS that delayed the mailing of CRS/DCFS audit reports to some of the group homes by as much as 15 days. This is inconsistent with the contractual requirement imposed on group homes to respond, in writing, to the audit report within 15 days of the date of the report.

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.1.1** Implement internal procedures to insure that program audit reports are expeditiously processed after completion by the Contract Audit Section and mailed within one day from the date of the audit report.

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Finding 4.V.2 Illegal activities are not promptly reported to law enforcement agencies.

Government auditing standards remind auditors to promptly report indications of illegal acts to appropriate law enforcement or investigatory agencies. Although the Contract Audit Section is not required to comply with these standards, it is in the best interest of the Department, the County, and the group homes to promptly report illegal acts. In one case, an illegal act was noted in October, 1997 and was not reported until January, 1998.

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.2.1 Develop written procedures for promptly reporting illegal activities.
- 4.V.2.2 Report all illegal activities promptly to law enforcement or investigatory authorities. All forms of communication should be utilized and followed up by a written confirmation.

Finding 4.V.3 Frequency of Social Worker visits do not meet minimum state requirements.

State law requires a mandatory minimum number of face-to-face visits by Social Workers with children residing in group homes. A sample of 564 required visits indicated that 99, or about 18%, were not made.

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Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.3.1 **Develop and implement procedures to improve supervisory monitoring of Social Worker visitations to group homes and to ensure the County's compliance with State mandated visitation requirements. This should include a monthly review of a statistical sample showing face-to-face visits by type of facility including Group Homes and verification of the Social Worker visits at the Group Home. Monthly reports should be submitted to the Director.**
- 4.V.3.2 **As part of the Board of Supervisors adopted policy concerning the follow-up of audit recommendations, send to the Board of Supervisors and the Commission on Children and Families a quarterly report reflecting of the implementation of Recommendation 4.V.3.1.**

It is also recommended that the Los Angeles County Board of Supervisors:

- 4.V.3.3 **Designate appropriate staff to monitor the quarterly reports of Social Workers' face-to-face visits with children under the care of DCFS.**
- 4.V.3.4 **As part of the two DCFS managers visit per year they specifically include inspection of the food services provided at each Group Home; and the facilities.**
- 4.V.3.5 **DCFS managers verify program statement compliance at each visit.**
- 4.V.3.6 **DCFS managers and CSW verify if child has had a complete assessment and evaluation. If not, they must schedule an evaluation expeditiously, and the child's file shall be kept current. Each time a child is relocated to a different facility the file is to accompany him /her at the time of relocation.**
- 4.V.3.7 **Before a young person is emancipated, there must be total agreement between CSW and the Group Home operator. If not, the case shall be referred to Juvenile Court for settlement.**

Executive Summary

Finding 4.V.4 Timing of required corrective action as a result of fiscal audits needs improvement.

This investigation indicated that a number of areas need improvement with respect to responding to and/or implementing corrective action that is identified during the performance of fiscal audits. For example, DCFS is required to respond to a Corrective Action Plan submitted by a group home within 60 days. A sample of 4 group homes indicated that only 2 of the 4 received the response within 60 days. The other 2 received their response in 70 days and 83 days. Further, DCFS must respond in writing to the Auditor-Controller within 60 days of the issuance of the final report detailing the final resolution of audit findings. As before, half of the reports were late. Another area involves the processing of collection referrals to the County Treasurer- Tax Collector. In one instance the referral was 4 months late. It is also apparent that the process used to sanction group homes for failure to comply with contract terms and conditions or refusal to cooperate in audits needs attention. In one case, DCFS was alerted to a problem in February, 1997, that led to a material breach of contract, yet the group home was not placed on "Do-Not-Use" status until December, 1997.

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.4.1 Establish written policies and procedures with specific time limits for group home and Departmental responses, specifically defining steps the Department should take to collect from operators before referring the case to the Treasurer-Tax Collector.
- 4.V.4.2 Implement procedures to ensure that the Department responds to Auditor-Controller fiscal audit reports within the required 60 days established by the Board of Supervisors detailing the final resolution of all findings. Because certain issues may not be completely resolved with the group home operator within the 60 day time frame, the Department should be required to submit a closure response to the Auditor-Controller.
- 4.V.4.3 Adhere to the instructions contained in the County Fiscal Manual related to referral of uncollectible accounts to the Treasurer-Tax Collector

Executive Summary

- 4.V.4.4** Enforce Section 10.11 of the Group Home Foster Care Agreement terminating a group home contract if financial records are not made available to the Auditor-Controller in the required time frame as directed by the County Auditor-Controller.

Finding 4.V.5 Fiscal audit staff lacks financial qualification.

The Contract Audit Section and the Quality Assurance Division of the Department of Children and Family Services have the responsibility to see that group homes comply with the financial provisions in the County Group Home Foster Care Agreement. However, the staff responsible for enforcing these provisions do not have the financial qualifications to monitor the numerous financial requirements.

The following are the areas that will require financial attention as a result of the Group Home Foster Care Agreement that is anticipated to go into effect in May 1998.

- Beginning in May 1998, DCFS will receive an estimated 200 group home corporations' monthly fiscal/invoice expenditure reports (see Section 4.V.6 below for recommendations regarding the review of these monthly reports);
- Annually, there will be an estimated 200 group home corporations submitting a detailed line-item budget to DCFS;
- The new agreement will have provisions for liquidated damages for violation of specific terms in the contract, thereby resulting in the need for collection and monitoring policies and procedures.

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.5.1** Request a new staff position to be filled by a person with a financial background and with the responsibility of coordinating the enforcement of all financial provisions of the County Group Home Foster care Agreement. The Auditor-Controller should be consulted to determine the Departmental responsibilities.

Executive Summary

Finding 4.V.6 Group home audit schedule needs rethinking.

The schedule for performance audits of group homes was recently revised from at least once every three years to a performance audit each year plus a manager visit twice each year. To accomplish this significant increase in audits/visits will require a corresponding increase in the audit staff of 6 positions for an annual cost of about \$200,000. It would appear that the increase may not be justified, since some have very good compliance history and may not need as frequent audits as do the "problem homes".

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.6.1 Use existing contract audit staff to audit those group homes that are performing well at least every three years, and audit those with less than adequate performance on an annual or bi-annual basis, depending on the severity of the problems.
- 4.V.6.2 Implement a random sampling procedure to audit group homes which are performing well, ensuring that each group home is audited not less than once every three years.
- 4.V.6.3 Direct the staff person hired for the new position recommended in Recommendation 4.V.5.1 of this report to develop guidelines, with the Auditor-Controller's assistance, for performing a simple review of monthly expenditure reports which should be performed by program audit staff at the time a group home audit is conducted.

Finding 4.V.7 Policies and Procedures Manual needs updating.

The Department of Children and Family Services has instituted numerous changes in policies and procedures during the past year but has not reduced many of them to written form for inclusion in the Policy and Procedures Manual.

Executive Summary

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.7.1 Update the Department's written policies and procedures to reflect recent changes in the administration and oversight of the group homes program.

Finding 4.V.8 Department of Children and Family Services financial records are suspect.

It became apparent during this investigation that a discrepancy exists between the financial records generated by the Department and the interpretation of those records by the County Auditor-Controller. This is a concern because it was also identified in the 1996-1997 Grand Jury report and involves overpayments to group homes. The problem was highlighted by the Auditor Controller in previous reports dating back several years but the problem has not been resolved. Lacking confidence in the financial reports tends to invalidate any analysis of the present status of group home overpayments.

Therefore, it is recommended that the Director of the Department of Children and Family Services:

- 4.V.8.1 (a) Develop an implementation plan of the 36 recommendations identified in their foster care provider overpayment study that prioritizes the order of implementation with special emphasis of controlling overpayments and contains an agreed to timetable; (b) determine the required necessary services of the Treasurer Tax-Collector to implement the 36 recommendations and (c) determine if the Department has available qualified staff to implement the recommendations;
- 4.V.8.2 Obtain qualified outside technical assistance to oversee the implementation of the 36 recommendations, if DCFS does not have available qualified staff.

Executive Summary

It is also recommended that the County Auditor-Controller:

- 4.V.8.3 Conduct a follow-up audit to determine if DCFS has achieved accurate and timely processing of foster care payments and collections, based on the agreed to timetable established in Recommendation 4.V.8.1 above. This audit should include verifying the outstanding uncollected overpayment balance. This phase of the audit should be performed when it has been determined by the Auditor-Controller that a sufficient number of the recommendations have been implemented.**

Grand Jury Reporting - Section 5

Purpose: The purpose of this inquiry was to resolve the uncertainty concerning what information could or could not be properly included in the Grand Jury's final report of its civil investigations. More specifically the concern involved the definition of "raw evidentiary material" which, by case law, is excluded from grand jury reports. Also of equal concern were limitations imposed by the Office of the County Counsel regarding the inclusion of reports prepared by outside management audit firms under contract to the Grand Jury to assist in the civil investigations, and similar limitations regarding secondary references, statistical data, and bibliographies. Furthermore, it became apparent that an understanding of the implementation of "The Civil Grand Jury Training, Communications and Efficiency Act of 1997", approved by Governor Wilson on September 23, 1997, was important since this would be the first Los Angeles County Grand Jury to operate under the new statute¹. Collectively, these concerns represented a pervasive problem since they impacted the reporting of each and every civil investigation carried out by this Grand Jury.

Finding 5.1 Los Angeles Grand Jury training needs updating to comply with new law

California law now requires all grand jurors to receive training to understand the scope of their responsibilities and statutory authority. While some training is already provided as part of the Superior Court's charge to each new grand jury, our review of relevant written materials showed that the description of the reviewing process for grand jury reports was not completely clear, nor did the 1997-1998 Grand Jury receive information on statutes, court decisions and legal research memoranda that help define the scope of its responsibilities and statutory authority.

¹Appendices B, C and D hereof contain the complete texts of this statute and two proposed bills concerning grand jury matters, which are currently under consideration by the California Legislature.

Executive Summary

Therefore, it is recommended that the District Attorney, acting as legal advisor to the Los Angeles Grand Jury:

- 5.I.1 Update all training/orientation materials for new Grand Jurors to reflect that Grand Jury reports are reviewed by the Legal Advisor from the District Attorney's Office, the Office of the County Counsel, and the Superior Court, and the reasons for each review, particularly the differing roles that the Legal Advisor and the Office of the County Counsel play in this process.**
- 5.I.2 Ask the Office of the County Counsel to provide copies of all applicable legal research memoranda it has prepared for previous grand juries during the past ten years, which remain in its possession, listed in chronological order, identified by subject(s) and penal code reference(s). The file of these memoranda should be assigned a permanent location in the Legal Advisor's Office at the grand jury, and regularly updated as new memoranda are received.**
- 5.I.3 Request that if the Supervising Judge of the Superior Court excises any material from the Grand Jury Final Report, a memorandum explaining the Court's legal basis for such excision be provided to the Grand Jury and filed in the casebook described in the following Recommendation 5.I.4.**
- 5.I.4 Establish a casebook, also to be maintained in the Legal Advisor's Office at the grand jury, of legal research memoranda, key case law and statutes pertaining to the grand jury. Responsibility for maintaining this casebook, on an annual basis, should be assigned to the juror appointed as Secretary of the Grand Jury, assisted by the Legal Advisor from the District Attorney's Office and the Office of the County Counsel.**
- 5.I.5 Establish a permanent procedure for receiving and filing copies of all new statutes, proposed legislation and court decisions applicable to California grand juries from the Legislative Services Office of the Los Angeles Superior and Municipal Court.**

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- 5.I.6 Provide to all new Grand Jury members, as part of the training now required under Penal Code Section 914(b), excerpts from the proposed casebook as part of their orientation and training materials, including copies of relevant statutes, case law and key legal research memoranda.

Finding 5.II Legislation Required to Allow Contract Auditor's Report to be Included in Grand Jury's Final Report.

Penal Code Section 926(a) states that a "grand jury may employ one or more experts, at an agreed upon compensation,...." The purpose of the employment of experts is to assist the grand jury in the conduct of performance audits of operations, accounts, and records of County officers, department and functions, city officers, departments and functions, joint powers agencies, the needs of county officers, redevelopment agencies, housing authorities, and special-purpose assessing or taxing districts and local agency formation commissions. A performance audit corresponds to the grand jury's civil oversight function as defined in the penal code. The end product of a performance audit is a written report. Grand juries have indicated a desire and need to use these reports more fully by including the auditor's report(s) as part of the Grand Jury Final Report.

However, the Office of the County Counsel, in its role as an advisor to the Superior Court, has advised that auditor's reports cannot be included as part of the grand jury final report. This view is based upon the California Supreme Court decision in "McClatchy Newspapers et al. V. The Superior Court of Fresno County(1988) 44 Cal.3d 1162, which prohibits a grand jury from disclosing "raw evidentiary materials" as part of its report. In the County Counsel's view, an auditor's report to the grand jury constitutes "raw evidentiary material". Similarly, the County Counsel has concluded that the source of secondary information, bibliographies, reference reports or statistical analyses done by others, but used by the grand jury in its research of the subject matter of the report should not be included in the final report. This opinion is apparently based on Penal Code Section 939.9 that states, in part, "A grand jury shall make no report, declaration or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury."

Executive Summary

Therefore, it is recommended that the District Attorney, in its capacity as legal advisor to the Grand Jury:

- 5.II.1 **Adopt procedures, acceptable to the judge in charge of reviewing the Grand Jury Final Report, as recommended in this section, for the format and review of contract auditors' reports, to meet the requirements of the *McClatchy* decision as well as complying with all statutory requirements.**
- 5.II.2 **Request the Office of the County Counsel, in light of this report, to reconsider its current legal interpretation and permit inclusion of auditors' reports, secondary references and statistical sources, in Grand Jury Final Reports, and to provide a written opinion concerning the effect the passage of Senate Bill 2100 in its present form would have on this issue.**
- 5.II.3 **Request an Attorney General's Opinion regarding the issue of inclusion of auditors' reports, secondary references and statistical sources, in Grand Jury Final Reports, including the effect of Senate Bill 2100.**
- 5.II.4 **Request that the Board of Supervisors continue its efforts for the passage of Senate Bill 2100 and support Assembly Bill 1907. The Grand Jury believes the former bill's passage will prove valuable in solving a Grand Jury communication problem discussed in this Report and the latter would improve the record-keeping of the Grand Jury Final Reports.**

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9-1-1 Response - Section 6

Purpose: The purpose of this inquiry was to evaluate the current status of the Los Angeles 9-1-1 emergency response system. This system became operational in 1984 and today consists of 47 separate 9-1-1 operational systems. Of these, the Los Angeles City Police Department and the Los Angeles County Sheriff's Department, receive the vast majority of calls to 9-1-1. In 1997, it is estimated that LAPD received over 2 million 9-1-1 calls and LASD received over 1 million 9-1-1 calls. Both agencies report that about 85% of the calls received were non-emergency and about 9% of the calls were abandoned. In addition, LAPD reports that about 15% of the calls take over 10 seconds to answer due to system overload. The system operated by LASD, which is decentralized into 17 Public Safety Answering Points, reports only 1% of the calls take over 30 seconds to answer.

In sum, the Los Angeles 9-1-1 emergency response system is burdened by inappropriate, non-emergency use. Alternatives, such as a 3-1-1 non-emergency system and/or public education are discussed in detail in the full report which follows in the next section.

Findings and Recommendations

Finding 6.1 Public education is essential to reducing non-emergency use of the 9-1-1 system in the short term.

Public education programs and outreach efforts have been highly successful in informing residents of Los Angeles County of the existence of 9-1-1. However, these programs have failed to teach residents to discriminate between emergency and non-emergency situations. Only recently has education begun in the use of the seven digit non-emergency numbers. Processing non-emergency calls through the 9-1-1 system potentially (a) increases the number of abandoned calls, (b) causes continuing delays in answering calls, (c) delays emergency service response time, and (d) leads to loss of life and/or property due to delays in responding.

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Therefore it is recommended that the Los Angeles County Board of Supervisors:

- 6.I.1 Assist 9-1-1 Administrators in seeking demonstration grant money from the United States Department of Justice (COPS Office), and the California Department of Justice to develop and implement public education and information programs as an additional method of reducing non-emergency calls.**
- 6.I.2 Fund a County-wide public education and information program designed to provide residents with information on appropriate and inappropriate uses of the 9-1-1 systems.**
- 6.I.3 Designate a staff member to serve as contact person for the 47 9-1-1 Directors in the County.**
- 6.I.4 Encourage law enforcement agencies to foster relationships with school districts, utilities, religious, and nonprofit community based organizations in order to develop collaborative educational programs.**

Also, it is recommended that 9-1-1 Directors in Los Angeles County:

- 6.I.5 Create and distribute clear and concise brochures that explain the appropriate use of 9-1-1**
- 6.I.6 Ask the public utilities operating in the County to insert the new 9-1-1 brochure with their utility bills as a public service.**
- 6.I.7 Ask the electronic and print media companies to assist in promoting the proper use of 9-1-1 by developing and running public service announcements and special advertisements for newspapers, television, and radio.**

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- 6.I.8 Ask the telephone companies to provide front cover visibility on their directories for key emergency/non-emergency information, and to consider printing a special page listing emergency/non-emergency numbers and providing peel-off stickers that may be placed on telephones.
- 6.I.9 Develop programs with school districts to educate children on the proper use of the 9-1-1 system and provide information sheets with peel-off stickers.

Finding 6.II Development of a statewide 3-1-1 non-emergency system may be a long-term solution to overuse of the present 9-1-1 emergency system.

On February 19, 1997, the Federal Communications Commission approved a request to reserve 3-1-1 for national non-emergency use. The California Department of Justice has convened a task force to investigate the feasibility of implementing a 3-1-1 program statewide. Law enforcement agencies in Los Angeles County agree that a 3-1-1 non-emergency system may be an effective alternative, but caution that it is years away, may prove costly, and is technologically challenging.

Therefore, it is recommended that the Los Angeles County Board of Supervisors:

- 6.II.1 Continue to participate in the development of the statewide 3-1-1 non-emergency system.

Voter Registration - Section 7

Purpose: The purpose of this inquiry was to explore issues regarding the integrity of the voter registration process and other related factors such as the proliferation of multi-lingual registration forms and ballots. Limitations in time and funding precluded any attempt to measure falsification of records, voter irregularities, or absentee ballot problems.

Findings and Recommendations

Finding 7.1 At time of registration to vote, proof of citizenship, age, and residency is not required.

The voter registration system is seriously flawed. However, this is not because of the policy and procedures implemented by the office of the Los Angeles County Registrar-Recorder/County Clerk. Quite the contrary. The system is flawed because of Federal and State laws that, over the years, have so liberalized the registration requirements and the process that, collectively, they prostitute the intent of the Constitution of the United States.

The Constitution of the United States clearly states that a citizen, 18 years of age or older, has the right to vote. The California Constitution adds a disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

Under current Federal and State law, applicants certify, under penalty of perjury, that the information on the registration form is correct. Thus our election system is an "honor system". Lacking proof at time of registration creates the need for a host of administrative procedures used by the Registrar of Voters, all labor intensive and costly, in an attempt to maintain the integrity of the system.

Executive Summary

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.I.1 Endorse the recommendations set forth in the Secretary of State's Official Status Report- Orange County Voter Fraud Investigation, dated February 3, 1998, and in so doing, notify all California State Legislative and Congressional membership of such endorsement.
- 7.I.2 Endorse Rep. Stephen Horn's bill, H.R.1428, and in so doing, notify all California Congressional membership of such endorsement.
- 7.I.3 Require the County Counsel perform a legislative analysis of Federal and State laws and, recommend changes that would require proof of citizenship, age, and residency at time of registration. Said recommendation should then be sent to California Congressional members for introduction of bills, as appropriate, to rectify the core problem.

Finding 7.II Voter registration file maintenance is suspect.

With approximately 3.8 million registered voters in Los Angeles County, the maintenance of the data base is a significant problem. For example, the removal of names from the data base upon issuance of a death certificate, is not always possible. Although a Social Security number is usually listed on the death certificate, voter registration files do not and, with so many people having the same name, it is all but impossible to know which of the many "John T. Smith" to remove. Keep in mind that about 40,000 people die in Los Angeles every year—a lot of record checking. Another example is undelivered mail. The procedure to sample the data base accuracy, by mailing registration confirmation letters to randomly selected individuals, does not result in a large response. Note that the response to the "Jury Duty" mailing was only 62.8%. The National Voter Registration Act (Jan. 1995) does not permit cancellation of voter registration due to undelivered mail.

Most of the procedures developed to maintain the data base are labor intensive, costly, and do not assure a high degree of accuracy in the end result. For the most part, the procedures are an attempt to compensate for lack of proof of citizenship, age and residency at time of registration.

Executive Summary

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.II.1 Follow the recommendations set forth in Finding No. 7.I.1 with the additional requirement to have the County Counsel, in concert with the Secretary of State, evaluate the possibility of amending State law to require a Social Security number on the voter registration form. This recommendation presumes that such an amendment is not prohibited by Federal law.
- 7.II.2 Sponsor a new State law that would require periodic re-registration, such as every 7-10 years. The data base could be divided such that a percentage of registrants would re-register each year. An alternate approach would be a re-registration cycle similar to that used for renewal of one's California Driver's License, but with a longer cycle period.

Finding 7.III The voter registration form needs to be redesigned.

The present voter registration form has a statement at the top, in small print, that asks: "Are you a U.S. citizen? If not, do not fill out this form." In practice, the form is often attached to a clipboard and the clip hides the small print. In addition, the new scanners that will be installed this summer will most likely require redesign of the form to facilitate ease of scanning and optical character recognition of the signature.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.III.1 Require the redesign of the voter registration form, in concert with the Secretary of State, such that a prominent statement be placed at the top of the form which clearly states that one must be a citizen of the U.S., 18 years of age, a resident of Los Angeles County, and not imprisoned or on parole for the conviction of a felony. Such redesign should be scanner compatible. In addition, training of Deputy Registrars should be required to assure the registration forms are properly filled out and the registrant understands the legal ramifications of falsifying the required information.

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Finding 7.IV Multilingual requirements are creating administrative gridlock.

The requirement in Federal and State laws to provide multilingual election materials has created a labor intensive situation that approaches gridlock during major elections. Each precinct must be analyzed as to multilingual requirements and election materials sorted and boxed, by hand, for each precinct. With 4856 precincts and 3.8 million voters, this is no small task.

The use of multilingual materials is contrary to the wishes of the California citizens (Prop. 38, 1984) and the need is questionable. It is doubtful that U.S. born citizens of voting age are not competent in English, and Naturalized citizens must demonstrate a reasonable degree of competence in English as a requirement of naturalization.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.IV.1** Require the County Counsel to perform a legislative analysis of Federal and State law and to recommend changes that would eliminate the need for multilingual election materials. Said recommendations should then be sent to California Legislative and Congressional members for introduction of bills, as appropriate, to change the law(s).

Finding 7.V Punchcard ballots and readers will soon be obsolete and will need replacement.

Although not a concern as to the integrity of the overall election system, it became apparent during this inquiry that the present use of punchcard ballots and their companion punchcard readers will soon be obsolete. Fully integrated electronic systems are being installed and tested in other parts of the country. The transition, when made, will be costly and technically challenging. The size of Los Angeles County, and the cost to make the transition, dictates that it be done only after careful study and the development of a comprehensive implementation plan.

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Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.V.1 **Require and fund a study of electronic based election systems and the development of a time phased implementation plan, including an estimated budget.**

Finding 7.VI Precinct size is limited to 1000 voters by State law.

Again, this is not an issue of system integrity, but does impact the processing of election materials which may contribute to errors. The 1000 voter limitation is absolute and does not make much sense in high density areas such as large condominiums, apartments, and townhouses. More precincts mean more analysis, more sorting and boxing of election supplies, more record keeping, more reporting, etc. In short, more of everything associated with the election process.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.VI.1 **Require a study, in concert with the Secretary of State, of precinct size and support an amendment, if appropriate, to the State law to provide a degree of flexibility in determining precinct size.**

Workers' Compensation Program

3-

Government Operations Committee

**Jolyn F. Rudelson, Chair
Ellis S. Fields, D.D.S., Co-Chair
Herbert L. Badler
Leo Celniker
John W. Hayes
Roselyn S. Klein, Ph.D.
Karl R. Reinecker
David Seale**

Workers' Compensation Program

Introduction

This report results from a management audit of issues relating to the County's Workers' Compensation program, and presents findings, conclusions and recommendations of the 1997-98 Los Angeles County Grand Jury.

This investigation began with an initial series of meetings and interviews with management personnel responsible for the County's Workers' Compensation program. Background documentation and key issues relevant to the program were discussed and reviewed. During this initial survey, it was found that, in the fiscal year that ended June 30, 1997, the County incurred total Workers' Compensation related costs of approximately \$153.7 million. Most of these expenditures were supported by general fund revenue, either directly or through enterprise funds, such as the County's hospitals, that receive general fund subsidies.

It was also learned that recent initiatives have been pursued by the County to control Workers' Compensation costs, reduce lost time due to employee injuries and improve employee safety. These initiatives resulted from recommendations received from a private consulting firm (hereafter referred to as "Consultant A"), which were included in their 1996 study, "Worker's Compensation Cost Containment". That report recommended improvements to the management of Workers' Compensation in Los Angeles County, and was followed by an action plan for implementation of specific improvements that were still in progress at the onset of this study.

In addition, it was determined that the Chief Administrative Officer's (CAO) staff had undertaken a separate project to explore the potential benefits of a privately insured workers' compensation program. This idea was presented to the CAO by Consultant A, the same private insurance consultant that had prepared the 1996 report. Their proposal suggested a method to both reduce the County's future annual expenditures for workers' compensation benefits and eliminate the substantial unfunded liability for existing claims. The potential sizeable benefit to the County, in the elimination or even reduction of the unfunded liability, made this proposed program worth exploring. Developing this idea led to a request by the CAO to delay some of the implementation of the action plan for improvements to the County's Workers' Compensation program described

Workers' Compensation Program

above. As our report will explain, the County has operated on a “pay-as-you-go” basis for many years, and currently has no reserves for future liabilities related to existing Workers' Compensation cases. It was determined that most large employers are self-insured, because of the resulting long-term savings.

The report is presented in four sections:

- Section 3.I Current Organization, Staffing and Cost of Workers' Compensation Administration in Los Angeles County**
- Section 3.II Recent Efforts to Control the Cost of Workers' Compensation in Los Angeles County**
- Section 3.III The CAO's Proposed Program to Implement a Fully Insured Workers' Compensation Program**
- Section 3.IV Chronology of Events Regarding the CAO's Consultant Selection Process for its Proposed Program to Implement a Fully Insured Workers' Compensation Program**

When this investigation began, the program to purchase full insurance coverage for past and future workers' compensation claims was under development by staff of the Chief Administrative Office. CAO staff were working with Consultant A, whom the CAO was considering for provision of marketing and services related to the development of a full insurance program. A draft consultant agreement had been negotiated by the CAO and the proposed consultant, Consultant A. The CAO had shared with the County Counsel and the Director of Personnel a draft letter to the Board of Supervisors for approval of the draft consultant agreement and Consultant A. Legal issues that have been presented by the County Counsel related to the proposed program are addressed in Section 3.III.3 of this report.

Workers' Compensation Program

On March 5, 1998, the CAO and his staff met with County Counsel and his staff as well as the Director of Personnel and Department of Human Resources staff responsible for the County's current Workers' Compensation program. The CAO convened the meeting in order to broaden the County's process for review and evaluation of the fully insured workers' compensation program proposal.

The CAO's proposal to implement a fully insured Workers' Compensation program should be considered as "work in progress." At this time, no contracts with consultants or insurance carriers have been approved, or even submitted to the Board of Supervisors for approval. Even if an initial consulting contract is approved, that does not guarantee that the County will implement full insurance. Further work will need to be done, and bids from insurance carriers received, followed by an evaluation of financial benefits, before such a program will be undertaken. It is likely that several months, or longer, will pass before such a program can be implemented and a transition period will begin. It is not possible to render a firm opinion on the future benefits of the proposed program until much more information is available. Consequently, this report provides recommendations for further review and evaluation of this proposal.

Workers' Compensation Program

Section 3.1 - Current Organization, Staffing and Cost of Workers' Compensation Administration in Los Angeles County

Workers' Compensation provides benefits for workers who suffer work-related injuries or illnesses. These include medical benefits, disability benefits, rehabilitation benefits, disfigurement benefits, and death benefits.

The Los Angeles County Code Section 5.31.050 states that responsibility for the Workers' Compensation program lies with the County's Director of Personnel. From 1982 until 1994 the County's personnel function, including the Worker's Compensation program, was organizationally located under the Chief Administrative Officer (CAO) who also served as the Director of Personnel. In 1994, the Board of Supervisors created a separate Department of Human Resources, headed by the Director of Personnel, and the workers' compensation program has been located in that department since that time.

From 1939 to 1969 the workers' compensation program was insured by a private insurance carrier. In 1969 the County converted to a self-insured program which was fully funded on a present value basis. In other words, the County kept on hand a cash reserve large enough to pay for all of its workers' compensation claims for the estimated life of the claims as if all of the claims were to be paid in full that year.

In 1978, the Board of Supervisors converted the County's workers' compensation system to a pay-as-you-go program, with a reserve of approximately \$50 million. However, in 1983, the Board of Supervisors depleted the \$50 million reserve to fund other County needs. Now, still operating on a pay-as-you-go basis, the County budgets annually for the estimated workers' compensation benefit claims and expenses estimated to be needed for that fiscal year only and has minimal cash reserves for future benefit payments. It is estimated that, as of June 30, 1997, the total unfunded liability for open workers' compensation claims is \$1.5 billion.

Workers' Compensation Program

Workers' Compensation Program Cost

For Fiscal Year (FY) 1997-98, the Workers' Compensation Program has a total budget of approximately \$154.3 million and 12.5 authorized positions, including workers' compensation division supervision and management. Since 1987, claims administration services have been contracted out to Third Party Administrators (TPAs). Currently the County contracts with three TPAs at a budgeted cost of approximately \$7.5 million in FY 1997-98. The County also contracts for all medical cost containment services and a portion of workers' compensation-related legal services.

The Workers' Compensation program expended \$146,475,815 in FY 1996-97 for workers compensation benefits provided to employees of the County of Los Angeles, who sustained injuries or illnesses in the course of their employment. Total costs in FY 1996-97 for the major categories of workers' compensation benefits were as follows:

Table 3.1.1
Workers' Compensation Costs
Fiscal Year 1996-97

<u>Benefit Payments</u>		
Indemnity Payments	\$ 75,673,567	
Medical Expenses	55,215,952	
Other	<u>1,443</u>	
<i>Benefit Payments Subtotal</i>		\$130,890,962
 <u>Administrative Expenses</u>		
Loss Expense Payments ¹	18,107,332	
Department Administrative Expenses	<u>6,984,518</u>	
<i>Administrative Expenses Subtotal</i>		25,091,850
 <u>Subrogation</u>		 <u>-2,522,481</u>
 <u>Total Expenditures</u>		 \$153,460,331

¹Payments to outside contractors, including third party administrators, for services such as administering and adjusting benefit claims, medical fee review, investigations, legal services, and systems maintenance.

Workers' Compensation Program

As shown in the table below, in the three year period from FY 1994-95 to FY 1996-1997, total worker's compensation program costs have risen by \$6,219,952, or 4.2 percent.

Table 3.1.2

Workers' Compensation Costs¹
Fiscal Year 1994-95 to Fiscal Year 1996-97

	<u>FY 1994-95</u>	<u>FY 1995-96</u>	<u>FY 1996-97</u>
Benefit Payment	\$124,771,582	\$126,170,360	\$130,890,962
Administrative Expenses	24,930,252	23,242,988	25,091,850
Subrogation	(2,461,455)	(3,042,753)	(2,522,481)
Total Costs	\$147,240,379	\$146,370,595	\$153,460,331

¹This table does not include unpaid loss expense, i.e., unfunded liability, which is a cost deferred to future years under the County's pay-as-you-go system.

Workers' Compensation Program

Section 3.II - Recent Efforts to Reduce the County Workers' Compensation Program Costs

In June of 1995, the Board of Supervisors approved a motion that the Chief Administrative Officer (CAO) retain an experienced workers' compensation expert to provide advice and assistance to the County. The consultant was to identify ways to improve the quality, efficiency and effectiveness of the County Workers' Compensation Program and to achieve all cost reductions possible while continuing to provide an adequate level of care and benefits to injured County employees. In October of 1995, Consultant A was selected.

In May of 1996, Consultant A issued a report containing various recommendations to improve the Workers' Compensation program and produce cost savings, which was approved by the Board of Supervisors in June 1996. At that time, the Board of Supervisors also instructed the Interim CAO to develop a plan to implement the recommendations, form a Project Implementation Team consisting of members representing various County departments to assist in that effort, and report back to the Board within 90 days with the proposed implementation action plan. The selection, approval and adoption of findings and recommendations of Consultant A's report were all done under a prior administration. The current CAO assumed his position in July, 1996 just after the Board of Supervisors accepted the recommendation of the Interim CAO to approve Consultant A's report and directed implementation of its recommendations.

Consultant A estimated that the full implementation of their recommendations would result in \$16 million in net annual savings and that it could take up to three years before most of the savings would be realized. However, the Department of Human Resources, although agreeing with the issues identified in the report, disagreed with many of Consultant A's estimates of savings. The Department of Human Resources initially estimated that the implementation of Consultant A's recommendations would result in significantly lower net savings of \$3.9 million annually, and anticipated that it would take more than three years to implement the recommendations. The Department of Human Resources subsequently adjusted their estimate to \$7 million to reflect greater savings from the implementation of a managed care program.

Workers' Compensation Program

In September of 1996, the Project Implementation Team reported back to the Board of Supervisors with an Action Plan to implement Consultant A's recommendations in the following areas:

- Management of Workers' Compensation Medical and Disability Costs**
- Early Return-to-Work**
- Closing of Excess Open Cases**
- Downsizing Strategy**
- Third Party Administrator Management and Pricing**
- Fraud Control**
- Departmental Accountability**

As of the writing of this report, only a portion of the recommendations addressed by the Project Implementation Team's Action Plan have been implemented; others are in various stages of implementation. Most notably however, the implementation of a comprehensive managed care program, estimated by the County to have potential net cost savings of \$4.9 million annually, has been delayed because the CAO was evaluating the feasibility of converting to a privately insured workers' compensation program and suggested that the execution of the managed care contracts be delayed. In addition, as noted above, there is a large discrepancy between the potential net savings of \$16 million estimated by Consultant A and the net savings of \$7 million currently estimated by the Department of Human Resources, if all of the report's recommendations are implemented.

The following is a discussion of Consultant A's recommendations and estimated savings, the savings estimates provided by the Department of Human Resources, and the implementation status of the recommendations as of March of 1998 for each of the areas listed above.

Workers' Compensation Program

Management of Workers' Compensation Medical and Disability Costs

Medical and disability costs account for approximately 85 percent of the County's annual workers' compensation costs, which is budgeted at \$154.3 million for FY 1997-98. Consultant A's report stated that the largest opportunity for cost savings in the Workers' Compensation program is in the area of managed care and that the implementation of a comprehensive managed care program would result in an estimated \$7.8 million in net annual savings. The Department of Human Resources has disagreed with Consultant A's estimates and places estimated net annual savings at \$4.9 million. Under the schedule proposed by the Project Implementation Team, the selection of managed care contractors was to be completed and a new program put in place by May 1997.

In September of 1997, two vendors for the managed care program had been selected and draft contracts had been drawn up for approval by the Board of Supervisors. However, at the request of the Chief Administrative Officer, the Department of Human Resources delayed submission of these contracts to the Board of Supervisors for approval. The Department of Human Resources reports that the reason for this delay was that the CAO was in the process of evaluating the feasibility of converting to a privately insured workers' compensation program and suggested that the execution of the contracts be delayed.

In February of 1998, the Department of Human Resources submitted a letter to the Board of Supervisors recommending approval of contracts with the two vendors to provide comprehensive workers' compensation medical and disability management services for three years at an annual fee of approximately \$3.8 million with two optional one year extensions. As noted above, it was reported by the DHR that the estimated net annual savings from these contracts would be \$4.9 million. On March 31, 1998, the two managed care contracts appeared on the Board of Supervisors agenda, however, at the request of a Supervisor, discussion of the item was delayed by the Board of Supervisors for 30 days.

Workers' Compensation Program

Early Return-to-Work Program

Early Return-to-Work programs aim to reduce workers' compensation costs by returning injured employees to work within their physical limitations as soon as possible. This includes exploring options for placing employees temporarily in modified alternate work positions in their own department, or in a different department if their work restrictions prevent return to their own department, and thereby reducing the number of employee days on disability. In their 1996 report, Consultant A did not provide a specific savings estimate in this area, but stated that implementation of an expanded and consistent Return-to-Work Program should result in improved productivity and not hard dollar savings.

Steps to implement the recommendations in this area began in August of 1996 with a completion target date of July 1997. In May 1997, a Request for Proposal was issued for Early Return-to-Work consulting services. Previously, the Department of Human Resources had applied for and received a Productivity Investment Board (County Board of Supervisors funded entity) grant of \$100,000 to fund the program. In December of 1997, the Board of Supervisors approved a \$100,000 contract for Early Return-to-Work consulting services. The Department of Human Resources reports that development of the program is currently in progress.

Downsizing Strategy

Consultant A's report contained several recommendations aimed at putting strategies in place for managing the potentially adverse effect of major reductions in force. According to the report, layoffs result in an increase in workers' compensation claims and special measures should be taken to avoid this possibility. Consultant A did not provide an estimate of cost savings in this area as their recommendations were mostly preventative. The Department of Human Resources began the implementation of these recommendations in August of 1996 and report that these measures were fully in place in December of 1996.

Workers' Compensation Program

Closing of Excess Open Cases

Consultant A's report recommended developing strategies to significantly reduce the number of open workers' compensation claims. Their report stated that an estimated 20 percent of the cases that are currently open could be closed with a more aggressive "best industry practices" case management approach. Consultant A estimated that a net amount of \$900,000 annually could be saved by implementing their recommendations in this area.

The Department of Human Resources has disagreed with Consultant A's claim that 20 percent of cases could be closed through aggressive case management. According to the Department of Human Resources, Consultant A's analysis did not take into account that the County's contracts with Third Party Administrators contain a strong financial incentive to keep caseloads down. Currently, the County pays a one-time flat fee for the administration of each new claim with no additional fees paid to the Third Party Administrators for the duration of that claim. The Department of Human Resources has taken the position, therefore, that no additional savings can be achieved through the implementation of Consultant A's recommendations in this area.

In October, 1996, Consultant A, representatives of the Project Implementation Team and representatives of the County's Third Party Administrators met on this matter. The consensus of this meeting was that it was unlikely that 20 percent of the caseload could be closed. Since that time, one of the Third Party Administrators that has experienced high caseload levels, has undertaken two special projects to attempt to reduce caseload. Additional staff and staff on overtime were used to review all files to determine which could be closed or put into the closing process. They reduced their caseload by approximately 600 cases or 5 percent. Subsequently, caseload levels again increased, and a second project to close cases is now underway. According to Department of Human Resources management, it appears that the contractor will be able to reduce caseload by as much as 7 percent.

Workers' Compensation Program

Strategy for Managing and Pricing Contracts with Third Party Administrators

The County currently contracts with three separate Third Party Administrators to administer all of its workers' compensation claims. Consultant A's report contained numerous recommendations to enhance the performance of the Third Party Administrators. Areas for improvement included:

- **Caseloads per adjuster** – Consultant A recommended that, in the case of one of the County's contracted Third Party Administrators, the caseload handled by each claims adjuster should be reduced from 250 to 200 cases. The reasoning behind this is that fewer cases per adjuster allows for greater scrutiny of each case and improved control over costs. The report recommended that the desired reduction in caseload could be achieved, at no increase in contract costs, through case closure efforts. Such case closure efforts, Consultant A predicted, would reduce caseloads by 20 percent. They reported that the implementation of this recommendation would result in \$2.8 million in net annual savings. The Department of Human Resources reported that it estimates that the implementation of this recommendation would result in \$2.4 million in annual savings.

As described in the section on case closures above, case closure efforts have reduced caseloads by 7 percent, not 20 percent as anticipated by Consultant A. Therefore, at this time, the subject Third Party Administrator has been unable to reduce caseloads from 250 to 200 cases per adjuster. The Department reports that, by early 1999, it expects to have a new contract put into place with caseloads set at 200 cases per adjuster. However, reducing the caseload in this manner will be achieved through increased contract costs to the County.

- **Litigation Management** – Consultant A recommended that the County reduce the number of litigated cases referred to outside counsel by 25 percent by giving responsibility to the Third Party Administrators for the management of the less complex cases. According to Consultant A, County Counsel should still maintain final authorization for settlement of claims, but all the active work on a claim file should be done by the Third Party Administrator. Consultant A estimated net savings in this area of \$717,000 annually.

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However, the Department of Human Resources and County Counsel have disagreed with Consultant A's findings. They state that the Third Party Administrators do not have the expertise or training necessary to litigate as much as 25 percent of the cases without the assistance of an attorney.

The Project Implementation Team has recommended the initiation of a pilot project to reduce the number of cases referred to legal counsel. Currently, the Department of Human Resources, County Counsel and one of the Third Party Administrators have established program procedures encouraging adjusters to resolve less complex litigated claims without assigning an attorney. In September of 1997, the pilot program was put into effect. The Department of Human Resources reports that very preliminary estimates show savings of less than \$100,000 per year.

- **Investigative services** - Consultant A's report stated that the Third Party Administrators should perform more of their own investigative services instead of referring out all investigative issues to an outside contractor. They reported that they found a 25 percent over-referral rate to outside investigators for cases which could be easily performed by the Third Party Administrators. Consultant A estimated that a reduction in this area would result in estimated annual savings of \$188,000.

The Department of Human Resources has taken the position that the over-referral problem most likely exists at only one Third Party Administrator and that a reduction in referrals would result in annual estimated savings of \$47,000. Additionally, the Department of Human Resources believes that investigations are essential to identify fraud and therefore referrals to outside contractors for investigation should not be restricted. The Department reports that it has discussed this issue with the Third Party Administrator in question and has requested that they perform a review of their investigation assignments.

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Fraud Control Strategy

Consultant A recommended that savings could be achieved through improved communications and training on fraud and abuse as well as the establishment of a Special Investigation Unit for detecting fraudulent medical claims at each of the County's Third Party Administrators. According to Consultant A, implementation of these recommendations would result in \$4.9 million in net annual savings.

The Department of Human Resources has stated that many of the issues used as a basis for the analysis performed by Consultant A in this area are not applicable to the County's Workers' Compensation program. The Department believes the County's current fraud program, adopted by the Board of Supervisors in 1992, is already effective in deterring and identifying fraud and abuse. Therefore, the Department has estimated that the implementation of Consultant A's recommendations in this area could result in net annual savings of only \$400,000.

The Department of Human Resources reports that fraud training for Department of Human Resources, Third Party Administrators and department Return-to-Work Coordinators was completed in March of 1997. Additionally, updates on fraud identification measures are now included in annual workers' compensation seminars.

Departmental Accountability for Workers' Compensation Costs

Consultant A stated that increasing departmental accountability for workers' compensation costs was one of the most significant recommendations contained in their report. The report recommended that the County take measures to make County department managers more aware of and accountable for their department's workers' compensation costs through improved management information systems and putting into place management goals and performance incentives. Consultant A did not provide a savings estimate in this area, instead they stated that these savings were included in the estimated savings for the recommendations contained throughout their report.

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The Department of Human Resources reports that it now annually issues a Departmental Loss Experience Report, which contains useful management information for department managers to measure their workers' compensation costs.

Conclusion

As detailed above, only a portion of the recommendations addressed by the Project Implementation Team's Action Plan have been implemented; others are still in various stages of implementation. Most notably, one of the areas for the largest potential savings to the County, the implementation of a comprehensive managed care program, has been delayed since September of 1997. Based on estimated net annual savings of \$4.9 million from the implementation of a managed care program, the County would certainly benefit from putting this program into effect without further delay.

Recommendation

It is recommended that the Board of Supervisors:

- 3.II.1 Approve the two managed care contracts which are currently before the Board of Supervisors as soon as possible.**

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Section 3.III - The Chief Administrative Officer's Proposed Program to Implement a Fully Insured Workers' Compensation Program

As discussed in the Introduction to this report, the County's Department of Human Resources (DHR) was in the process of implementing an Action Plan for improvements to its workers' compensation program when the Chief Administrative Officer's staff began consideration of the potential benefits of funding a fully insured program.

The CAO subsequently issued a "Request for Concept Papers" (RFCP) to obtain analyses of the insurance concept and receive quotations for any necessary services. The consultant selected would assist the County in determining the viability of the plan by surveying the insurance market and preparing and releasing a request for proposal to the insurance market. After review of responses to the RFCP, and provisional selection of proposed Consultant A, the CAO began negotiation of a draft agreement for consulting services related to the conversion to full insurance that, when finalized, would be submitted to the Board of Supervisors for approval.

While the CAO was evaluating the full insurance proposal and negotiating a draft agreement with the proposed consultant, DHR was preparing the final steps for implementation of its Action Plan for improvements. The CAO requested that the final elements of the Action Plan be delayed until further work could be completed on the full insurance proposal.

A meeting was held with the CAO and his staff early in the management audit project to discuss the full insurance proposal. The CAO agreed to share all materials that had been developed concerning the proposal on the condition that certain details be held confidential. The request for confidentiality was based on the fact that work on the proposal had not been completed and a recommended consultant and proposed contractual agreement had not been submitted to the Board of Supervisors for final approval.

This entire section is therefore a discussion of materials that the CAO has provided to the Grand Jury with the understanding that specific details of the proposal remain confidential until subsequently released by his Office.

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Section 3.III is divided into the following subsections, each of which addresses specific aspects of the proposal:

- Subsection 3.III.1 The CAO's Consultant Selection Process for Implementation of a Fully Insured Workers' Compensation Program**
- Subsection 3.III.2 The CAO's Financial Projections of Savings through the Purchase of Commercial Insurance for Los Angeles County's Workers' Compensation Program**
- Subsection 3.III.3 Legal Issues**
- Subsection 3.III.4 Review of the Draft Agreement for Workers' Compensation Consulting Services**
- Subsection 3.III.5 Opportunities for Improvement to Los Angeles County's Workers' Compensation Actuarial Valuation**

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Subsection 3.III.1 - The CAO's Consultant Selection Process for Implementation of a Fully Insured Workers' Compensation Program

Consultant A's May 1996 report, "Workers' Compensation Cost Containment" did not contain a specific recommendation to explore the possibility of converting to a privately insured workers' compensation system. However, in its executive summary it was noted that, "The County should address the priority concerns and immediate potential for cost savings discussed in this report and continue to consider other innovative, cost saving ideas in areas such as alternative funding mechanisms, loss prevention, and information systems." It was after the release of the report, in the Fall of 1996, that Consultant A made a presentation to CAO staff introducing a "proprietary" product for full insurance conversion, including the transfer of the County's unfunded liability for past claims, and showing how the County could reduce its overall workers' compensation costs from this conversion.

Consultant A pointed to the fact that workers' compensation insurance rates had recently been deregulated, resulting in a reduction in workers' compensation insurance premium levels statewide. Consultant A also cited other factors which may permit the County to lower its costs through private insurance, such as more efficient claims administration systems and methods, which could be implemented by large carriers specializing in workers' compensation insurance, and lower claims expense. In addition, it was noted that the County may realize cost savings due to the private insurer's ability to obtain a significant investment return on the premium paid by the County.

Request for Concept Papers Issued by the CAO

On February 24, 1997, in lieu of a Request For Proposal (RFP), the CAO issued a "Request for Concept Papers" (RFCP) to invite discussion and expressions of interest from potential consultants regarding the viability of a fully insured workers' compensation program with a due date of April 16, 1997. The RFCP was sent to 17 firms and advertised in an announcement published in the *Los Angeles Times* on February 27, 1997. In a letter to the Board of Supervisors dated February 24, 1997, the CAO stated that if the results of the RFCP showed promise for the private insurance approach, the CAO would recommend the retention of a consultant to assist the County in determining the viability of the plan by surveying the

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insurance market, and to prepare and release a request for proposal to the insurance market. The stated purpose of the RFCP was to select the consultant who presented the most workable plan to reduce the County's overall workers' compensation costs through insurance.

The RFCP described the proposal that Consultant A presented to the CAO where all liability for workers' compensation claims expense, including the transfer of the unfunded liability for past claims, and all authority for program administration would be transferred to an insurance carrier in exchange for a set premium paid by the County. Firms were asked to prepare a three-part response as follows: (1) submit their views on the feasibility and cost effectiveness of converting the program to an insured arrangement including a specific plan and cost estimates for the conversion; (2) provide a quote on the fees they would charge to prepare and oversee an RFP for an insured program; and (3) describe and propose a fee for on-going long-term consulting services, including assisting the County in on-going oversight of the insurance carrier and of the program in general if an insured program were to be implemented. Four firms, including Consultant A, submitted responses to the RFCP.

The RFCP Evaluation Team consisted of six members, three representatives of the CAO's Office and one representative each of the Auditor-Controller, Department of Human Resources and Treasurer-Tax Collector. The Evaluation Team "ground rules" stated that the main mission of the team was to recommend a vendor to assist the County in surveying the insurance market for a privately insured workers' compensation program and performing other consulting services outlined in the RFCP. It was made clear to the team by the CAO staff that the team was not to concern itself with the viability of the plan when assessing the proposals. In a memo from the CAO staff member who headed the team, they were advised that the RFCP would be the first step in a two-step process with a survey of the insurance market being the second step and reminded that, "It is important to keep in mind that the feasibility and the efficacy of an insured workers' compensation program will be determined at the conclusion of Step 2, not now."

After reviewing and ranking the proposals, the RFCP Evaluation Team selected Consultant A. Subsequently, the CAO confidentially negotiated a draft contract with Consultant A, which, as of the writing of this report, has not yet been submitted to the Board of Supervisors.

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Assessment of the RFCP Process

The structure of the RFCP was viewed by some as creating a conflict of interest. According to the RFCP, respondents were to propose consulting fees for parts two and three only. Therefore the objectivity of the consultants' views on the viability of the proposal could be questioned because a consultant's ability to charge fees for the project were directly dependent on a consultant's recommendation that the plan was a good idea for the County to pursue. One firm, Consultant B, wrote a letter declining to respond to the RFCP, citing the conflict of interest involved. Another, Consultant C, recommended in the cover letter accompanying their proposal that the County separate the analysis phase from the implementation phase to avoid a conflict of interest in providing an unbiased opinion and stated that it was in the County's best interest to segregate the three phases into different proposals, to eliminate any cost shifting between them.

In order to solicit proposals for the project, the CAO decided to issue a Request for Concept Papers (RFCP) instead of a Request for Proposal (RFP). RFPs are typically used to obtain bids for work with a clearly defined scope. The CAO's staff advises that a contract for consulting services could have been awarded on a sole source basis to Consultant A, and that by selecting the RFCP approach, the CAO's Office opened up the process to provide other firms with the opportunity to compete, and enabled the prospective proponents to take broad latitude in determining the scope of their responses.

However, the RFCP enabled the proponents and the CAO's Office to take broad latitude in determining the scope of the proposals. In a letter to the Board of Supervisors dated September 16, 1997, one of the respondents, Consultant D, complained that the scope of the project was "expanded immensely" after the release of the RFCP and requested a second opportunity to submit a concept paper.

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Finally, as noted above, the four RFCP responses varied widely in approach, the scope of services to be provided, and price. A memo to all Department of Human Resources managers issued by the Auditor-Controller's Office in October of 1996, acknowledges that qualitative factors play an important role in assessing RFPs. However, the Auditor-Controller recommended that, when evaluating RFPs, departments ensure that the weight given to cost savings is as much as the weight given to any other evaluation criterion.

In the case of the subject RFCP, after discussions with the County Counsel's Office, it was decided not to use a point evaluation system to rate the proposals. Instead, the raters were to assign letter grades, from "A" through "F" for each proposal. Among the areas of evaluation criteria, the Evaluation Team was instructed to evaluate the proposals based on cost. Of the four proponents, Consultant A was neither the lowest nor the highest bidder. The Evaluation Team also determined that of the four responses to the RFCP only two were responsive; the other two were rated as unresponsive and received "F" or "D" grades from each of the evaluators. Therefore, the Evaluation Team's decision not to recommend the lowest bidder appears to be appropriate.

Conclusion

The selection of Consultant A may be deemed a less than competitive process, since they had already presented to the CAO's staff their "proprietary idea" for conversion to a full insurance program. The staff indicates that the CAO could have awarded a contract on a sole source basis to Consultant A without using the RFCP. However, the CAO opened up the process to provide other firms with the chance to compete and offer their own ideas.

Our review of the four responses to the RFCP confirmed that only Consultant A and one other firm appeared to be at all responsive. We find no facts to substantiate any other conclusion than that County procurement rules and regulations were NOT violated during the RFCP process.

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Subsection 3.III.2 - The CAO's Financial Projections of Savings Through the Purchase of Commercial Insurance for Los Angeles County's Workers' Compensation Program

Consultant A's proposal includes a debt financing strategy to fund workers' compensation insurance premiums. This strategy is described by the proponent as "proprietary", meaning that Consultant A is entitled to confidentiality in regard to this particular application of the suggested financing strategy. This section of our report will discuss the basic elements of the financing strategy and the CAO staff projections of anticipated savings from purchasing insurance.

Based on current actuarial information, the County would issue bonds to finance a one-time premium payment to an insurance company. This premium would be paid so that the insurance company would assume full liability for the payment of benefits for existing claims (i.e. the "tail claims"). The County would therefore have no further liability for the future costs of such claims. However, as will be discussed in Section 3.III.3, County Counsel is currently researching whether or not such liability can, in fact, be fully transferred to a private insurance company. As of June 30, 1996, the County's actuary estimated that the future value of the liability for such existing claims amounted to \$1.38 billion.

CAO staff members have developed financial comparisons in order to evaluate the potential savings that can be achieved through this approach. To develop baseline data for comparison purposes, the CAO requested a projection of County costs, if current self-insurance operations were to remain unchanged over the next thirty years. The County's workers' compensation actuary provided the CAO with such a projection. As we report in Section 3.II, the County's "pay-as-you-go" costs for its workers' compensation program in fiscal year 1996-97 equaled \$153.5 million. The County's workers' compensation actuary provided the CAO with a projection of future workers' compensation costs which grow at an annual rate of between 4.0 and 4.2 percent for the next ten years and at a rate of 3.1 percent thereafter.

This projection was then adjusted to reflect the savings, as estimated by the Department of Human Resources that would be realized by implementation of various programs to improve the County's workers' compensation program. As discussed in Section 3.II of this report,

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savings were originally estimated to amount to \$3.9 million annually once such programs were fully implemented. However, the estimate was increased to \$7.0 million to reflect additional savings realized through implementation of a managed care program for medical and disability claims. Finally, the CAO staff requested, and received an analysis of cash flow scenarios from the Los Angeles County Treasurer's financial advisor for the debt funding of private insurance premiums for tail claims and estimates of new claims that would be funded each fiscal year. Using estimates of "debt service requirements" (annual payments that would be required to pay the principal and interest on a bond issuance) the County's independent financial advisor provided the CAO with cash flow scenarios that covered several cases. These cases included financing periods of 20 and 30 years for both taxable and tax-exempt bonds. Taxable bonds would be sold at higher interest rates, thus necessitating increased annual debt service payments, when compared to tax exempt bonds.

The dollar amounts for insurance premiums that would be financed by the County were provided by the CAO's proposed consultant. Tail claims would be financed in a principal amount of approximately the assumed present value of the actuarial valuation of the County's future unfunded liability after adjustments for projected improvements and efficiencies. The annual premiums for new claims that would be filed each year were also estimated by the proposed consultant, and were based on projected improvements and efficiencies that would result from the consultant's services.

Based on these figures derived from a variety of sources, the CAO developed financial comparisons to evaluate the potential savings from the proposed full insurance program.

The CAO estimates total savings of \$1.36 billion dollars over 30 years by comparing the debt financing of assumed insurance premiums with the projected costs of the "improved," self-insured, County-operated program.

An additional benefit of the proposed financing of private insurance premiums, in the opinion of the CAO is that future costs of all old claims would be fully funded if the County were to return to a self-insured workers' compensation program at any point during the 30 year projection period. Therefore, if the County were to abandon a privately insured program, its

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on-going annual expenditures for a self-insured program would be less than current levels since funds would only need to be appropriated for the cost of new claims. The CAO has not measured the effects of this potential benefit on future spending levels, if the County were to convert to a fully insured program and then shift back to a self-insured program at some point in the future.

An option that has been reviewed by the CAO is to finance insurance premiums over a longer period. If, for example, debt financing were to occur over a period of 30 years, instead of 20, annual debt payments would show a savings for the first 23 years, but total debt service would be much more because of higher interest expense. Hence, total savings would be much less over the 30 years.

Moreover, under a 30-year financing, annual costs in the last seven years of the 30-year financing term would be more than the projected costs of an improved County system, due to the cumulative effect of interest expenses over a longer period.

An analysis of the debt financing cash flow comparisons reveals that the results of such comparisons are highly sensitive to key assumptions. Changes in such assumptions could significantly alter the results of the cash flow comparisons.

Projections of Savings are Sensitive to Base Case Growth Rate Assumptions

As stated above, the County's workers' compensation actuary provided the CAO with a projection of future workers' compensation costs which grow at a rate of between 4.0 and 4.2 percent for the first ten years. For years 11 through 30, the actuary projects a rate of increase of 3.1 percent. Such rates of increase are based on historical data that the actuary has described as deficient and in need of improvement (see Section 3.III.5). In addition, the actual growth in spending for claims in recent years has shown a lower rate. Average growth over the three-year period between 1993-94 and 1996-97 amounted to 2.7 percent.

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Using a consistent spending growth rate assumption of 3.1 percent, instead of the higher rates over the first ten years, produced significantly different results. Using a 3.1 percent growth rate for the first 10 years of the financing period alone would lower the projected costs of an improved County system by approximately \$950 million, thus significantly reducing the projected savings of the private insurance concept.

In Section 3.III.5 of this report, improvements to the actuarial valuation of the County's unfunded workers' compensation liability are recommended. Such improvements would also contribute to a more accurate projection of future expenditures for cost comparisons with alternative programs, such as debt funding of private insurance premiums.

Projections of Savings are Sensitive to Estimates of Future Interest Rates

Projections of debt service costs should take into account the fact that interest rates are presently at the lowest levels in many years. Over the long term, such as twenty to thirty years, it is likely that at some point, interest rates will move upward from current favorable levels. Therefore, the CAO's cost comparisons should take into account the potential impact of increased interest rates in future years.

The Cost of Future Insurance Premiums Cannot be Reliably Projected

The CAO's long term cash flow comparisons establish initial insurance premiums at levels that are much lower than existing annual spending for workers' compensation claims on a pay-as-you-go basis. If the proposed consultant does not obtain firm quotations that are less than or equal to specific dollar thresholds, the County in all likelihood would not proceed with the purchase of private insurance and the proposed consultant would not receive fees for its marketing services (see Section 3.III.4 concerning the draft consulting agreement).

Even if favorable initial insurance premiums are achieved for up to three years, there is no guarantee that such savings will continue on an annual basis in future years. For example, a joint powers authority representing California schools has recently decided to return to self-insurance for workers' compensation claims after realizing savings from the purchase of

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private insurance over a period of three years.¹ Although the schools realized savings initially, the cost of private insurance premiums is now increasing to levels that eliminated the savings and made a return to self-insurance an economical business decision.

The CAO staff believe that under such a scenario, Los Angeles County would be able to return to a self-insured program and still realize the benefits of having fully funded the future costs of all old claims. Annual expenditures for old claims under a self-insurance program would therefore be eliminated. However, the County would still incur debt service costs for the financing of insurance premiums for the tail claims and any annual premiums. As mentioned above, the CAO has not conducted a financial analysis of the costs and savings that would occur under such a scenario.

Due to the vast sums of taxpayer dollars involved in this proposal that could require the debt financing of over \$3.0 billion in total insurance premiums over the next 20 years, it is essential that an independent and rigorous financial analysis by a third party expert be conducted prior to any final decision on this proposal. Such third party expert should be knowledgeable of finance and the workers' compensation industry, but should have no business or brokerage connections to that industry. Such an analysis should measure the variations in costs and benefits that could occur under a continuing private insurance program and under a scenario where the County would proceed with private insurance for some amount of time and then return to a self-insurance program.

Alternatives to the Purchase of Private Insurance Premiums

An alternative to the current workers' compensation program or the proposed fully insured private insurance program is an approach put into effect by San Bernardino County.

In 1994, San Bernardino County issued bonds to finance its existing and future workers' compensation liability. These bonds were issued by a County Joint Powers Agency. The bond proceeds are held in a reserve fund by the Joint Powers Agency. The County and the Joint

¹Business Insurance, February 2, 1998

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Powers Agency entered into a contract where the County annually receives payment of all workers' compensation costs from the reserve fund held by the Joint Powers Agency. The County makes a payment to the Joint Powers Agency for the annual debt service on the bonds issued.

California Government Code Sections 6584-6599.1 provides the legal authority for the Joint Powers Authority to issue the bonds. California Government Code Section 6588(q) provides the legal authority for the contract between the County and the Joint Powers Authority.

Unlike the fully insured private insurance proposal, the alternative approach discussed above does not necessarily eliminate County responsibility for the old or new claims. However, through the establishment of funded reserves for such liabilities, the County is able to fund such costs in advance at a lower cost. This approach, therefore, allows the County to reduce its net workers' compensation program costs by earning investment income that exceeds its interest payment on the Joint Powers Authority bond proceeds. The "arbitraged" interest earnings therefore reduce the County's net annual expenditures. San Bernardino County reports recent savings and capital appreciation of \$8.8 million annually for a workers' compensation program that is much smaller than the County of Los Angeles.

Subsequent to issuing self-insurance revenue bonds, San Bernardino County adopted a program of services known as an "Investment Agreement". The Investment Agreement provides the County with cash management services tailored to a self-funded insurance program that optimizes the County's return on its investment of bond proceeds.

Conclusion

The CAO, in evaluating the proposal to purchase private insurance for workers' compensation claims, has conducted a variety of financial analyses using data provided by the County's actuary and independent financial advisor. Their analyses demonstrate that significant savings can be realized over the next thirty years, using certain financing assumptions that are discussed herein.

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In reviewing the CAO's financial analyses, it was found that results are highly sensitive to variation in certain key assumptions; specifically assumptions concerning the spending growth rate for the County's self-insurance program, that losses will be reduced by 30%, and projections regarding future interest rates and costs of private insurance premiums.

It is therefore concluded that a rigorous financial analysis by a third party expert should be conducted prior to any final decision by the County on this proposal. The central question, which still needs to be fully addressed by an independent analysis, is: What impact will the full conversion of current and future unfunded liabilities have on County costs, if private insurance premiums should rise to unacceptable levels in future years and the County decides to return to a self-insured program?

The Chief Administrative Officer should also investigate the savings realized by San Bernardino County using its alternative debt funding approach to workers' compensation claims.

Recommendations

It is recommended that the Chief Administrative Officer:

- 3.III.2.1 Request that the Auditor-Controller and Treasurer-Tax Collector obtain a third party expert review of all financial forecasts and projections prior to final determination that the County should proceed with the debt financing approach to funding private insurance premiums. The third party expert should also evaluate the impact on County costs of a subsequent County decision to return to a self-insured program, after the private insurance program had been implemented. Any independent or third party consultant referred to in the recommendations in this report should be knowledgeable of finance and the workers' compensation industry, but should have no business or brokerage connection to that industry.**

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- 3.III.2.2** Request that the Auditor-Controller and Treasurer-Tax Collector evaluate the alternative benefits, as compared to the current pay-as-you-go program, of creating a Joint Powers Authority to issue bonds to fund the existing and future self-insured workers' compensation program costs and realize savings through the attainment of investment income in excess of interest expenses. The financial risk of such a program and the impact on county financial operations in general of the resulting indebtedness must also be evaluated.

These recommendations are subject to favorable opinions from the County Counsel as discussed in the following section.

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Subsection 3.III.3 - Legal Issues

In August, 1997, the CAO initially provided to County Counsel a draft letter to the Board of Supervisors requesting approval of a draft consulting agreement for the proposed workers' compensation marketing and services related to the development of a fully insured program.

In September, 1997 County Counsel responded in a personal and confidential memorandum, that "we cannot concur with the letter and contract as now written." A major problem, in the view of County Counsel was whether or not the bonds would be exempt from Federal taxation, which would have a significant effect on the economics of the financing.

A second draft memorandum was prepared by County Counsel's bond expert who reviewed the proposal under consideration by the CAO.

Although this is a draft that has not been issued by County Counsel, their opinion suggests that the issuance of bonded indebtedness to fund workers' compensation claims would be subject to the California Constitutional Debt Limit, thereby necessitating two thirds voter approval.

A requirement that the County must obtain a two thirds voter approval to issue the bonds would also result in increased costs, to both the County and the taxpayers, thus subjecting the ballot measure to some likelihood of failure, regardless of the economics of the proposal.

The draft legal opinion also suggested that the County might not be able to transfer liability for claims where benefits have been finally determined (i.e. "tail claims"). However, a clear conclusion on this point was not reached in the draft opinion.

A decision that bonds issued to fund commercial insurance premiums for workers' compensation claims would not be tax exempt would increase the interest expense over the life of the bonds by as much as 200 basis points (two percent). Over a financing term of thirty years, as contemplated in the CAO's financial projections, this higher interest rate would result in additional expenditures of approximately \$341 million, and would have a significant dampening effect on the CAO's projected savings, leaving a smaller margin for error in the financial forecast.

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As reported in the introduction to this report, on March 5, 1998, the CAO and his staff met with County Counsel and his staff as well as the Director of Personnel and Department of Human Resources staff responsible for the County's current workers' compensation program. The CAO convened the meeting in order to broaden the County's process for review and evaluation of the fully insured workers' compensation program proposal. Subsequent to this meeting, CAO and Human Resources staff met with County Counsel staff to again discuss the legal issues related to the proposal. No final decision regarding such questions and issues has resulted.

The CAO staff are requesting a formal legal opinion from County Counsel on this matter. In order to prepare their written request for the County Counsel opinion, the CAO has submitted a list of questions they would like answered for Counsel's review and advice on the formulation of their written request. The CAO's legal questions are summarized below:

- 1. Could the county enter into a contractual arrangement with a commercial insurance carrier that would, within certain limitations, transfer the insurable portion of the loss portfolio "tail claim" liability from the County to the carrier at a guaranteed cost?**
- 2. Could the County issue debt to finance the loss portfolio transfer referenced in Question 1?**
- 3. Could the existing County-created Joint Powers Authority (JPA) issue the debt to finance the loss portfolio transfer referenced in Question 1? That is, could the JPA issue the required debt and pay the carrier in exchange for payments from the County that offset the cost of the debt service?**
- 4. Could the County purchase commercial workers' compensation insurance that would transfer the insurable liability for future claims to an insurance carrier?**
- 5. Could the County issue debt to finance the purchase of the insurance referenced in Question 4?**
- 6. Could the existing County-created JPA issue the debt to finance the cost of insurance referenced in Question 4 via the arrangement described in Question 3?**

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- 7. Assuming the County would be willing to accept the risk associated with carrier insolvency and the risk for any uninsurable costs identified in the answers to Questions 1 and 4, and assuming the County were willing to make use of the County-created JPA to accomplish the issuance of the required debt at taxable rates of interest, is the 20-year financing scenario discussed with the CAO, County Counsel and others on March 5, 1998 legally feasible?**
- 8. Assuming the answer to Question 7 is "yes," what steps should be taken next to determine if the financing referenced in that question could be offered at tax exempt rates of interest?**
- 9. Would the bonds require two-thirds voter approval?**

As of the writing of this report, the County Counsel has not responded to the CAO's questions. It is highly unlikely therefore, that a County Counsel opinion on these issues will be available to the 1997-98 Grand Jury in a timely manner. Without such an opinion, it would be impossible to fully evaluate whether or not the consulting proposal to investigate a fully insured workers' compensation program warrants approval.

Conclusion

County Counsel has raised several legal questions relevant to the CAO's workers' compensation insurance proposal through privileged and confidential communications to the CAO. Further discussion of these issues has proceeded recently, and the CAO is now formulating a request for a formal County Counsel opinion.

Without a conclusive legal opinion on these issues, it is not possible to fully evaluate whether or not the consulting proposal to investigate a fully insured workers' compensation program is legally viable.

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Recommendations

It is recommended that the County Counsel:

- 3.III.3.1 Issue a formal legal opinion at the request of the CAO regarding the proposal to convert the County to a privately insured workers' compensation program, as soon as possible, to facilitate the evaluation of this proposal.**

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Subsection 3.III.4 - Review of the Draft Agreement for Workers' Compensation Consulting Services

During the fieldwork phase of this management audit two documents were provided to the Grand Jury by the Chief Administrative Officer (CAO): a draft Board letter and draft consulting agreement between the CAO and Consultant A, who had been provisionally selected to provide services for the investigation of a fully insured Workers' Compensation Program. This draft agreement was developed after extensive negotiations between the CAO staff and Consultant A, subsequent to the CAO's receipt of Consultant A's response to the CAO's request for concept papers (RFCP) on this subject.

Summary of Draft Agreement

The purpose of the draft agreement for Consultant Services is to retain the services of the Consultant A to determine the feasibility of converting the County's self-insured workers' compensation program to a fully insured program by transferring all existing and future workers' compensation claims to a private insurance company. All of the criteria in the draft agreement concerning the ability to convert the workers' compensation program to a fully insured program are based on Consultant A's contention that they can obtain favorable insurance premiums from the private sector. The major elements of this proposal are as follows:

- **Old claims - The County would transfer a new and updated unfunded liability presently estimated by an independent actuarial valuation at \$1.38 billion as of June 30, 1996 to an insurance carrier for a one-time lump sum premium payment. A revised, and presumably more accurate, actuarial valuation is to be prepared prior to the solicitation of bids for the insurance premium. According to a draft transmittal letter from the Chief Administrative Officer to the Board of Supervisors, the source of funds for this premium would be obtained through a tax-exempt public bonded debt offering.**

Workers' Compensation Program

- **Future claims** - The County would transfer the expected first year annual premium for not more than a set percentage of total liability over the life of such claims. The insurance carrier would assume all future years liability for the first years claims.

The Chief Administrative Office hopes to obtain a three year premium guarantee. If not, future years annual premiums would be adjusted based on loss experience and changes in the County payroll. Future year annual premiums would also be financed over a term concurrent to the original financing of the old claims.

Services are to be provided by Consultant A consisting of two segments:

- **Marketing Services** - Consultant A will assist the County in completing and negotiating an agreement to transfer the old and future claims, in accordance with the parameters discussed above, to a private insurance carrier for a fee. If Consultant A successfully presents such premiums to the County, Consultant A will receive the fee whether or not it is approved or disapproved by the County. Provisions for a reduced fee, are included in the event that a modified program is implemented.
- **Consulting Services** - Consultant A would provide services to control future workers' compensation loss experience and premium expense (such as medical managed care, fraud control, case closure, early return-to-work, etc.). Consultant A will receive a three year fee based on attainment of specified cost outcomes. An additional fee would be paid if the contract is extended for two more years beyond the initial three year agreement.

The following is a summary of the major areas of the draft agreement for Consultant Services:

Term of the Draft Agreement

The term of the draft agreement is for three years and six months from the date of approval by the County Board of Supervisors, unless the Chief Administrative Officer and Contractor mutually agree to extend the draft agreement for two additional years. Under the draft agreement, such an extension would not require additional approval by the Board of Supervisors.

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The County may terminate the contract immediately by written notice at any time if the Contractor fails to comply with the terms of the Agreement.

Statement of Work

The following is a discussion of the marketing services and consulting services segments of the draft agreement.

Consultant A is to provide the County with consulting services to assist in an exploration of the private workers' compensation insurance market to determine the feasibility of insuring both the old claims and future claims ("*Marketing Services*"). Additionally, Consultant A will provide management of the insured workers' compensation program ("*Consulting Services*").

According to the draft agreement:

The proposed Consultant would assist in preparing data for the Actuary for the new actuarial valuation. This includes verifying and summarizing the historical cost data, identifying any errors, omissions, inconsistencies and any other data that could result in an inaccurate or misleading actuarial valuation.

This is a process that is currently performed by the County Department of Human Resources. However, the Chief Administrative Office reports there is a concern by Consultant A that the actuarial report may not be accurate. According to Consultant A, private insurance carriers would be skeptical of entering into an agreement based on data supplied by the County. Consultant A believes that if Consultant A prepares the data, an agreement can be reached with the private insurance carriers. Therefore, Consultant A advises that it will be necessary to provide a higher quality of data prior to the performance of the new actuarial valuation to determine the new unfunded liability. Further discussion related to the accuracy of the County data is covered in Section 3.III.5 - Opportunities for Improvement to Los Angeles County's Workers' Compensation Actuarial Valuation.

Because the proposed draft agreement is based on transferring the old claims to a private insurance carrier for a one-time lump sum payment, it is important that the County have an accurate new actuarial valuation reflecting the total estimated unfunded liability.

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Although it has been determined by the Chief Administrative Office that Consultant A is qualified to perform this task, we recommend that an independent third party consultant be retained to gather the data for the new actuarial valuation. Performance of such services by an independent and objective party, whose potential fees were not dependent on a specific outcome, would safeguard the County from the consequences of any misstatement of claims data on which future premium proposals would be dependent.

Additional Marketing Services

The draft agreement also provides for the following additional marketing services:

- *Present County with a written Request for Proposal (RFP) for the transfer of the old and new liabilities, which is to include the following County requirements:*
 - *Statement of County's needs and goals in issuing the RFP;*
 - *Summary of description of County's current workers' compensation program;*
 - *Presentation of underwriting information;*
 - *County requirements regarding cost guarantees;*
 - *County requirements regarding contract term and multi-year premium rate guarantees;*
 - *Information relating to premium financing options;*
 - *Specifications relating to Insurance Carrier solvency and minimum size;*
 - *Specifications relating to Insurance Carrier Risk Management Information Systems (RMIS);*
 - *Description of criteria by which proposal will be evaluated;*

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- *Specifications regarding carrier performance standards in claims management, RMIS, and safety and loss prevention.*
- *Within 90 days following the County approval of the RFP, the following services are to be provided:*
 - *Identify qualified Insurance Carrier proposers and distribute the RFP;*
 - *Serve as a point of contact;*
 - *Receive and review requests for additional data or other queries;*
 - *Arrange for carrier audits of current workers' compensation files in the County or third party administrators possession;*
 - *Assist in reviewing and evaluating preliminary quotes;*
 - *Review service levels and claims administration practices known as "best practices" used by the finalists;*
 - *Recommend claims management procedures and performance standards to use in negotiations;*
 - *Review final quotes and premium financing arrangements and prepare financial model showing cash flows and savings from finalists' proposals compared to projected current expenditures;*
 - *Prepare and submit a written analysis of RFP responses. This analysis would include County options and selection of a recommended carrier;*
 - *Assist County in any additional negotiations with insurance carrier.*

As can be seen above, the RFP process requires numerous tasks to be completed. Many of the tasks are a standard part of all County proposals. Most County departments, including the Chief Administrative Office, have issued RFPs previously and are familiar with the process.

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Some tasks may require technical expertise. For these tasks, departments may retain a consultant. For example, the Department of Human Resources recently issued an RFP for a Managed Care Consultant for the Workers' Compensation Program, which required the retention of a consultant to assist in preparation of the RFP. However, the Chief Administrative Office or Department of Human Resources could conduct many of the tasks contained in the draft agreement, enabling the County to reduce the proposed consulting fee accordingly.

Additionally, the above tasks involving the review of the preliminary and final proposal quotes is an area where independence is required to safeguard the County's interests and should be evaluated by an independent third party.

Fee For Services Performed

For the above Marketing Services, the County would agree to pay Consultant A as follows:

- 1. Consultant A will receive a one-time fee, if they present the County with an insurance proposal which would transfer the old claim unfunded liability to an insurance carrier at a guaranteed one-time premium of not more than a lump sum percentage off the present unfunded liability estimated at \$1.5 billion as of June 30, 1998, and future liabilities incurred in the first policy year at a guaranteed annual premium of not more than a lump sum percentage of the estimated first year incurred liability. This fee would be due and payable at the time the insurance proposal is either approved or disapproved by the Board of Supervisors, or six months after the date the insurance proposal is presented to Board of Supervisors.*

To further clarify the fee portion of the draft agreement described above, if Consultant A presents the County with an insurance carrier that meets the stated terms, the initial fee would be due Consultant A regardless of whether the County decides to proceed or not. According to the Chief Administrative Office these terms were structured to show the insurance industry that the County is serious in pursuing this issue. Also, Consultant A wants to be guaranteed that they will be paid if the outcomes specified in the draft agreement are attained.

Workers' Compensation Program

Although the draft agreement for Services Contract states that there is a guaranteed premium for the first year liability, the Chief Administrative Office is hoping to secure a three year rate guarantee. However, the Chief Administrative Office is also concerned that if a three year guaranteed premium rate is secured, the private insurance carrier will be less concerned with efficiency improvements that are assumed to be required in order to receive financially favorable premium quotations. Additionally, if a three-year guaranteed premium is secured, the outcome fees associated with the consulting services discussed below would be affected. Therefore, an analysis will need to be performed to determine if the most cost effective arrangement for the County is to secure a one- or three-year rate guarantee.

The draft agreement also states that:

2. *A one-time fee would be paid if Consultant A presents the County with an insurance proposal, which does not meet the requirements stated in the previous paragraph, but is approved and implemented by the County within one year after the insurance proposal is presented to the Board of Supervisors.*

No compensation would be payable to Consultant A under the following conditions:

- *If the contractor does not present an insurance proposal that meets the requirements stated in 1. above within nine months of the execution of this agreement or another date selected by the County, unless an alternative proposal is presented that is approved and implemented by the County in which case Consultant A receives the fee discussed in 2. above;*
- *The County elects to terminate the project because financing necessary for the project is not available or not permissible at tax exempt rates of interest within 270 days of the execution of the agreement.*

Conclusion

The CAO proposes entering into an agreement with an outside consultant for various Marketing Services including conducting a solicitation process for a private insurance carrier to assume the old and new workers' compensation liabilities. A fee will be paid to Consultant

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A if they deliver a private insurance carrier based on the parameters described in this section, whether or not the County decides to proceed, or a lower fee if a modified program is implemented. Many of the services that will be provided are standard procedures in the Request for Proposal process administered by County departments. Consultant A could be retained to assist in the technical areas. Some services should be provided by a third party independent consultant. Performance of such services by an independent and objective third party, whose potential fees were not dependent on a specific outcome, would safeguard the County from the consequences of any misstatement of claims data on which future premium proposals would be dependent.

The proposed consulting fee would require adjustment if Recommendation 3.III.4.6 shown below is adopted.

Recommendations

It is recommended that the Chief Administrative Officer:

- 3.III.4.1 Request that the Auditor-Controller oversee an independent analysis to determine if the Agreement for Consulting Services should be negotiated based on a one- or three-year guaranteed premium;**
- 3.III.4.2 Request that the Auditor-Controller oversee a determination of whether services that are to be provided by Consultant A contained in the Agreement for Consulting Services can be performed by the County;**
- 3.III.4.3 Determine if Consultant A should be paid the same fee whether or not the County decides to proceed with the private insurance proposal. Instead, determine if the contract should include an agreement on estimated hours and fees for marketing services with a cap on these fees, if the County decides not to move forward with the proposal;**
- 3.III.4.4 Retain a third party independent consultant to: (a) assist in the preparation of the data for the new actuarial valuation; and (b) evaluate the Request for Proposal responses;**

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- 3.III.4.5 **Require that the chosen third party independent consultant, referred to in any of the recommendations in this report, work with both the CAO and DHR staffs;**
- 3.III.4.6 **If the County elects to enter into the Agreement for Consulting Services with Consultant A, the consulting service fee should be amended to reflect the services performed by others per Recommendations 3.III.4.2, 3.III.4.3 and 3.III.4.4 above, and 3.III.4.7 below.**

On-Going Services

The following are major areas of the Services that are to be provided by Consultant A:

- *Claims and disability management services that will be provided prior to or simultaneously with the transition to an insured workers' compensation program;*
- *Claims and disability management services that will be provided subsequent to the transition to an insured workers' compensation program;*
- *Early return-to-work services;*
- *Services to reduce the frequency and severity of future claims;*
- *Management Information Services including conversions between County system and insurance carrier;*
- *Consultant agrees to troubleshoot and assist the insurance carrier or County with any related problem which they have the capability to resolve.*

Many of the consulting services that are to be performed by Consultant A have been implemented or are proposed to be implemented in the very near future under the action plan developed by the Project Implementation Team following Consultant A's 1996 report. These include managed care for medical claims, early return-to-work and case closure services.

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Section II of our report, **Recent Efforts to Control the Cost of Workers' Compensation in Los Angeles County** contains a discussion of these areas. Therefore, a majority of the services Consultant A will be receiving fees for are in various stages of implementation. If the County elects to approve this agreement it will be necessary to analyze the programs implemented to date and determine if the structure of Consultant A's fee is appropriate.

Additionally, as stated above, Consultant A is proposing to review the open claims of the County's current Third Party Administrators for possible closure. This task could impact the new actuarial valuation and result in a reduction of the estimated unfunded liability, which, as explained in the summary section above, is being transferred to the insurance carrier for a one time premium. This task should be performed prior to preparation of a new actuarial valuation.

Fee For Services Performed

For the above Consulting Services the County will compensate Consultant A as follows:

1. *A base fee for each of the first three years of the fully insured workers' compensation program.*
2. *Additional fees based on outcomes realized, including the number of lost days per employee, reduction in medical costs and actual costs for injuries. As discussed above in the Fee For Services Performed (1.) section for Marketing Services, if the County enters into a three year guaranteed annual premium agreement with an insurance carrier the outcome fee may be affected. The multi-year agreement could determine in advance that Consultant A is entitled to part or all of the outcome fees.*
3. *The County's maximum obligation for all services provided is one fee if the agreement is terminated in 3 years six months, or a higher fee if terminated after 5 years six months.*

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According to the CAO's draft Board Letter concerning this agreement, Consultant A would agree not to accept any commission or other compensation from a private insurance carrier or any other source as a direct or indirect result of this project. Consultant A would be required to take all necessary steps to ensure that such forms of compensation are not included and the insurance carrier would be required to confirm this in writing.

County Responsibilities and Commitments

In order for Consultant A to fulfill its responsibilities contained in the draft agreement, the County will be required to permit Consultant A access to various workers' compensation records and personnel. The County would also be required to provide assurances that the necessary changes to achieve efficiency improvements will be implemented. The County responsibilities and commitments are outlined in detail in the draft agreement.

Although there are numerous County Responsibility items outlined in the draft report, most are administrative support functions that can be achieved with little effort or expense. However, one element required is a back-up detail for the new actuarial valuation including a 10 year history of medical and indemnity expense data. This data is not currently available and the Department of Human Resources reports this task would cost an additional estimated \$25,000. This item is described in detail in Section III.5 - Opportunities for Improvement to Los Angeles County's Workers' Compensation Actuarial Valuation of this report

Conclusion

The CAO is considering a proposal to enter into a agreement with an outside consultant for various Services. For these services, Consultant A will receive a fee based on results achieved by Consultant A and depending on the length of the contract. Many of the services that will be provided have already been implemented or will be implemented by the County in the very near future. Open case closure services should be performed prior to the performance of a new actuarial valuation and not be part of the services. The County will need to determine if adjustments to the fees are necessary if the proposed services are reduced.

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Recommendations

It is recommended that the Chief Administrative Officer:

- 3.III.4.7 Request that the Auditor-Controller oversee a review of the open claims of County Third Party Administrators for possible closure prior to performance of a new actuarial valuation;**
- 3.III.4.8 If the County elects to enter into the Agreement for Consulting Services with Consultant A, request that the Auditor-Controller oversee an analysis to determine which program improvements have already been implemented by the County. The Consulting fees contained in the Agreement should be adjusted to reflect any reduction in services to be provided by Consultant A due to the program improvements already implemented by the County.**

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Subsection 3.III.5 - Opportunities for Improvement to Los Angeles County's Workers' Compensation Actuarial Valuation

The purpose of the Workers' Compensation actuarial study is to measure the value of future workers' compensation payments and associated administrative costs that may be required for open claims that have occurred since the inception of the County's self-insurance program.

As of June 30, 1996 the estimate of unpaid workers' compensation benefit payments and associated administrative cost is approximately \$1.38 billion. This is an estimate for claims that remained open as of June 30, 1996.

The estimate makes no provision for the time value of money. This means it is an estimate of future value including the effects of inflation for benefit payments.

The present value estimates, discounted at three assumed annual interest rates, are as follows: at 3 percent, \$1,001,511; at 5 percent, \$854,448; and at 7 percent, \$750,554. This means that if the County had a workers' compensation program with \$750,554 held in reserve for future workers' compensation benefit payments and associated administrative costs, and earned the assumed 7 percent annual interest on the \$750,554 reserve, the earnings would be sufficient to meet the currently estimated future liability of \$1.38 billion.

Improvement to Actuarial Measurement

A key actuarial step in determining the total future liability is a breakdown of projected worker's compensation loss payments into indemnity and medical losses. The County's Actuary reports that these losses exhibit different patterns, and separate analysis often yields different estimates than those derived by a combined amount. The County was able to provide this data from June 1995 forward. The actuarial report states that the June 1995 forward data is not sufficient to determine the separate effects for indemnity and medical losses and believes several more years of data would be needed.

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Approximately 72 percent, or \$1.0 billion of the estimated \$1.38 billion liability is due to the anticipated costs of claims that were opened prior to June 30, 1995. Consequently, the Actuary recommends that the County capture this data for future studies and separate the information prior to 1995 for the Salary Continuation and the Safety (4850) programs. Additionally, as reported in Section 3.III.4 of this report addressing the County's responsibilities for a proposed Contractor to meet outcomes required for the County's consideration of a fully insured workers' compensation program, a 10-year history of this data is necessary. Although Consultant A has requested a 10-year history, the County's Actuary believes the data should be separated into indemnity and medical losses for all years prior to 1995. The Department of Human Resources reports this task would cost an estimated additional \$25,000.

Since actuarial analyses are based on conservative projections from known historical data, detailed trend information is critical to accuracy. Without such information, actuaries tend to make extremely conservative estimates.

The most recent actuarial report also discusses additional areas of variability that could impact the estimated liability, such as number of cases closed for the most recent two fiscal years and unusual loss activity during the last two calendar years for cases that remain open from the 1970s.

In summary the Actuary states that given the variability of the factors discussed in their report, substantial variance of actual results is not unexpected and they have not audited, verified, or reviewed the data obtained for reasonableness and consistency.

Additionally, as discussed in detail in Section 3.III.4 under Statement of Work, Consultant A believes that the actuarial report may not be accurate.

Based on the above facts, and as also discussed in Section 3.III.4 under Statement of Work, it is important that the County have an accurate actuarial valuation reflecting the total projected unfunded liability that will be used to determine the cost of a one-time lump sum premium transfer as proposed in the draft Agreement.

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For this reason, it would be in the best interest of the County and its taxpayers to retain a third party, independent consultant to develop a certified opinion of the value of the projected unfunded liability prior to entering into any agreement to transfer the old claims. Even if the County elects not to approve Consultant A's proposal for a full insurance program, an accurate assessment of the unfunded liability would be obtained.

Conclusion

Based on a review of the County's workers' compensation actuarial report, the projected unfunded liability of \$1.38 billion may not be accurate. Based on the County's concern for this growing liability and the impending proposal of transferring the unfunded liability to a private insurance carrier, an improved, more accurate measurement of the County's unfunded liability should be obtained.

Recommendations

It is recommended that the Chief Administrative Officer:

- 3.III.5.1 Request that the Auditor-Controller oversee retention of a third party independent consultant to: (a) separate the data prior to 1995 for workers' compensation loss payments into indemnity and medical losses; and (b) implement Recommendation 3.III.4.3 in Section 3.III.4 to assist in preparation of the information for the revised actuarial valuation;**
- 3.III.5.2 Subsequent to Recommendation 3.III.5.1., an independent actuary should be retained to complete a new actuarial valuation.**

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Section 3.IV - Chronology of Events

The following is a chronology of events concerning the Chief Administrative Officer's consultant selection process for the proposed program to implement a fully insured workers' compensation program.

6/27/95 The Board of Supervisors approves a motion that the CAO retain an experienced workers' compensation expert. This consultant would provide advice and assistance in determining changes necessary to improve the quality, efficiency and effectiveness of the County Workers' Compensation Program and to achieve all cost reductions possible while continuing to provide an adequate level of care and benefits to injured County employees. Further, the outside consultant is to work either pro bono or on a contingency basis based on results that produce a reduction in workers' compensation expenditures which would offset the cost of the study.

10/19/95 The CAO reports to the Board of Supervisors that a consultant that would undertake the project on a pro bono basis has not been located, however, a qualified firm has been found that is willing to do the work on a contingency basis. The CAO reports that Consultant A was one of five firms known for its expertise in the workers' compensation area. According to the CAO, none of the five firms was willing to work pro bono and only two firms were interested in a contingency arrangement.

The cost of the consulting services contract with Consultant A is to be offset by anticipated savings from a reduction in workers' compensation costs. Consultant A is to perform the work at a cost not to exceed \$200,000 contingent on end results that would result in at least that amount in savings. Further, it is stated that no fees would be paid and no savings would be credited for this purpose unless the savings occur within 12 months of implementation, as confirmed by the CAO. Consultant A reports to the Board of Supervisors that they anticipate completion of the project within approximately 90 days, and that they are confident of savings of substantially more than \$200,000.

The CAO states that Consultant A is prepared to immediately assign a project team and that it is anticipated that moving ahead expeditiously could produce significant savings within the current fiscal year. Furthermore, the CAO reports that Consultant A had recently completed

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a similar study for the City of Los Angeles and that the reports they were getting from the City were extremely positive. According to the CAO, the City expects a reduction in workers' compensation expenditures far in excess of the fees paid to Consultant A and that the firm has both the experience and the resources necessary for the project. The Board of Supervisors approves the CAO's request to retain the firm of Consultant A to perform workers' compensation consulting services.

5/14/96 The CAO submits to the Board of Supervisors a request to approve and accept Consultant A's May 1996 report titled "Workers' Compensation Cost Containment." Consultant A's report concludes that the County could reduce workers' compensation expenditures by approximately \$16 million annually. According to the report, some of the recommendations could be implemented quickly and others would require more time. Full realization of the projected savings is not expected for up to three years from the point of implementation.

The CAO also recommends that the Board of Supervisors instruct the CAO to organize a project implementation team. The project implementation team would develop an action plan to implement the recommendations in the report and report back to the Board of Supervisors with the action plan within 90 days. Additionally, the CAO recommends that the Board of Supervisors approve payment to Consultant A of up to \$200,000 based on an anticipated reduction in workers' compensation costs.

5/16/96 A memorandum is sent to the CAO from the Director of Personnel stating that the potential savings estimates in Consultant A's report are "ballpark" estimates, there are significant implementation costs, and that the full implementation could take several years. The Director of Personnel concurs with the CAO that the report provided general guidance in areas requiring change, but states that it is not a detailed action plan or one that can be used for budget planning.

6/4/96 The Board of Supervisors approves the 5/14/96 recommendations made by the CAO, including payment of \$200,000 to Consultant A. Additionally, the Board of Supervisors instructs the Interim CAO to use Consultant A on a pro bono basis to advise the project implementation team.

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6/25/96 The Interim CAO requests a legal opinion from County Counsel to determine whether conflict of interest rules prohibit the County from contracting with Consultant A for additional consultation services. The CAO states that additional consulting help is needed in each of the six major areas addressed in Consultant A's report. The CAO reports that, although all of the recommendations could be implemented by County staff, the changes could be implemented faster and more efficiently by use of an outside experienced consultant and that Consultant A is considered to have the best experience based on the work already performed on this project. Therefore, according to the CAO, retaining Consultant A would be the most cost effective approach.

8/15/96 County Counsel determines that the retention of Consultant A for additional consulting services does not represent a conflict of interest and that the firm can be retained to implement the recommendations on a compensated basis.

9/5/96 A memorandum is issued to the Board of Supervisors from the new CAO regarding the project implementation team's action plan which addresses all of the recommendations from Consultant A's Workers' Compensation Cost Containment report. The CAO states that most of the work to implement the recommendations is to be completed within the next 10 months, however the effort will extend into 1998.

2/24/97 The CAO requests approval from the Board of Supervisors to release a Request for Concept Papers (RFCP). The stated objective of the RFCP is to obtain ideas and recommendations related to the feasibility of converting the County's self-funded workers' compensation program into a fully insured program. The CAO reports that, based on the results of the RFCP, a consultant may be retained to assist the County in soliciting the insurance market for an insured worker's compensation program.

The CAO reports that, subsequent to the approval by the Board of Supervisors of Consultant A's Workers' Compensation Cost Containment report on 6/4/96, Consultant A presented the CAO with an approach to determine if a fully insured workers' compensation would be cost effective. Under the plan, all liability for workers' compensation claims expense and all responsibility for program administration would be transferred to an insurance carrier for a set premium paid by the County. This would also include a transfer of the County's unfunded liability for past claims.

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According to the CAO, the release of the RFCP would permit the County to obtain the best ideas from all consulting firms that would be interested in this project. The RFCP would permit each proposer to develop cost projections based on the new actuarial valuation that was being completed. If the results of the RFCP indicate interest for the insurance approach, a recommendation would be made to retain a consultant to prepare and release a Request for Proposal to the insurance market. The objective would be to determine if the cost of the insurance premiums would be less than what the County is currently spending.

4/2/97 A memorandum is issued to the CAO from Director of Personnel regarding a report issued by Consultant B concerning the savings expected from Consultant A's report to the City of Los Angeles. Consultant B's report states that Consultant A's cost savings were overstated and that it is estimated that the City's costs will actually increase by \$32.4 million during the first three years rather than be reduced by \$27.7 million as estimated by Consultant A.

4/16/97 Four firms, including Consultant A, respond to the County's RFCP. Consultant A outlines an approach to the workers' compensation program which is believed could produce savings of \$500 million within the next ten years.

Consultant A's suggestions include:

- **Go from self-funding for workers' compensation benefits and expenses to an insured program by transferring the current open claims to an insurance carrier and purchasing coverage for new claims;**
- **Transfer all administration of the claims to an insurance carrier;**
- **Finance the transfer through either bond issuance or premium finance, with a resulting payout pattern that produce immediate cash flow savings for the County;**
- **Utilize Consultant A's and the insurance carrier's expertise to control future workers' compensation loss experience and premium expense on a County-wide basis, to assure continuing savings.**

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6/11/97 A memorandum is sent from the Assistant CAO to the CAO requesting approval to begin negotiations for the services of Consultant A, the Consultant selected by the RFCP Evaluation Team. The Evaluation Team consists of six representatives from the Auditor-Controller, County Administrative Office, Department of Human Resources, and Treasurer-Tax Collector.

According to the Assistant CAO the evaluation team's unanimous recommendation was based on the following:

- Consultant A projected a reduction of at least \$475 million in program liability in year one and they were willing to place their fee at risk based on this outcome.
- Consultant A's proposal was superior to the other proposals by its commitment, not only to obtain the best insurance arrangement, but to also assist in achieving the internal County changes necessary for maximum cost containment.

The Assistant to the CAO advises that if Consultant A is to be retained, the next step is to negotiate contract language with Consultant A regarding scope of services and fees.

8/29/97 A draft letter is prepared by the CAO to the Board of Supervisors recommending approval of a contract with Consultant A to provide consulting services to explore converting from a self-funded to an insured Workers' Compensation Program. A copy of the draft is provided to County Counsel, Director of Personnel, and the Treasurer-Tax Collector.

The purpose of the letter is to obtain Board of Supervisors authorization to retain Consultant A to explore the feasibility of converting the workers' compensation insurance program to an outside insurance agency for all existing and future workers' compensation claims. The letter states that Consultant A will: (1) assist the CAO in preparing a Request For Proposal and conduct a solicitation process for an insured workers' compensation program; and (2) provide consulting services if a private contract is awarded.

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9/16/97 A memorandum is sent from the County Counsel to the CAO stating that the County Counsel does not concur with the draft letter to the Board of Supervisors of 8/29/97, because of certain legal issues that need to be addressed. However, the County Counsel states that they believe the concept can be restructured within the legal parameters.

The County Counsel's main issue of concern is the Federal taxability of the interest on the bonds. Additionally, the County Counsel notes that the CAO asserts that insuring the "tail" (old) claims will result in no more liability to the County for those claims. County Counsel states that they believe that the law is clear as to new claims but not to already adjudicated claims. Therefore, it is their belief the County would still have contingent liability for the "tail" claims.

County Counsel also questions whether the County would be able to issue the bonds and the CAO's assumption they are legally similar to the Pension Obligation Bonds. However, they do believe the Joint Powers Authority can be used to issue bonds to fund an insurance reserve which was done by San Bernardino County or to purchase insurance. Additionally, legal authority would need to be established to obligate the County to repay the funds.

10/8/97 A memorandum is issued by the Assistant CAO to the CAO discussing the recommended course of action to move forward with the proposed contract with Consultant A. The primary issues discussed in the memo are the legal issues raised by County Counsel, private firm legal opinions and discussion of all parties to resolve the legal issues.

12/22/97 A memorandum is issued from the CAO's Chief of Compensation Policy to the Assistant CAO responding to County Counsel concerns regarding the financial feasibility of insuring the worker's compensation program. It includes a recommendation that all financial projections and other issues be subject to review and discussed with County Counsel and the Department of Human Resources.

3/5/98 CAO convenes meeting with County Counsel and his staff as well as the Director of Personnel and Department of Human Resources staff responsible for the County's current workers' compensation program. The CAO convened the meeting in order to broaden the County's process for review and evaluation of the fully insured workers' compensation program proposal.

Group Homes Follow-Up

4-

Human & Social Services Committee

Jack Bernal, Chair
Belem Asaad
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Group Homes Follow-Up

Introduction

In September 1997, the 1997-98 Los Angeles County Grand Jury undertook to perform a management audit and a special study of the Department of Children and Family Services (DCFS) Contract Review Section (CRS), including their activities related to group homes. The objectives of the audit and special study were as follows:

- Review the DCFS Contract Review Section to determine if the Department has adequately implemented the recommendations, made last year by the 1996-97 Grand Jury, for compliance with the County contract/program statement and State regulations (*Recommendations 1.1 through 4.3 set forth on pages 8-26 through 8-28 of the 1996-97 Grand Jury Report*); and
- Based on the results of our review of the Department's progress to improve policies and procedures, determine if additional recommendations should be made to improve the quality of services provided by group homes and increase group home accountability.

Methodology

This management audit has been conducted according to standards included in United States General Accounting Office's Government Auditing Standards, 1994 Revision, prepared by the Comptroller General of the United States. While conducting this management audit, the Grand Jury :

- Held preliminary meetings to define the scope of the management audit;
- Held an Entrance Conference with the DCFS Chief of the Quality Assurance Division and the Section Head of the Contract Review Section, the Senior Division Chief of the Revenue Enhancement Division, the County Assistant Auditor-Controller and members of staff responsible for implementing fiscal recommendations;
- Obtained and reviewed new written policies and procedures and related documents for program audits and fiscal audits;

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- **Reviewed program audit reports issued by the Contract Review Section and fiscal audit reports issued by the Auditor-Controller;**
- **Reviewed children's files to determine if Social Workers are making mandatory face-to-face visits as required by State regulations;**
- **Obtained and reviewed a management audit report issued by the County Auditor-Controller related to group home overpayments;**
- **Reviewed the new County group home foster care agreement; and**
- **Made unannounced visits to a number of group homes where we inspected facilities, interviewed staff, and spoke with children.**

Based on the review of documentation and our interviews, we analyzed the current DCFS contract audit function and related group home activities to determine whether the Department has appropriately implemented last year's Grand Jury recommendations. We then developed additional findings and recommendations that we believe will further improve group home operations and increase group home accountability if implemented. These recommendations should help to insure continued compliance with the County group home foster care agreement, Department policies and procedures, and State regulations.

Organization and Budget

For FY 1997-98 the Department of Children and Family Services has a budget of approximately \$988 million and 5,544 authorized positions. Of this budget, an estimated \$175 million was spent on group home foster care services for approximately 3,000 children. In order to ensure that these monies are expended in a cost effective manner and that the County, State and federal governments obtain the quality of services for which they are paying, staff has been assigned to the Contract Review Section at a cost of approximately \$465,000 for FY 1997-98. Additionally, the County Auditor-Controller provides DCFS with an estimated \$1,000,000 worth of audit and advisory services per year which will include an estimated \$280,000 allocated for group home fiscal audits from July 1, 1997 to June 30, 1998.

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Background

The Contract Review Section, formerly called the Contract Audit Section, is a division of the Quality Assurance Division of the Department of Children and Family Services (DCFS) which is part of the Department's Bureau of Executive Services. The role of the Contract Review Section is to audit various contractors, but primarily those operating group homes. The Contract Review Section was established in December 1994 with the purpose of reviewing group home contracts and, until May 1997, foster family agency contracts, to ensure child safety through compliance with the contract/program statement and State regulations and to assess the quality of care and services provided by the group homes.

Group homes are audited for program quality to assure the adequate delivery of services and care to children in out-of-home placement and compliance with regulations and contractual agreements. Based on the results of its program audits, a fiscal audit function was created within DCFS. In October 1996 the Los Angeles County Board of Supervisors directed the County Auditor-Controller to perform fiscal audits of group homes under contract with the Department of Children and Family Services (see Section 4.II below).

Scope of Reporting

Our report addresses the implementation of the 1996-97 Grand Jury recommendations and additional recommendations for the 1997-98 Grand Jury as follows:

- Section 4.I Compliance with Departmental Policies, Goals, and Auditing Standards;**
- Section 4.II Financial Reporting and Contracting Policies and Procedures;**
- Section 4.III DCFS Accounting and Information Systems Pertaining to Group Home Foster Care Payment and Collection Processing;**
- Section 4.IV Foster Care Group Home Quality of Care Issues;**
- Section 4.V Additional Findings and Recommendations.**

Group Homes Follow-Up

Sections 4.I through 4.IV provide the section and corresponding numbered recommendations from the 1996-97 Grand Jury report in italicized text and are followed by the results of our review of the status of each recommendation. Section 4.V of this report provides additional findings and recommendations.

Group Homes Follow-Up

Section 4.1 - Compliance with Departmental Policies, Goals, and Auditing Standards

To help evaluate DCFS success in implementing the recommendations of the 1996-97 Grand Jury, the policies, goals, and auditing standards in effect during the FY 1996-97 management audit of the Contract Audit Section, now called the Contract Review Section, were compared to the policies, goals, and auditing standards in effect during this FY 1997-98 follow-up management audit. This section describes the implementation status of the recommendations based on our review of current procedures, staff interviews and selected data samples.

Recommendation 1.1 from the 1996-97 Grand Jury Report:

Conduct audits in accordance with United States General Accounting Office Standards; in order to comply with this recommendation, the Department should provide necessary training for its audit staff.

Status: Implemented

The Department believes this is primarily a recommendation related to financial audits which are now the responsibility of the County Auditor-Controller. However, it is noted that the Department has implemented *Recommendations 1.4, 1.6, and 1.7* below which are recommendations that comply to the United States General Accounting Office Standards and meet the intent of the recommendation.

Group Homes Follow-Up

Recommendation 1.2 from the 1996-97 Grand Jury Report:

Adhere to Title 22 and Departmental policies requiring that Corrective Action Plans be submitted within 30 days.

Status: Not Implemented

The Department has adopted new policies and procedures for group home program audits. Previously, the group home was given 30 days from the date of the final report to complete all corrective actions and provide a Corrective Action Plan (CAP) which discloses how the corrective measures will be maintained.

On September 5, 1997, a letter was issued to all group homes from the DCFS Director advising them of the new procedures. These include a requirement that certain serious deficiencies be corrected within five days. Failure to make the necessary corrections could result in the home being classified as either "Do Not Refer" (no additional children can be placed at the facility) or "Do Not Use" (children are removed from the facility). These serious deficiencies are:

- Lack of psychotropic medication authorizations;
- Insufficient clothing supplies;
- Insufficient or poor food;
- Poor facility or environmental issues.

Additionally, group homes now have 15 days from the date of the final audit report to complete corrective actions and/or advise in a Corrective Action Plan of the steps they will take to address the deficiencies identified in the program audit. Previously, the group home operators had 30 days to provide a Corrective Action Plan. If a group home is subsequently placed on a "Do Not Use" status, the operator must apply as a new intake and be re-evaluated by DCFS before the County will place any children in that group home.

On November 7, 1997 the Section Head of the Contract Review Section issued a letter to all group home administrators outlining the audit protocol for group homes which included these new timetables.

Group Homes Follow-Up

The DCFS Contract Review Section issued a total of 178 program audits of group home corporations between calendar years 1995 and 1997. A total of 128, or 72 percent, of these program audit reports were issued in the nine month period between March 5, 1997 and December 31, 1997 after the 1996-97 Grand Jury issued its report recommending accelerating these audits. All group homes currently in operation have undergone a program audit between 1995 and 1997.

For our analysis, we divided the Contract Review Section program audits into two groups:

- **Program audits conducted between March 5, 1997 through October 31, 1997 based on prior policies and procedures requiring submittal of a Corrective Action Plan within 30 days of the final program audit report.**
- **Program audits conducted between November 6, 1997 and December 31, 1997 based on the new policies and procedures requiring submittal of a Corrective Action Plan within 15 days of the final program audit report.**

Tables 4.L1 and 4.L2 show the number of days passed prior to DCFS receiving the group home Corrective Action Plans from the group home operators for each of the two groups.

Group Homes Follow-Up

Table 4.I.1

Program Audits
March 5, 1997 through October 31, 1997
Timeliness of Corrective Action Plan Submission

<u>Days Elapsed Prior to Receipt</u>	<u>Number of Audits</u>	<u>% Total</u>
30 or Less ¹	20	54%
31 to 60	10	27%
61 to 90	5	14%
91 to 120	<u>2</u>	<u>5%</u>
Total	37	100%

¹these were within the County required response time

As shown in Table 4.I.1, of a total of 37 required Corrective Action Plans, 54 percent were received within the required number of days. This is compared with the 1996-97 Grand Jury study which reported that, at the time the study was conducted, 39 percent were received within the required number of days. Also as indicated in Table 4.I.1, 19 percent of the required Corrective Action Plans were received more than 60 days late. At the time of the 1996-97 Grand Jury study, 39 percent were received over 60 days late.

Table 4.I.2 shows that since the inception of the Department's new policies and procedures in November 1997, 80 percent of the Corrective Action Plans were received within the 15 required days. This represents a significant improvement when compared to the results shown above in Table 4.I.1 which were prior to the 15 day procedures being implemented.

Group Homes Follow-Up

Table 4.I.2

Program Audits November 6, 1997 through December 31, 1997
Timeliness of Corrective Action Plan Submission

<u>Days Elapsed Prior to Receipt</u>	<u>Number of Audits</u>	<u>% Total</u>
15 or Less ¹	71	80%
16 to 20	7	8%
21 to 30	9	10%
over 30	<u>2</u>	<u>2%</u>
Total	89	100%

¹these were within the County required response time

Two of the 91 program audit reports issued, during the period covered by Table 4.I.2, are excluded, because those group homes were put on "Do Not Use" (all children removed from the facility) status prior to the required 15 days for receipt of the Corrective Action Plan.

See Subsection 4.V.1 for a related discussion of inadequate procedures concerning DCFS timeliness in issuing program audit reports to the group homes.

Recommendation 1.3 from the 1996-97 Grand Jury Report:

Adhere to Departmental policies to perform follow-up reviews six months after the required receipt date of the Corrective Action Plan.

Status: Not Implemented

Group Homes Follow-Up

The Contract Review Section and the Quality Assurance Division have implemented new procedures so that each group home is to be visited by DCFS staff three times a year. Formerly, DCFS conducted one program audit of each group home during the three year contract period and a follow-up review six months after receipt of a group home's Corrective Action Plan.

Under the new policies and procedures, the Contract Review Section will now perform a program audit at all group homes annually. In addition, as of May 1997, all group homes will receive a "manager visit" twice a year by one of the Department's approximately 100 managers with social work experience.

These manager visits will not be as comprehensive as the program audits performed by the Contract Review Section. The purpose of the manager visits is to ensure that children are receiving quality care and services in a safe and nurturing environment. The visits will also identify group homes that may require immediate attention by the Quality Assurance Division. The Contract Review Section reports that all group homes currently in operation were all visited twice by a manager in 1997, once in May and again in August. The Department intends to continue manager visits twice a year, though the time frame for visits will be altered by the Director to an as yet undetermined schedule, according to DCFS staff.

Critical areas will be reviewed in the manager visits including the use of psychotropic medication, clothing standards and personal rights violations. The managers are instructed to call the Director if there are serious problems and not to leave the premises with serious problems unsolved.

Recommendation 1.4 from the 1996-97 Grand Jury Report:

Report all illegal activities to law enforcement agencies immediately.

Status: Not Implemented

Group Homes Follow-Up

Our current review of program audits found allegations that one group home hires illegal aliens and that possible work labor issues were of concern. These allegations were disclosed in an audit report issued by the Contract Review Section on November 21, 1997. The Contract Review Section has stated that they made several unsuccessful attempts to contact the Immigration and Naturalization Services (INS) by telephone to report this matter beginning in October 1997. In January 1998, the Contract Review Section sent a letter to the INS detailing this illegal activity.

The Auditor-Controller identified potential illegal activity during fiscal audits at two other group homes. In the case of the first group home, hereafter referred to as Group Home F, the fiscal audit report was issued to the Los Angeles County Board of Supervisors on October 31, 1997. The second group home was previously identified in the 1996-97 Grand Jury report and will continue to be referred to in this report as Group Home E.

On January 23, 1998, the DCFS Director issued a letter to the County District Attorney requesting an evaluation of possible criminal prosecution based on the Auditor-Controller's findings for Group Homes E and F. The Auditor-Controller issued a letter to the Internal Revenue Service regarding possible misreporting of taxable wages for Group Home F. Additional discussions about Group Homes E and F are located in Sections 4.II and 4.V of this report.

Although the two examples described above demonstrate that the Department is now reporting illegal or potentially illegal acts to the proper authorities, such illegal activities, once identified, should be reported in a more prompt manner.

See Subsection 4.V.2 for further recommendations for reporting illegal activities.

Recommendation 1.5 from the 1996-97 Grand Jury Report:

Perform a 100% audit of children's files during program audits of group homes to determine if authorization has been obtained to administer psychotropic medication.

Status: Implemented

Group Homes Follow-Up

The Contract Review Section has added a program audit step during their program audits to perform a 100% review of children's files for administering psychotropic medication. The following questions are to be answered in these reviews:

- Are appropriate authorizations obtained for the administration of psychotropic medication?
- Are psychiatric evaluations conducted for each resident on psychotropic medication?
- Are monthly psychiatric consultations to monitor medications conducted?

Additionally, as discussed under *Recommendation 1.2 above*, the new policies and procedures provide that, if a violation is identified for use of psychotropic medication, the group home is required to submit a corrective action plan within five days.

Recommendation 1.6 from the 1996-97 Grand Jury Report:

Remit all audit reports to the State Community Care Licensing Division and request they transmit to DCFS all audit reports performed by them for Los Angeles County Group Homes.

Status: Implemented

The State Community Care Licensing Division (CCL) is now sending all audit reports to the DCFS Out-of-Home Care Evaluation Unit (OHCEU). When the DCFS Contract Review Section begins an audit, OHCEU files are reviewed for background material about the group home, including any State reports that have been issued.

Our review revealed that the Contract Review Section is forwarding a copy of all of their program audit reports to the CCL. These reports can be used by the CCL to investigate and levy fines on group homes based on the deficiencies identified in the DCFS program audits. In accordance with Health and Safety Code Section 1548, the State Department of Social Services has the authority to suspend or revoke a licensee.

Group Homes Follow-Up

Recommendation 1.7 from the 1996-97 Grand Jury Report:

Make specific appropriate report recommendations consistent with audit findings in order to obtain compliance with State and local laws and regulations including suspension or cancellation of group home contracts, if warranted.

Status: Implemented

Our review of the Department's program audits found that DCFS has modified its executive summaries to more closely reflect the significant findings found in the program audit reports. In addition, since January 1997, DCFS reports that 15 group homes were shut down for significant violations. This is compared to 4 group homes which were shut down in 1994, 8 in 1995, and 10 in 1996.

According to DCFS, the 15 group homes shut down since January 1997 were closed for the following reasons:

Voluntary Closure	3
Revoked License	0
Financial (2 of these were also cited for poor services or care)	5
Facility and Environment	1
Poor Services/Poor Care	5
Criminal Investigation	<u>1</u>
TOTAL	15

The Department reports that 7 of the 15 group homes were shut down as the direct result of a program audit, manager's visit, or fiscal audit conducted by the Auditor-Controller which was referred by DCFS.

In addition, DCFS has placed three group homes on "Do Not Refer" status as a result of findings made during program audits. "Do Not Refer" status means that, although the group home may continue to operate and the DCFS children currently residing in the home will remain, DCFS will not place any additional children in the home. One group home is on

Group Homes Follow-Up

permanent "Do Not Refer" status for DCFS children because the program audit found it to have a restrictive program model more suitable for children on probation. The other two are on "Do Not Refer" status pending corrective actions for deficiencies noted during their program audits.

The DCFS has prepared a new Group Home Foster Care Agreement which was approved by the County Board of Supervisors and is anticipated to become effective in May 1998. Section 27 of the Agreement contains County remedies for group home defaults. Under the new Agreement, if the DCFS Program Director determines that a violation of the agreement has occurred, the County may elect any or all of the following remedies:

- Suspend referrals of children to the group home;
- Remove all of the children from the group home;
- Require the group home to correct the default within a specified time period and submit a Corrective Action Plan;
- Take any legal action or assessment of liquidated damages, or terminate the Agreement.

Recommendation 1.8 from the 1996-97 Grand Jury Report:

Perform a staffing analysis to determine if any current DCFS staff can be reallocated to the Contract Audit Section and the Group Home Liaison Unit. If this is not possible, request additional personnel during the annual budget process to ensure that all group home audits will be conducted on a timely basis consistent with Departmental policy of at least once every three years.

Status: Implemented

Group Homes Follow-Up

DCFS has revised their staffing during the last fiscal year. Previously the Contract Audit Section, now called the Contract Review Section, consisted of the Section Head Chief, four program auditors and one fiscal auditor. The current staff includes the Section Head Chief and eight auditors to perform program audits. An additional auditor is assigned to the County's McClaren facility. All fiscal audits of group homes are performed by the County Auditor-Controller.

Additionally, 14 staff were temporarily assigned to the Contract Review Section from October 1997 through December 1997 and performed 44 program audits. However, since this staff was redirected to perform group home program audits, the monitoring of other DCFS contracts, such as foster family agencies, was affected.

The revised staff of eight program auditors and the 14 temporarily reassigned FFA staff enabled the Department to complete all program audits as explained under *Recommendation 1.2 above*. Additionally, the Department has determined that in order for it to continue its new policy of conducting a program audit for all group homes annually, six additional full-time staff positions, will be required. The Department has submitted a FY 1998-99 budget request for this additional staff.

See Section 4.V.7 for additional recommendations related to DCFS staffing and performing group home program audits annually.

Recommendation 1.9 from the 1996-97 Grand Jury Report:

Relocate the functions performed by the Bureau of Specialized Services Group Home Liaison Unit to the Contract Audit Section.

Status: Implemented

Group Homes Follow-Up

The Group Home Liaison Unit, which formerly was a unit of the Bureau of Specialized Services is now a unit of the Bureau of Resources. The Department has taken a position that this unit performs a function that provides an alternative perspective from the review process, and believes it is better to keep this unit independent from the Contract Review Section. This alternative action meets the intent of the recommendation.

Recommendation 1.10 from the 1996-97 Grand Jury Report:

Develop specific Departmental policies pertaining to sanctions for group homes found to be not in compliance with Title 22 regulations, including fines, restrictions on future placements, etc.

Status: Implemented

As stated under *Recommendation 1.7* above, the Department has a new Group Home Foster Care Agreement which is expected to become effective in May 1998 and includes provisions for liquidated damages for violations of specific terms and conditions.

Acknowledgments

We would like to thank the staff of the Department of Children and Family Services and the Auditor-Controller for their assistance provided during the course of this study.

Group Homes Follow-Up

Section 4.11 - Financial Reporting and Contracting Policies and Procedures

The 1996-97 Grand Jury made recommendations to improve the ability of the Contract Audit Section, now called the Contract Review Section, to determine if foster care monies are appropriately expended. This section addresses the implementation status of those recommendations. The results are based on interviews with the Chief of the Quality Assurance Division, the Section Head of the Contract Review Section and the County Auditor-Controller Manager for Group Home Audits, and a review of the current Department policies and procedures.

Background

In October 1996 the Los Angeles County Board of Supervisors directed the County Auditor-Controller to perform fiscal audits of group homes under contract with the Department of Children and Family Services. Prior to that and since 1995, the Contract Review Section had begun conducting fiscal audits using their own staff. At the time that the Auditor-Controller took on the fiscal audit function for the Contract Review Section, the Contract Review Section had performed six fiscal audits of group homes. During November and December of 1996, the Auditor-Controller devised a fiscal audit program for group homes including detailed audit procedures. In January 1997 the Auditor-Controller began conducting their fiscal audits.

The purpose of the fiscal audits is to ensure that foster care monies are appropriately accounted for and spent on allowable and reasonable expenditures for providing necessary care and services to children placed in group homes. Included in these audits is an evaluation of each group home's accounting records, internal controls, and compliance with the County contract and applicable State and federal guidelines governing the disbursement of group home foster care funds.

Group Homes Follow-Up

Since January 1997, a total of 18 fiscal audits have been referred to the Auditor-Controller. Except for Group Home E identified below, all fiscal audits have been referred to the Auditor-Controller from DCFS. The following is the status of the Auditor-Controller's fiscal audits:

- Four audit reports have been issued to the Board of Supervisors;
- One report (Group Home E) was issued only to the DCFS Director;
- Eight audits are in various stages of the audit process;
- Five audits referred by DCFS have not begun;
- DCFS reports that nine additional group homes were referred to the Auditor-Controller for a fiscal audit.

Recommendations from the 1996-97 Grand Jury report are presented below using the numbering system presented in that report. Each recommendation is shown in italicized text and is followed by the implementation status of the recommendation. Section 4.V of this report addresses additional findings and recommendations.

Recommendation 2.1 from the 1996-97 Grand Jury Report:

- 2.1 Initiate legal action requesting all financial records for Group Homes C and E. If there is a failure to supply financial records by the group homes, the Department should proceed with termination of their contracts.*

Status: Implemented

On November 14, 1996 the Department referred Group Home C to the Auditor-Controller for a fiscal audit. On February 12, 1997, after making this referral but before the fiscal audit had commenced, the group home was classified as "Do Not Use" by DCFS due to quality of care issues. On March 18, 1997 the Contract Review Section was informed by the State Community Care Licensing Division that the Internal Revenue Service (IRS) had issued a notice seizing the property. The Contract Review Section has also provided us with documentation from the IRS showing \$56,138.67 in unpaid taxes due from this group home.

Group Homes Follow-Up

The Auditor-Controller was in attendance at the 1996-97 Grand Jury report exit conference where the name of Group Home E was provided at the Auditor-Controller's request. As a result of the 1996-97 Grand Jury audit report, the Auditor-Controller initiated a fiscal audit of Group Home E. Section 4.V.4 presents a chronology of events of the Auditor-Controller's fiscal audit and additional recommendations.

Recommendation 2.2 from the 1996-97 Grand Jury Report:

2.2 Refer Group Homes B, C, D and E to the Auditor-Controller for Fiscal Audits.

Status: Implemented

The Contract Review Section has requested that the Auditor-Controller perform fiscal audits for Group Homes B, C and D. As stated under *Recommendation 2.1* above, the Group Home E fiscal audit was initiated by the Auditor-Controller based on the 1996-97 Grand Jury audit report. The results of the Auditor-Controller's fiscal audit of Group Home E are discussed in detail in Section 4.V.4.

The Group Home B audit report was issued to the Board of Supervisors on February 17, 1998 and detailed an estimated \$47,000 of questioned expenditures. The Contract Review Section is working with the managers of Group Home B to resolve the questioned expenditures and was to provide a response to the Auditor-Controller by March 17, 1998 detailing the final resolution of all findings contained in their report. On March 4, 1998 the Department provided the Auditor-Controller with a letter from the Department written to Group Home B concerning issues that have not yet been resolved.

As noted in under *Recommendation 2.1* above, Group Home C was referred by the Department to the Auditor-Controller for a fiscal audit, however, an audit was never conducted because the home was closed by the Department due to quality of care issues after the referral had been made. With regard to Group Home D, a fiscal audit has been performed and a report was issued to the Director on February 17, 1998 by the Auditor-Controller which reported \$19,900 in questioned expenditures.

See Section 4.V.4 for additional recommendations related to fiscal audits.

Group Homes Follow-Up

Recommendation 2.3 from the 1996-97 Grand Jury Report:

2.3 *Adopt more comprehensive and stringent fiscal provisions in the Group Home Foster Care Agreement.*

Status: Implemented

As stated under *Recommendation 1.7* above, the County has adopted a new Group Home Foster Care Agreement that is anticipated to go into effect in May, 1998. Our references to parts of the Agreement will be identified in *italicized text* to distinguish them from references to other parts of this Grand Jury Report. *Section 11* of the Agreement provides the following financial reporting requirements:

- *Section 11.1* states that the group home shall report monthly revenues and expenditures on the Monthly Fiscal Invoice/Expenditure Report to be submitted to DCFS Quality Assurance Division. These are to be submitted no later than 45 calendar days following the month of services. In the event invoices are not received timely the County may place the group home on a "Do Not Refer" status until invoices are received.
- *Exhibit F* of the agreement includes instructions for the monthly fiscal invoice/expenditure report. The completed signed report certifies that, under penalty of perjury, the amounts are traceable to the group home accounting records and includes a statement that falsification of any amount disclosed constitutes a false claim pursuant to California Government Code Section 12650.
- *Section 11.2* states that the group home must annually submit a detailed line-item budget, including staffing patterns, projected expenses for operating costs, indirect overhead and revenue, to the DCFS Quality Assurance Division 30 days prior to the one year anniversary date of the Agreement. Additionally, the group home must develop and maintain a financial plan that ensures resources necessary to meet operating costs for care and supervision of the children.
- Also included in the Agreement is the Group Home Contract Accounting and Operating Handbook. This handbook establishes required accounting, financial reporting, and internal control standards.

Group Homes Follow-Up

- *Section 10* details contractor responsibilities regarding records and audits.

See Section 4.V.4 for recommendations related to enforcement of the above fiscal provisions.

Recommendation 2.4 from the 1996-97 Grand Jury Report:

- 2.4** *Require that all group homes comply with the County Auditor-Controller's accounting standards and Title 22 financial requirements.*

Status: Implemented

The items described in 2.3 above that are included in the Group Home Foster Care Agreement result in compliance with the County Auditor-Controller's accounting standards and Title 22 financial requirements.

Recommendation 2.5 from the 1996-97 Grand Jury Report:

- 2.5** *Request Assistance from the Auditor-Controller in a consultant capacity to develop more comprehensive and stringent fiscal provisions to be included in future Group Home Foster Care Agreements.*

Status: Implemented

The Department has worked with the Auditor-Controller who has developed the financial provisions stated in 2.3 above. Additionally, the Auditor-Controller established audit procedures and objectives to perform group home audits in accordance with County, federal and State of California regulations and guidelines.

Group Homes Follow-Up

Section 4.III - DCFS Accounting And Information Systems Pertaining To Group Home Foster Care Payment And Collection Processing

This section addresses the lack of adequate accounting and management information systems and operating procedures to achieve accurate and timely processing of foster care payments and collections. The following were the recommendations made by the 1996-97 Grand Jury to improve this process:

The 1996-97 Grand Jury Report recommended that the Director of the Department of Children and Family Services:

3.1 Develop and implement comprehensive accounting and operational procedures, with the assistance of the Office of the Auditor-Controller, that will ensure the timely and accurate processing of all foster care payments and collections including stop date reporting of the termination of a child's placement (Although most foster care payments are processed timely and accurately, terminating payments and payments for children who have changed level of care have frequently been subject to errors.)

Status: Not Implemented

3.2 Develop and implement a system of comprehensive management information reports, with the assistance of the Office of the Auditor-Controller, that will provide timely and accurate management information to enable DCFS to exercise appropriate oversight pertaining to all foster care payments and collections.

Status: Not Implemented

Group Homes Follow-Up

The 1996-97 Grand Jury Report recommended that the Auditor-Controller:

- 3.3** *Conduct or arrange to be conducted, an audit of the DCFS overpayments system to determine which accounts should be written off due to statute of limitation restrictions, and which accounts should be immediately referred to the Treasurer-Tax Collector for collection. (This study by the Auditor-Controller or by outside consultants should include selected large group home contracts for purposes of reconciling substantive discrepancies between overpayment balances on Departmental records and group home records)*

Status: Implemented

- 3.4** *Assign appropriate staff to evaluate the DCFS accounting system, management information system, and operating procedures related to the processing and collection of foster care payments. This staff should then consult with DCFS staff and oversee the implementation of new and revised procedures and systems to ensure that all internal controls are adequate and working as intended.*

Status: Not Implemented

Based on the above recommendations made by the 1996-97 Grand Jury, the County Auditor-Controller has commenced audits to assist the DCFS in improving their operations. The following areas are being or will be addressed:

- **Reduction of overpayments and reconciliation of balances in the DCFS Overpayment Collections System to the Treasurer Tax Collector's records and the foster care provider records. This report was issued on March 27, 1998 and a copy has been provided to the Grand Jury and its Human and Social Services Committee .**
- **Review of the DCFS Automated Provider Payment System which the Auditor-Controller uses to generate payments to providers and helps identify overpayments. The Auditor-Controller anticipates issuing this report by May 30, 1998.**
- **Review of operating procedures for processing and collecting foster care payments.**
- **In-depth review of the accounting and information systems.**

Group Homes Follow-Up

In March 1997 the DCFS began a process to reconcile the balances shown in their records to the records of the 195 group home providers with overpayment balances. During an entrance conference with the DCFS it was reported to the Grand Jury that all group home account balances have been reconciled. However, a sample of the reconciled account balances of 12 group homes reviewed by the Auditor-Controller revealed that they were unable to verify the validity of 88 percent of the figures tested.

In October 1997 DCFS hired a new consultant to enhance the collection system. The consultant will develop new reports to assist the management process and control overpayments, enhance the security system and develop enhancements for the reconciliation of the data produced by the primary computer systems.

See Section 4.V.9 for additional discussion of the audit report issued by the Auditor-Controller and further recommendations regarding the foster care payment and collection processing.

Group Homes Follow-Up

Section 4.IV - Foster Care Group Home Quality of Care Issues

The 1996-97 Grand Jury determined that the Department of Children and Family Services was not complying with mandatory State regulations pertaining to minimum visitation requirements of children in foster care group homes.

Social Workers assigned to children in group homes are required to perform face-to-face visits with the children in accordance with Section 31-320 of the State Child Welfare Services Program Manual of Policies and Procedures. This requirement is based on Sections 10553-10554 of the State Welfare and Institutions Code. The face-to-face visitation standards set by the State are mandatory minimum standards. The 1996-97 Grand Jury reported that DCFS case workers failed to make face-to-face visits with children approximately 14 percent of the time. This section addresses a follow-up review of Social Worker visits.

The following provides the recommendations as numbered in the 1996-97 Grand Jury report in italicized text and are followed by a statement regarding the implementation status of each recommendation. Section 4.V of this report addresses additional findings and recommendations.

Recommendation 4.1 from the 1996-97 Grand Jury Report:

Develop and implement procedures to improve supervisorial monitoring of case worker visitations and to ensure the County's compliance with mandatory visitation requirements embodied in State regulations.

Status: Not Implemented

The Department states that it has instituted new controls at every level of regional management including DCFS Supervisors, Deputy Regional Administrators and Regional Administrators. Child Safety Enhancement Reviews have been conducted since April 1997 by DCFS Social Workers and include a review of child visits by their Social Workers. These reviews are for all children, estimated at 60,000, for which DCFS provides assistance payments.

Group Homes Follow-Up

Of these, an estimated 3,000 are group home children. A monthly report issued by the Department of all children in the system indicated that DCFS Social Workers were making 97 to 98 percent of all required face-to-face visits with all of the children served by the Department.

However, our analysis of a valid statistical sample of 100 case files of children who were residing in group homes found that DCFS Social Workers were not making visits within the mandated visitation status required by statute. In other words 18 % of children are not being visited as required. This performance is below last year's level! See Section 4.V.3 for a more detailed description of a our analysis, further discussion of DCFS Social Worker visits, and recommendations for improved monitoring.

Recommendation 4.2 from the 1996-97 Grand Jury Report:

Develop and implement more rigorous enforcement policies in order to ensure timely and full compliance with State regulations and the County's group home foster care agreement, and, when appropriate, the expeditious termination of noncomplying group homes.

Status: Implemented

Section 4.I of this report addresses the adoption of various new policies and procedures by the Department that should result in compliance with State regulations and the County's group home foster care agreement. Additionally, the discussion under *Recommendation 1.7* in Section 4.I hereof includes an analysis of group home closures.

Recommendation 4.3 from the 1996-97 Grand Jury Report:

Request additional group home program liaison staff to provide sufficient staff resources necessary to achieve timely compliance with State regulations and the County's group home foster care agreement as described in Section 1 of this report.

Status: Implemented

Group Homes Follow-Up

One additional staff person has been added to the group home liaison staff. Assuming the Department continues to follow the policies and procedures described in Section 4.I of this report and the necessary compliance is achieved, staffing may be adequate. The Department should continue to monitor staffing levels to meet the required level of compliance.

Section 4.V - Additional Findings and Recommendations

The Human and Social Services Committee randomly selected 24 Group Homes for inspection of which 22 of the 24 were visited. We confined our inspections as to how well the Group Homes operators were working to meet the needs of the children under their care. The committee made unannounced visits to each group home. In doing so we identified additional findings and made recommendations to strengthen this process. These findings and recommendations are included in this section.

Section 4.V is divided into the following subsections, each of which addresses a specific aspect of the additional findings and recommendations. The 1997-1998 Grand Jury believes the recommendations set forth in these subsections, if implemented, will further improve group home operations and increase group home accountability:

- Subsection 4.V.1 Inadequate Procedures for Issuing Program Audit Reports**
- Subsection 4.V.2 Prompt Reporting of Illegal Activities to Law Enforcement Agencies**
- Subsection 4.V.3 Social Worker Case Visitation**
- Subsection 4.V.4 Failure to Take timely Corrective Actions for Fiscal Audits**
- Subsection 4.V.5 Monitoring Group Home Fiscal Matters**
- Subsection 4.V.6 DCFS Group Home Audit Schedule**
- Subsection 4.V.7 Written Policies and Procedures Require Updating**
- Subsection 4.V.8 Foster Care Overpayments and Collections**

Group Homes Follow-Up

Subsection 4.V.1 - Inadequate Procedures For Issuing Program Audit Reports

During our evaluation to determine the timeliness of receipt for the group home Corrective Action Plans described in Section 4.II of this report, we have identified an internal procedural problem that is delaying the mailing of audit reports to the group home by as many as 15 days.

As stated in Section 4.II of this report, the Contract Audit Section has adopted new audit protocols for all group homes. Included is a statement that the group home must respond in writing to the signed and dated audit report within 15 calendar days from the date of the report. According to Department policy, no extensions will be granted.

In order for the group home to comply with the Department's policy, the Department must send the completed report to the group home operator timely. More important, the sooner the group home receives the report the sooner they will correct the deficiencies.

After a report is completed by the Contract Audit Section and approved by the Chief of Quality Assurance it is forwarded to the Bureau of Executive Services to be dated and approved by the Deputy Director. The report is sent back to the Quality Assurance Division and then forwarded to the Contract Audit Section to be mailed. Depending on the number of days that have passed before they receive the report back, the Contract Audit Section may fax the report to the group home. Our review found that the following number of days had elapsed from the date the report was completed until the date it was mailed to the group home:

Table 4.V.1

Timeliness of Issuing Program Audit Reports

<u>Number Days from Audit Report Date To Date Mailed to Group Home</u>	<u>Number of Audits</u>	<u>% Total</u>
0 to 1	20	22%
2	13	14%
3 to 4	15	16%
5	7	8%
6	16	17%
7 to 9	16	17%
10 to 15	<u>6</u>	<u>6%</u>
Total	93	100%

The Contract Audit Section began tracking this timing in October 1997. Table 4.V.1 shows that of 93 program audit reports tracked, only 22 percent of the reports were mailed within one day of the report date. One program audit report was not mailed until 15 days after the date of the report.

The following excerpt from a group home addressed to the Director and Deputy Director was noted during our review of Corrective Action Plans submitted by group homes:

The purpose of this communiqué is to provide the correct information, answers and interpretation to the audit data submitted in your report dated December 11, 1997, envelope bearing a U.S. Post Office postmark of December 18, 1997 and received on December 20, 1997. It is our position to completely and thoroughly respond to your report within the time constraints indicated. We note for your records, the lateness of the date the report was mailed, postmarked and received.

Your letter indicates that we have fifteen days to address the concerns of this signed report. However, for the records, please note that you signed it a total of seven (7) days before its mailing! We are totally not apprised the reasons for your delay, but it appears not to have been a problem with the U.S. Mail. Once the United States Postal Service received and stamped your envelope (December 18, 1997), it took only 2 days for the mail service to deliver. (Copy of envelope is available for inspection.)

Group Homes Follow-Up

RECOMMENDATION:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.1.1 Implement procedures to insure that program audit reports are expeditiously processed after being completed by the Contract Audit Section and mailed within one day from the date of the audit report.

Subsection 4.V.2 - Prompt Reporting of Illegal Activities to Law Enforcement Agencies

Section 7.33 of the Government Auditing Standards reminds auditors to report promptly indications of illegal acts to law enforcement or investigatory agencies. Although the Contract Audit Section is not required to comply with these standards, it is in the best interest of the Department, County and the group homes that this policy is adhered to.

Under *Recommendation 1.4*, Section 4.1 of this report describes an allegation that a group home hires illegal aliens. Although the Contract Audit Section states that they attempted unsuccessfully to notify the Immigration and Naturalization Services (INS) by telephone beginning in October 1997, a written letter informing the INS was not transmitted by the Department until January 20, 1998.

Also discussed under *Recommendation 1.4*, Section 4.1 of this report, are potential criminal activities discovered at a group home referred to as Group Home F. A fiscal audit report was issued by the County Auditor-Controller on October 31, 1997 questioning an estimated \$340,000 in expenditures made by Group Home F. This home was closed by DCFS in June 1997 for reasons related to poor services and poor care. Group Home F sent a Corrective Action Plan to DCFS on October 12, 1997 which was found to be unresponsive. The DCFS then spoke with the executive director of the group home in October 1997 and requested an addendum to the Corrective Action Plan but the additional supporting documentation was never received. On January 23, 1998 a letter was sent to the County District Attorney informing that office of possible criminal prosecution. On January 13, 1998 the Department also referred the questioned expenditures to the County Treasurer-Tax Collector for collection.

Group Homes Follow-Up

We believe the chronology of events described in the paragraph above demonstrates that the DCFS gave Group Home F ample opportunity to submit an acceptable Corrective Action Plan and should have been referred to the proper authorities prior to January 23, 1998.

Although the two examples described above show that the Department is reporting illegal or potential illegal acts to the proper authorities, such illegal activities, once identified, should be more promptly reported.

RECOMMENDATIONS:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.2.1 Develop written procedures for reporting illegal activities;
- 4.V.2.2 Report all illegal activities promptly to law enforcement or investigatory authorities. All forms of communication should be utilized and followed up by a written confirmation.

Subsection 4.V.3 - Social Worker Case Visitation

The Department of Children and Family Services is not complying with mandatory State regulations pertaining to critically important minimum visitation requirements of children in foster care group homes. As stated in Section 4.IV of this report, under *Recommendation 4.1*, Social Workers are required to perform a mandatory minimum number of face-to-face visits with children residing in group homes.

In order to determine the rate of compliance with mandatory visitation requirements for group home children only, we generated a randomly selected sample. This form of sampling enables one to express an opinion regarding the entire universe from which the selection is made. The sample, consisting of 100 children's case files, was randomly selected from the total population of 2,843 children residing in group homes as of March 4, 1998. We reviewed each file for documentation of face-to-face social worker visits from January 1, 1997 through February 28, 1998.

Group Homes Follow-Up

The results of our analysis revealed that out of a total of 564 required visits, 99, or approximately 18 percent, were not made. These results show that the Department is not in full compliance with the mandatory regulations for face-to-face visits. Therefore, additional reporting requirements are needed to determine whether the Social Workers are making the required visits. The Child Safety Enhancement Review Reports referred to above should be reported in a manner that stratifies the results by type of facility so that group home visits are separately reported.

The Quality Assurance Division performs a monthly compliance review which includes a sample of the estimated 60,000 annual face-to-face foster care visits by Social Workers. The group home children's case files should be excluded from this sample and replaced by a valid statistical sample of group home children's case files. A sample of the children's records at the group home should also be performed to verify the Social Worker visits. A monthly summary report of the results should be sent to the Director.

RECOMMENDATIONS:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.3.1 **Develop and implement procedures to improve supervisory monitoring of Social Worker visitations to group homes and to ensure the County's compliance with State mandated visitation requirements. This should include a monthly review of a statistical sample showing face-to-face visits by type of facility including group homes and verification of the Social Worker visits at the group home. Monthly reports should be submitted to the Director;**

- 4.V.3.2 **As part of the Board of Supervisors adopted policy concerning the follow-up of audit recommendations, send to the Board of Supervisors and the Commission on Children and Families a quarterly report reflecting the results of the implementation of Recommendation 4.V.3.1 above.**

Group Homes Follow-Up

It is recommended that the Board of Supervisors:

- 4.V.3.3 Designate appropriate staff to monitor the quarterly reports of Social Workers' face-to-face visits with children under the care of DCFS.
- 4.V.3.4 As part of the two DCFS managers visit per year they specifically include inspection of the food services provided at each Group Home; and the facilities.
- 4.V.3.5 DCFS managers verify program statement compliance at each visit.
- 4.V.3.6 DCFS managers and CSW verify if child has had a complete assessment and evaluation. If not, they must schedule an evaluation expeditiously, and the child's file shall be kept current. Each time a child is relocated to a different facility the file is to accompany him /her at the time of relocation.
- 4.V.3.7 Before a young person is emancipated, there must be total agreement between CSW and the Group Home operator. If not, the case shall be referred to Juvenile Court for settlement.

Group Homes Follow-Up

Subsection 4.V.4 - Failure To Take Timely Corrective Actions For Fiscal Audits

The Department of Children and Family Services is not responding timely or taking appropriate corrective actions to the results of fiscal audits which is demonstrated by the following three findings:

Finding 4.V.4.A

As stated in Section 4.II of this report, the Auditor-Controller has issued four fiscal audit reports to the Board of Supervisors. The Auditor-Controller has specific response timelines for the group homes and DCFS. Upon issuance of the final report, the group home has 30 calendar days to provide DCFS with a written response to the report known as a Corrective Action Plan (CAP). The response should address all of the findings contained in the report and indicate the corrective actions planned or already taken. Based on an audit follow-up policy adopted by the Board of Supervisors, DCFS is required to respond in writing to the Auditor-Controller within 60 days of issuance of the final report detailing the final resolution of all findings contained in the report. Our review revealed that of the three fiscal audits shown in Table 4.V.4 which were issued to the Board of Supervisors by the Auditor-Controller, two group homes responded with a Corrective Action Plan to DCFS in the required number of days and one was late. DCFS, on the other hand, is not reviewing group home responses in a timely manner. The following table demonstrates this problem:

Group Homes Follow-Up

Table 4.V.4

Timeliness of Fiscal Audit Report Responses

<u>Group Home</u>	<u>Number of Days from Date of Report to Date CAP¹ Received</u>	<u>Number of Days from Receipt of CAP Until DCFS Responded to Group Home</u>	<u>Number of Days DCFS Response to Auditor-Controller Was Late</u>
1	28	83	(a)
2	2	70	44
3	48	50	52
4	13	57	(b)

¹ CAP = Corrective Action Plan prepared by group home operator after each audit.

(a) Audit performed prior to Auditor-Controller assuming responsibility for this function.

(b) As of 3/27/98, the Department is in consultation with the County Counsel's Office as to the disposition of the audit findings.

As shown in Table 4.V.4, the DCFS review of group home fiscal audit corrective action plans ranged from 50 to 83 days. The last column in Table 4.V.4 reflects the number of days DCFS has been late in submitting a written response to the Auditor-Controller with the final resolution of the audit findings as required by the Board of Supervisors.

Finding 4.V.4.B

The Department of Children and Family Services is not processing collection referrals to the County Treasurer-Tax Collector in a timely manner. A chronology of events for Group Home #1 shown in Table 4.V.4 follows:

- **March 10, 1997 -program and fiscal audit issued;**
- **April 1997- Corrective Action Plan submitted;**

Group Homes Follow-Up

- **June 23, 1997 - DCFS issued a response to the Corrective Action Plan including a statement that the group home did not include a repayment plan for \$39,470 in questioned expenditures;**
- **July 11, 1997 - Children were removed from home as a result of a fire, making the home unsafe for the children to remain placed;**
- **October 7, 1997 - The group home was classified "Do Not Use" because the Corrective Action Plan of June 23, 1997 was not adequate and the home was unsafe;**
- **January 12, 1998 - DCFS referred to the County Treasurer-Tax Collector for \$39,470 in questioned expenditures.**

Group Homes Follow-Up

The Treasurer-Tax Collector is responsible for collection of delinquent accounts and has issued written guidelines contained in the County Fiscal Manual specifying which accounts to refer for collection. Delinquent accounts meeting all of the following criteria should be referred:

- Account balance of \$50 or more;
- The account is delinquent for a period of 60 days from the accrual date;
- The Department has determined the responsible party; and
- The Department has made a reasonable attempt to collect.

A review of the chronology of events of Group Home #1 reveals that DCFS had met all of the necessary requirements prior to referring this group home to the Treasurer-Tax Collector. This group home should have been referred for collection on or about October 7, 1997 instead of on January 12, 1998.

Managers of the Treasurer-Tax Collector Collections Division have reported that a key factor in maximizing collections is how quickly accounts enter the collection process, as cited in the 1996-97 Grand Jury report. The earlier collection efforts are pursued, the greater the chance of successful collection, according to these managers. This belief is also supported by surveys of other California counties.

Finding 4.V.4.C

The Department is not taking appropriate corrective actions based on the results of fiscal audits received from the Auditor-Controller. The following is a chronology of events of Group Home E, discussed previously in the 1996-97 Grand Jury audit report and Sections 4.I and 4.II of this report, under *Recommendations 1.4, 2.1 and 2.2*.

February 14, 1997 - The management audit report issued by the 1996-97 Los Angeles County Grand Jury recommended to initiate legal action requesting all financial records for Group Home E and for DCFS to refer this group home to the Auditor-Controller for a fiscal audit. Additionally it was recommended that if there is a failure to supply financial records by the group home, the DCFS should proceed with termination of the contract.

Group Homes Follow-Up

March 24, 1997 - The Auditor-Controller called the group home to schedule an entrance conference and made four subsequent calls that were not returned by the Executive Director. A registered letter followed by a fax was sent notifying the group home that the audit would begin on April 3, 1997 and identified the records and documents that should be available on that date. The Executive Director responded and requested a postponement until April 11, 1997 because they were being audited by the State of California. The Executive Director subsequently canceled the appointment three additional times.

May 13, 1997 - The entrance conference was held. However, the group home did not have its accounting records and supporting documentation available for review, although these records were previously requested twice in writing. Subsequent requests were made, but only limited documents were received. The Executive Director stated the records were maintained at the administrative office at a different location. The promised documents were never received.

May 29, 1997 - The Auditor-Controller sent a letter to the Director of DCFS notifying that the Auditor-Controller was unable to complete the requested audit of the group home due to lack of cooperation in making financial records available for review in accordance with the group home's Foster Care Contract.

The Auditor-Controller stated that, the group home's failure to provide its records represents a material breach of contract as defined under Contract *Section 24, "Failure to Perform."* Additionally, it was recommended that the Department take immediate action requiring the group home to provide access to all records and documents by June 13, 1997, and, failing to do so, the Department should confer with County Counsel regarding terminating the contract. *Section 10.11* of the Group Home Foster Care Agreement allows DCFS to terminate group home contracts if the group home does not make financial records available to the Auditor-Controller on a timely basis.

June 30, 1997 - The group home agreed to have all of its accounting records and documents available for inspection on this date. The Auditor-Controller performed a limited review to determine if the group home's documents were in order and could be audited. A determination was made that the accounting records were substantially incomplete and were not reliable.

Group Homes Follow-Up

September 22, 1997 - In a letter to the Director of DCFS, the Auditor-Controller's Office stated that they "seriously question whether this group home can adequately account for the receipt and disbursement of foster care group home funds received from your department."

It was also stated again by the Auditor-Controller that the group home was in material breach of its contract and that the Auditor-Controller had suspended its audit and was referring this matter to the Department for follow-up.

November 26, 1997 - DCFS sent a letter to the Auditor-Controller stating that they agreed that the group home's failure to maintain appropriate accounting records is a violation of the Contract and would constitute a material breach of the contract. The Executive Director was also directed to submit a plan of correction addressing this issue by December 10, 1997. To insure that the plan had been implemented, the Department requested that the Auditor-Controller conduct a follow-up review including a full fiscal audit.

A letter was sent to the Executive Director of the group home containing the Auditor-Controller's findings and a request for a Corrective Action Plan (CAP) due by December 10, 1997. The letter stated that failure to submit an appropriate CAP might result in the termination and/or non-renewal of the contract.

December 9, 1997 - A corrective action plan was received from the Executive Director of the group home stating that the plan had been implemented effective immediately.

December 16, 1997 - An entrance conference and interviews were held with the DCFS and 1997-98 Grand Jury follow-up audit was initiated. At this time, the Grand Jury researchers made inquiries as to the status of the group home and the Department's position as to termination of the contract. Grand Jury researchers stated that, based on the events above, the group home was not in compliance with the contract. Based on the records available, the auditors stated that a misuse of funds was suspected.

December 17, 1997 - Another meeting was held with the Department and Grand Jury researchers made further inquiries about the status of this group home. The researchers were informed by the Department that as a result of discussions the previous day, the Department requested that the Auditor-Controller perform a fiscal audit of the group home by December 19, 1997. The Auditor-Controller agreed to perform this fiscal audit.

Group Homes Follow-Up

December 18, 1997 - The Auditor-Controller and the Contract Review Section went to the group home to perform the audit. The documents provided were not adequate and the Executive Director stated that the remaining documents were in another location. The Executive Director was given one last opportunity to bring the documents to DCFS on December 19, 1997.

December 19, 1997 - Documents were provided by the group home, but it was determined that they were not adequate.

December 22, 1997 - DCFS placed the group home on a "Do Not Use" status and all children were removed from the facility.

In conclusion, based on the events of May 29, 1997 and September 22, 1997 described above and DCFS's stated policies and procedures, the Department should have placed this home on "Do Not Use" status as early as May 29 and certainly by September 22.

RECOMMENDATIONS:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.4.1 Establish written policies and procedures with specific time limits for group home and Departmental responses, specifically defining steps the Department should take to collect from operators before referring the case to the Treasurer-Tax Collector;**
- 4.V.4.2 Implement procedures to ensure that the Department responds to Auditor-Controller fiscal audit reports within the required 60 days established by the Board of Supervisors detailing the final resolution of all findings. Because certain issues may not be completely resolved with the group home operator within the 60 day time frame, the Department should be required to submit a closure response to the Auditor-Controller.**
- 4.V.4.3 Adhere to the instructions contained in the County Fiscal Manual related to referral of uncollectible accounts to the Treasurer Tax Collector;**

Group Homes Follow-Up

- 4.V.4.4** Enforce *Section 10.11* of the Group Home Foster Care Agreement terminating a group home contract if financial records are not made available to the Auditor-Controller in the required time frame as directed by the County Auditor-Controller.

Group Homes Follow-Up

Subsection 4.V.5 - Monitoring Group Home Fiscal Matters

The Contract Audit Section and the Quality Assurance Division of the Department of Children and Family Services have the responsibility to see that group homes comply with the financial provisions in the County Group Home Foster Care Agreement. However, the staff responsible for enforcing these provisions do not have the financial qualifications to monitor the numerous financial requirements.

The following are the areas that will require financial attention as a result of the Group Home Foster Care Agreement that is anticipated to go into effect in May 1998.

- Beginning in May 1998, DCFS will receive an estimated 200 group home corporations' monthly fiscal/invoice expenditure reports (see Subsection 4.V.6 below for recommendations regarding the review of these monthly reports);
- Annually, there will be an estimated 200 group home corporations submitting a detailed line-item budget to DCFS;
- The new agreement will have provisions for liquidated damages for violation of specific terms in the contract, thereby resulting in the need for collection and monitoring policies and procedures;

As stated in Section 4.II of this report, the Auditor-Controller has the responsibility for performing fiscal audits of the group homes. All of the fiscal audits performed to date have been referred by DCFS or by the 1996-97 Grand Jury. In most instances a group home is selected for fiscal audit by DCFS due to the results of a program audit. Since all group homes have received a program audit, to date, those identified with potential fiscal problems have already been referred to the Auditor-Controller, DCFS may not have many subsequent referrals to the Auditor-Controller as a result of program audits in the near future. Fiscal audits should still be regularly performed by the Auditor-Controller even if referrals are not made by the DCFS or the Grand Jury. Selection criteria for fiscal audits will have to be determined by DCFS and the Auditor-Controller.

Group Homes Follow-Up

The following are additional areas requiring financial expertise that will require attention by DCFS:

- **Monitoring contract compliance and internal control deficiencies;**
- **Selecting group homes for fiscal audits;**
- **Evaluating group home responses to final reports and developing corrective action plans to resolve questioned amounts, overpayments, and contract compliance and internal control deficiencies.**

Therefore, based on the financial responsibilities stated above and others that may be required, DCFS should request a new staff position to be filled by a qualified financial staff person. Additionally, the Auditor-Controller's office should be consulted for advice in these matters.

RECOMMENDATION:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.5.1 Request a new staff position to be filled by a qualified financial person with the responsibility of coordinating the enforcement of all financial provisions of the County Group Home Foster Care Agreement. The Auditor-Controller should be consulted to determine the Departmental responsibilities.**

Group Homes Follow-Up

Subsection 4.V.6 - DCFS Group Home Audit Schedule

Under the prior policy established by DCFS, a program audit of each group home was supposed to be performed by DCFS at least once every three years. However, as reported in Section 4.1 of this report, under *Recommendation 1.3*, DCFS has instituted a new policy whereby each group home will now undergo a program audit every year and will be visited by DCFS managers in a "manager visit" twice per year. Under the old policy, a follow-up review would be performed by the Contract Review Section within six months after receipt of a group home's required Corrective Action Plan to ensure that the corrective steps outlined in the plan were actually implemented. Under the new policy, such follow-up reviews will not be conducted. Instead, Semi-annual manager visits will now replace the follow-up review. Therefore, under the new policy, each group home will be visited three times per year by DCFS.

The following is a summary of the type and frequency of group home audits/visits by DCFS staff:

Under the old system, each group home:

1. Received a comprehensive program audit, which typically takes one to two weeks, by DCFS contract audit staff once every three years.
2. If deficiencies were identified during the program audit, within six months after the audit the group home received a follow-up visit by DCFS contract audit staff to determine if such deficiencies had been corrected.
3. Was evaluated by the State Office of Community Care Licensing annually.

Under the new system, each group home would receive a total of four visits annually from DCFS and State evaluators. Under the new system each group home will:

1. Receive an annual comprehensive program audit, which typically takes one to two weeks, by DCFS contract audit staff. (Note: DCFS reports that it must increase its contract audit staff by one-third or 6 positions at an estimated increased cost of over \$200,000 annually in order to carry out annual program audits).

Group Homes Follow-Up

- 2. Be visited twice per year by a DCFS manager. These are one day visits where DCFS managers who have social work experience will evaluate a group home guided by a checklist, which is shown as an Exhibit to this report. The purpose of these visits is to follow-up on program audits, ensure that the children are safe, and to alert DCFS program audit staff to group homes which may warrant additional attention.**
- 3. Receive an annual evaluation by the State Office of Community Care Licensing.**

Group Homes Follow-Up

The chart below is a summary of the new and old procedures:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
New Procedures	DCFS Program Audit	DCFS Program Audit	DCFS Program Audit
	DCFS Program Audit	DCFS Program Audit	DCFS Program Audit
	DCFS Program Audit	DCFS Program Audit	DCFS Program Audit
	State Office of Community Care Licensing Evaluation	State Office of Community Care Licensing Evaluation	State Office of Community Care Licensing Evaluation
Old Procedures	DCFS Program Audit		
	Follow-Up By DCFS Contract Audit Staff (6 months after program audit)		
	State Office of Community Care Licensing Evaluation	State Office of Community Care Licensing Evaluation	State Office of Community Care Licensing Evaluation

In 1997, DCFS performed a program audit of 128 group homes, or 72 percent, of its 178 group homes. The Department has accomplished this by redirecting staff resources from other divisions and hiring 5 new audit staff in FY 1997-98. The Department advises that, in order to conduct program audits of all of its group homes on an annual basis, the Department will require 6 additional audit staff positions (at an estimated additional cost of \$200,000 in salaries and benefits) added to its 8 current audit staff positions, for a total of 14 audit staff positions.

With these new policies, DCFS is attempting to remedy its past problems in monitoring the group homes. However, some of the Department's efforts may be misplaced. We agree that manager's visits throughout the year are a good idea, particularly to alert the Department to conditions directly concerning the health and safety of children in DCFS's care. However, we do not agree that the additional expense and effort required to have program audit staff audit each group home annually, regardless of a group home's past record of providing care, is as

Group Homes Follow-Up

important as ensuring that immediate and enduring corrective actions are undertaken by the group homes once deficiencies are identified. Directing all of the contract audit staff's time toward auditing each group home every year, regardless of the home's performance is not a good use of staff time.

Those group homes which have been identified by managers as having problems or as having a history of problems should continue to receive a full program audit annually. The Department should utilize past program audit reports as well as the reports from the Semi-annual manager's visits to identify those group homes requiring the most attention. However, requiring annual program audits of group homes with a history of good performance is unnecessary, particularly because the manager's visits will now provide a level of oversight which was not previously present. Instead, those group homes demonstrating consistently good performance should be audited on a random basis at least once every three years. Performing the audits on a random basis would provide group homes with an additional incentive to correct deficiencies and improve operations since a group home may be audited at any time and in some instances, more than once in a three year span.

Our analysis shows that the Contract Review Section should be able to adhere to our recommended policy of auditing those group homes that are performing well at least every three years and those with less than adequate performance on an annual or biannual basis, depending on the severity of the problems. The Contract Review Section reports that it currently has responsibility for auditing 536 different sites. Divided over three years, this averages 179 sites per year. The Department advises that each auditor can audit 3 sites per month. With its existing staff of eight, the Department has the ability to evaluate 288 sites per year (8 staff x 3 audits per month x 12 months), or 54 percent of all of its sites annually. Thus the Department should be able to use its existing staff to conduct more frequent program audits where deficiencies have been identified by the manager's twice yearly visits.

Finally, as stated in Section 4.V.5, DCFS has implemented a new policy requiring that each group home submit monthly expenditure reports to DCFS. Performing a review of such reports at the time of the program audit should be included as a component of DCFS audit staff's regular program audit of each group home. This review does not have to be an in-depth financial analysis but rather a simple review using pre-established criteria to determine if

Group Homes Follow-Up

monthly expenditures are appropriate and fall into a reasonable range, as well as if required levels of expenditures are being made. The new staff position recommended in Recommendation 4.V.5.1 of this report should be responsible for drafting guidelines for performing such a review.

RECOMMENDATIONS:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.6.1 Use existing contract audit staff to audit those group homes that are performing well at least every three years, and audit those with less than adequate performance on an annual or biannual basis, depending on the severity of the problems.**
- 4.V.6.2 Implement a random sampling procedure to audit group homes which are performing well, ensuring that each group home is audited not less than once every three years.**
- 4.V.6.3 Direct the staff person hired for the new position recommended in Recommendation 4.V.5.1 of this report to develop guidelines, with the Auditor-Controller's assistance, for performing a simple review of monthly expenditure reports which should be performed by program audit staff at the time a group home audit is conducted.**

Group Homes Follow-Up

Subsection 4.V.7 - Written Policies and Procedures Require Updating

As described in this report, the Department has instituted many changes in its policies and procedures with regard to its group homes program over the past year in part in response to the 1996-97 Grand Jury Report. These new policies and procedures should be put in writing and included in the Department's written policies and procedures.

RECOMMENDATION:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.7.1 Update the Department's written policies and procedures to reflect all recent changes in the administration and oversight of the Department's group homes program.

Subsection 4.V.8 - Foster Care Overpayments and Collections

The Auditor-Controller's audit report, discussed in Section 4.III of this report, found that DCFS has worked diligently to reconcile overpayments and resolve discrepancies between the records maintained by DCFS, the Treasurer-Tax Collector's Office, and the group homes and that DCFS has instituted new procedures to reduce overpayments to the group homes. However, the Auditor-Controller's report also states that substantial overpayment balance discrepancies still exist. Additionally, the Auditor-Controller's report identified large differences in balances between two DCFS computer systems which have accumulated over a period of many years. As a result, the Auditor-Controller's report contains 36 recommendations to resolve these problems.

The Auditor-Controller states that several of the problems addressed in their report were identified in previous audit reports dating back several years, but DCFS never fully corrected the problems. It is believed by the Auditor-Controller that if the recommendations had been implemented, the Department would almost certainly have much improved controls over overpayments processing and far more reliable overpayment balances would exist today.

Group Homes Follow-Up

The following is a discussion of some of the significant areas addressed in the Auditor-Controller's audit report.

Reducing Overpayments

As of January 31, 1997 the 1996-97 Grand Jury audit report identified approximately \$5.9 million in overpayments made by DCFS to group home operators. The Auditor-Controller reported that as of August 1997, the Overpayment Collection System showed an outstanding uncollected balance of \$4.1 million. During the past year the DCFS has implemented various procedures that they believed would result in a significant reduction in overpayments. However, based on the Auditor-Controller's review of the DCFS monthly management reports, overpayments have not decreased and are actually increasing. As of March 19, 1998 DCFS reports an overpayment balance of \$1.8 million. This amount has not been verified by the Auditor-Controller. The Auditor-Controller believes that a majority of the recommendations contained in their report will need to be implemented before an accurate balance can be obtained.

Reconciliation of Overpayment Balances

As stated in Section 4.III of this report, in March 1997 DCFS began a process to reconcile balances with the 195 group home providers. During an entrance conference with DCFS it was reported to the Grand Jury that all group home balances have been reconciled. However, a sample of the reconciled balances of 12 group homes reviewed by the Auditor-Controller revealed that they were unable to verify the validity of 88 percent of the figures tested.

Management Information Reports

The Auditor-Controller reports that the two pivotal management information reports concerning overpayment data are not accurate or complete. These are the only reports produced on a regular basis. The Auditor-Controller has identified additional reports that could provide valuable information.

Group Homes Follow-Up

In October 1997 DCFS hired a new consultant to enhance the collection system. The consultant will develop new reports to assist the management process and control overpayments, enhance the security system, and develop enhancements for the reconciliation of the data produced by the primary computer systems.

Implementation of Recommendations

We have discussed a few of the more significant areas the Auditor-Controller has addressed in their report. Other areas requiring implementation include accounting controls, processing and collecting overpayments and system security. The report contains 36 recommendations which require implementation to successfully resolve the overpayment and collection issues. Additionally, the Auditor-Controller recommends that DCFS assess whether they have staff with a strong financial and computer background, which would be needed to successfully implement the recommendations.

RECOMMENDATIONS:

It is recommended that the Director of the Department of Children and Family Services:

- 4.V.8.1 (a) Develop an implementation plan of the 36 recommendations identified in their foster care provider overpayment study that prioritizes the order of implementation with special emphasis of controlling overpayments and contains an agreed-to timetable; (b) determine the required necessary services of the Treasurer Tax-Collector to implement the 36 recommendations and (c) determine if DCFS has available qualified staff to implement the recommendations;**
- 4.V.8.2 Obtain qualified outside technical assistance to oversee the implementation of the 36 recommendations, if DCFS does not have available qualified staff.**

Group Homes Follow-Up

It is recommended that the County Auditor-Controller:

- 4.V.8.3 Conduct a follow-up audit to determine if DCFS has achieved accurate and timely processing of foster care payments and collections, based on the agreed-to timetable established in Recommendation 4.V.8.1 above. This audit should include verifying the outstanding uncollected overpayment balance. This phase of the audit should be performed when it has been determined by the Auditor-Controller that a sufficient number of the recommendations have been implemented.**

Grand Jury Reporting

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Grand Jury Reporting

Introduction

In the fall of 1997, the Los Angeles County Grand Jury was unclear about what specifically it **COULD** and **COULD NOT** properly include in the Final Reports of its civil investigations. This was due to its uncertainty concerning the definition of "raw evidentiary material" and the applicability of relevant statutes, case law and available legal opinions dealing with this overall topic. This was a pervasive problem, because it would impact the reporting of each and every civil investigation carried out by this grand jury. A study was authorized to accomplish the following tasks:

- Review and evaluate the reporting procedures and practices used in the past by the Los Angeles County Grand Jury. Compare these with the practices of grand juries in other California counties regarding their reporting of information received from their contract auditors, including secondary reference and statistical materials used by grand juries in their investigations.
- Review the legal basis for the contention by the Office of the County Counsel that these materials may not be included by the Los Angeles County Grand Jury in its final reports, that the Grand Jury's reports may not directly reference these materials, and that the Grand Jury may not include bibliographies of materials it reviewed.

This study followed legislative changes that increased the requirements for government officials to respond to grand jury findings and recommendations, and also appeared likely to subject grand jury reports to additional scrutiny. Penal Code Section 933.05, added in 1997, requires governmental agencies responding to a grand jury report, to respond to each finding in the report, stating whether they agree or disagree with the finding, and the reasons for any dispute. Respondents must also report whether grand jury recommendations have been implemented, and any reasons why they have not. Furthermore, amendments to Section 933(a) also require the grand jury foreperson and his or her designees to be available for 45 days after the end of the grand jury's term to clarify the jury's recommendations. This change generally incorporates legislation proposed by the Office of the County Counsel and supported by the 1996-97 Los Angeles County Grand Jury. The 1997-98 Grand Jury concluded that the effectiveness of its reports, and the ability of other agencies to respond to them, would be enhanced by resolving the continuing uncertainty regarding how their auditors' reports and other secondary reference and statistical materials, should be reported.

Grand Jury Reporting

To carry out the study objectives, a comparison was made between the practices of the Los Angeles County Grand Jury and the grand juries of the 10 next most populous counties in California. In addition, a lengthy analysis was performed of case and statutory law regarding grand juries, and several communications with the Office of the County Counsel regarding preparation of the Grand Jury Final Report and related issues. An interview with a representative from the Office of the County Counsel was held on December 17, 1997, at the start of the study, and an exit conference held at its conclusion, on March 13, 1998.

Background

This study concerns the grand jury's civil functions, principally its duty to investigate any problems regarding local government, report the findings of those investigations and make recommendations to correct the identified problems. These findings and recommendations, as required by Penal Code Section 933(a), are issued by grand juries in the form of final reports.

In conducting its investigations and preparing its reports, the grand jury receives assistance and oversight from several sources. First, the grand jury works under the oversight of the presiding judge of the superior court. Section 933(a) requires the grand jury to submit its reports to the presiding judge. An amendment to that section approved in 1988 also enacted into statute the decision of the California Supreme Court, in *The People et al. v. The Superior Court of Santa Barbara County* (1973 Grand Jury) 13 C.3d 430 (1975), which established that the presiding judge has the role of reviewing proposed grand jury reports, and may refuse to file reports which exceed the grand jury's jurisdiction. Once the presiding judge provides his approval, the reports may then be forwarded to responsible officers, agencies or departments, including the county board of supervisors, for comment.

Second, Penal Code Section 934 authorizes the grand jury to ask the advice of the presiding judge, the district attorney or the county counsel. Although not stated, it is presumed that this request would be for advice on legal matters.

Third, Penal Code Section 926 authorizes the grand jury, with the approval of the Superior Court, to employ experts in conducting its investigations.

Grand Jury Reporting

Section 5.1 - Grand Jury Orientation Materials

Penal Code amendments, adopted into law in 1997, have established a training requirement for grand juries in California. Specifically, Penal Code Section 914(b) states:

“To assist a grand jury in the performance of its statutory duties regarding civil matters, the court, in consultation with the District Attorney, the County Counsel, and at least one former grand juror, shall ensure that a grand jury that considers or takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury’s responsibility and statutory authority.”

As a practical matter, a review of information provided by grand juries in the 10 most populous counties, as well as Los Angeles County, indicates that many counties already have some sort of orientation/training process. These typically occur during the first meetings of the grand jury, and include presentations by the presiding judge overseeing the grand jury, the District Attorney and the County Counsel.

As part of this orientation/training process, written materials are also often provided, typically some type of procedures manual, prepared for the use of the grand jury. The 1997-98 Los Angeles Grand Jury received a book of grand jury Guidelines, last revised in June 1996. These Guidelines include information on grand jury history, descriptions of the grand jury’s criminal and civil functions, the duties of various grand jury officers, and suggestions for how the grand jury should structure itself to best accomplish its work.

Grand Jury Reporting

A review of the Guidelines identified two deficiencies: an insufficient discussion of the pre-publication review of grand jury reports by other parties, and inadequate information on case law and legal research memoranda, which define the grand jury's scope of responsibility and statutory authority.

Grand Jury Reporting Process

Our review, in conjunction with other research conducted for this study, concluded that these materials are not clear as to the respective duties of the Supervising Judge, the Office of the County Counsel and the District Attorney's Office, in reviewing proposed grand jury reports.

Penal Code Section 934 states that the grand Jury may ask the advice of the court, the district attorney, or the county counsel. The Los Angeles County Grand Jury Guidelines state that the Grand Jury's "Legal Advisor" is an attorney from the District Attorney's Office. That role includes providing legal advice to the grand jury, assisting grand jurors in finding or interpreting statutes or case law, and resolving legal problems in the grand jury's final report, such as libelous statements or conclusions which lack sufficient factual evidence. Nowhere is it clearly stated that the grand jury's Legal Advisor only has cognizance of criminal matters and cannot act as an advocate for the grand jury's concerns.

However, the Guidelines do state that a representative of the Office of the County Counsel is also available, through the Legal Advisor, to assist the grand jury in providing advice on legal questions related to its civil functions.

The Guidelines also describe the role of the Superior Court in overseeing the grand jury, including the requirement that the Supervising Judge review the grand jury's final reports before they are formally filed and published. However, the Guidelines do not describe a procedure that has developed in which the County Counsel also reviews all proposed grand jury reports.

Grand Jury Reporting

In a letter, dated January 15, 1998, addressed to Supervisor Yvonne Brathwaite Burke, as Chair of the Board of Supervisors, the Office of the County Counsel reported that its role in reviewing Grand Jury reports, and offering legal opinions regarding what may or may not be included in these reports, is that of an advisor to the Supervising Judge, as part of the Superior Court's duty to review all Grand Jury reports prior to their filing and publication.

This duty of the Superior Court is codified in Penal Code Section 933(a), requiring that the grand jury submit to the presiding judge of the Superior Court a final report of its findings and recommendations regarding County government matters no later than the end of each fiscal or calendar year. That section further states:

"A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title."

That code section, adopted in 1988, codified the California Supreme Court's decision in *The People et al. v. The Superior Court of Santa Barbara County* (1973 Grand Jury) 13 C.3d 430 (1975), which established the duty of the Superior Court to review proposed grand jury reports and its right to refuse to file reports which exceed the grand jury's legal jurisdiction.

In both verbal and written communications, the Office of the County Counsel reports that at some point in the past, the Superior Court contacted County Counsel and requested that office's assistance, by reviewing every proposed report from the Grand Jury and advising whether a report fully complies with statutory requirements and specifying any ways in which it does not. The Office of the County Counsel reports that because of the Grand Jury's deadlines to complete its final report, at the Court's direction the County Counsel has provided this analysis both directly to the Grand Jury and to the Court, to expedite resolution of identified defects. The Office of the County Counsel also indicates that in some cases the Grand Jury itself has sought a preliminary review and comment by the Office of the County Counsel on its reports, to expedite resolution of any problems.

Grand Jury Reporting

The Office of the County Counsel reports that its role in assisting the Superior Court is authorized by Government Code Section 27647(a), which states that on request of the Court, "the county counsel may represent any such court or judge thereof in all matters and questions of law pertaining to any of such judge's duties...." This role is not otherwise specified in any of the statutes or case law relating to grand juries.

The grand jury's training, and its orientation materials, should clearly spell out that the Legal Advisor from the District Attorney's Office reviews reports in his or her capacity as an advisor to the grand jury for criminal matters only, and the Office of the County Counsel reviews the grand jury final report only as an advisor to the Supervising Judge.

These materials also should indicate that one reason for the Legal Advisor's review is that in any dispute between the grand jury and other parties, including the Supervising Judge, regarding the content of a grand jury report, the District Attorney is the most likely legal representative for the grand jury.

This assumption is based on a brief review of case law in this area. The duty of the Superior Court to review grand jury reports prior to publication was established by the California Supreme Court in *People v. The Superior Court of Santa Barbara County*. In that case, the presiding judge of the Superior Court reviewed a 1972 grand jury interim report, and concluded that the report should not be filed or made public. The report was ordered sealed, and in subsequently advising the 1973 Grand Jury of its powers, the judge ordered that all grand jury reports be delivered to him for approval before being filed and publicly released. In the subsequent litigation establishing that the judge's action was proper, it was the District Attorney of Santa Barbara County that sued to overturn the action, while the County Counsel of Santa Barbara County represented the Superior Court.

Subsequently, the California Supreme Court in *McClatchy Newspapers et al. v. The Superior Court of Fresno County* (1988) 44 Cal.3d 1162, established that among the instances where the Superior Court could order material sealed from a grand jury report, were items constituting "raw evidentiary materials." *Id.*, at 1162. In that case, the grand jury was among the parties suing to overturn the Superior Court order removing the materials, and was represented by the District Attorney of Fresno County.

Providing this information on the nature and purpose of the various reviews of proposed grand

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jury reports will provide the grand jury additional information to clarify its rights in its civil function, and to clarify its relationship to the District Attorney's Office, the Office of the County Counsel and the Superior Court.

The Need for a Grand Jury Casebook

The grand jury has three primary written reference sources, which it may consult regarding the scope of its responsibility and statutory authority. One source is the statutes governing the grand jury. These statutes are primarily found in Section 888 through Section 939.91 of the California Penal Code, otherwise known as Title 4 of the Penal Code. These sections establish the composition and duties of grand juries in California. However, laws referring to the grand jury's function are also found elsewhere in state statutes, including other sections of the Penal Code, the Government Code and the Welfare and Institutions Code.

A second written reference source for the grand jury is case law, decisions by the California Supreme Court and lower appellate courts regarding grand jury functions. It is through these decisions that the statutes regarding the grand jury are interpreted where the meaning is not clear. Case law also may address grand jury issues that have not been addressed in statutory law. As part of this study, the Grand Jury obtained copies of key court decisions, such as *The People et al. v. The Superior Court of Santa Barbara County* (1973 Grand Jury) which established the duty of the Court to review grand jury reports. Grand jury members had not previously received this information, and since case law is as important as the statutes, in defining the scope of grand jury responsibility and statutory authority, it is important for grand jurors to receive information on key cases regarding their duties. At a minimum, the grand jury should be given access to key court decisions, such as:

The People et al. v. The Superior Court of Santa Barbara County 13 C.3d 430 (1975).

McClatchy Newspapers et al., v. The Superior Court of Fresno County 44 Cal.3d 1162 (1988). This case established a rule excluding disclosure of "raw evidentiary material" in grand jury reports.

Unnamed Minority Members of the 1987-88 Kern County Grand Jury v. The Superior Court of

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***Kern County* 208 C.A.3d 1344 (1989).** This case held that a minority report, that was never submitted to the full membership of the grand jury for approval by a majority of its members as a minority report, is not an authorized grand jury report, and may not be accepted by the Court for filing and publication.

***Brooks v. Binderup* 39 C.A.4th 1287 (1995).** This case held that Penal Code Section 930 does not deny grand jurors due process of law, when it states that comments in civil grand jury reports, defaming individuals who have not been indicted by the grand jury, are not privileged against defamation lawsuits. Grand jurors had claimed that the section 930 unfairly exposed them to liability, and also claimed that other penal code provisions regarding secrecy of grand jury proceedings prevented them from providing an adequate defense against a defamation lawsuit.

Possibly other key cases should be added to this list. The point is that grand juries need to be made aware of and have access to this important source of information defining the scope of their responsibility and statutory authority. The most appropriate person to assist the grand jury in compiling this information, and in keeping the grand jury apprised of relevant new statutes or case law, is the assigned Legal Advisor from the District Attorney's Office, as part of its current role in scheduling the orientation the grand jury now receives, according to the Guidelines.

The third written reference source for the grand jury is the legal research memoranda provided to current and previous grand juries by their advisors. As noted previously, Penal Code Section 934 authorizes the grand jury to approach the court, the district attorney or the county counsel for advice. Frequently this advice is provided to the grand jury in the form of a letter or memorandum from these advisors. Such letters typically provide an analysis and response to the legal question posed. They thus provide the same guidance for the grand jury as would a county counsel's opinion to the board of supervisors, and assist the grand jury in interpreting its mandate as a watchdog regarding local government.

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The Grand Jury's attempts to locate previous memoranda showed that the current availability of these memoranda is limited. Some files supposedly containing these documents were empty when checked, although some information was obtained through the Grand Jury Legal Advisor from the District Attorney's Office.

On the other hand, the Office of the County Counsel reported that it published memoranda from 1899 to 1973, and that these opinions relating to Grand Jury matters are available in the Los Angeles County Law Library. The Grand Jury confirmed that all County Counsel opinions provided to the Grand Jury and other County entities are maintained in the Law Library. However, because these opinions comprise 45 volumes and are not subject-indexed, we doubt the utility of these records in their current form.

Because these legal advisory memoranda, like court decisions and statutes, are an important resource for the Grand Jury in understanding the scope of its responsibility and statutory authority, the Office of the County Counsel and the District Attorney's Office should provide copies of memoranda prepared for previous grand juries on issues related to the civil grand jury function.

A formal system should be devised to retain copies of all legal memoranda prepared by the Legal Advisor and the Office of the County Counsel on a permanent basis for the use of future grand juries.

Because it is not clear how many of these legal research memoranda exist and will accumulate, it may be too cumbersome to provide each member of each year's grand jury with copies of all such memoranda. However, at a minimum, the grand jury should maintain a casebook of these memoranda as part of the materials kept in the Grand Jury Legal Advisor's Office. While ultimately it would be extremely helpful to have a subject index of these memoranda, initially it is recommended that the Grand Jury simply maintain a chronological file of all memoranda obtained, so that the current and future grand juries have access to these materials. Responsibility for maintaining this casebook should be assigned to the Secretary appointed by each grand jury, assisted by the Legal Advisor from the District Attorney's Office and the Office of the County Counsel. This casebook should also include copies of the key appellate court cases pertaining to grand juries, as described above, as well as copies of relevant statutes.

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It is also recommended that orientation materials for each new grand juror include copies of the statutes relating to the grand jury, copies of key court decisions relating to the grand jury's civil function, and a selection of the most important legal research memoranda available from the new casebook. Selecting which memoranda to provide would be an appropriate function for the former grand juror assigned to assist in training each new grand jury under Section 914(b), in conjunction with the Court, District Attorney's Office and Office of the County Counsel.

Providing each year's grand jury with access to these key legal reference materials will assist the grand jury and its advisors in researching legal questions regarding the grand jury's jurisdiction, and will provide the grand jury with more complete information in understanding the scope of its responsibility and statutory authority as required by law.

Conclusion

California law now requires all grand jurors to receive training to understand the scope of their responsibilities and statutory authority. While some training is already provided as part of the Superior Court's charge to each new grand jury, our review of relevant written materials showed that the description of the reviewing process for grand jury reports was not completely clear, nor did the 1997-98 Grand Jury receive information on statutes, court decisions and legal research memoranda that help define the scope of its responsibilities and statutory authority.

Grand Jury Reporting

Recommendations

It is recommended that the District Attorney, acting as Legal Advisor to the Los Angeles County Grand Jury:

- 5.I.1** Update all training/orientation materials for new Grand Jurors to reflect that Grand Jury reports are reviewed by the Legal Advisor from the District Attorney's Office, the Office of the County Counsel, and the Superior Court, and the reasons for each review, particularly the differing roles that the Legal Advisor and the Office of the County Counsel play in this process.
- 5.I.2** Ask the Office of the County Counsel to provide copies of all applicable legal research memoranda it has prepared for previous grand juries during the past ten years, which remain in its possession, listed in chronological order, identified by subject(s) and penal code reference(s). The file of these memoranda should be assigned a permanent location in the Legal Advisor's Office at the grand jury, and regularly updated as new memoranda are received.
- 5.I.3** Request that if the Supervising Judge of the Superior Court excises any material from the Grand Jury Final Report, a memorandum explaining the Court's legal basis for such excision be provided to the Grand Jury and filed in the casebook described in the following Recommendation 5.I.4.
- 5.I.4** Establish a casebook, also to be maintained in the Legal Advisor's Office at the grand jury, of legal research memoranda, key case law and statutes pertaining to the grand jury. Responsibility for maintaining this casebook, on an annual basis, should be assigned to the juror appointed as Secretary of the Grand Jury, assisted by the Legal Advisor from the District Attorney's Office and the Office of the County Counsel.

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- 5.I.5** **Establish a permanent procedure for receiving and filing copies of all new statutes, proposed legislation and court decisions applicable to California grand juries from the Legislative Services Office of the Los Angeles Superior and Municipal Court.**

- 5.I.6** **Provide to all new Grand Jury members, as part of the training now required under Penal Code Section 914(b), excerpts from the proposed casebook as part of their orientation and training materials, including copies of relevant statutes, case law and key legal research memoranda.**

Grand Jury Reporting

Section 5.11 - Reporting of Contract Audits

The grand jury's watchdog function, established in the California Penal Code, includes the ability to "investigate and report on the operations, accounts, and records" of county officers, departments or functions, city officers, departments and functions, joint powers agencies, the needs of county officers, redevelopment agencies, housing authorities and special-purpose assessing or taxing districts and local agency formation commissions.

To assist the grand jury in its work, Penal Code Section 926(a) states that "the grand jury may employ one or more experts, at an agreed upon compensation, to be first approved by the court." Section 926(c) permits any contract entered into for such services to include services performed up to six months after the end of the fiscal year in which the grand jury has been impaneled. Section 926(d) requires the contract to stipulate a time certain for delivery of an expert's work product for use by the grand jury.

For a number of years the Los Angeles County Grand Jury has utilized these sections to hire a contract auditor. Each year the firm selected conducts one or more audit projects for the grand jury, overseen by the grand jury Audit Committee and one or more of the other committees.

The audits conducted are performance audits, defined by *Government Auditing Standards, 1994 Revision*, by the Comptroller General of the United States. That document defines a performance audit as:

"an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action."

This definition of performance auditing corresponds to the grand jury's civil watchdog function as defined by the Penal Code. In addition, it fulfills the requirements of Penal Code Section 916 that call for "guidelines for the grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract

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auditors....” Typically the auditor’s work product is delivered in the form of a written report for the grand jury. The current Grand Jury, and previous grand juries, have indicated their interest in utilizing these auditors’ reports more fully in some instances, by including the auditor’s report(s) as part of the Grand Jury Final Report.

However, the Office of the County Counsel, in its role, discussed in Section 5.I, as an advisor to the Superior Court in the Court’s mandated review of grand jury reports, has advised that auditors’ reports cannot be included as part of the grand jury report. This view is based on the California Supreme Court decision in *McClatchy Newspapers et al. v. The Superior Court of Fresno County* (1988) 44 Cal.3d 1162, which prohibits a grand jury from disclosing “raw evidentiary materials,” as part of its reports. In the County Counsel’s view, an auditor’s report to the grand jury constitutes “raw evidentiary materials.”

Similarly, the Office of the County Counsel has also stated that the grand jury should not include the source of secondary materials that may be used in its research, either by including a bibliography of materials consulted in its report, or by referencing these materials, such as academic reference reports or statistical analyses, in its report. The County Counsel has concluded that paraphrasing or summarizing the evidence the grand jury relies on in writing its reports is within the grand jury’s authority, but disclosing the source of that evidence exceeds the grand jury’s authority.

This opinion appears to be heavily based on Penal Code Section 939.9 which states in part:

“A grand jury shall make no report, declaration or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury.” Analysis of the history of section 939.9 reveals that it was codified in its present form through a 1959 revision of various Penal Code sections related to grand juries. Prior to that time the same language was contained in Penal Code Section 932, added by statute in mid-1957. The provisions of Section 932 were instituted after a 1954 “Social Welfare Conference” of grand jury representatives from throughout California, resulted in grand juries inserting proposals adopted at that meeting verbatim into their final reports.

It is logical to assume that the 1957 legislation which led to Penal Code Section 932, now 939.9, was designed to prevent recurrence of that 1954 incident, so that California grand juries would be prohibited from adopting statewide recommendations without investigating local conditions in each county. The issue that this legislation was meant to address is far removed from the

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issue of the grand jury's authority to release its experts' report as a part of the grand jury's own final report.

To assess the universality of the Office of the County Counsel's advice, grand juries in the 10 most populous California counties, other than Los Angeles, were compared regarding their practices in using auditor's reports and sourcing other reference materials, and regarding other reporting practices.

In addition, a detailed review was conducted of California statutes and the *McClatchy* decision, to verify the Office of the County Counsel's interpretation of the decision, and to determine whether an alternative interpretation could permit the inclusion of auditor's reports and sources of other reference materials in grand jury reports.

Practices of Other California Counties Regarding Auditors' Reports

Of the 10 counties surveyed, six counties, Alameda, Fresno, Orange, Riverside, San Bernardino and San Diego, reported that their grand jury had used some audit resources in the past, either from a contract auditor hired under Section 926(a), or by utilizing their county's internal audit unit, typically part of the Auditor-Controller's Office. Of the six counties, three counties, Alameda, Orange and San Bernardino, reported that in the past, audit reports had been included as part of grand jury interim or final reports.

The process for this inclusion is most elaborate in Orange and San Bernardino counties. In those counties, the contract auditor submits its report to the grand jury, which then reviews the report in detail, including, as necessary, contacting the auditor with follow-up questions or requesting to review audit work papers. The grand jury then votes whether to accept the audit, and has the option of accepting all, some, or none of the audit findings and recommendations. In cases where the full audit findings and recommendations have been accepted, the grand jury will adopt those findings and recommendations as its own. The final report will then include an introduction to the auditor's report in which the grand jury

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summarizes that report and indicates its agreement with the findings and recommendations. That introduction is then followed by the auditor's report, which is reproduced in the grand jury report. Orange County's 1996-97 Final Report included auditors' reports on several topics, while San Bernardino County reports it did not conduct any audits during the 1996-97 term.

Alameda County reported that in some cases auditor's reports have been included as appendices to their Grand Jury's Report. That county also reported that the audits conducted for their Grand Jury are solely financial audits. While Alameda County's 1996-97 Grand Jury Report did not include the text of any auditor reports, at least one section of the Report included a reference to an audit apparently conducted at their Grand Jury's direction.

In addition to the three counties who reported the grand jury uses audit resources and has included the audit reports in its own reports, two other counties, San Diego and Santa Clara, reported that while those grand juries have never included auditors' reports with their own reports, there appears to be no legal impediment to those grand juries doing so. San Diego County reported that the grand jury has requested audits be conducted by the county internal auditor, while Santa Clara County reports that the grand jury has not requested use of a contract auditor, primarily for financial reasons. We note that Santa Clara County already has an independent management auditor working under the Board of Supervisors.

As a follow-up to the survey, all five of the counties, who stated that auditor's reports have been or could be included as part of the grand jury's reports, were asked their view of the *McClatchy* decision as possibly prohibiting the inclusion of auditor reports in grand jury reports. Four of the five indicated they saw no impediment in *McClatchy* to including an auditor's report as part of the grand jury's report. In particular, Orange County and San Bernardino County representatives stated that because the grand jury adopts the auditor's report as its own, inclusion of that report is permissible even under *McClatchy*. A Santa Clara County representative reported that to meet the requirements of *McClatchy*, the grand jury would not only have to adopt the auditor's report as its own, but would need to report the auditor's information as its own. In other words, the auditor's information would have to be reported in the grand jury's report in the same type as the rest of the grand jury report, without any reference to the auditor as having provided that information.

Also, representatives in all five counties agreed that to be included as part of a grand jury

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report, an auditor's report would have to meet the intent of *McClatchy* to protect the identities of individuals who provide information for the audit, and thus for the grand jury. As the Supreme Court stated in *McClatchy*:

"The grand jury may, of course, refer in its reports to evidence supporting its conclusions by summarizing or paraphrasing the evidence, so long as the identity of witnesses is not thereby revealed, directly or by implication from content." *McClatchy Newspapers et al. v. The Superior Court of Fresno County* (1988) 44 Cal.3d 1162, at 1182.

To summarize, our survey indicates that four of the six counties where grand juries have used audits in their work, or 66.7 percent of that number, and five of the 10 counties surveyed overall, 50 percent of the total, believe that a grand jury may include an auditor's report in its own report in some manner, without violating the requirements of the *McClatchy* decision.

Practices of Other Counties Regarding Other Reference Materials

In addition to inquiring about use of auditors' reports, the survey of the 10 most populous counties asked whether information from reference materials, such as academic research studies, statistics from sources other than the direct calculation of the grand jury, or bibliographies of materials consulted, were ever included in grand jury reports. This information was sought because the Office of the County Counsel has stated it believes that the Los Angeles County Grand Jury should include in its reports neither any references to the source of reference or statistical materials used in its reports, nor a bibliography of these materials, based on *McClatchy*.

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Summarized survey results are shown in the following table. Full survey results for all counties are shown in Appendix A at the end of this Final Report.

Table 5.II.1

**Use of Reference Material, Bibliographies and Statistics
in Grand Jury Reports in the 10 Most Populous California Counties¹**

Question: Are any of the following items included in your Grand Jury final report?

	<u>Yes²</u>	<u>No</u>	<u>Percent Yes</u>
Reference Material	6	4	60%
Bibliographies	6	4	60%
Statistics	9	1	90%

¹Excluding Los Angeles County

²Riverside County stated that reference material and bibliographies were "seldom" included, while statistics were "sometimes" included. Contra Costa County reported statistics were "occasionally" included, and Fresno County said they were "sometimes" included. These answers were counted as affirmative responses for purposes of the survey.

As the table indicates, a majority of counties reported that all three types of source materials and references may be included in the grand jury's report. In an attempt to validate these survey responses, 1996-97 grand jury final reports from all 10 of the responding counties were also reviewed, to determine if any of these materials were included or referenced in them.

Regarding reference material or statistics, based on the previous comments from the Office of the County Counsel to the Los Angeles County Grand Jury, a report was counted as having included these items if it either included a copy of source materials, such as a copy of a document the grand jury received in its investigation, or if it referred by name to a statistical or reference material source.

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Regarding bibliographies, several counties use footnotes rather than a bibliography to provide a source for information, and those counties were included among those providing a bibliography.

Results of this review are summarized in the following table. County-by-County results are in Table 5.II.3 at the end of this section.

Table 5.II.2

**Use of Reference Material, Bibliographies and Statistics
in Grand Jury Reports in the 10 Most Populous California Counties¹,
Based on a Review of 1996-97 Grand Jury Final Reports**

	<u>Yes</u>	<u>No</u>	<u>Percent Yes</u>
Reference Material Included?	9	1	90%
Bibliographies Included?	4	6	40%
Statistics Included?	8	2	80%

¹Excluding Los Angeles County

As Table 5.II.2 shows, nearly all the counties surveyed report reference material by name from other sources, and statistics by name from other sources. This included some counties whose actual practices contradicted their survey response. Use of bibliographies or footnotes for sources was the only area in which a majority of surveyed counties did not participate.

In summary, the information gathered regarding grand jury reporting practices in other large California counties indicates a wide variety of practices in the various counties. In each of these counties the grand jury presumably has access to legal advisors, and has a Superior Court review of its reports, as does the Los Angeles County Grand Jury. Consequently, the wide variety of practices among these counties suggests that Los Angeles County Grand Jury's current procedures, based on the position of the Office of the County Counsel in advising the Superior Court, may not be the only procedures permitted regarding the handling of this material.

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Practices of Other Counties Regarding Judicial Review of Final Reports

Of additional interest in the survey is the mode by which the final report is reviewed and approved. Penal Code Section 933.1 states in pertinent part that "A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, upon finding of the presiding judge that the report is in compliance with this title." The survey revealed that in addition to Los Angeles County, the presiding judge in nine of the ten counties surveyed, exercised their statutory duty to review the final report.

Legal and Legislative Analysis

Based on the survey findings showing a wide variety of practices among California counties, an attempt has been made to analyze the legal basis for the Office of the County Counsel's position that neither direct citation from auditors' reports, reference materials or statistical reports, nor appending these materials to the Grand Jury Final Report, is permitted.

The Office of the County Counsel bases its view on the California Supreme Court ruling in *McClatchy Newspapers et al. v. The Superior Court of Fresno County* (1988) 44 Cal.3d 1162, which prohibits a grand jury from disclosing "raw evidentiary materials." *Id.*, at 1167. In communications to the Grand Jury, the Office of the County Counsel, attempting to define this phrase, noted that the Supreme Court referred to "transcripts of testimony, summaries and analyses of testimony, and documentary exhibits," disclosure of which "would be fundamentally inconsistent with governing legislation setting out the parameters of proper grand jury reporting and providing for the secrecy of grand jury proceedings which is central to the effective functioning of the grand jury system in California." *Id.*, at 1167.

A review of the *McClatchy* decision reveals that its clear thrust is to protect the confidentiality of individuals who provide information to the grand jury, such as witnesses who testify before it. The decision includes a long discussion of the history of secrecy in relation to grand jury proceedings, and notes that this tradition serves a number of key purposes: 1) to encourage candor by witnesses testifying before the grand jury; 2) to protect against disclosing criticisms of individuals made by witnesses testifying before the grand jury, 3) to protect the grand

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jurors, themselves, against external influences or threats, and 4) to promote impartiality. *Id.*, 1173-1177. The decision properly notes that the grand jury itself may criticize individuals in its report, subject to the warning of Penal Code Section 930 that criticism of individuals in a grand jury report, when those individuals are not indicted, is not privileged against lawsuits for defamation by the persons criticized. *Id.*, at 1177.

Reinforcing this emphasis on protecting the confidentiality of witnesses, the Supreme Court stated:

“The grand jury may, of course, refer in its reports to evidence supporting its conclusions by summarizing or paraphrasing the evidence, so long as the identity of witnesses is not thereby revealed, directly or by implication from content.” *Id.*, at 1182.

In addition to this emphasis on protecting the confidentiality of witnesses, the *McClatchy* decision also emphasized the absence of statutory authority for release of the materials included in the Fresno County Grand Jury’s report. As noted earlier, the Court said disclosure of such materials “would be fundamentally inconsistent with governing legislation setting out the parameters of grand jury reporting . . .” *Id.*, at 1167. Later, the Court flatly stated: “There is no *explicit* statutory authority for the grand jury to disclose to the public raw evidentiary materials as part of its final report in a watchdog investigation.” *Id.*, at 1178. The Court then

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went on to analyze various Penal Code sections in support of its view that the Legislature never intended to give the grand jury such authority. *Id.*, at 1179-1183. Finally, addressing the District Attorney's reports included in the Fresno County Grand Jury's report, the Court stated: "No statute or decision permits disclosure of this information or advice when it is given during a secret inquiry." *Id.*, at 1183.

However, our review of the Penal Code sections related to grand juries has identified two sections, adopted subsequent to *McClatchy*, that arguably provide statutory authority for citation or inclusion of contract auditors' reports and other reference or statistical sources in grand jury reports, so long as these materials conform to *McClatchy's* requirement to protect the identity of individuals providing information to the grand jury.

Penal Code Section 916

Penal Code Section 916, as amended by the Legislature in 1988, prescribes the process for a grand jury to annually adopt its rules of procedure. It states:

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

Rules of procedure adopted by a grand jury could include a procedure for including auditors' reports and reference materials and statistical sources as part of its final report. Both Orange and San Bernardino counties have adopted such a procedure. In fact, this section would be rendered moot if the grand jury, required to ensure that its findings are supported by documented evidence, has no way to utilize that documentation in responding to criticism that its findings are not supported. This concern is particularly relevant in light of Penal Code amendments enacted in 1997. These amendments expand the detail in which subjects of grand jury reports must respond to grand jury findings and recommendations, and require that the grand jury be available for 45 days after the end of its term to clarify its recommendations. This process may include some criticism of the grand jury's work. To respond to these critiques, the grand jury will need to reference the information it used.

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Penal Code Section 926(d)

Penal Code Section 926(d), also amended in 1988, addresses contracts between a grand jury and experts. It states:

“Any contract entered into by a grand jury pursuant to this section 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.”

The words, “for such use as that jury finds appropriate to its adopted objectives,” at the end of the section appear to be a broad grant of authority to a grand jury to utilize an auditor’s report as it chooses, including citing it or including it as part of a grand jury report.

In addition, it is noted that Section 926(d) along with the rest of Section 926, refers to the hiring of an expert by the grand jury. The Office of the County Counsel, in its interpretation of *McClatchy*, appears to be viewing a contract auditor hired by the grand jury, and the work product of that auditor, as equivalent to a witness testifying before the grand jury or providing documents to the grand jury. It appears, however, that as an expert hired under this section, the contract auditor serves, not as a witness whose work product constitutes “raw evidentiary materials,” but in a staff capacity as a grand jury employee. Therefore, we believe citation of contract auditors’ reports in the grand jury’s reports, or including such reports as part of grand jury reports, is appropriate, so long as those reports follow the Supreme Court’s requirement in *McClatchy* to protect the identity of individuals providing information to the grand jury through the auditors.

Both Section 916 and 926(d) were added to the Penal Code as part of SB 2753, legislation introduced on February 19, 1988, and amended several times during that year before being approved by the legislature on August 30. Consequently, these amendments were considered by the Legislature during the period in which the Supreme Court also rendered the *McClatchy* decision, which was issued April 18, 1988. *Id.*, at 1162. The court stated in *McClatchy* that,

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“we strive to assign significance to every statute or part thereof in attempting to divine legislative intent, and we avoid interpretations which would render certain words and passages mere surplusage.” *Id.*, at 1181, citing *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, and *Palos Verdes Faculty Assn. v. Palos Verdes Unified Sch. Dist.* (1978) 21 Cal.3d 650. The Legislature’s use of such broad language in these sections related to auditors’ reports and other materials used by grand juries in their watchdog function indicates the Legislature’s intent that grand juries include these materials as part of their final reports, rather than prohibiting them from doing so under *McClatchy*, as the Los Angeles Office of the County Counsel’s view requires.

Because of the broad language used in these two sections, we conducted extensive research into the legislative history of SB 2753. Based on this information, which included an interview with an individual intimately familiar with the drafting of the legislation, we are confident that the Legislature’s intent in adding these two sections included permitting grand juries to include auditors’ reports and information from secondary reference and statistical sources in grand jury reports.

To summarize, we believe that this legislative analysis, combined with the information obtained regarding the practices of other counties, indicates that the Office of the County Counsel’s interpretation of the *McClatchy* decision is not the only interpretation possible. The Grand Jury is therefore requesting that the Office of the County Counsel reconsider its interpretation of *McClatchy*, in light of the information provided in this study, permitting the grand jury to include auditors’ reports, identified reference materials and statistical sources as part of grand jury final reports, so long as such disclosures meet the requirement of *McClatchy* that “the identity of witnesses is not thereby revealed, directly or by implication from content.” *Id.*, at 1182.

Other Options

The legislative analysis just described, and the survey of practices in other counties, indicate that there is by no means unanimity of opinion as to the interpretation of *McClatchy* in this area. If the Office of the County Counsel interpretation of this decision remains unchanged, there are two other options to clarify this issue.

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First, the Grand Jury could seek an opinion from the Attorney General's Office regarding this question. Such opinions, for purposes of legal interpretation, do not have the force of law, as do decisions of courts, but are considered persuasive in providing interpretations of State law. Government Code Sec. 12519 states that such opinions may be requested by, among others, the Legislature and any district attorney. Consequently, the Grand Jury would request such an opinion through its Legal Advisor from the District Attorney's Office. The Attorney General's Office reports that such a request should be made in writing, and may include any supplemental materials the requester wishes to provide regarding the question posed.

Second, clarification of this issue can be sought through the new legislation proposed by Supervisor Yvonne Brathwaite Burke to the Board of Supervisors on January 27, 1998, and introduced on February 20, 1998, by State Senator Richard Polanco, D-Los Angeles as Senate Bill 2100. The proposed legislation would add Section 929 to the Penal Code to read as follows:

"As to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material relied upon in a final report concerning county, city, district, or housing affairs."

This legislation is similar to language proposed by the Office of the County Counsel in 1997 and supported by the 1996-97 Los Angeles County Grand Jury.

In addition, Assemblyman Tom Woods, Jr., has introduced Assembly Bill 1907 during the current legislative session. This bill authorizes a grand jury to pass on to the succeeding grand jury any records, information or evidence acquired during the course of the grand jury's civil investigations, excepting information that could form part or all of the basis for issuing an indictment. The bill also requires a copy of each grand jury final report, together with the responses to it, to be filed with the county clerk. The county clerk then must forward a copy of the report to the State Archivist. The bill also permits grand juries to ask the Attorney General for advice.

Because these issues are relevant to the operations of the current Los Angeles County Grand Jury and its successor, the current grand jury highly recommends these proposed legislative bills.

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Format of Auditors' Reports

Penal Code Section 916 requires each grand jury to determine its rules of proceeding.

This report is intended to serve as an example and a format for grand jury reporting and the reports of its auditors. This report does not refer by name to any of the individuals who provided information for the research on which it is based, and in fact identifies no individual by name or title. Instead, the report refers solely to institutional sources for information, such as the District Attorney's Office or the Office of the County Counsel. By referring to information sources in this manner, this report, and reports of auditors following this format, will meet *McClatchy's* requirement not to identify individuals who provide information, either directly or by reference to the information provided.

Perhaps more important than the format of auditors' reports, in evaluating their eligibility for inclusion in a grand jury report, is the grand jury's procedure for reviewing and approving such reports. A specific review and approval procedure is recommended below to assure compliance with the requirements of Penal Code Section 939.9, which states: "A grand jury shall make no report, declaration or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury."

Recommended Review and Approval Procedure

Before an auditor's report may be included in a grand jury report it must be reviewed and approved for publication as follows:

- 1 The grand jury will receive copies of each report, to be reviewed for form and content by the Audit Committee and any other committees with whom the auditor has worked, based on the subject matter of a particular report.
- 2 The auditor will then make a formal presentation regarding the report, at which all grand jurors may ask questions of the auditor and review audit work papers as necessary to assure themselves that the report findings and recommendations are properly supported.

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- 3 The grand jury would then vote whether to accept or reject each of the findings and recommendations in the auditor's report. Based on these votes, the grand jury could decide to include all, some or none of the auditor's report in the grand jury's own report. If it decides to include the auditor's report in the grand jury report, the grand jury would prepare a prefatory statement for the auditor's report attesting that the grand jury has reviewed, approved and adopted its findings and recommendations as its own.**
- 4 Once the grand jury completes review and approval of its report, including any applicable auditor's reports, it would then forward its report to the Office of the County Counsel and Superior Court to review, as they do now.**

By conducting this process, the grand jury would make the auditor's report its own, meeting the requirements of Penal Code Section 916, and permitting the auditor's report to be included in the grand jury final report.

Conclusion

Penal Code Section 926 authorizes a grand jury, with the approval of the court, to hire one or more experts for assistance in carrying out its watchdog functions under various Penal Code sections. While the Office of the County Counsel believes that expert reports, and secondary reference and statistical sources, may not be included in grand jury reports under the *McClatchy* decision, analysis of that decision and of relevant statutes, and a survey of practices in other large California counties, suggest that interpretations of *McClatchy* to permit inclusion of this material are possible.

Grand Jury Reporting

Recommendations

It is recommended that the District Attorney, acting in his or her capacity as Legal Advisor to the Los Angeles County Grand Jury:

- 5.II.1 **Adopt procedures, acceptable to the judge in charge of reviewing the Grand Jury Final Report, as recommended in this section, for the format and review of contract auditors' reports, to meet the requirements of the *McClatchy* decision as well as complying with all statutory requirements.**
- 5.II.2 **Request the Office of the County Counsel, in light of this report, to reconsider its current legal interpretation and permit inclusion of auditors' reports, secondary references and statistical sources, in Grand Jury Final Reports, and to provide a written opinion concerning the effect the passage of Senate Bill 2100 in its present form would have on this issue.**
- 5.II.3 **Request an Attorney General's Opinion regarding the issue of inclusion of auditors' reports, secondary references and statistical sources, in Grand Jury Final Reports, including the effect of Senate Bill 2100.**
- 5.II.4 **Request that the Board of Supervisors continue its efforts for the passage of Senate Bill 2100 and support Assembly Bill 1907. The Grand Jury believes the former bill's passage will prove invaluable in solving a Grand Jury communication problem discussed in this Report and the latter would improve the record-keeping of the Grand Jury Final Reports.**

Grand Jury Reporting

Table 5.II.3

Content Analysis of 1996-97 Grand Jury Reports in California Counties Surveyed

County	Alameda	Contra Costa	Fresno	Orange	Riverside	Sacramento	San Bernardino	San Diego	San Francisco	Santa Clara
Does the final report include?										
Contract Auditor Reports	quoted	no	no	yes	no	no	no	no	no	no
Reference Materials	yes	yes	yes	yes	yes	no	yes	yes	yes	yes
Bibliographies	no	no	no	yes	no	no	no	footnotes	footnotes	yes
Statistics	yes	no	yes	yes	yes	no	yes	yes	yes	yes

9-1-1 Response

6-

Health Services Committee

Rosalyn S. Klein, Ph.D., Chair

Belem Asaad

Herbert L. Badler

Jack Bernal

Leo Celniker

Ellis S. Fields, D.D.S.

Jane Ann Grossman

Jacob Spillman

Shizie Kohno Taira

Lupe Valenzuela

9-1-1 Response

Introduction

History of 9-1-1

The concept of a three-digit emergency number was developed in Great Britain in the late 1930's when 9-9-9 was used to request police, fire, and emergency medical services. American military personnel, stationed in England, recognized the efficiency of this system, and on return to the United States after the war, those choosing careers in law enforcement and as fire fighters were influential in implementing this concept.

In 1957, the National Association of Fire Chiefs formally recommended the development of a universal emergency telephone number. Since 1968, all telephone companies in the United States have provided 9-1-1 numbers to any community that wished to implement an emergency 9-1-1 response program. Systems have been established in approximately 75% of the cities and towns in the United States, representing about 35% of our geographic area.

Promotion of the Los Angeles 9-1-1 System

The Los Angeles 9-1-1 emergency response system became operational in 1984. To promote the use of the new three-digit emergency number, public service announcements, presentations at neighborhood watch meetings, posters, brochures, and other materials were used and the campaign was overwhelmingly successful.

Appropriate and Inappropriate Uses of the 9-1-1 System

As the educational and promotional campaigns and information states, 9-1-1 is for the reporting of emergency situations. However, gradually as individuals have become accustomed to dialing a three-digit number to contact the police and other law enforcement and public safety agencies, the indiscriminate use of 9-1-1 has increased.

9-1-1 Response

The California Highway Patrol (CHP), the Los Angeles (City) Police Department (LAPD), and the Los Angeles (County) Sheriff's Department (LASD) report that about 85% of the calls made to 9-1-1 are not emergencies or requests for assistance in life threatening situations. Several reasons for the increase in non-emergency calls have been cited by emergency response system administrators.

First, public information and education campaigns have been very successful. Most people are aware that dialing 9-1-1 will route them to the public service agency they wish to contact. Second, 9-1-1 is an extremely simple number and concept to recall as opposed to a seven-digit number for non-emergency calls. Third, information about and access to seven-digit non-emergency numbers for police and fire departments have not been readily available. Fourth, recent increased immigration and the growing numbers of residents with limited English comprehension skills, have affected the numbers of non-emergency calls. Many abuse the system as if it were a general information number. Public safety agencies report that 9-1-1 has been used to request information on where to purchase concert tickets, obtain directions, find out about traffic conditions, and inquire regarding the correct time.

Calls to report excessive noise or abandoned vehicles are legitimate reasons to contact the police department, but 9-1-1 should not be used for these types of situations. In addition, calls to inquire about scheduling inspections to obtain hazardous materials permits, and fire code clearances for occupancy of a facility, for example, are not emergencies.

The Grand Jury believes it is possible to reduce the number of non-emergency calls by providing the public with better information on appropriate uses of the system. For example, the Emergency Communications Center in Arlington County, Virginia has produced a brochure that provides the public with:

- **A single seven-digit non-emergency number to use for contacting the police, fire, or emergency medical services agencies;**
- **A description of when 9-1-1 should be used and examples of when it should not be used;**

9-1-1 Response

- An explanation of how to use the 9-1-1 system in terms of the information the caller should be prepared to give the 9-1-1 operator, the types of questions the 9-1-1 operator may ask you, and how the 9-1-1 operator will assist you (e.g., providing caller with CPR¹ instructions, childbirth instructions, personal safety instructions, etc) in an emergency, if they determine that such assistance is necessary; and
- Information on how the 9-1-1 system works and reminders to post emergency and non-emergency numbers near telephones.

The LAPD brochures revised in March 1998 and distributed by the LAPD Communications Division Community Outreach Program give clear examples of the appropriate use of 9-1-1. The brochures also list non-emergency service numbers, police station numbers, community relations office and community service centers. In addition, multiple community resource numbers are provided. These brochures have also been published in Spanish, for in Los Angeles County it is essential to provide for the cultural and ethnic diversity of the population.

The Impact of Cellular Telephones on the 9-1-1 System

Impact of 9-1-1 Calls Statewide

The California Highway Patrol (CHP) reports that its volume of 9-1-1 calls statewide increased from approximately 94,000 annually in 1986 to an estimated 2.2 million in 1995. This represents an increase of 2,210% over approximately 10 years. Along with the increase in call volume is an increase in time to answer calls to CHP 9-1-1 system. The state-recommended goal is to have all calls to the 9-1-1 system answered within 10 seconds. Yet, in 1995, only 50% of the calls to 9-1-1 were answered within 10 seconds. The other 50% of the calls to the 9-1-1 system operated by CHP were placed on hold for an average of 55 seconds.

¹Cardio Pulmonary Resuscitation

9-1-1 Response

The increase in call volume and the delays in answering calls may be attributed, in part, to the use of cellular telephones. In 1995, there were an estimated 3.5 million cellular telephone subscribers. The telecommunications industry reports that the number of cellular telephone subscribers is increasing about 40% each year. Cellular telephones alone generate approximately 1,800 calls per day to the CHP Los Angeles communications center. This represents approximately 43% of the 4,100 calls per day that are handled by the Los Angeles Communications Center.

Impact of 9-1-1 Calls on Los Angeles City and County

While LAPD and LASD operate 9-1-1 systems which are independent of the statewide CHP system, the great increase in cellular 9-1-1 calls has put a greater burden on all three systems. Based on the nature of the call and the location of the incident, the CHP determines which agency should respond to a particular call. For example, if a call is made from a cellular telephone to report an incident within the City of Los Angeles, the CHP will route that call to the LAPD's 9-1-1 switchboard. This call counts as a call to the CHP for 9-1-1 services as well as the LAPD for 9-1-1 services. Each agency is required to answer the call for assistance and immediately assess need. The call adds to the volume of incoming calls on both systems and is counted as workload statistic by both agencies.

Current Workload Statistics

Los Angeles (City) Police Department (LAPD)

In order to obtain an understanding of the workload and call volume related to 9-1-1 calls, we reviewed workload reports from the LAPD's Communication Division. For the third quarter of 1997 (July, August, September), the Central Dispatch Center received 538,537 calls. This represents an average of 179,512 calls per month. Of the calls received, a total of 488,299 or 91% were answered by a 9-1-1 operator. However, these statistics also reveal that 9% or 50,238 calls were abandoned during this same three-month time period. This represents on an average 16,746 abandoned calls per month.

9-1-1 Response

Table 6-1 on the next page shows the workload statistics for the Central Dispatch Center for calendar year 1996 and nine months of data for calendar year 1997.

These data show that the overall volume of 9-1-1 calls is lower in 1997 even though a greater number of calls were received during the third quarter of 1997. If about 85% of the calls to 9-1-1 truly are inappropriate, then during calendar year 1996, approximately 170,000 of the abandoned calls should have been made to the appropriate seven-digit, non-emergency number. This also indicates that an estimated 30,000 of the abandoned calls were legitimate calls for assistance that went unanswered.

In addition to being unable to answer as many as 30,000 legitimate calls for emergency service, the data provided by the LAPD show that the number of calls that are being answered in 10 seconds or less is declining. During calendar year 1996, an estimated 85% (1.65 million of the 1,927,515 calls answered by 9-1-1 operators) were answered in 10 seconds or less.

9-1-1 Response

Table 6-1

Annualized and Average Monthly Workload Statistics for 9-1-1 Calls Received by the City of Los Angeles Police Department's Communications Division at the Central Dispatch Center for Calendar Years 1996 and 1997¹

Year/Status	Number of Calls Third Quarter	Number of Calls Year-to-Date	Number of Calls Annually²	Average Number of Calls Monthly³
1996				
Received	532,141	1,596,424	2,128,565	177,380
Answered	481,879	1,445,636	1,927,515	160,626
Abandoned	50,262	150,788	201,051	16,754
1997				
Received	538,537	1,528,563	2,038,084	169,840
Answered	488,299	1,395,357	1,860,476	155,040
Abandoned	50,238	133,206	177,608	14,800

¹ Statistics were provided by the Los Angeles Police Department's Communications Division and report on the 9-1-1 calls coming into the Central Dispatch Center for the third quarter of calendar year 1997, and the number of calls year-to-date (January through September) for calendar years 1996 and 1997.

² Estimate derived by annualizing the number of calls year-to-date.

³ Estimate based on annualized figure.

9-1-1 Response

The LAPD's Communication Division at the Central Dispatch Center reported that for the first quarter of Calendar Year 1998 there were 448,885 calls to the 9-1-1 system. Of those calls 425,588 were answered and 23,297 were abandoned. This translates into average monthly call rates of:

- 149,628 calls received;
- 141,863 calls answered;
- 7,766 calls abandoned:

Los Angeles (County) Sheriff's Department (LASD)

Information on the LASD 9-1-1 system, which included workload statistics, was analyzed. Rather than having a centralized dispatch operation for 9-1-1, the Sheriff's Department has 17 Public Safety Answering Points (PSAP), located throughout the County within Sheriff's Stations. Unlike the system operated by the LAPD, calls to the Sheriff's Department 9-1-1 system are not put on hold and the call is not answered by a recording.

LASD provided data from six of the PSAP which covered a two-month time period from July 1, 1997 through August 31, 1997. The PSAP were:

- City of Industry, a large primary PSAP
- Marina Del Rey, a medium primary PSAP
- Lakewood, a large primary PSAP
- Norwalk, a large primary PSAP
- Pico Rivera, a large primary PSAP and
- Walnut, a large primary PSAP.

9-1-1 Response

During the two-month period covered by the reports, these six stations received a total of 61,709 calls. Using an average of 10,285 calls per PSAP, the 17 locations would have processed collectively approximately 174,842 calls. Annualized, this translates into 1,049,053 calls to the Sheriff's 9-1-1 system.

The data provided in the reports indicate that during July and August of 1997, 45,027 of the 61,709 calls were answered while the balance, 16,682, were abandoned. As such, approximately 27% of the calls made to the Sheriff's 9-1-1 system were abandoned while 73% were answered. However, 81.4% of the answered calls were answered in 10 seconds or less by an operator. The Sheriff's Department further reports that less than 1% of the calls required longer than 30 seconds to answer.

Holding the percentages constant and annualizing the data, over the course of a year, the Sheriff's Department answers approximately 765,808 of the 1,049,053 calls that come into the 9-1-1 system. The remaining calls, 283,245 are abandoned. The Sheriff's Department uses the national average of 40% to estimate that the percentage of the calls made to 9-1-1 are not life-threatening or emergencies. As such, of the 765,808 calls that are answered annually, approximately 306,323 of those calls would have been more appropriately placed to a seven-digit non-emergency number. Concomitantly, approximately 169,947 of the estimated 283,245 abandoned calls represent legitimate calls to 9-1-1.

Information on call volume and call status during the months of July and August of 1997 is displayed in Table 6-2.

9-1-1 Response

Table 6-2

Bi-Monthly and Estimated Workload Statistics for 9-1-1 Calls to the Los Angeles County Sheriff's Department based on July and August 1997 Actuals

Station/Status	July/August 1997 Actuals ¹	Average Number of Calls Per Month ²	Estimated Number of Calls Annually ³
City of Industry			
Answered	8,322	4,161	49,932
Abandoned	4,894	2,447	29,364
Marina Del Rey			
Answered	1,590	795	9,540
Abandoned	324	162	1,944
Lakewood			
Answered	14,989	7,495	89,940
Abandoned	4,181	2,090	25,080
Norwalk			
Answered	9,822	4,911	58,932
Abandoned	3,332	1,666	19,992
Pico Rivera			
Answered	4,235	2,118	25,416
Abandoned	1,379	689	8,268

¹ Based on data provided in the Summary 911 Traffic Report from the LASD for the reporting period July 1, 1997 through August 31, 1997.

² Derived from the data provided in the Summary 911 Traffic Report from the LASD.

³ Derived by annualizing the data from the Summary 911 Traffic Report for the period covering July 1, 1997 through August 31, 1997.

9-1-1 Response

Table 6-2 continued

Bi-Monthly and Estimated Workload Statistics for 9-1-1 Calls to the Los Angeles County Sheriff's Department based on July and August 1997 Actuals

Station/Status	July/August 1997 Actuals	Average Number of Calls Per Month	Estimated Number of Calls Annually
Walnut			
Answered	6,070	3,035	36,420
Abandoned	2,572	1,286	15,432
All Others⁴			
Answered	82,587	41,293	495,516
Abandoned	30,546	15,273	183,276
Total			
Answered	127,614	63,807	765,684
Abandoned	47,228	23,614	283,368
Total of all Calls	174,842	87,421	1,049,052

⁴ Estimate of the number of calls processed at the remaining 11 PSAP, based on the average number of calls processed by the six PSAP reporting.

9-1-1 Response

Alternative Approaches to 9-1-1 Misuse

Data from the CHP, LASD, and LAPD demonstrate the large volume of calls processed through the 9-1-1 systems. The three agencies estimate that about 85% of the calls are non-emergencies or life-threatening situations. Yet this phenomenon of ever increasing inappropriate calls to the system is not unique to these three agencies.

In many areas, alternative Approaches to 9-1-1 misuse have been developed to encourage residents to dial non-emergency numbers to reach law enforcement, fire, medical, and other public safety agencies. The most widely recognized alternative is 3-1-1. This three-digit number is now used in Baltimore, Maryland and San Jose, California on a trial basis. Other localities that have implemented 3-1-1 programs include Dallas, Prince George's County, Maryland, and Weld County, Colorado. As of June and July 1997, a survey conducted by the Warner Group for the California Department of Justice noted that several additional urban areas were investigating the feasibility of implementing 3-1-1 programs. These areas included:

- Miami Beach, Florida;
- Nashville, Tennessee;
- Davidson County, Tennessee; and
- Salt Lake City, Utah.

Several localities sampled were not considering implementing 3-1-1 programs. At the time of the survey these localities included Norfolk, Virginia; Long Beach, California; Buffalo, New York; Portland, Oregon; and Atlanta, Georgia. Many 9-1-1 administrators believe that it is more effective to develop methods of operating more efficient 9-1-1 systems by promoting well-defined and well-managed public information and education programs. The Long Beach 9-1-1 Administrator stated that a percentage of 3-1-1 calls could be handled better as 9-1-1 calls, since point-of-origin information would then be available.

9-1-1 Response

3-1-1 in Baltimore

In August 1996, the United States Department of Justice, Office of Community Oriented Policing Services (COPS Office) requested that the Federal Communications Commission reserve 3-1-1 for national non-emergency use. This formal request was in response to the increasing concern about problems related to call volumes and inappropriate uses of the 9-1-1 system nationwide. The Federal Communications Commission on February 19, 1997 approved the request.

Prior to the Federal Communications Commission granting this request, Baltimore, in conjunction with the COPS Office, implemented its 3-1-1 non-emergency program. The goal of the 3-1-1 non-emergency program was twofold. First, the city wanted to reduce the number of non-emergency calls coming into the 9-1-1 system. Second, the city viewed the 3-1-1 program as a way of enhancing the COPS Office efforts of the Baltimore Police Department.

Baltimore's 3-1-1 non-emergency program has been successful. After one year of operation (October 1996 through October 1997), there was a 69% reduction in the number of abandoned 9-1-1 calls, an 82% reduction in the number of 9-1-1 calls answered by a recording, and a 67% reduction in response time. The report stated that total 9-1-1 call volume had been reduced by 20%.

3-1-1 in San Jose

San Jose also has implemented a 3-1-1 non-emergency program. During 1996, the San Jose Police Department received approximately 433,675 calls on 9-1-1. The Police Department estimates that approximately 40%, or 173,470 of these calls were non-emergencies. The one-year pilot program was funded by the State with an estimated cost of \$200,000.

Like Baltimore, San Jose also experienced a reduction in the number of 9-1-1 calls. 9-1-1 administrators in San Jose reported that the difference in volume for the two-month period of November 1, 1996 through December 31, 1996, and the same time period for 1997 represented a 4% decrease. While this decrease is not as dramatic as the decrease in call volume reported by Baltimore, the 4% reduction is the equivalent of 2,050 calls. Additionally, the time required to answer a call was reduced by almost a full second, or 26%.

9-1-1 Response

Reasons for Differences of 3-1-1 Effectiveness in Baltimore and San Jose

As previously noted, reductions experienced by the San Jose Police Department are not as dramatic as those experienced by the Baltimore Police Department. While there are several reasons for the difference, two are paramount.

Baltimore, prior to their new 3-1-1 program, did not offer alternative seven-digit numbers for residents to call, if they wished to contact public service agencies that normally respond to 9-1-1 calls. Therefore, 9-1-1 was the only well-known method available for contacting the Police, Fire, or Emergency Medical services. In hindsight, perhaps city officials would agree that the campaign to promote general use of the three-digit 9-1-1 number was too effective, and possibly flawed.

In San Jose, as in Los Angeles City and County, there are alternative numbers that have been published for residents to use in non-emergency situations. Consequently, there are already some non-emergency calls going to those numbers instead of the 9-1-1 system. So, while introduction of a 3-1-1 number would reduce the burden of non-emergency calls of the 9-1-1 system, thus making it easier to contact the Police, Fire, or Emergency Medical services, the reductions may never be as dramatic as those experienced in Baltimore.

Financial Considerations in Implementing 3-1-1 in Los Angeles

There have been discussions regarding implementing a 3-1-1 program in Los Angeles County. The LAPD estimates that it would cost the city approximately \$1.8 million to operate such a system. The California Department of Justice has convened a task force to investigate the feasibility of implementing a 3-1-1 program statewide. However, with approximately 47 separate 9-1-1 systems operating in the County of Los Angeles and the overlaps in the system geographically and technologically, the 3-1-1 system must be carefully defined and developed, and the implementation of the system must be well planned. Law enforcement agencies in Los Angeles County agree that 3-1-1 may be an effective alternative, but as an alternative for the entire County, it is many years away, may well be extremely costly and is certainly a technologically advanced alternative.

9-1-1 Response

The Captain in the Communications and Fleet and Management Division of the Sheriff's Department stated that the Department will be participating in the State's pilot program for 3-1-1. The 3-1-1 non-emergency number would be operational at all 17 of the Sheriff's Stations that currently provide patrol services for communities and operate 9-1-1 emergency systems. The Sheriff's Department believes that the funding for the non-emergency 3-1-1 pilot project will be approved by the State as early as May of this year. If that is the case, the program should be operational by the beginning of Fiscal Year 1998-99, (July 1, 1998). However, in areas of the County that do not have patrol services provided by the LASD 3-1-1 will not be available. Anyone dialing 3-1-1 from one of the non-covered areas will be informed that the service is not available and instructed to dial 9-1-1 or a seven-digit number to contact the appropriate agency in their area.

As part of the implementation of the new 3-1-1 non-emergency project in Los Angeles County, the Sheriff's Department will conduct a public information and education campaign to inform citizens of the new service. This campaign would more than likely include information on the appropriate use of 9-1-1 systems also. As with the current 9-1-1 system, the new 3-1-1 system would be decentralized and the printed information promoting the 3-1-1 non-emergency number would be specific to the location of the Sheriff's station (e.g., Marina del Rey, City of Industry, Lakewood, Norwalk, etc.).

9-1-1 Public Re-education

Introducing 3-1-1 non-emergency program is not the only alternative available to reduce the number of calls entering 9-1-1 systems. For example, LAPD currently has seven-digit numbers for residents to call in non-emergency situations depending upon the individual's location in the city. LAPD is considering developing one, easy to remember, seven-digit number. An example would be 213-LAPD. It is imperative that the public be educated on the proper use of the 9-1-1 system. While this would be an arduous task, it is an alternative that could begin immediately and would more than likely result in some reduction in the use of 9-1-1 in non-emergency situations. The development of a public education and information program of the magnitude required to effectively communicate the proper use of 9-1-1 systems will require the cooperation of county agencies and organizations.

9-1-1 Response

In order to begin re-educating the public on the proper use of 9-1-1, the following steps should be taken:

- **A committee, composed of 9-1-1 directors, law enforcement personnel, as well as fire, rescue and emergency medical service personnel, should create and distribute clear and concise brochures that explain the appropriate use of 9-1-1.**
- **Directories, which now carry a message about 9-1-1 emergency calls and the appropriate seven-digit numbers for non-emergency calls on the inside front cover should carry the same message on the outside front cover in a reduced format. Peel-off stickers should be provided.**
- **Utilities, such as the Department of Water and Power, Southern California Edison, gas companies, and cable companies should effectively promote the proper use of 9-1-1 by the distribution of the new brochure publicizing the non-emergency number.**
- **The media, both electronic and print, should develop public service announcements and special advertisements that could be aired and published.**
- **Public safety agencies should work with schools and preschools to develop information and education programs for children.**
- **Religious, service, and other community-based organizations should provide information to their members.**
- **The County should develop a three-year budget for the cost of creating, implementing, and operating a County-wide, 9-1-1 public re-education campaign.**

9-1-1 Response

- **County and local jurisdictions should investigate the possibility of funding these efforts and programs by obtaining special demonstration grants from the United States Department of Justice (COPS Office) for public education and information programs. The California Department of Justice should be contacted to request special demonstration grant funds for alternative programs that would potentially reduce the number of calls to 9-1-1, but would not employ the 3-1-1 concept currently under consideration.**

Conclusions

Over the past 10 years, the number of calls placed to 9-1-1 systems has increased more than 2,000%. It now takes longer to answer calls, there are more abandoned calls, and response times have increased. In addition to receiving more calls, in general 9-1-1 systems are receiving more inappropriate calls. Three law enforcement agencies in Los Angeles County report that about 85% of the calls to 9-1-1 on an annual basis do not report life-threatening situations. The phenomenon is not unique to Los Angeles County and the situation has reached the point where alternatives to 9-1-1 are under discussion and development on a national level.

An alternative is the development and implementation of a 3-1-1 non-emergency program. This type of program was implemented in Baltimore and has been successful in reducing the number of calls to the City's 9-1-1 system. The success of the program in Baltimore led to the concept being implemented in San Jose, and it is in the process of being implemented in Dallas, Prince George's County, Maryland, and Weld County, Colorado. The LAPD is evaluating the benefits of developing and implementing a 3-1-1 non-emergency program. However, the Department believes that it will be several years before such a program could be operational due to technological limitations and financial considerations.

Steps must be taken to reduce the number of inappropriate calls to 9-1-1 system. A public education and information campaign is essential. The County should develop budget estimates related to the cost of creating, implementing, and operating a county-wide public education and information program on the proper use of 9-1-1 systems. With the assistance and cooperation of utilities, community-based organizations, schools, and the media, such a campaign would be successful.

9-1-1 Response

Recommendations

In order to enable the 9-1-1 systems in Los Angeles County to operate more efficiently, it is recommend that the Board of Supervisors in collaboration with the City of Los Angeles and other cities within the county take the following actions:

- 6.I.1 Assist 9-1-1 Administrators in seeking demonstration grant money from the United States Department of Justice (COPS Office), and the California Department of Justice to develop and implement public education and information programs as a method of reducing non-emergency calls.**
- 6.I.2 Fund a County-wide public education and information program designed to provide residents with information on appropriate and inappropriate uses of 9-1-1 systems.**
- 6.I.3 Designate a staff member to serve as contact person for the forty-seven 9-1-1 Directors in the County.**
- 6.I.4 Encourage law enforcement agencies to foster relationships with school districts, utilities, religious, and other non-profit community-based organizations in order to develop collaborative, 9-1-1 educational programs.**

It is recommended that the 9-1-1 Directors in Los Angeles County:

- 6.I.5 Create and distribute clear and concise brochures that explain the appropriate use of 9-1-1**
- 6.I.6 Ask the public utilities operating in the County to insert the new 9-1-1 brochure with their utility bills as a public service.**
- 6.I.7 Ask the electronic and print media companies to assist in promoting the proper use of 9-1-1 by developing and running public service announcements and special advertisements for newspapers, television, and radio.**

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- 6.I.8 Ask the telephone companies to provide front cover visibility on their directories for key emergency/non-emergency information, and to consider printing a special page listing emergency/non-emergency numbers and providing peel-off stickers that may be placed on telephones.**
- 6.I.9 Develop programs with school districts to educate children on the proper use of the 9-1-1 system and provide information sheets with peel-off stickers.**

It is recommended that the Board of Supervisors:

- 6.II.1 Continue to participate in the development of the statewide 3-1-1 non-emergency system.**

Voter Registration

7-

AD HOC Committee

**David Seale, Chair
Phyllis H. Barbato
John W. Hayes
Patricia R. Locher
Karl R. Reinecker
Jacob Spillman
Shizie Kohno Taira**

Voter Registration

Introduction

The purpose of this inquiry was to explore issues regarding the integrity of the voter registration process and other related factors such as the proliferation of multi-lingual registration forms and ballots. Limitations in time and funding precluded any attempt to measure falsification of records, voter irregularities, or absentee ballot problems.

Background

The Constitution of the United States guarantees a republic form of government. That is, a government in which supreme power resides in a body of citizens entitled to vote and is exercised by elected officers and representatives responsible to the citizenry and governing according to law. The foundation of this concept is the right of citizens to vote for representation of their choice. Although all too often the source of jokes, voting is serious business--not only a right, but to some, a duty. Recent allegations of voter fraud in Orange County have raised awareness of the practical impact on the outcome of close elections and the difficulty of resolving contested issues.

This review was initiated with a request for related information from the Office of the Registrar-Recorder/County Clerk. (R-R/CC). After receipt and review of the information, a trip was made to that office and a review of operations and procedures was undertaken. It became clear during this on-site review that policies and procedures followed by R-R/CC were dictated by Federal and State Law.

The first issue addressed was proof of citizenship at time of registration to vote. Our registration/election system is an honor system and Federal and State law does not require proof of citizenship or age at time of registration nor does the system require proof of identity or residency at time of voting. More specifically, Federal law has evolved in a manner to make it as easy as possible to register, including registration by mail. For example:

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- **Public Law 103-31 (May 20, 1998) Section 9, entitled “Federal Coordination and Regulations” states, in Sub-section (b), Contents of Mail Voter Registration Form, that the form shall include a statement that...**
 - (A) **specifies each eligibility requirement (including citizenship).**
 - (B) **contains an attestation that the applicant meets each such requirement; and**
 - (C) **requires the signature of the applicant, under penalty of perjury.**

It is further stated that the form may not include any requirement for notarization or other formal authentication.

State law is even more specific;

- **California Election Code;**
 - 2111. **Proof of citizenship. A person may prove he or she is a citizen by his or her certification under penalty of perjury on the affidavit of registration. (Added by Stats. 1994; c. 920 §2)**
 - 2112. **Evidence of citizenship by signing affidavit. Notwithstanding any other provision of law to the contrary, the fact that a person certifies to his or her United States citizenship by signing his or her affidavit of registration shall be deemed evidence of citizenship for voting purposes only.**

Lacking the legal necessity to show proof of citizenship at time of registration creates doubt as to the integrity of the registration process. This doubt was clearly identified by the Secretary of State, State of California, in the Official Status Report-Orange County Voter Fraud Investigation dated February 3, 1998. The Secretary of State’s report proposed the following reforms at both the Federal and State level:

Voter Registration

At the Federal Level;

- (1) Amend the Federal “Motor Voter” law to clearly and unequivocally permit file maintenance.**
 - **“Motor Voter” should be amended to empower local elections officials to clean “deadwood” off the files. This would involve an amendment to 42 U.S.C. § 1973gg-6 (3) and (4).**
 - **Build the alternate residency confirmation process (California Elections Code § 2220 et seq.) expressly into the Federal “Motor Voter” Act (42 U.S.C. (1973gg-6)**
- (2) Permit the use of a social security number on voter registration affidavits.**
 - **The Congress needs to amend all applicable Federal laws to permit elections officials to require persons registering to vote to provide their social security number.**
 - **Include a provision that use of the registrant’s social security number shall be for official use only by elections officials, the Secretary of State and law enforcement.**
- (3) Require the presentation of photo identification at the polling place.**
 - **Require the presentation of photo identification at the polling place as a prerequisite to voting in a Federal election.**
 - **The identification may consist of a driver’s license or photo voter registration card issued at no cost to registrants who lack or cannot afford a driver’s license.**
- (4) Establish a system for local elections officials to ascertain and determine the status of federal felons on probation or parole.**

Voter Registration

- (5) Amend the postal code to permit the return of undeliverable official elections materials without charge to elections officials.
 - Amend the postal laws to provide that undeliverable, returned official elections material may be retrieved by elections officials from the Postal service without charge.
 - *Note: This would eliminate "buy-backs" and permit file maintenance activities based upon returned mail to be free of charge.*

And at the State Level;

- (1) Require identification at the polls:
 - Require voters to present any one of the enumerated forms of identification at the polling place. Voters without identification can vote a provisional ballot.
- (2) Require a social security number on registration affidavit:
 - Require that the person registering to vote provide a social security number on the registration form, if permitted under Federal law. The Secretary of State and local elections officials may undertake negotiations and efforts with the Social Security Administration (SSA) to obtain electronic access to the SSA's electronic database for purposes of obtaining information to verify voter identification data.
- (3) Include citizenship verification field on registration card:
 - Include the citizenship check-box as required text on the voter registration card, under penalty of perjury. Currently the citizenship check-box is an optional portion of the registration card, and is not mandatory in order to become a registered voter.

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- (4) **Add a fraudulent registration felony provision:**
 - **Amend California Elections Code Section 18100 to include “attempt to register” in the parameters of the offense. Additionally, a provision to the Penal Code sections that govern the Grand Jury should be amended to permit the Secretary of State to present investigative information, take evidence and request subpoenas from the county grand jury, pursuant to the Grand Jury’s civil oversight authority.**
- (5) **Specifically criminalize procuring fraudulent registrations and fraudulently causing aliens to register to vote:**
 - **Provide that procuring fraudulent voting is a felony (non-wobbler), punishable by a sentence range dependent upon the number of fraudulent votes induced. Additionally, it expressly includes a provision that fraudulently *procuring* registrations from non-citizens is a felony and establishes the penalty based upon the number of non-citizens registered to vote by the perpetrator.**
- (6) **Create a rebuttable presumption regarding intent to defraud:**
 - **Create a “rebuttable presumption” that the intent to defraud is established if the unqualified registrant signed the declaration under penalty of perjury.**
- (7) **Expressly prohibit running a lottery based upon registration or voting:**
 - **Expressly criminalize the running of a lottery or other game-of-chance as an inducement to vote, not vote, register or not register to vote.**

Concurrent with the Orange County Voter Fraud Investigation, a special study was conducted by the Los Angeles County R-R/CC. In this study, letters were mailed to individuals identified by the Los Angeles County Superior Court, Juror Services Division, as having completed a juror questionnaire on which they stated that they could not serve on a jury because they were not United States citizens. This mailing was cross-referenced against the voter registration

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files. That is, the Juror Services Division uses voter registration files as a data base for selecting candidates for jury duty. The mailing is tabulated in Table 1. An analysis of the responses resulted in the removal of 1,416 affirmed non-citizens from the voter data base and the referral of 2,917 registrants to the Secretary of State for further investigation. A final report was submitted to the Board of Supervisors by R-R/CC on March 10, 1998.

Table 7-1

Voter Eligibility Verification Mailing

<u>Total Letters Mailed</u>	5,291	
Total Responses	3,326	62.8%
Affirmed U.S. Citizens	1,863	56.0%
Affirmed Non-Citizens	1,416	42.5%
Did Not Designate Citizenship Status	47	1.4%
Total Non-Responses	1,965	37.1%
No Response To Letter	1,617	82.2%
Returned U.S. Postal Undeliverable Mail	308	15.6%
Returned U.S. Postal w/Forwarding Address	40	2.0%

To further R-R/CC's goals to ensure voter file integrity, instill voter confidence, and facilitate voter participation in elections, the following legislative bills, department programs and voter file maintenance procedures have been implemented by R-R/CC:

Legislation - R-R/CC was instrumental in the drafting of legislative proposals to strengthen California's voter registration laws with regard to "bounty hunters" (individuals who are hired and compensated by organizations to assist in registering voters). Bounty hunters, who are usually paid on a per registration basis, are a source of fraudulent voter registrations in this County.

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In efforts to remedy this problem, State legislation was introduced in February 1995 and February 1997, sponsored by the Los Angeles County Board of Supervisors, to make paid registration agents and the organizations hiring them accountable for voter registration violations and liable for associated monetary fines and imprisonment penalties. Both legislative bills were enacted into law, with the support of the Secretary of State and California County Clerks Association.

Additionally, California Secretary of State, Bill Jones, is on record as having a “zero” tolerance for voter fraud. His office is currently sponsoring legislation to amend existing or adopt new election laws to strengthen voter file maintenance provisions at both the state and federal levels. This proposed legislation would permit elections officials to remove so-called “deadwood” registrations from the voter file, under specified conditions, which should assist in further reducing the opportunity for election fraud.

Voter Fraud Allegation Procedures - All voter fraud allegations reported to R-R/CC (whether by telephone, fax, mail correspondence, or in personal communication) are documented and researched. Any apparent registration/voting violation cases are referred to the County District Attorney or Secretary of State for investigation/prosecution.

Voter File Maintenance Procedures - Current voter file clean-up methods utilized by R-R/CC to detect potential fraudulent registrations and reduce the opportunity for registration/voting fraud are as follows:

- **Computer File Match Updates** - Regularly scheduled computer file match update programs are performed to correct, cancel or inactivate voter registrations. Voter file records are programmatically updated to reflect current registration status as shown below:
 - 1) **Monthly** computer file match of voter records and death certificate records to **cancel** “deceased” voters from the voter file;
 - 2) **Monthly** computer file match of State vs. County voter registrations to **cancel** “duplicate” records from the County’s voter file that are usually the result of inadvertent data entry errors; or occur when registered voters move and register to vote in another county without canceling prior registration;

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- 3) **Weekly and Monthly voter record purge to cancel reported convicted felons, mentally incompetent persons and ineligible non-citizen registrants based upon official judicial court or governmental authority notification;**
 - 4) **Monthly and Annual computer match of Department of Motor Vehicle (DMV) and U.S. Postal Service (USPS) address corrections to update voter registrations and ensure accurate addressing/postal delivery of election materials;**
 - **Commencing in 1978 through December 1997 over 3 million voter registrations have been canceled from the voter file based upon postal notification of “undeliverable mail” for registrants, which has resulted in reduced election printing/mailing expenses and the opportunity for voting fraud.**
 - **Effective in January 1995, with the enactment of the National Voter Registration Act (NVRA), voter registrations are no longer canceled due to “undeliverable mail” but are changed to an “inactive” voter status to prevent the possible disenfranchisement of registered voters based upon incorrect postal information. Under NVRA provisions, elections officials are not required to *mail* election sample ballots to or *order* precinct voting supplies for “inactivated” voters. The elimination of subsequent election mailings (particularly sample ballot material) to inactivated voters has reduced election printing/postage cost as well as the potential for voting fraud.**
- **Voter Fraud Telephone Hot-Line - R-R/CC voter fraud telephone hot-line (800) 815-2666 is operational 24 hours a day, 7 days a week. All telephone call messages are recorded; reported allegations are documented/researched and apparent violations referred to County District Attorney or Secretary of State for investigation/prosecution.**

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- **Registration Confirmation Mailings** - Voter Notification Cards (VNC) are mailed to new registrants or re-registrants to confirm receipt and processing by the R-R/CC, as required by law. Registrants are requested to verify the accuracy of the information on the VNC and to notify the R-R/CC if any registration information is incorrect or if "mail addressee" did not register to vote. Several instances of fraudulent registrations have been uncovered as a result of these routine mailings.
- **Random Survey Mailings** - Voter registration confirmation letters are mailed to 1% of randomly selected new registrants to determine: (1) *how accurately* organizations and individuals are following voter registration procedures and laws pertaining to registering voters; (2) *how effectively* L.A. County's voter outreach distribution program is working; (3) *how accurately* employees are updating registration information to the voter file. Several instances of fraudulent registrations have been detected from these mailings, mostly involving bogus registrations submitted by "bounty hunters".
- **Voter Eligibility Verification Mailings** - *Residency* verification letters are mailed to confirm valid addresses of registrants whenever the R-R/CC receives official notification or reported allegations that the voter: (1) never lived at the registration address; (2) has moved and no longer lives at the registration address; or (3) is registered at an invalid commercial address or postal mail box. *Citizenship/Underage* verification letters are mailed to confirm U.S. citizenship or valid age status of registrants whenever the R-R/CC receives official notification or reported allegations of ineligible voter registrations.

Concern over voter registration integrity is not unique to California. Alleged voter fraud in the November 4, 1997, Miami, Florida mayoral elections prompted a Miami-Dade County grand jury to recommend a requirement that people show proof of citizenship and residency when registering to vote. In 1996, Congress passed, and the President signed into law, the Illegal Immigration Reform and Immigrant Responsibility Act, which made it explicitly illegal for non-citizens to vote and made voting by non-citizens an offense punishable by deportation.

Earlier this year, U.S. Congressman Stephen Horn, 38th District, California, introduced H.R. 1428, the Voter Eligibility Verification Pilot Program Act of 1998. This Bill, co-sponsored by a host of fellow congressmen, would amend the Immigration and Nationality Act to establish a system through which the Commissioner of Social Security and the Attorney General

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respond to inquiries made by election officials concerning the citizenship of voting registration applicants and to amend the Social Security Act to permit States to require individuals registering to vote in elections to provide the individual's Social Security number. The pilot program would terminate on September 30, 2001. The program involves the Social Security Administration since it has verified citizenship status for applicants for a Social Security number since 1978 and has always asked applicants for their place of birth. Since 1988 Social Security Administration has required proof of citizenship (birth certificate) or naturalization papers for all new applicants. In 1998 it now requires the Social Security number of the parents for a child under 18 years of age. INS deals with naturalization and its records would identify new, naturalized, citizens.

The use of Social Security numbers has another important element not addressed in the Bill. Los Angeles County has about 3.8 million registered voters. When someone dies, and the death certificate is issued, it contains the deceased's Social Security number. However, voter files do not. With so many people having the same name it is very difficult to scrub the data base and remove the deceased. The inclusion of Social Security numbers on the voter registration record would eliminate this problem.

Congressman Horn's Bill was voted on by the House on February 12, 1998 under expedited procedures, and required a 2/3 majority. The Bill received 210 yes votes and 200 no votes and thus failed. It was then incorporated into a campaign finance reform bill, which was defeated on March 30, 1998. The Bill is intended to be reintroduced as a stand alone that will only require a simple majority to pass.

Another area of interest associated with the integrity of the overall voter system is the actual processing of ballots. In addition to the initial visit to R-R/CC offices on March 20, 1998, members of the Grand Jury observed ballot processing during the April 14, 1998 Special Elections. Although this was a very small election, with only 146 precincts involved, it was prototypical of a general election.

The typical ballot used in Los Angeles County is a punchcard having either a round hole or a small rectangular hole to be punched out, with a probe, by the voter. At the conclusion of the voting period after the polls are closed, the voted ballots are placed in a red cardboard box,

Voter Registration

a paper seal attached, and then placed in a silver, heat resistant, pouch that is sealed with a metal tamper-proof seal. The pouches are transferred by Deputy Sheriffs from the ballot collection centers to the R-R/CC offices in Norwalk for counting. Each pouch has a bar code and is scanned at each point of transfer.

In Norwalk, the pouches are received in a designated area, the bar code scanned, and the seal removed. Each operation is observed by a supervisor and at least one permanent employee. The ballots are then hand carried to the "tally center". The tally center is a controlled area housing photo-optical card readers and computers connected to a local area network (LAN) that is gated. That is, information can only flow out of the LAN, information cannot flow into the LAN. This eliminates the possibility of exterior electronic manipulation of the tally. Before the start of the tally process, each card reader is tested with a predetermined set of punched cards, and the out-come verified and initialed by a supervisor and a member of the staff. Multiple card readers are then summarized by the master station that totals the count. Again the outcome is verified, and initialed, by a supervisor and a member of the staff. The outcome of the master station is fed, through the "gate" to the web site home page and to a printer that produces the official election returns. The home page is updated on a continuous basis and Semi-official election returns are printed periodically. At the conclusion of the tally process the card readers and the master station are again re-verified as before the count started. The pre and post election tally testing is called "logic and accuracy testing."

Each card reader is capable of reading 1000 cards per minute. In practice, the actual throughput is much less. Although the card readers are only 1½ years old, the mechanics of reading punchcards is far from perfect. The slightest imperfection in the card prevents the card from being processed. The most frequent is shards, those little pieces of the card that did not get completely punched out by the voter's probe. Most shards are easily removed by the machine operator and the count continues. Rejects are logged and set aside for further processing. It should be noted that security prevents manual entry of data into the tabulation computer, therefore, each unreadable ballot card must be remade and processed in subsequent vote total updates.

As stated, this was a very small election. One can only conclude that a general election must be an event to behold. The process of counting ballots and tabulating the results is extremely labor intensive and, it must take a significant amount of time to finish, even with 36 card readers running at the same time.

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While observing the Special Election, it became apparent that R-R/CC is undergoing a major technology change. A completely new computer system is being installed that will significantly speed up the processing of data. A vendor supplied Voter Information Management System (VIMS) will be installed. The new system will operate on a local PC-LAN network. Mainframe menu driven screens dating to the 1970's will be replaced with PC style icons for point and click navigation.

By this summer, scanners will be installed to directly read documents, such as voter registration applications, death and birth certificates, real estate transactions, etc., thus eliminating manual entry by data processing clerks. The scanners will minimize errors and help reduce the backlog in all areas of R-R/CC. In addition, the new system will use fiber-optics and dedicated servers, which should improve processing time by an order-of-magnitude.

The next generation of electronic voting machines will transmit voter selections directly from the polling booth via secured land lines to the tally center. No more bulky card readers, misplaced pouches, late hours, etc. These machines are available today, but need to be proven in smaller counties where the cost is more manageable.

This Grand Jury also expressed an interest in the proliferation of multilingual election materials. This proliferation is driven by Federal and State laws. In Los Angeles, voter registration applications forms and ballots are provided in Chinese, Japanese, Spanish, Tagalog, Vietnamese, and English. On August 26, 1992, President Clinton signed Public Law 102-344 which extended the minority language provisions of the Voting Rights Act of 1965. Now, election officials must provide registration services, elections materials, and voter assistance to minorities where 10,000 or more citizens of voting age are members of a single language and are found not to be fully conversant in English. State law also encourages multilingual election assistance. Section 2103 of the Election code provides, in part, that:

“(c) It is the intent of the Legislature that non-English speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance.

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“(d) Where the county election official finds that citizens described in subdivision (c) approximate 3 percent or more of voting age residents of a precinct, or in the event that interested citizens or organizations provide information which the county election official believes indicates a need for registration assistance for qualified citizens described in subdivision (c), the county election official shall make reasonable efforts to recruit deputy registrars fluent in language used by citizens described in subdivision (c), and in English. That recruitment....”

Although well intended, these Federal and State laws have created interesting administrative problems in Los Angeles County. Each precinct must be analyzed as to ethnic content and the level of conversancy of the citizens of voting age that are registered voters. Given that this is somehow done, the supplies sent to each precinct must now be sorted as to language content such that the correct number of ballots in the correct language are sent to each precinct. This sorting and “stuffing” of the precinct supplies is done by hand by the R-R/CC staff for each election. With 4856 precincts in Los Angeles County and six languages (a seventh, Korean may soon be added) it is apparent that compliance is costly and labor intensive.

It is interesting to note that Proposition 38, voting materials in English only, an initiative measure, was approved by the people of California at the General Election held on November 6, 1984. The initiative read as follows:

“ENGLISH BALLOT INITIATIVE”

“Section 1. Findings and Declarations.

“We, the people of the State of California, do hereby find and declare that:

- “(a) The United States has been and will continue to be enriched by the cultural contributions of immigrants from many counties with many different traditions.**
- “(b) A common language, English, unites our immigrant residents, fosters harmony among our people, promotes political stability, permits interchange of ideas at many levels and encourages societal integration.**
- “(c) The United States Government should foster similarities that unite our people, the most important of which is the use of the English language.**

Voter Registration

- “(d) Multilingual ballots are divisive, costly and often delay or prevent our immigrant citizens from moving into the economic, political, educational and social mainstream of our country.**
- “(e) Multilingual ballots are unnecessary since immigrants seeking citizenship must pass an examination for literacy and proficiency in English.**

“Section 2. Transmittal.

“The Governor of the State of California, within thirty (30) days of enactment of this statute, shall sign and cause to be delivered to the President of the United States, the Attorney General of the United States and to all members of the United States Congress a written communication which incorporates the findings and declarations in Section 1 and includes the following language:

“The People of the State of California recognizing the importance of a common language in unifying our diverse nation hereby urge that Federal law be amended so that ballots, voters’ pamphlets and all other official voting materials shall be printed in English only.”

Voter Registration

Findings and Recommendations

Finding 7.I At time of registration to vote, proof of citizenship, age, and residency is not required.

The voter registration system is seriously flawed. However, this is not because of the policy and procedures implemented by the office of the Los Angeles County Registrar-Recorder/County Clerk. Quite the contrary. The system is flawed because of Federal and State laws that, over the years, have so liberalized the registration requirements and the process that, collectively, they prostitute the intent of the Constitution of the United States.

The Constitution of the United States clearly states that a citizen, 18 years of age or older, has the right to vote. The California Constitution adds a disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

Under current Federal and State law, applicants certify, under penalty of perjury, that the information on the registration form is correct. Thus our election system is an "honor system". Lacking proof at time of registration creates the need for a host of administrative procedures used by the Registrar of Voters, all labor intensive and costly, in an attempt to maintain the integrity of the system.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.I.1 Endorse the recommendations set forth in the Secretary of State's Official Status Report- Orange County Voter Fraud Investigation, dated February 3, 1998, and in so doing, notify all California State Legislative and Congressional membership of such endorsement.**
- 7.I.2 Endorse Rep. Stephen Horn's bill, H.R.1428, and in so doing, notify all California Congressional membership of such endorsement.**

Voter Registration

- 7.I.3** **Require the County Counsel perform a legislative analysis of Federal and State laws and, recommend changes that would require proof of citizenship, age, and residency at time of registration. Said recommendation should then be sent to California Congressional members for introduction of bills, as appropriate, to rectify the core problem.**

Finding 7.II **Voter registration file maintenance is suspect.**

With approximately 3.8 million registered voters in Los Angeles County, the maintenance of the data base is a significant problem. For example, the removal of names from the data base upon issuance of a death certificate, is not always possible. Although a Social Security number is usually listed on the death certificate, voter registration files do not and, with so many people having the same name, it is all but impossible to know which of the many "John T. Smith" to remove. Keep in mind that about 40,000 people die in Los Angeles every year--a lot of record checking. Another example is undelivered mail. The procedure to sample the data base accuracy, by mailing registration confirmation letters to randomly selected individuals, does not result in a large response. Note that the response to the "Jury Duty" mailing was only 62.8%. The National Voter Registration Act (Jan. 1995) does not permit cancellation of voter registration due to undelivered mail.

Most of the procedures developed to maintain the data base are labor intensive, costly, and do not assure a high degree of accuracy in the end result. For the most part, the procedures are an attempt to compensate for lack of proof of citizenship, age and residency at time of registration.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.II.1** **Follow the recommendations set forth in Finding No. 7.I.1 with the additional requirement to have the County Counsel, in concert with the Secretary of State, evaluate the possibility of amending State law to require a Social Security number on the voter registration form. This recommendation presumes that such an amendment is not prohibited by Federal law.**

Voter Registration

- 7.II.2** Sponsor a new State law that would require periodic re-registration, such as every 7-10 years. The data base could be divided such that a percentage of registrants would re-register each year. An alternate approach would be a re-registration cycle similar to that used for renewal of one's California Driver's License, but with a longer cycle period.

Finding 7.III The voter registration form needs to be redesigned.

The present voter registration form has a statement at the top, in small print, that asks: "Are you a U.S. citizen? If not, do not fill out this form." In practice, the form is often attached to a clipboard and the clip hides the small print. In addition, the new scanners that will be installed this summer will most likely require redesign of the form to facilitate ease of scanning and optical character recognition of the signature.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.III.1** Require the redesign of the voter registration form, in concert with the Secretary of State, such that a prominent statement be placed at the top of the form which clearly states that one must be a citizen of the U.S., 18 years of age, a resident of Los Angeles County, and not imprisoned or on parole for the conviction of a felony. Such redesign should be scanner compatible. In addition, training of Deputy Registrars should be required to assure the registration forms are properly filled out and the registrant understands the legal ramifications of falsifying the required information.

Finding 7.IV Multilingual requirements are creating administrative gridlock.

The requirement in Federal and State laws to provide multilingual election materials has created a labor intensive situation that approaches gridlock during major elections. Each precinct must be analyzed as to multilingual requirements and election materials sorted and boxed, by hand, for each precinct. With 4856 precincts and 3.8 million voters, this is no small task.

Voter Registration

The use of multilingual materials is contrary to the wishes of the California citizens (Prop. 38, 1984) and the need is questionable. It is doubtful that U.S. born citizens of voting age are not competent in English, and Naturalized citizens must demonstrate a reasonable degree of competence in English as a requirement of naturalization.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.IV.1 Require the County Counsel to perform a legislative analysis of Federal and State law and to recommend changes that would eliminate the need for multilingual election materials. Said recommendations should then be sent to California Legislative and Congressional members for introduction of bills, as appropriate, to change the law(s).**

Finding 7.V Punchcard ballots and readers will soon be obsolete and will need replacement.

Although not a concern as to the integrity of the overall election system, it became apparent during this inquiry that the present use of punchcard ballots and their companion punchcard readers will soon be obsolete. Fully integrated electronic systems are being installed and tested in other parts of the country. The transition, when made, will be costly and technically challenging. The size of Los Angeles County, and the cost to make the transition, dictates that it be done only after careful study and the development of a comprehensive implementation plan.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.V.1 Require and fund a study of electronic based election systems and the development of a time phased implementation plan, including an estimated budget.**

Voter Registration

Finding 7.VI Precinct size is limited to 1000 voters by State law.

Again, this is not an issue of system integrity, but does impact the processing of election materials which may contribute to errors. The 1000 voter limitation is absolute and does not make much sense in high density areas such as large condominiums, apartments, and townhouses. More precincts mean more analysis, more sorting and boxing of election supplies, more record keeping, more reporting, etc. In short, more of everything associated with the election process.

Therefore, it is recommended that The Los Angeles County Board of Supervisors:

- 7.VI.1** **Require a study, in concert with the Secretary of State, of precinct size and support an amendment, if appropriate, to the State law to provide a degree of flexibility in determining precinct size.**

Citizen Complaints Committee

8-

Members

**Leo Celniker, Chair
Herbert L. Badler
Wade Chin
Jacob Spillman
Lupe Valenzuela**

Citizen Complaints

Citizen Complaints

One of the functions of the Grand Jury is to respond to citizen complaints. The complaints are limited to persons and governmental departments within the boundaries of Los Angeles County and incorporated cities.

The 1997-1998 Grand Jury received 72 citizen's complaints. Among others these complaints involved, the District Attorney's Office, the Sheriff's Department, the County Assessor's Office, the Department of Children and Family Services and the Chief Administrator's Office. These complaints were dealt with initially by a sub-committee of the Grand Jury, the Citizens Complaint Committee.

When a citizen's complaint was received by the Grand Jury it was first directed to the Grand Jury legal advisor. The legal advisor prepared a letter to the complainant acknowledging receipt of the complaint. This letter also advised the complainant that the Grand Jury might or might not deal with the complaint and, if so, it would be reported only in the final report at the end of the Grand Jury term.

The legal advisor also prepared a letter addressed to the Grand Jury foreman recommending a course of action for the Grand Jury. The foreman, in turn, directed all of this material to the Grand Jury Citizen's Complaint Committee. The complaint was reviewed by committee and it was forwarded to an appropriate sub-committee of the Grand Jury, e.g. the Government Operations Committee, the Criminal Justice Committee, the Jails Committee, the Human and Social Services Committee, etc., for possible further action. Alternatively, the complaint was returned to the foreman with a recommendation either that the complaint be forwarded to a department of the County Government or that no further action be taken.

Of the complaints received, 41 were determined to require no further action, 19 were forwarded to a government agency, 18 were directed to a sub-committee of the Grand Jury and 2 were returned to the complainant requesting more information.

Citizen Complaints

Many of the complaints submitted requested action and intervention by the Grand Jury that was beyond its jurisdiction and authority. The following complaints examined by the 1997-98 Grand Jury were resolved with the complainant, resulted in no action taken, were made the study of a published report or were referred to other agencies and departments.

The citizen's complaints were as follows:

- 95-62 Regarding election fraud.**
- 96-08 Regarding Department of Water and Power.**
- 96-78 Regarding misuse of Social Security number.**
- 96-89 Regarding a child support case.**
- 96-91 Regarding loss of job with the Metropolitan Transportation Authority.**
- 96-97 Regarding the Los Angeles Police Department, the Los Angeles Unified School District, the Metropolitan Transportation Authority, the Mental Health Services Department, the Courts, Etc.**
- 97-01 Regarding criminal conspiracy between City of Santa Monica and developer in building a home for the aged.**
- 97-20 Regarding children's services.**
- 97-24 Regarding stolen items.**
- 97-25 Regarding developmental loan to major department store.**
- 97-26 Regarding mistreatment by the Los Angeles Police Department.**
- 97-46 Regarding attempts to intimidate defendants.**

Citizen Complaints

- 97-47 Regarding unfair contracting and labor practices in the City of Pasadena.**
- 97-59 Regarding false prosecution.**
- 97-61 Regarding college employee retained on the payroll while awaiting the outcome of a trial.**
- 97-68 Regarding refusal by the District Attorney to pursue a case against a murderer.**
- 97-79 Regarding poisoning cats.**
- 97-81 Regarding illicit goings-on in state prison.**
- 97-82 Regarding bribery and conspiracy in a broadcasting system.**
- 98-01 Regarding environmental impact fraud.**
- 98-02 Regarding custody orders.**
- 98-03 Regarding misappropriation of funds by the Board of Supervisors, the CAO and the ISD.**
- 98-04 Regarding accusation against a judge.**
- 98-05 Regarding the conduct of the District Attorney's Office after the complainant was assaulted.**
- 98-06 Regarding opening prisoners' mail.**
- 98-07 Regarding retaliation for filing an appeal by a prisoner.**
- 98-08 Regarding missing property of prisoner.**
- 98-10 Regarding land swindle.**

Citizen Complaints

- 98-11 Regarding claim that the District Attorney was prejudiced.**
- 98-12 Regarding lack of response to complaint sent to the District Attorney about extortion and money laundering in the City of San Gabriel.**
- 98-13 Regarding the Los Angeles County Sheriff's Department.**
- 98-14 Regarding contracting practices in the City of Pasadena.**
- 98-15 Regarding abuses involving developmentally disabled children.**
- 98-16 Regarding the California State Prison in Lancaster.**
- 98-17 Complaint concerning Pension Board Commissioner.**
- 98-18 Regarding prosecution of bad check writer.**
- 98-20 Regarding conspiracy to influence the judge in the O.J. Simpson case.**
- 98-21 Regarding City Manager of Gardena.**
- 98-22 Complaint by wife of a prisoner.**
- 98-23 Regarding towing away of cars for monetary gain.**
- 98-26 Regarding discrimination against African-Americans in pay status in County Jail.**
- 98-27 Regarding discrimination by the Los Angeles Bureau of Fleet Services.**
- 98-28 Regarding District Attorney failing to file a case against an assailant in Newhall.**
- 98-29 Regarding child support payments.**
- 98-30 Regarding mishandling by the CAO's office of the Worker's Compensation Insurance Program. Further investigation of this complaint is described elsewhere in this report.**

Citizen Complaints

- 98-31 Regarding conspiracy to commit murder.**
- 98-32 Regarding discrimination against African-Americans.**
- 98-33 Regarding embezzlement in Inglewood Unified School District.**
- 98-34 Regarding embezzlement at the Firestone Scout Reservation.**
- 98-35 Regarding mistreatment of a prisoner.**
- 98-38 Regarding perjury.**
- 98-39 Regarding fraud in the Pasadena Unified School District.**
- 98-40 Regarding coerced false testimony by a prisoner.**
- 98-41 Regarding public agency's lack of response in prosecuting her ex-lover for giving her herpes.**
- 98-44 Regarding Inglewood Police Department.**
- 98-46 Regarding Department of Animal Control not serving the public.**
- 98-47 Regarding charges against a City Councilman.**
- 98-48 Regarding clearing of a citizen's record with the Bureau of Family Support.**
- 98-49 Regarding excessive assessments by the Lomita Tax Assessor's Office.**
- 98-50 Regarding prisoner complaint that he is not receiving exercise time.**
- 98-51 Regarding abuse of child and mistaken actions by the Sheriff's Department and the Antelope Valley School System.**
- 98-52 Regarding money disappearing from the bus system.**

Citizen Complaints

- 98-53 Regarding removing a City Councilman from office.**
- 98-54 Regarding filthy restaurants.**
- 98-55 Regarding assault by neighbor and arrest by police.**
- 98-56 Regarding return of records for appeal.**
- 98-58 Regarding threats against an inmate by a prison official.**
- 98-59 Regarding the Northeast Division of the police department and the Sheriff's Department.**
- 98-60 Regarding battery against two people causing head injuries.**
- 98-61 Regarding child placement by the Department of Children and Family Services.**
- 98-62 Regarding corruption in the Justice system.**
- 98-63 Regarding humiliation and mental condition caused by correction officer.**

Court Overtime

9-

Criminal Justice Committee

Ellis S. Fields, DDS, Chair

Belem Asaad

Jane Ann Grossman

John W. Hayes

Rosalyn S. Klein, Ph.D.

Patricia R. Locher

Karl R. Reinecker

Jacob Spillman

Court Overtime

Introduction

This report is a review of overtime costs due to court subpoenas of law enforcement witnesses. During our investigation we spoke to Los Angeles Police Department (LAPD) and Los Angeles Sheriff's Department (LASD) personnel and to both Los Angeles City and County officials. We surveyed past reports and statistical studies.

The total amount of money expended for court overtime is still significant in spite of efforts, some dating back to the 1980's, to alleviate the problem.

As the majority of crimes are committed during the 4 p.m. to midnight and the midnight to 8 a.m. shifts, the officers most likely to be subpoenaed are those that would be off-duty during regular court hours and would qualify for overtime pay at time and one half. Very often off-duty subpoenaed officers will choose to remain at home, on call, rather than drive to court. These officers can earn as much as three hours of overtime pay per day even if not requested to appear.

When on-duty personnel are called for court appearances, there may be a negative impact on the department due to changes involved in personnel deployment, in officer response time, and overall quality of service. The overtime budget is not affected unless another person is required to work overtime to replace the subpoenaed officer.

Court Overtime

Court Overtime Costs

Los Angeles Police Department

FY 1995-1996	\$12,661,126
FY 1996-1997	\$12,782,896

Los Angeles Sheriff's Department

FY 1995-1996	\$4,395,253
FY 1996-1997	\$4,454,325

LAPD and LASD reported that officers, both those waiting in court and those waiting at home, testify less than 10% of the time when under subpoena. If that is the case, then from the data provided above, it may be concluded that for FY 1996-1997 the combined potential savings for LAPD and LASD would approximate \$15 million, if overtime pay was limited to those officers who actually were heard in court.

Section I - Existing Programs

As a result of past studies, many changes have been made in the management of officer court overtime. The decision to allow officers to be on call, as opposed to requiring them to appear in court, was implemented in 1980. There are existing programs that warrant review:

Los Angeles Felony Accelerated Sentencing Teams (LA: FAST)

The early disposition of cases is an effective way to reduce law enforcement officer overtime and help relieve the current burden on the court system.

LA: FAST is designed to settle felony cases at their first appearance, thereby avoiding the preliminary hearing and eliminating the need for subpoenaed officers. This program targets offenders involved in drug possession offenses.

Experienced Deputy District Attorneys and Public Defenders work together to judge the merit of the case and, if possible, arrive at a plea agreement prior to the preliminary hearing.

Court Overtime

Prompt and accurate chemical test results are needed from the LAPD's Scientific Investigation Division to be available for review at the time of filing the case.

Traffic Court Pilot Program

On July 1, 1994 the LAPD, in conjunction with the Los Angeles Metropolitan Courts began a pilot program where officers are subpoenaed for traffic court appearances on a bi-monthly basis.

Violators wishing to contest a citation must contact the court clerk and choose one of the two scheduled court days assigned to the issuing officer for that month.

During the first six months of the pilot program, 25.8 % of overtime savings and 2000 hours of straight-time savings were realized.

This program has been expanded to include the Van Nuys Courts.

Superior Court Delay Reduction Project

The currently in place Delay Reduction Project evolved from the 1995 Superior Court Pilot Program which ordered subpoenas issued to officers seven days prior to the last day, rather than the traditional ten days prior to trial. The intent was to eliminate three days of being on call. LAPD reported 407 hours of court overtime was saved the first month.

This pilot program was in effect at the Criminal Courts building through March of 1996, when it transitioned into the Delay Reduction Project throughout the County. As part of that project, officers once again were subpoenaed for the 50th court day of 60. However, the court stated it would be very active in addressing delays and would not grant continuances except for very unusual and valid causes.

Five months later, August 29, 1996, the project was modified when the Supervising Judge of the Criminal Division ruled that the court would set a date for trial at the time of arraignment, and the date was set at "59 days of 60".

Court Overtime

During the first four months following the change, LAPD reported a 15.1% decrease in the hours of court overtime per case.

Municipal Court

In November 1997 Municipal Court Presiding Judge Mel Red Recaña issued an order extending to the San Fernando Valley procedural changes that were started earlier in 1997 in the downtown Municipal Courts.

This policy reduced the number of pretrial court hearings for misdemeanor cases from two to one. The rationale was that two hearings were not necessary because only a very small number of cases were settled during the 1st pretrial. The vast majority of cases were postponed until the final day allowed under speedy trial laws.

Law enforcement personnel will now be subpoenaed just once which definitely should have an impact on overtime court cost. At this time statistics are not available verifying the monetary savings.

District Attorney's Office Witness Coordination System

This office, using information from prosecuting and defense attorneys and law enforcement personnel, monitors the original subpoenas issued for court appearances. If changes are required, they again schedule dates that cause minimum waiting time.

Both the District Attorneys and the Public Defenders are encouraged to subpoena only those officers most likely to testify.

The police and sheriffs, when possible, assign responsibility for issuing Miranda warnings, conducting field sobriety examinations, and other duties to minimize the necessity of calling more than one officer witness.

Court Overtime

Video Usage

Some arraignments are now being performed through an interactive video link between Parker Center and both the downtown and Van Nuys Courts.

In addition, video tapes can be introduced as evidence to substantiate testimony by officers displaying drugs and weapons confiscated at time of arrest. This procedure can save hours transporting evidence to court and returning it to storage.

Compressed Work Schedules

The use by LAPD of various "experimental" work schedules---12 hour work days, etc---made it difficult to arrange court times and increased court overtime costs.

These schedules are no longer in effect and thus no longer an issue.

Section II - Current Investigations

Acknowledging the continuing existence of excessive LAPD court overtime costs, the Mayor's Task Force On Court Overtime reconvened February 18, 1998. Their objective was to evaluate the effectiveness of the changes recommended in their original report published in 1995.

One month later, March 20, 1998, a new and separate task force was formed to study the court overtime costs incurred by LASD. The County of Los Angeles Countywide Criminal Justice Coordination Committee, chaired by Supervisor Yvonne Brathwaite Burke, responded to the Sheriff's report that in January 1998 deputies spent "95% of their time in court waiting to testify".

The Countywide Criminal Justice Coordination Committee includes the Mayor, the City of Los Angeles, members of the Board of Supervisors and the Los Angeles City Council, the Presiding and Supervising Superior, Municipal and Juvenile Court Judges, the Chiefs of the various law enforcement agencies, the heads of Federal, County and City legal offices, the County Chief Administrative Officer, the Director of the Department of the Coroner, the Superintendents of City and County school districts, and additional elected and appointed administrators.

Court Overtime

Section III - Conclusion

Countywide law enforcement expenditures for court overtime hours are still in the millions of dollars: A review reveals that current programs are only partially effective.

Section IV - Recommendations

- 1. Judges should strictly enforce the programs mandated by the Supervising Judges. All those concerned should remember that it is their tax dollars that are being used unproductively.**
- 2. District Attorneys and Public Defenders should subpoena only those officers that are definitely going to testify, and, reduce officer waiting time whenever possible.**
- 3. Currently all court overtime expense is borne by the law enforcement departments. The District Attorney, the Public Defender and the Court have no budgetary incentive to control costs.**

It would be more equitable if the millions of dollars allocated to pay for officer court overtime was shared by all those involved.

- 4. The Mayor's Task Force and the Countywide Criminal Justice Coordination Committee should collaborate in their investigations. A single integrated report should be presented to the Board of Supervisors and the Los Angeles City Council.**

Jails Committee

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Members

Ralph R. Villani, Ed.D., Chair

Belem Asaad

Phyllis H. Barbato

Jack Bernal

Jane Ann Grossman

John W. Hayes

Juan R. Rincon

Gilbert R. Rodgers

David Seale

Shizie Kohno Taira

County Jails

Background Information

California Penal Code Section 919(b) mandates that the grand jury "shall inquire into the condition and management of the public prisons within the county." Some previous Grand Juries visited 100 percent of the Los Angeles County jails during their term, while other Grand Juries visited as few as 40 percent of the jails.

Section 919(a) provides that the grand jury "may" inquire into the cases of unindicted persons in custody on criminal charges. There is no record that previous Grand Juries specifically looked into cases of unindicted persons.

Guidelines for minimum standards for jail facilities are covered under Title 15 of the California Administrative Code. These guidelines do appear to provide local and County jail facilities with direction in order for local and County jails to comply with court decisions and constitutional matters relating to detention of inmates.

In addition to the Grand Jury, there are several agencies, commissions and organizations concerned with monitoring Los Angeles County jails. Among these are the California Board of Corrections, the Sybil Brand Los Angeles County Institutional Inspection Commission, the State Fire Marshal and local fire agencies, and the Los Angeles County Department of Health Services.

A major function of the Los Angeles County Sheriff is to house inmates who are awaiting trial. The Sheriff also maintains custody of some inmates sentenced to prison terms not exceeding one year. The Los Angeles City Police Department and some other incorporated cities hold arrestees until arraignment hearings, release, or transfer to the custody of the Los Angeles Sheriff. The number of hours for which a person in custody may be detained without arraignment and trial is prescribed by law. Because of this limitation, those arrested for criminal conduct are moved quickly into arraignment proceedings. Once arraignment is conducted by the criminal courts, the time of detention of inmates awaiting trial ranges widely according to legal issues, bail posting, agreements between the District Attorney and the inmate's attorney, and decisions of judges.

County Jails

Jail Committee Member Activities

The 1997-98 Jails Committee visited approximately 60% of the jails in Los Angeles County. The nine (9) member committee divided into four (4) teams of two (2) or three (3) members each. Each team was assigned a number of jails to consider for inspection and visitation. The exact number and location of each team's jail visit was left up to each team's discretion. The entire membership of the Grand Jury also visited some of the larger jails and special program facilities.

The following facilities were visited during the 1997-98 Grand Jury term:

Los Angeles Sheriff's Department Stations and Detention Facilities

Avalon
Carson
Central Regional Detention Facility,
Lynwood
East Los Angeles
La Crescenta Valley
Lakewood
Lennox
Lomita
Lost Hills
Men's Central Jail
Norwalk
Pitchess Detention Center
Santa Clarita
Twin Towers Correctional Facility
West Hollywood

Los Angeles Police Department Jails

Devonshire Area
Foothill Area
Harbor Area
Hollywood Area
Northeast Area
Pacific Area
Rampart Area
Valley Jail Section
West Los Angeles
West Valley Area
Wilshire Area

County Jails

Municipal Police Department Jails

**Alhambra
Arcadia
Azusa
Baldwin Park
Beverly Hills
Burbank
Claremont
Compton
Covina
Culver City
El Monte
El Segundo
Gardena
Glendale
Hawthorne
Hermosa Beach
Huntington Park
Inglewood
La Verne
Long Beach
Manhattan Beach
Maywood
Monterey Park
Palos Verdes Estates
Pomona
San Gabriel
Santa Monica
Vernon
Whittier**

Municipal and Superior Court Lockups

**Alhambra
Beverly Hills
Calabasas
Catalina
Criminal Courts
Inglewood Juvenile Court
Long Beach
Norwalk
Pasadena
Pomona
San Fernando (North Valley)
Van Nuys**

Juvenile Institutions

**Barry J. Nidorf (Sylmar Juvenile)
Detention Center
Camp Kilpatrick
Camp Mendenhall
Camp Miller
Camp Munz**

County Jails

Findings And Remarks

The Jails Committee utilized an inspection form created by the 1996-97 Grand Jury Jails Committee. The form assisted Committee members in the visitations by providing criteria for observations. However, Jail Committee members had no training or expertise for these visitations and were therefore limited in ascertaining a satisfactory jail environment. The Jails Committee member's inspection reports and observations were at best a quick finding of each member's interpretation of how well a jail complied with Title 15, California Code of Regulations, Crime Prevention and Corrections, Subchapter 4, Minimum Standards for Local Detention Facilities.

It is noted that in the overwhelming majority of jails and facilities visited, inspection teams were welcomed courteously, promptly and given an unhurried tour of the jail or facility. Two jails did not welcome these visits and kept the teams waiting for over thirty (30) minutes, giving team members the impression that the jail was not in a satisfactory condition for an unannounced visit. These jails were the Hawthorne Police Department and the Lost Hills (Agoura) Sheriff Department jails.

The overall assessment of the Committee concerning the operation of the jails and juvenile facilities which were visited is that almost all these jails and facilities are satisfactorily managed within the guidelines of Title 15. However, one exception is the Compton Police Department Jail.

Although the Compton Police Department leadership is working to improve conditions, the jail continues to be in non-compliance with certain applicable sections of Title 15, California Code of Regulations, Minimum Jail Standards for Local Detention Facilities. It is also noted that recommendations for improvements from the Department of Health remained uncorrected for a period of over seven (7) years.

As can be anticipated with Los Angeles County budget reductions in staff and maintenance, some jails and facilities were not as clean as would be desirable. Most of these conditions were not excessive and therefore, are not reported here with the exception of the maintenance of the Juvenile Camps. Juvenile Camp facilities suffer from deferred maintenance relating to roofing, painting and repairs.

County Jails

Recommendations

It is recommended that future Los Angeles Jail committees, before making jail visitations as authorized under the Penal Code, meet with representatives of the California Board of Corrections, the Sybil Brand Los Angeles County Department of Health Services and other appropriate agencies which visit jails. The purpose of this meeting would be to determine the necessity for specific jail visits. Los Angeles County Grand Jury Jail Committee visits should emphasize jails operating below minimum standards.

Grand Jury Jail Committee members should also inquire into specific cases of unindicted persons held in Los Angeles County jails. The findings of specific cases of unindicted persons detained in Los Angeles County jails should be reported to the public in the Grand Jury's final report.

It is also recommended that future Grand Jury Jail Committee members receive training early in their term. This training should be conducted by Los Angeles County Sheriff personnel in order to better prepare jail committee members for jail visitations.

Finally, it is strongly recommended that the Compton Police Department and the Compton City Council set a high priority for bringing the Compton City Police Department Jail facility up to standards set forth in Title 15, and without further delay.

Status of Metropolitan Transit Authority

11-

Transportation Committee

**Gilbert Rodgers, Chair
David Glickberg
Juan R. Rincon
David Seale
Shizie Kohno Taira**

Status of Metropolitan Transit Authority

Introduction

The Transportation Committee is aware of questions raised in the press regarding the quality of construction achieved by the Metropolitan Transportation Authority (MTA). This committee listened to speakers on transportation issues, toured construction sites, and traveled on existing modes of transportation. Significant portions of the new Metro rail systems are now open to the public and operating in a safe and efficient manner.

The MTA also operates buses and light rail. The Blue Line which runs from Long Beach to downtown Los Angeles is very successful and is also in construction to extend to Pasadena. The Green Line operates between Redondo Beach and Norwalk. The Red Line (which is a subway) connects Union Station to Wilshire-Western. In the near future, the Red Line is scheduled to open to Hollywood and North Hollywood. There is a possibility that the Red Line will be extended eastward to accommodate the east side of the County. (See exhibits I & II)

The function of the MTA is to provide the best public transportation for the citizens of Los Angeles County, one of the most populated counties in the nation. This function is hampered by the makeup and voting system of the present MTA board, which consists of thirteen members. The board of directors of the MTA is composed primarily of elected representatives of Los Angeles City and County and smaller cities within the county.

The MTA is a consolidation of several predecessor agencies charged with public transportation within Los Angeles County. Due to the lack of mutual agreement between the MTA board members, a corporate specialist was hired in 1997 to restructure the MTA. One of his functions is to unify the various factions of the board and outside committees and to provide tighter financial controls throughout the MTA.

Status of Metropolitan Transit Authority

Findings and Recommendations

Findings

- 11.I.A** Speakers have brought to our attention that the Mayor of Los Angeles controls four of the 13 MTA board member votes. The Mayor of Los Angeles alone appoints three of the four seats controlling decision-making from the City of Los Angeles.
- 11.I.B** The Los Angeles County City Selection committee is comprised of four members who represent the remaining 87 cities within the County. (See exhibit III)
- 11.I.C** The population of Los Angeles County is over 10 million. The population of the City of Los Angeles is over 3.5 million and has four votes. The remaining 87 cities have only a four vote representation.

Therefore, it is recommended that the Los Angeles County Board of Supervisors:

- 11.I** Support an amendment to the state law to require that the City of Los Angeles have one vote and the remaining 3 votes be allocated to the Los Angeles County City Selection Committee.

Finding 11.II The Cost of building the Red Line is being shared by a combination of federal and state funding, with matching local funds from voter-approved sales tax initiatives and established benefits.

Status of Metropolitan Transit Authority

Therefore, it is recommended that the Los Angeles County Board of Supervisors:

- 11.II.1 Request that the Federal and State governments exercise greater oversight and coordinate the MTA operations to *best serve the needs of this County*.**

Finding 11.III One important fact that was discovered by committee members is the fact that people in the County are not about to give up their cars, for a system of transportation that is not yet adequate for the general public.

Therefore, it is recommended that the Los Angeles County Board of Supervisors:

- 11.III.1 Promote park and ride lots and other ridesharing facilities. These must be greatly expanded and improved in order to entice more people to rideshare.**
- 11.III.2 Encourage the MTA to establish area transport zones as was done in the San Gabriel Valley in 1988. The Foothill Transit zone created by cities in the San Gabriel Valley have improved transportation in that area.**
- 11.III.3 Request the MTA to expand the schedules of the Metrolink lines and Commuter Express Lines serving Los Angeles and other counties. This serves only working people, but many wish to use these lines during various hours of the day and early evening.**

Status of Metropolitan Transit Authority

Findings without Recommendations

Finding 11.IV Each Metro Rail Train consists of four cars, capable of handling 180 passengers each. Currently there are 94,000 passengers that use the system on a daily basis.

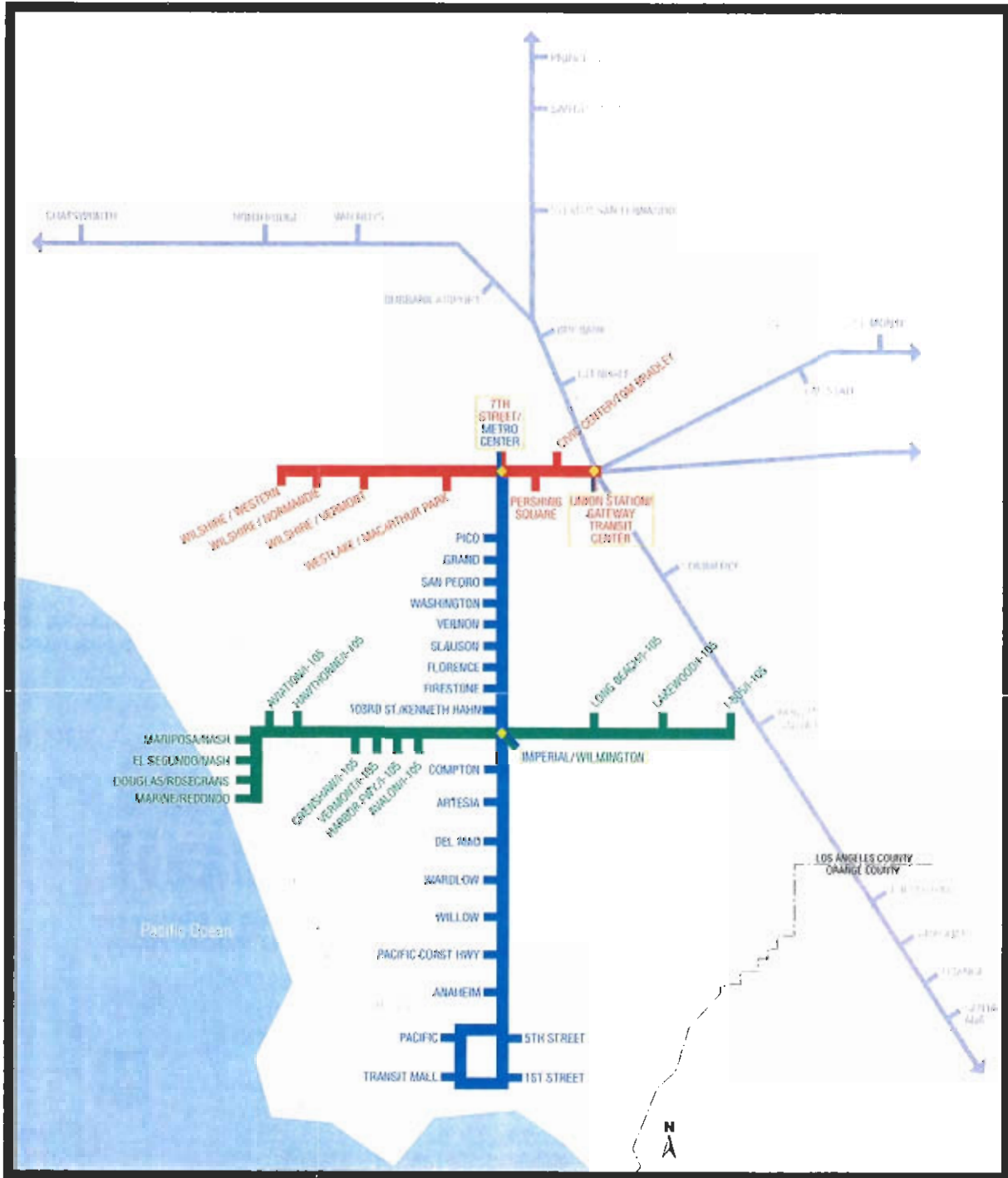
Finding 11.V The Subway was designed and constructed to withstand a major earthquake. The surrounding earth absorbs most of the shock. The oval shape of the tunnel is naturally resistant to earthquake forces.

Finding 11.VI Supporting the "arts in Public Places" policy, more than 200 artists have contributed to the original works of art placed in the Metro Rail Stations. The MTA invites new artists and art professionals to participate.



Metro Rail System

Metropolitan Transportation Authority







LEGEND

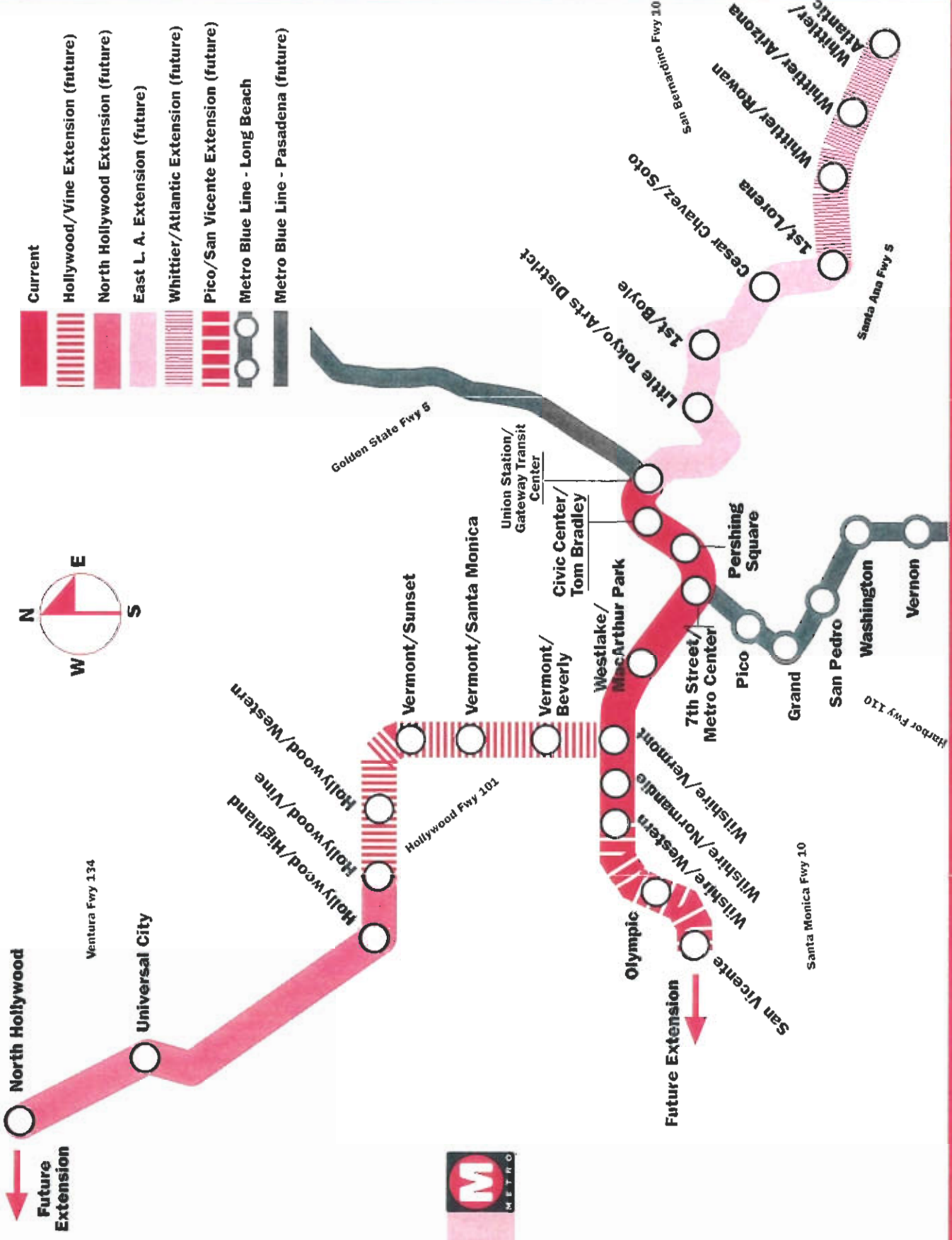
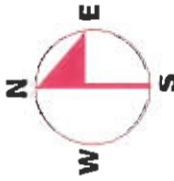
- █ Metro Red Line
- █ Metro Blue Line
- █ Metro Green Line
- █ Metrolink
- Transfer Stations
(Estaciones de Transbordo)

ADDITIONAL METROLINK STOPS

VENTURA COUNTY LINE	VENTURA COUNTY LINE
SEASIDE	SEASIDE
AGORA	AGORA
CAMARILLO	CAMARILLO
OXFORD	OXFORD
SAN DIEGO COUNTY LINE	SAN DIEGO COUNTY LINE
DEL MAR	DEL MAR
ESCONDIDO	ESCONDIDO
POYAMA	POYAMA
FLYING DUTCHMAN	FLYING DUTCHMAN
MORENO VALLEY	MORENO VALLEY
ONTARIO	ONTARIO
RANCHO CUCAMONGA	RANCHO CUCAMONGA
TEMPERANCE	TEMPERANCE
VALLEJO	VALLEJO
SAN BERNARDINO	SAN BERNARDINO
LANCASTER LINE	LANCASTER LINE
LANCASTER	LANCASTER
ORANGE COUNTY LINE	ORANGE COUNTY LINE
IRVINE	IRVINE
SAN JUAN CAPISTRANO	SAN JUAN CAPISTRANO
LA HABRA	LA HABRA
CLAREMONT	CLAREMONT
NOBLE	NOBLE
NEWPORT BEACH COUNTY LINE	NEWPORT BEACH COUNTY LINE
NEWPORT BEACH	NEWPORT BEACH
WEST GARDENA	WEST GARDENA
SAN JUAN CAPISTRANO	SAN JUAN CAPISTRANO
LA HABRA	LA HABRA
CLAREMONT	CLAREMONT
NOBLE	NOBLE

LEGEND

-  Current
-  Hollywood/Vine Extension (future)
-  North Hollywood Extension (future)
-  East L. A. Extension (future)
-  Whittier/Atlantic Extension (future)
-  Pico/San Vicente Extension (future)
-  Metro Blue Line - Long Beach
-  Metro Blue Line - Pasadena (future)



MTA BOARD OF DIRECTORS

COUNTY OF LOS ANGELES

Michael Antonovich

Yvonne Brathwaite Burke, 1st Vice Chair

Don Knabe

Gloria Molina

Zev Yaroslavsky

CITY OF LOS ANGELES

Richard Riordan, Chair

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Hal Bernson

Jose Legaspi

LOS ANGELES COUNTY CITY SELECTION COMMITTEE

James Cragin, 2nd Vice Chair

John Fasana

Jenny Oropeza

Larry Zarian

Audit Committee

12-

Members

**Karl R. Reinecker, Chair
Herbert L. Badler
David Glickberg
John W. Hayes
Jolyn F. Rudelson
David Seale
Ralph R. Villani**

AUDIT COMMITTEE REPORT

The Audit Committee has three basic duties:

- **To engage a management audit firm to assist the Grand Jury in the investigation and analysis of Jury-selected government operations within Los Angeles County.**
- **To assist the Grand Jury in identifying possible projects for investigation, including development of the statements of work for each, and prioritization of the projects.**
- **To negotiate a fixed price project commitment with the selected management audit firm for each project approved by the Grand Jury and to monitor the performance of the management audit firm to assure adherence to the contract terms.**

In pursuit of these duties, the Audit Committee reviewed a master list of firms that were known to perform such audits or had expressed an interest in doing such audits. From this list, 10 firms were selected and contacted for an expression of interest. All 10 indicated their desire to compete. Accordingly, an invitation letter was sent to them requesting a proposal for the performance of management audits based upon a consulting (labor hours and expenses only) type of contract, containing mutually acceptable terms and conditions.

Unfortunately, despite their verbal expressions of interest, only four firms responded, two of which did so as a joint venture. This resulted in receipt of three valid proposals for evaluation. The proposals were reviewed independently by each member of the Audit Committee and their weighted numerical rankings and averages calculated. Two proposals were ranked significantly higher than the third. Oral presentations were requested from the top two firms, and after the presentations, the firms and their proposals were re-evaluated by the Audit Committee. The result of this evaluation process was presented to the full Grand Jury which voted to select the Harvey M. Rose Accountancy Corporation to assist the 1997-1998 Grand Jury in the discharge of its management audit responsibilities.

Audit Committee Report

Concurrent with the selection of the Harvey M. Rose firm, some 16 projects were identified by members of the Grand Jury for possible investigation and/or evaluation. These projects were assigned to the appropriate committees, who, in conjunction with the Harvey M. Rose Firm prepared for each a preliminary statement of work. All 16 projects were then presented to the full Grand Jury for discussion. And adjustments to the statement of work of some of the projects were incorporated.

The 16 projects were then prioritized using the "Delphi Technique." That is, the projects were listed on a chalk board in an arbitrary sequence with each project occupying a numbered position on the list ranging from 1 through 16. The Grand Jury then voted as to preference by comparing the preference of number 2 to 1. If 2 was preferred over 1, their positions were reversed, i.e., 2 became 1 and 1 became 2. Next, 3 was compared to the new 2. If 3 was preferred over 2, 3 was moved up and compared to 1, and if preferred over 1, number 3 became number 1, with 1 and 2 shifted downward to become 2 and 3. This process of comparing the project in a lower position to each project in positions above until the next higher comparison failed to cause a re-ranking, resulted in an agreed ranking of 16 projects by 23 Grand Jurors in about two and a half hours.

Recognizing that available funding for management audits limited the number of audits that could be pursued, the Harvey M. Rose firm was asked to provide firm cost estimates¹ for the top eight projects based on the initial statements of work jointly defined by the Grand Jury and the Rose firm. The cost estimates resulted in the realization that only the top three projects could be funded, leaving a small contingency reserve.

A formal consulting agreement with a not-to-exceed price for the top three projects was then negotiated with the Harvey M. Rose firm and authorization to proceed was issued on November 20, 1997. In March 1998, the contingency reserve was applied to a limited scope study of the 9-1-1 systems within Los Angeles County.

¹The Harvey M. Rose Accountancy Corporation guaranteed completion of each project statement of work within its firm estimated cost (not-to-exceed price) and accepted the contract terms and conditions proposed by the County.

Audit Committee Report

Note

The 1998-1999 Grand Jury should review as soon as possible (no later than July 15, 1998) Section Twelfth of the 1997-1998 Grand Jury Agreement for Services of their Contract Auditor. Section Twelfth covers free services available to the new grand jury, if requested prior to July 31, 1998.

The final duty of the audit committee, to monitor contract performance, was quite simple. Each project was defined by a detailed cost estimate and a schedule that set forth required submittals, such as oral and written progress reports, a draft final report, and the finished final report. Written progress reports were provided to the appropriate committees for review followed by oral reports to the entire jury. Invoices were submitted and paid monthly. Actual performance was compared against contract requirements on a biweekly basis, and minor adjustments agreed upon as required. Changes, although minor, were confirmed in writing. It should be noted, however, that the not-to-exceed prices were not subject to change.

Edit & Publications Committee

13-

Members

**Phyllis H. Barbato, Chair
David Glickberg
John W. Hayes
Patricia R. Locher
Karl R. Reinecker
Lupe Valenzuela**

Edit & Publications Committee Report

The primary responsibility of the Edit and Publications Committee is to edit, prepare for publication, and publish the Final Report of the Grand Jury. The final report represents the end product of the civil oversight function of the grand jury and contains the findings and recommendations of the numerous studies and investigations conducted by the Grand Jury of government activities within Los Angeles County.

The procedures of a grand jury in conducting criminal indictments are strictly prescribed by law and give a grand jury few problems. In contrast, the civil oversight function lacks specific direction and has many options. As a result, considerable planning and thought must go into the selection of subjects to be investigated, the format of the final report, and the editing, typing and publishing process. For example, each section of the final report may be drafted by an individual, by a committee, or by the management audit firm engaged by the Grand Jury to assist in the investigation of a government organization. Each section tends to take on a personality of its own. It is essential that a format be developed early in the investigative cycle such that all parts of the final report will be consistent with each other, and conflicts among the references to various sections are prevented.

Editing is that part of the process that attempts to correct mistakes and mold each section into a predetermined format without altering the content. With 23 grand jurors, each having input into one or more sections, editing proved to be time consuming and required an inordinate amount of retyping.

Preparation for publishing involved the actual typing of the final report and review, first by each committee of each section they were responsible for, and then by the Grand Jury as a whole. Again, comments and corrections were incorporated as required. After the final draft of the report was approved by the Grand Jury it was sent to the Supervising Judge for final approval. Upon approval by the Supervising Judge, the Final Report was printed and released for distribution.

In all, the process is onerous and time consuming. However, valuable lessons were learned. A grand jury that had, as a member, a specialist in desktop publishing, editing, and the capacity to type 40 or more words per minute would be a very fortunate grand jury. Lacking such a specialist, it is suggested that the following be considered by the next Los Angeles County Grand Jury:

Edit & Publications Committee Report

- 13.1 Establish the format for each section, and for the complete report early in the investigative cycle. Insist that all reports conform, to the extent possible, with the pre-approved format. This is especially true of the outside audit firm. Do not assume that the audit firm will turn in standardized reports.**
- 13.2 All typed material should be saved on a computer diskette in format compatible with the software that will be used to prepare the final report for publishing. Again this is especially true of the reports prepared by the audit firm. Software incompatibility requires extra steps and can lose tables and graphics.**
- 13.3 Invite the top government officials of the County such as members of the Board of Supervisors, City Mayors, Chief Administrative Officer, Audit-Controller, Commission on Government Effectiveness and Efficiency, and Department heads, as may be of interest in your oversight function, to address the Grand Jury as early in the year as possible. They are eager to help and their input is invaluable in selecting the best subjects for investigation. All investigations should be completed by April 1 to allow adequate time for editing and publishing.**
- 13.4 Consider contracting with a specialist or firm with desktop publishing and editing experience to work directly with the Grand Jury during the editing and preparation for publishing of the Final Report preparation. The 1997-1998 Grand Jury used Superior Court Office Services for all typing, and they did an effective job, with 24-hour turnaround. However, it did require a lot of paper shuffling between buildings, making quick changes and corrections impossible.**

In sum, the Edit and Publications Committee was able to overcome the many problems encountered and perform its function because of the cooperation of all the committee chairs and the contributions of the entire 1997-1998 Grand Jury. With dedication and perseverance and many hours of work at home, our committee members accomplished this formidable task. The Chair thanks each and every Grand Jury member for making this possible.

Speakers & Events Committee

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Members

**Jacob Spillman, Chair
Phyllis H. Barbato
Jane Ann Grossman
Patricia R. Locher
Grace Colston Nichols
Juan R. Rincon
Jolyn F. Rudelson
Lupe Valenzuela**

Speakers and Events

The 1997-1998 Los Angeles County Grand Jury invited a distinguished array of speakers to educate and enlighten its members. Included were representatives from the Board of Supervisors, law enforcement, L.A. City Council, education, transportation, children's services, health services, and the media.

Speakers

NAME	POSITIONS
Fred Bennett	Assistant Los Angeles County Counsel
Bruce Staniforth	Executive Director, Economy and Efficiency Commission
Dr. Justin Rudelson	Professor, Tulane University
Donald W. Ingwerson	Superintendent, Los Angeles County Office of Education
Dr. L. Sathyavagiswaran	Chief Medical Officer, Department of Coroner
Anthony Hernandez	Executive Director, Department of Coroner
Bernard Parks	Chief of Police, Los Angeles Police Department
Ruben Zacarias	Superintendent, Los Angeles Unified School District
Bob Navarro	TV News Reporter
Chris Westhoff	Director, Hyperion Water Plant
Patrick Killian	Los Angeles City Fire Department
Peter Digre	Director, Department of Children and Family Services
Sherman Block	Sheriff, Los Angeles County
Mark Funicane	Director, Department of Health Services
Zev Yaroslavsky	Board of Supervisors
Yvonne Braithwaite Burke	Board of Supervisors
John Ferraro	President, Los Angeles City Council
Gil Garcetti	District Attorney, Los Angeles County
Tyler McCauley	Assistant Auditor, L.A. County
Larry Zarian	MTA Board Member, Glendale Mayor
Dr. Andrea Rich	President & Chief Executive Officer, Los Angeles County Museum of Art
Jim Christian	Los Angeles Impact
Mike Antonovich	Board of Supervisors
Bill Boyarsky	Los Angeles Times, City Editor
David Newsham	Burbank Chief of Police
Julie Korenstein	President - Board of Education, City of LA
Harry Hogan	Department of Corrections - Sacramento
Dr. Shirley Fannin	Medical Director, Department of Disease Control
Glenn Levant	President, DARE America
Judy Duken	Los Angeles Times, Editorial Staff
Don Knabe	Board of Supervisors
Stan Chambers	News Reporter - KTLA, Channel 5
David Janssen	Chief Administrative Officer, Los Angeles County
Jess Marlow	News Reporter - KNBC, Channel 4
Warren Olney	News Commentator, Radio, KCRW
Pat Curry	Chair, Commission for Children and Family
Linda Lewis	Executive Dir., Association of Children's Services Agencies
Ramona Ripston	Director, Southern California ACLU
Pam Smith	Administrator, Los Angeles County Adult Protective Services Intake Unit

Speakers and Events

In addition to the informative speakers, 1997-1998 Grand Jury members visited a variety of special sites which added a new dimension to their understanding of the County, its government, and its people. The Grand Jury wishes to express its appreciation to the many individuals whose cooperation made these field trips possible.

Field Trips

Los Angeles Board of Supervisors session
Men's Central Jail
Twin Towers Correctional Facility
Criminal Courts Building
Los Angeles Times Printing and Editorial facilities
Metro Red Line Tunnel Project
Hyperion Water Plant
Autry Museum of Western Heritage
Las Angelitas del Pueblo Downtown Tour
Museum of Tolerance
Los Angeles City Council session
Pitchess Detention Center
Department of the Coroner
Los Angeles County Museum of Art
Jet Propulsion Lab
Sylmar Juvenile facility
Los Angeles Sheriffs Department Graduation
Woodland Hills Pacific Lodge Youth Home
Dorothy Chandler Music Center
Richard M. Nixon Presidential Library

CBS Studios
Los Angeles Harbor tour
Malibu Juvenile Sports Camp
Los Angeles Central Library
California Institute of Technology Seismograph Lab
Ronald Reagan Presidential Library and Museum
MacLaren Children's Center
Juvenile Court Review:
Judge Michael Nash
Natural History Museum
J. Paul Getty Museum
Los Angeles Sheriffs Department Crime Lab
Los Angeles Police Academy
Drew-King Medical Center
Children's Hospital
Leroy Haynes Center
Los Angeles County Peace Officers' Memorial
Donald C. Tillman
Water Reclamation Plant and Japanese Garden

Appendices

A-

B-

C-

D-

Appendix A -- Grand Jury Reporting Survey Results

As part of the Los Angeles County Grand Jury project to update its reporting practices, information was gathered on selected reporting practices in the next 10 most populous California counties. To gather this information, a questionnaire was prepared and distributed by mail to appropriate staff in each of the selected counties. In some cases, follow-up interviews were conducted to clarify survey responses. Copies of the 1996-97 final Grand Jury Report for each county were also reviewed, as were copies of written policy and procedures manuals for counties which provided them.

This appendix summarizes survey results not reported elsewhere in this report. Following the summary is a table of survey results for all counties.

Use of County Auditors

Only three counties, Alameda, Orange and San Bernardino, reported using contract auditors for assignments made by the Grand Jury, with budgeted amounts ranging from \$48,030 in San Bernardino County, to \$108,000 in Alameda County. However, Alameda County's budget of \$108,000 is primarily for the legally mandated annual review of the county's general purpose financial statements, published in a document known as a Comprehensive Annual Financial Report, which typically includes a letter from the auditor summarizing the results of its review. In Alameda County the same auditing firm is hired under contracts with the Grand Jury and Board of Supervisors, auditing the financial statements while also assisting the Grand Jury as assigned. Also, audits for the Alameda County Grand Jury are financial in nature only, not management audits similar to those which contract auditors have conducted for the Grand Juries in Los Angeles, Orange and San Bernardino Counties.

Of the remaining counties, three, Fresno, Riverside and San Diego, reported that the Grand Jury has access to audit resources. In Riverside County the Grand Jury may hire an auditor as needed, but does not have an annual budget for such services as do the previously discussed counties. Fresno and San Diego Counties report that the Grand Jury uses the county's internal auditor, normally located in the Auditor-Controller's Office, for auditing assignments.

Of the remaining counties, it is important to note that two, San Francisco and Santa Clara, have existing management audit programs working under authority of the Board of Supervisors. Finally, we note that in this 1995-96 final report, the Contra Costa County Grand Jury recommended that the County establish a management auditing program.

Grand Jury Reporting - Survey Results

However, that recommendation was rejected by County management and the Board of Supervisors, based on the administrator's response that increased workloads and reduced staffing in the administrator's office and the Auditor-Controller's Internal Audit Division made such a program infeasible.

Partial Inclusion of Auditors' Reports

All 20 counties reported that the full Grand Jury has the authority to approve or change its report prior to filing that report for public release. Three counties reported that the District Attorney has authority to review the report, but all indicated that review was limited to recommending revisions, or, in San Diego County, only occurred by request of the Grand Jury. Six counties reported the County Counsel reviews the report. Three of the six indicated this review was limited in some way, either to suggesting revisions, in Riverside and Santa Clara Counties, or to solely reviewing the report for legal concerns, in San Diego County. Finally, nine counties reported that the Superior Court, either the presiding judge or his designee, reviews the report, as required under the Supreme Court decision in *The People et al. V. The Superior Court of Santa Barbara County* (1973 Grand Jury) 13 C.3d 430. Based on that decision, we assume San Bernardino's failure to indicate Superior Court review was an oversight.

Minority Reports

None of the 10 counties reported having provisions for including minority reports in the Grand Jury's final report. In passing, we note that existing case law, *Unnamed Members of the 1987-88 Kern County Grand Jury v. The Superior Court of Kern County* 208 C.A.3d 1344, appears to authorize inclusion of such reports, as long as those reports are approved by the full Grand Jury for inclusion in its report.

Grand Jury Reporting - Survey Results

Reporting Practices of Grand Juries in the 10 Most Populous California Counties

County	Alameda	Contra Costa	Fresno	Orange	Riverside	Sacramento	San Bernardino	San Diego	San Francisco	Santa Clara
Questions										
1. Do you include your contract auditor's report, pursuant to Penal Code Section 926, as part of your grand jury's final report?	Yes (1)	No	No	Yes	No	No	Yes	No	No	No
2. What is the amount currently budgeted for the auditor's report?	\$108,000	0	county auditor	\$74,000	as needed	none	\$48,030	county auditor	none	none
3. If only a part of the contract auditor's report is included verbatim in the grand jury's report, which part is included, and how is the remaining information reported?	reference	N/A	N/A	handled on a report-by-report basis	N/A	N/A	Executive Summary may be included, with reference to full report	N/A	N/A	N/A
4. Who has the authority to approve or change the grand jury final report before it can be issued? Please mark all applicable responses.										
The full grand jury	X	X	X	X	X	X	X	X	X	X
The District Attorney					X (3)			X (5)		X (7)
The County Counsel	X		X		X (3)	X		X (6)		X (7)
The Presiding Judge	X	X	X	X	X (4)			X	X	X
Other						advisory judge				
5. Does the grand jury have any provisions for minority reports by members?	No	No	No	No	No	No	No	No	No	No
6. Are any of the following items included in your grand jury final report?										
Reference Material	No	No	No	Yes (2)	seldom	No	Yes	Yes	Yes	Yes
Bibliographics	No	No	No	Yes (2)	seldom	No	Yes	Yes	Yes	Yes
Statistics	Yes	occasionally	sometimes	Yes (2)	sometimes	No	Yes	Yes	Yes	Yes
Notes:										
(1) The printed questionnaire stated contract auditors reports are not included, but in an interview the grand jury's legal advisor stated that in some cases audit reports have been included as appendices to the final report. Audits are financial only.										
(2) Material is included on a case-by-case basis, bearing in mind McClatchy requirement of not disclosing "raw evidentiary materials."										(3) Review and suggest revisions only
(4) Review and may refuse to release										
(5) District Attorney review only if requested.										
(6) Legal review only										
(7) Recommend changes										

Appendix B AB 829 "The Civil Grand Jury Training, Communications and Efficiency Act of 1997"

An Act to amend Sections 914, 933, and 933.05 of, and to add Section 938.4 to, the Penal Code, relating to grand juries.

(Approved by Governor September 23, 1997. Filed with Secretary of State September 24, 1997.)

LEGISLATIVE COUNSEL'S DIGEST

AB 829 Thomson. Grand juries.

(1) Existing law provides that, when the grand jury is impaneled, the court shall give the grand jurors specified information.

This bill would require the court to ensure that the grand jury also receives training, as specified.

(2) Existing law requires each grand jury, no later than the end of each fiscal or calendar year, to submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters.

This bill would require the grand jury foreperson, and his or her designees, to be available during the 45-day period following the expiration of the term, to clarify the recommendations of the grand jury's report, and require the grand jury to meet with the subject of the investigation, except as specified. This bill would also require the superior court to provide a meeting room and other support to the grand jury.

(3) The act would be known as the Civil Grand Jury Training, Communication, and Efficiency Act of 1997. The bill would include a statement of legislative intent.

(4) This bill would establish a state-mandated local program by imposing new duties on local officials.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund, to pay the costs of mandates that do not exceed \$1,000,000 statewide, and other procedures for claims whose statewide costs exceed \$1,000,000.

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This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. *This act shall be known and may be cited as the Grand Jury Training, Communication, and Efficiency Act of 1997.*

SECTION 2. *It is the intent of the Legislature to encourage grand juries that consider or take action on civil matters to communicate more efficiently with the subjects of their investigations in an effort to enhance the likelihood of implementation of the reports of these grand juries.*

SECTION 3. *Section 914 of the Penal Code is amended to read:*

914. (a) *When the grand jury is impaneled and sworn, it shall be charged by the court. In doing so, the court shall give the grand jurors such information as it deems proper, or as is required by law, as to their duties, as to any charges for public offenses returned to the court or likely to come before the grand jury.*

(b) *To assist a grand jury in the performance of its statutory duties regarding civil matters, the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a grand jury that considers or takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.*

(c) *Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.*

SECTION 4. *Section 933 of the Penal Code is amended to read:*

933. (a) *Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to*

Appendix B - "The Civil Grand Jury Training, Communications and Efficiency Act of 1997"

the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. One copy of each report found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the government body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(c) As used in this section "agency" includes a department.

SECTION 5. *Section 933.05 of the Penal Code is amended to read:*

933.05.(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

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

Appendix B - "The Civil Grand Jury Training, Communications and Efficiency Act of 1997"

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendations will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, 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, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

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

(e) During an investigation, the grand jury shall meet 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.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to the 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.

Appendix B - "The Civil Grand Jury Training, Communications and Efficiency Act of 1997"

SECTION 6. *Section 938.4 is added to the Penal Code, to read:*

938.4 The superior court shall arrange for a suitable meeting room and other support as the court determines is necessary for the grand jury. Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.

SECTION 7. *Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claim Fund.*

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

**Appendix C - Proposed Senate Bill 2100, Polanco, Amended March 23, 1998,
Introduced by Senator Richard Polanco, Los Angeles**

An Act to add Section 929 to the Penal Code, relating to grand jury reports.

LEGISLATIVE COUNSEL'S DIGEST

SB 2100, as introduced, Polanco. Grand jury reports.

(1) Existing law provides that every grand jury may investigate and report upon the needs of all county officers in the county, and shall cause a copy of the report to be transmitted to each member of the board of supervisors of the county.

(2) Existing law also provides that any comment upon any person or official who has not been indicted by such grand jury in such a report shall not be deemed to be privileged.

(3) This bill would provide, as to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material relied upon in a final report concerning county, city, district, or housing affairs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 929 is added to the Penal Code, to read:

929. As to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material, findings and other information relied upon by, or presented to, a grand jury for its final report in any civil grand jury investigation, provided that the name of any person, or facts which lead to the identity of any person, who provided information to the grand jury, shall not be released. Prior to granting approval pursuant to this section, a judge may require the redaction or masking of any portion of matter, including but not limited to the identity of witnesses, and any testimony or materials of a defamatory or libelous nature.

SECTION 2. The purpose of the Legislature in allowing the judge to redact or mask the identity of witnesses is to encourage full candor in testimony in present and future matters, by protecting the privacy of those who participate in any Civil Grand Jury investigation.

**Appendix D - Proposed Legislation 1998 Assembly Bill 1907, Introduced by
Assemblyman Tom Woods, February 17, 1998**

An Act to amend Sections 924.4, 933, and 934 of the Penal Code, relating to grand juries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1907, as introduced, Wood. Grand jury.

(1) Existing law authorizes the grand jury to transmit to the succeeding grand jury, any information or evidence acquired during the course of any investigation conducted by it, except any information that relates to a criminal investigation or that could form part or all of the basis for the issuance of an indictment.

This bill would clarify that the grand jury is authorized to provide the succeeding grand jury with any records, information, or evidence acquired by it during its term of service, except as stated above.

(2) Existing law requires a grand jury to submit a report of its findings and recommendations to the presiding judge of the superior court at the end of the fiscal or calendar year, and to file a copy of each report in the office of the county clerk.

This bill would require the grand jury also to file in the office of the county clerk, a copy of the responses to the final report. In addition, the bill would require the county clerk to forward a copy of the report and responses to the State Archivist to retain in perpetuity. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(3) Existing law authorizes the grand jury to seek advice from the court or judge of the court, or the district attorney or county counsel.

This bill would add the Attorney General to the list of persons from whom the grand jury may seek advice.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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This bill would provide that if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. *Section 924.4 of the Penal Code is amended to read:*

924.4. *Notwithstanding the provisions of Sections 924.1 and 924.2, any grand jury or, if the grand jury is no longer empaneled, the presiding or sole judge of the superior court, may pass on and provide the succeeding grand jury with any records, information, or evidence acquired by the grand jury during the course of any investigation conducted by it during its term of service, except any information or evidence that relates to a criminal investigation or that could form part or all of the basis for issuance of an indictment. Transcripts of testimony reported during any session of the grand jury shall be made available to the succeeding grand jury upon its request.*

SECTION. 2 *Section 933 of the Penal Code is amended to read:*

933. (a) *Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.*

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(b) *One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk. The county clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.*

(c) *No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.*

(d) *As used in this section "agency" includes a department.*

SECTION. 3. *Section 934 of the Penal Code is amended to read:*

934. *The grand jury may, at all times, ask the advice of the court, or the judge thereof, the district attorney, the county counsel, or the Attorney General. Unless such advice is asked, the judge of the court, or county counsel, district attorney, or Attorney General as to civil matters, shall not be present during the sessions of the grand jury.*

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SECTION 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.