



2001-2002
FINAL REPORT

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Sacramento County GRAND JURY



Julie M. Fong, Foreperson

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June 10, 2002

The Honorable Richard K. Park
Advisor Judge to the Grand Jury
Sacramento Superior Court
720 Ninth Street, Department 39
Sacramento, CA 95814

Dear Judge Park:

In compliance with Penal Code section 933, the Sacramento County Grand Jury is pleased to submit to you its 2001-2002 Final Report.

It has been my honor and privilege to serve as Foreperson of the Grand Jury. This Final Report is the cumulative result of the nineteen member Grand Jury working countless hours researching, investigating, interviewing and deliberating over a number of issues.

On behalf of my colleagues, we are grateful for the sincere dedication of all the public officials with whom we spoke. We were met with a high level of cooperation and openness by the staff, directors, and public officials with whom we came in contact. They were readily available, forthright in providing information, and generous in contributing their time to inform jurors about programs, policies and procedures.

Concerned members of the public brought many of the issues to our attention. Others were initiated by the Jury as a result of our observations during tours of various governmental facilities or from other sources. Although every complaint submitted to the Grand Jury received our consideration, many did not result in formal action, so much of the efforts of the Jury is not reflected in this report.

The Jury wishes to express its sincere appreciation to you, Judge Park, for the superior advice and support you provided as our Advisor Judge. We are also indebted to the assistance and advice of County Counsel, and the Department of Justice Attorney General's Office.

Finally, special thanks go to Michelle Park, Executive Secretary for the Grand Jury, for her invaluable knowledge, professionalism and her outstanding work on our behalf.

The members of the 2001-2002 Grand Jury are honored to have served our community and hope our efforts are a positive contribution towards better government.

Sincerely,

JULIE FONG, Foreperson
2001-2002 Sacramento County Grand Jury

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HISTORY

HISTORY OF THE GRAND JURY

The grand jury is the means by which people who volunteer from every walk of life work within the judicial system to ensure that the institutions of government are responsive and fair to those who are governed. It also protects minority opinions or unpopular causes from persecution or prosecution. The grand jury concept has a long history and has adapted throughout the centuries to meet the needs and conditions of each time period.

Grand juries perform two primary roles. One is to evaluate the validity of charges being brought by a prosecutor, if the charges are not reviewed by a judge, to ensure that they are not frivolous or ungrounded. The other is to inquire into, and investigate if necessary, the operations of local government agencies and officials to ensure that activities are valid and services are efficiently and legally provided. In both instances, the secrecy of the grand jury's deliberations is a common thread that ensures independent and objective consideration of facts brought before it.

History of the Grand Jury: Before American Development

Some historians believe that the earliest versions of the grand jury existed in Athens, where the Greeks used citizen groups to develop accusations. Others find traces of the concept in all the Teutonic peoples, including early Anglo-Saxons. For example, the concept was employed in the early Scandinavian countries. Evidence also exists that the early French developed the "King's Audit" involving citizens who were sworn and required to provide fiscal information related to the operation of the kingdom.

However, most commentators believe that the grand jury arose as an institution in England. In the first millennium, English individuals prosecuted criminals, with the king personally involved in the system. Under the Doom Law of Anglo-Saxon King Aethelred (980-1016), a dozen landowners were appointed to investigate alleged crimes. In 1166, King Henry II established a system of local informers (twelve men from every one hundred) to identify those who were "suspected of" various crimes. If the suspects survived their "trials by ordeal", they paid fines to the King. However, the "informers" were fined if they failed to indict any suspect, or even enough suspects. After 1188, they became tax collectors as well, and after the reign of Henry III, they were charged with looking into the condition and maintenance of public works.

The Magna Carta, signed by King John in 1215, did not mention the grand jury specifically, but did establish various procedures to ensure fairness in the dispensation of justice. Thereafter, until the mid-1300's, the 12-man juries served both to present indictments and also to rule on the validity of charges. During Edward III's reign, from 1312-1377, the 12 individuals were replaced by 24 knights, called "le grande inquest", and the 12 became a "petit jury" responsible only for declaring innocent or guilty verdicts.

Ultimately, in the 1600's, the English grand jury developed as a process to determine whether there was probable cause to believe that an accused individual was guilty of a crime. Grand juries reached their English pinnacle of citizen protectors in 1681, when they refused to indict enemies of King Charles II for alleged crimes. (Ironically, English laws establishing grand juries were repealed in 1933.)

History of the Grand Jury: Early American Development

The use of juries in earliest colonial history was limited. In the New Haven colony, for example, religious beliefs resulted in the residents eliminating trial by jury because there was no reference to juries in the laws of Moses. However, procedures similar to grand juries were used to hear criminal charges of larceny (Boston, 1644), holding a disorderly meeting (Plymouth, 1651), and witchcraft (Pennsylvania, 1683).

In the early 1600's, colonial representatives of the English monarchs made laws and prosecuted violators. The first grand juries recommended civil charges against those crown agents, thus establishing themselves as representatives of the governed, similar to grand juries today. The first grand juries also looked into government misconduct or neglect. For example, the first colonial grand jury, established in Massachusetts in 1635, "presented" town officials for neglecting to repair stocks, as well as considering cases of murder, robbery and spousal abuse.

Other early grand juries performed a variety of administrative functions, including audits of county funds (New Jersey), inspections of public buildings (Carolinas), and review of taxes and public works (Virginia). Virginia grand juries also investigated whether each family planted two acres of corn per person.

In the Colonies, grand juries were considering criminal accusations and investigating government officials and activities, but with a populist view. Grand jurors included popular leaders such as Paul Revere and John Hancock's brother. These grand juries played a critical role in the pre-Revolutionary period: for example, three grand juries refused to indict John Peter Zenger, whose newspaper criticized the royal governor's actions in New York (he ultimately was prosecuted by the provincial attorney, defended by Alexander Hamilton, and acquitted). Grand juries also denounced arbitrary royal intrusions on citizens' rights, refused to indict the leaders against the Stamp Act of 1765, and refused to bring libel charges against the editors of the Boston Gazette in 1766.

After the Revolutionary War ended, the new federal constitution did not include a grand jury. Early American leaders such as John Hancock and James Madison objected. Thereafter, the grand jury was included in the Bill of Rights, as part of the Fifth Amendment, which states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger..."

From then, until today, the federal grand jury remains an integral part of the justice system, used by federal prosecutors for a variety of potential crimes. In 1801, a federal grand jury indicted Colonel Aaron Burr for treason. Most recently, federal grand juries considered allegations related to the Oklahoma City and New York Trade Center bombings, President Clinton's conduct both before and during his term of office, and the recent claims of wrong-doing by former California Insurance Commissioner Chuck Quackenbush and some associates.

History of the Grand Jury: Adaptation by the States

As the various states were admitted to the Union and adopted their legal and operating procedures, almost every one initially included some reliance on grand juries for either (or both) review of criminal indictments or inquiries into government activities. Some states' grand juries were very active in administrative affairs, even including recommending new laws. Others carried out investigations of government officials; one Tennessee grand jury indicted the entire state court of appeals and another opposed a judge's reappointment on the grounds of "mental imbecility".

Throughout this state-by-state development, the underlying concept remained the same: ordinary citizens, neighbors, and others on grand juries were a necessary part of government to ensure that public prosecutors were not swayed by personal or political prejudices, and that government officials efficiently and effectively performed their jobs.

Since the mid-1800's, grand juries have been criticized as ineffective or out-of-date by a number of reformers because they were slow, lacked expertise, and on other grounds. Others criticized the "star chamber" atmosphere of secret hearings without customary due process rights. However, these complaints were offset by effective grand jury investigations, including those of the Boss Tweed ring in New York City (1971) and racketeering charges brought by a grand jury assisted by Thomas Dewey in the 1930's. Since the nineteenth century, various minor and major changes have been made in grand jury selection, procedures, and qualifications, often resulting in fairer and more efficient jury operations.

Today, all states except Connecticut and Pennsylvania, and the District of Columbia, may use grand juries to indict and begin criminal trials. Twenty-three states and the District of Columbia require that grand jury indictments be used for certain—more serious—crimes. California and twenty-four other states make use of grand jury indictments optional. All states and the District of Columbia use grand juries for investigative purposes.

The Grand Jury's Role in Criminal Prosecutions

Although the American grand jury originally was conceived as a protector of ordinary citizens by other ordinary citizens, the fairness of its criminal operations has been questioned by various commentators and judges. U.S. Supreme Court Justice William Douglas stated, "It is, indeed, common knowledge that the Grand Jury, having

been conceived as a bulwark between the citizen and the Government, is now a tool of the Executive.” Some even have referred to it as a “rubber stamp” for prosecutors.

In the criminal system, the California constitution and laws provide that felony prosecutions are initiated only after a determination that there is “probable cause” to believe that specific individuals committed specific crimes. This is done either by an “information” presented for examination and approval by a judge, or by indictment after a grand jury hearing and vote. In either case, the purpose of the objective review is to prevent overzealous prosecutors from unjustified, groundless, or unfair prosecutions when “probable cause” does not exist.

The grand jury operates without providing many fundamental rights common in court hearings and trials. For example, the defendant has neither the right to present evidence to the grand jury or cross-examine the witnesses against him or her. Only the prosecutor may present evidence, and the defendant has no right to counsel, even if required to testify. Even judges generally are excluded, leaving the grand jurors to rely on the prosecutor for all information. One early study indicated that 95% of all cases brought to the grand jury resulted in indictments, raising questions about the value of this review because the grand jury is not able to adequately evaluate the evidence presented only by the district attorney.

The Grand Jury’s Role in Civil Investigations

The role of the grand jury in civil investigations presents an interesting twist: the original (English) grand juries served to aid the government in finding and prosecuting private citizens’ misdeeds; now, these juries investigate and accuse public figures, defending individual citizens’ rights and expectations. Grand juries, both federal and state, may investigate criminal activity or non-criminal activities. In California, for example, the grand jury can investigate any activity by a public official (other than a judge) which violates a state law, and many other activities, as long as they occur within the county of the grand jury.

State grand juries—but not federal grand juries—can investigate any non-criminal activity and report and make recommendations based on the results of the investigation. These investigations commonly include reviewing the operation and condition of jails and prisons, investigating the conduct of local public officials, and other similar matters of public health, safety, and welfare. The results of these investigations may be criminal charges, recommendations for new laws, or merely reports to the public identifying problems but proposing no specific solutions.

California Grand Juries: An Overview

Grand Juries are impaneled in every county in California. Article I, §23 of the California Constitution states: “a grand jury shall be drawn and summoned at least once a year in each county.” Depending on a county’s population, a specified number of citizens ranging from 11 to 23 in each of California’s 58 counties are empowered to investigate

and report on various activities of county and city government. The rules governing the makeup, organization, powers and duties of grand juries in California are found in the California Penal Code §888-939. Recent changes in the Penal Code (§904.6, 1991) permit any county to have an additional grand jury at the discretion of the presiding judge of the superior court.

The statutes permit some variation in the manner and time of selection of jurors and require only that the term of service be for one year and coincide with the County's fiscal year. Qualifications for grand jurors are outlined in Penal Code § 893. This section requires the prospective grand juror be at least 18 years old, in possession of their natural faculties and have sufficient knowledge of the English language. In Sacramento County, each grand jury begins its term July 1 and ends its service June 30 of the following year. Throughout the State, prospective grand jurors in each county are chosen through a lengthy process that includes application, screening by the jury commissioner from Department of Motor Vehicle Records and nomination of interested persons by Superior Court Judges. A thorough background check is made on all interested persons and list of qualified candidates is submitted to the judges for review and approval. Since some members of the existing grand jury may be carried over for a second term, the number of names drawn will equal those needed to provide a grand jury of 19 members. (The law allows for a grand jury of 23 in counties with greater than a four million population and for 11 members in counties with less than 20,000 population. (Penal Code §888.2)) It has been the practice in many counties to advertise widely and to encourage many people to apply for the grand jury. Because grand jury service requires the devotion and commitment to spend 20 hours per week or more for only a token payment, it is desirable for grand jurors to have an interest in community affairs and be open-minded with a true concern for the views of others. Grand jurors also should possess some investigative skills and be able to take good notes and write and type reports. A good knowledge of the functions and responsibilities of city and county government is also helpful.

California Grand Juries: Investigation of Complaints and Accusations

The grand jury also is likely to receive a number of citizen complaints, many of which involve operations of county or city agencies or special districts. Whether the complaint is civil or criminal, rules of secrecy apply, and during the course of its investigation, the grand jury may not divulge the subject or methods of inquiry. The subject of the investigation and the methods of inquiry are only revealed when the final report is published. Privileged or confidential material is not included in the grand jury reports. Thus the names of those questioned and facts that might lead to the identity of a person who provided information to the grand jury are not released.

§ 919(c) of the Penal Code requires the grand jury to inquire into the willful or corrupt misconduct in office of public officers of every description within the county. Where misconduct is found, the grand jury may file an accusation leading to a trial. If the official is convicted, the person is thereby removed from office. Very few of these accusations are filed. Frequently, if there is misconduct in office, it is of a criminal nature, and an indictment rather than an accusation would be issued. It is also possible that an official would resign rather than face an accusation.

The grand jury may file an accusatory pleading against a corporation doing business in its county of jurisdiction (Penal Code § 892).

In a report published by the California Grand Jurors Association, misconduct in office could include any of the following:

Nonfeasance:

- (1) The failure to act where duty requires an act; or
- (2) Neglect or refusal, without sufficient cause or excuse, to do that which is the officer's legal duty to do, whether willfully or through malice; or
- (3) Willful neglect of duty.

Misfeasance:

- (1) The improper or doing of an act that a person might lawfully do; or
- (2) The performance of a duty or act that one ought to do or has a right to do, but in a manner such as to infringe upon the rights of others.

Malfeasance:

- (1) The performance of an act that is positively unlawful or wrong; or
- (2) The performance of a wrongful act that the person has no legal right to do.

Duties of the Grand Jury: Government Watchdog

In California today, provisions of the Penal Code to require the grand jury:

- (1) Investigate and report on the accounts, records, operations, and functions of district, city and county government and public officials (Penal Code § 925 & 925a); It may also inquire into the affairs of joint powers agencies located in the county.
- (2) Inquire into the condition and management of all correctional facilities within the county (Penal Code § 919(b)).

The grand jury may investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of the several offices.

Powers permitted to the grand jury include:

- (1) free access, at reasonable times, to public prisons;
- (2) the right to examine all public records within the county;
- (3) the right to examine books and records of (a) any incorporated city, or joint powers agency located in the county; (b) certain redevelopment agencies and housing authorities; (c) special-purpose assessing or taxing districts wholly or partly within the county; & (d) non-profit corporations established by or operated on behalf of a public entity;

- (4) the authority to investigate and report on operations and methods of performing duties of any such city, county, or joint powers agency and to make recommendations as deemed proper;
- (5) the ability, with permission of the Superior Court, to hire experts such as auditors and accountants;
- (6) the right to inquire into the sale, transfer and ownership of lands which might or should escheat to the state.

Note: The grand jury has no authority to investigate the courts or the acts or omissions of any judge or judicial employee.

Duties of the Grand Jury: Criminal Indictments

The California Constitution permits criminal trial on the basis of indictment by a grand jury or by information after the district attorney recommends prosecution and a judge agrees that facts exist which warrant prosecution. In addition, under § 917 of the Penal Code, "the grand jury may inquire into all public offenses committed or triable within the county, and present them to the court by indictment." In actual practice, grand juries seldom initiate such inquiries; rather, such offenses are generally brought to the grand jury by the district attorney, who asks for and generally receives an indictment, upon presentation of adequate facts.

According to the California Grand jurors Association, the district attorney much more frequently bypasses the grand jury and uses the process known as a preliminary hearing. A 1954 survey of California district attorneys listed the following factors as influential in the decision to seek a grand jury indictment rather than using the preliminary hearing: (1) high public interest in the case; (2) the fact that a preliminary hearing would take more time than a grand jury hearing; (3) the necessity for calling children or witnesses who would be subject to cross-examination at a preliminary hearing; (4) the existence of a weak or doubtful case which the district attorney wishes to test; (5) cases involving malfeasance in office; and (6) the fact that witnesses are in a state prison.

A more recent study adds the following reasons for using the grand jury: (1) cases where the defendant cannot be located and the time limit under the statute of limitations is about to expire, (2) where the secrecy of the grand jury may allow defendants to be charged and taken into custody before they can pose potential danger to a witness's safety or flee from the jurisdiction, (3) the need to protect the identity of undercover agents, and (4) the ability to test a witness before a jury.

From 1978 until 1990, grand juries were seldom used for indictments. A California Supreme Court ruling required holding preliminary hearings even if grand jury indictments were obtained. In 1990, a constitutional amendment made significant alterations in California criminal law and court procedures, including a provision that defendants were not entitled to preliminary hearings if indicted by a grand jury. As noted above, recent statutes (Penal Code § 904.6) give district attorneys the option of using special grand juries chosen from the regular jury pool to handle criminal cases and thus ensure indictment by those who represent a cross section of the community. Although the law allows criminal indictments to be brought by a grand jury, in practice, the District Attorney generally prefers to use the speedier preliminary hearing process.

Grand Jury: Reports

State Law requires that each grand jury submit a final report of its findings and recommendations to the presiding judge of the Superior Court. In addition to the mandated reports on financial audits and the condition of adult and juvenile detention facilities, recent Sacramento County grand jury reports have covered such topics as the Department of Health and Human Services, criminal and juvenile justice agendas, other municipalities and special districts.

A report, just as an accusation or an indictment, must be approved by at least 12 of the 19 grand jurors (15 if it is a 23 member jury). With so many possible investigations and a term limited to a single year, it is necessary for each grand jury to make hard decisions as to what it wishes to undertake during the term. Except for mandated duties to report on the financial condition of the county and on the conditions of county jails, the grand jury has great discretion in determining its agenda.

Most grand juries divide into committees for conducting investigations and for writing reports, but there seems to be a wide variation between counties as to the number and structure of committees; it is up to each grand jury to determine its own method of operation within the parameters of the law.

Government agencies that are the subject of reports are required by law to respond to specific grand jury findings and recommendations. However, the grand jury has no enforcement power, and the agencies are under no legal obligation to carry out the recommendations. While some recommendations are ignored, others are followed, particularly those that suggest greater efficiency for operations and that do not require the expenditure of large sums of money. Grand jury criticisms of public officials and agencies frequently attract press attention, bringing greater community awareness of what is happening in public agencies. Many grand jurors believe that public officials tend to be more accountable when they know an impartial, outside body is looking over their collective shoulders.

The California Grand Jurors Association (CGJA) (www.cgja.org), a statewide organization of former grand jurors has begun a program of identifying and indexing grand jury reports in each county with the hope of establishing a state archive of annual reports. The State Library also maintains an archive of grand jury reports from all counties. CGJA also monitors and occasionally proposes or endorses proposed laws to conserve and improve the grand jury as an important institution of local government. It offers services to those grand juries that may request advice and help in preparing informational manuals and in providing orientation for incoming jurors. Some members of the CGJA now provide orientation programs for those counties that request this service.

While surrounded by secrecy before publication, grand jury reports become public documents when signed by the grand jury foreman and approved by the grand jury's advisory judge. Copies are sent: to all targeted government agencies, to interested officials, to public and private groups and individuals and to the press. At the end of the year, bound or loose-leaf copies of all reports are placed in all public libraries.

Copies of recent Sacramento County Grand Jury reports may be found on the Grand Jury's website. (www.sacgrandjury.org) Individuals may request copies from:

Sacramento County Grand Jury
720 9th Street, Room 611
Sacramento, CA 95814
(916) 874-7559 (voice mail)

REPORTS AND INVESTIGATIONS

Adult Protective Services

What Is the Future of Our Elder and Dependent Adults?

Subject of Investigation

Delivery of Adult Protective Services in Sacramento County.

Reason for Investigation

The Grand Jury received a complaint that Adult Protective Services (APS) lacked coordination with local agencies.

Method of Investigation

Members of the Grand Jury interviewed the Division Manager for Senior and Adult Services, the Program Manager for Adult Protective Services, a Sacramento County Administrative Services officer, employees of local senior services agencies, a former Sacramento County APS employee and a consultant to local counties. The members also read the *Report on the Sacramento Community System of Protection for Senior and Dependent Adults*, October 2001, issued by the Adult System of Protection Team. They reviewed the *Manual Letter No. APS-01-01*, effective 10-29-01, Adult Protective Services Program, pages 5-6, 38 as well as the response letters, 1-15-02 and 4-26-02 from the Division Manager for Senior and Adult Services. They also reviewed the letter to the Grand Jury from the Director of the Department of Health and Human Services (DHHS) dated 5-2-01.

Background

Sacramento County Adult Protective Services, Division of Senior and Adult Services, is the county agency responsible for carrying out the mandates in Section 15763.3(c) and other sections of the Welfare and Institutions Code. This Section states in part that a county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about

changes in their lives and to provide a safety net to enable them to protect themselves in the future. These services are intended for both the elderly and dependent adults (18-64 years of age), and specifically include basic protections such as food, emergency shelters, home protective care, and other services that may be of value on a case by case basis.

Statistics released by the Sacramento Community Services Planning Council indicate that since 1990, in Sacramento County, the portion of the population ages 65 to 84 has increased 18.4%, from 100,746 persons in 1990 to 119,283 persons in 2000. The portion of the population age 85 and older has increased dramatically by 55.8%, from 9,534 persons in 1990 to 14,854 persons in 2000. This growth trend is dramatically continuing locally and nationally.

From the late 1980s to the early 1990s the Adult Protective Services program in this County suffered extreme budget cuts, that reduced the local services to a skeletal structure. Prior to these budget cuts Adult Protective Services was a recognized leader in its approach to the issue of elder and dependent adult abuse. Services remained at a minimum until 1998 when Senate Bill 2199 addressing elder and dependent adult abuse was enacted into law. This bill amended the State Welfare and Institutions Code by expanding the definition of mandated reporters and included abandonment, isolation, financial abuse, and neglect as reportable offenses.

In response to SB 2199, the Adult and Aging Commission's Oversight Committee conducted a public forum, resulting in the formation of an Adult System of Protection Team. This Team spent two years (1999-2001) evaluating the current system and identifying areas that needed improvement to guarantee seniors and dependent adults adequate protection from neglect and abuse. The Team identified several themes needing attention, including case management, direct service, and followup, and released a final report in October 2001. One of the key recommendations in the report asked the county Board of Supervisors to direct the Department of Health and Human Services to develop a budget proposal to fund and establish a case management unit for FY 2002. APS confirmed that case management services are currently not being provided nor is there a plan to implement case management in FY 2002-2003. Grand Jurors concur with the frustration expressed by professionals interviewed during the investigation. Two years of studying the problems with a strong confirmation that case management is necessary only to be followed by yet another year of study rather than actual implementation of services is a waste of resources.

Concurrent with the beginning of this study, Adult and Senior Services initiated a Department of Health and Human Services/District Attorney Elder Abuse Prevention media campaign. According to the Adult and Senior Services Division, a significant increase in referrals occurred as a result of the media campaign as well as the increase in reporting requirements in SB 2199

Facts

The original complaint to the Grand Jury stated there was a lack of coordination between APS and other agencies. However, during this investigation what became most evident was the need for more enhanced services to reduce the number of cases being reopened. According to interviews with the administration of Adult and Senior Services, APS stated their interpretation of the language of new state regulations clearly provides that, "APS is not intended to be a long-term, ongoing case management activity...." On the other hand they expressed the need for case management services, and the reasons for not providing them were lack of staff and funding. In fact, it was stated that, "any reassignment of social work staff, to a case management unit, would make it impossible to make a timely and effective response to incoming reports of abuse..."

The Grand Jury learned that APS placed a cap of 90 consecutive days of intervention with a client, at which time the case is closed whether the case is stabilized or not. Professionals interviewed agreed that to arbitrarily set a cap of 90 days often denies the individuals the full opportunity for services that specifically address their situation. It precludes reassessment and a management plan that can be modified when necessary. Some cases may require far less than 90 days, and others may require up to 12 months to stabilize. This conclusion, according to those interviewed, was deemed consistent with the State's language not to be a long-term, ongoing case management program. Members of the Grand Jury also found language that does provide for "time-limited" case management within the scope of service.

However, in interviews, APS admitted, "it is typical that any client with complex or resistive problems has his/her case closed without the problem being significantly solved and then re-opened due to subsequent crisis calls." Statistics provided by APS showed 10,710 cases opened between January 1998 and January 2002 that represented only 7,245 clients, or 27.5% of the clients accounting for 50.1% of case openings. APS reported that had these cases been effectively resolved through case management services, it would have resulted in savings of approximately \$2,700,000 over that four-year period.

Not included in these savings is the significant cost to the County of ancillary services for the individuals who continually have repeat contact, with expenses incurred through contact with law enforcement and medical emergencies, in addition to other services. The statistics, provided to the members of the Grand Jury showing the highest risk cases by type and number of abuses, indicate that some cases were re-opened up to 14 times over a four-year period.

Highest Risk Case Statistics as Provided by Adult and Senior Services (April 2002)							
Abuse Type	Number of Case Openings Per Specific Client						Total
	1	2	3	4	5	6+	
Financial	1263	610	344	207	70	193	2687
Neglect	1040	577	325	184	97	183	2406
Physical	866	428	215	147	68	128	1842
Psychological/Mental	1019	495	231	145	69	121	2080
Self-Neglect Health & Safety	1405	645	268	139	53	93	2603
Self-Neglect Physical Care	419	328	214	135	74	146	1316
Total	6002	3083	1597	957	431	864	12934

Sacramento County Adult Protective Services had an allocation of \$762,920 in FY 1998/1999. By FY 2001/2002, APS allocation had been increased to \$2,413,626. (See Budget Table). During this time of an augmented budget, APS has increased staff and their ability to handle emergency responses, but has not provided enhanced services such as case management as directed by SB 2199, (enacted in 1998).

Annual Budgets as Provided by Adult and Senior Services (January 2002)				
	FY 98-99	FY 99-00	FY 00-01	FY 01-02
APS Allocation	\$769,920	\$1,924,525	\$2,413,493	\$2,413,626
Increase over Base Year	N/A	\$1,161,605	\$1,660,573	\$1,650,706
County Services Block Grant (CSBG)	\$1,020,612	\$1,020,612	\$1,020,662	\$660,190
Totals of Allocations	\$1,790,532	\$4,106,742	\$5,084,728	\$4,724,522

Adult and Senior Services reports that "the APS allocation is dedicated strictly to the APS Program. The CSBG (County Services Block Grant) allocation includes funding for Information and Referral, Out-of-Home Care Services for Adults, and optional programs and activities performed in the above categories by Skilled Professional

Medical Personnel (SPMP). However, at this time, the Department is using the CSBG allocation to fund certain activities of the Public Guardian/Conservator's Office.

It was learned through interviews with other community agencies that there are case management programs for seniors to whom APS makes referrals when available and appropriate. Grand Jurors also learned of possible additional funding sources APS might pursue to fund case management services. One such program is MediCal Administrative Activities (MAA).

A second funding source is Targeted Case Management (TCM) which became a covered MediCal benefit effective January 1, 1995 under the Welfare and Institutions Code, Section 14132.44. TCM consists of case management services to a specified target population who need medical, social, educational and other services. TCM was designed to include documented assessment, service plan development, linkage and consultation, assistance in accessing service, crisis assistance planning and periodic review for adults at risk for abuse, neglect, and possible institutionalization.

Adult Protective Services confirmed that it has not pursued Targeted Case Management funding. It was stated that the Sacramento County Conservator's Office pursues reimbursement through TCM on a small scale. APS also stated that TCM is only at a 50% reimbursement rate for services, and believes what is currently being done by APS is more fiscally advantageous. A consultant who works with other counties verified that TCM could have long-range savings.

It is the position of the County that TCM creates a burden on the social worker and the DHHS Fiscal Department. Adult and Senior Services reports that an additional staff person would be required to process the claims. However, the Grand Jury was informed during interviews that there is a statewide consortium comprised of county fiscal persons, and that Sacramento County already has a TCM coordinator position. APS could not substantiate if this position is still active and what duties are involved.

Persons with expertise in TCM validated the additional reporting requirement by the social worker because specific documentation is necessary to obtain reimbursement. The documentation would require training and/or specific software. There are a number of public and private agencies located locally and nationally that use various forms of software for this purpose. Persons with expertise in TCM indicate that the use of TCM software actually minimizes the time a worker spends on documentation, and the software also ensures reimbursement through this proper documentation.

The Grand Jury did not find that Sacramento County Adult Protective Services lacked coordination with local agencies. The Grand Jury did determine that APS could expand on its coordination more effectively. To the credit of Sacramento County Adult and Senior Services, it had established a multidisciplinary team (MDT) long before it was mandated in Senate Bill 2199. This was in effect during the years before the major budget cuts. APS continued to support and maintain the need for a forum to present difficult cases and coordinate with other agencies, even when staffing, money, and

options were very limited. It has assisted in reaching positive resolution for many of these cases. APS continues to chair this type of forum and has enjoyed increased participation from a number of community agencies. Currently, Sacramento County's MDT meets one time per month for 2 hours.

Findings and Recommendations

Finding #1. During FY 2000/2001, with an augmented budget, APS increased its staff and its ability for emergency response, but has not provided enhanced services such as case management as required by SB 2199. APS concurs that there is a need for case management, but attributes its absence to lack of staff and funding.

Recommendation #1. Sacramento County APS should immediately implement a pilot program of case management for the identified highest risk cases. APS should implement case management as specified in SB 2199 and the two-year study.

Finding #2. APS administrators were unable to provide members of the Grand Jury with documentation requiring the 90 day cap, and it is unclear whether this is imposed by state regulations or self-imposed by the County.

Recommendation #2. Adult Protective Services needs to remove the 90-day cap on the amount of time a case can remain open.

Finding #3. Adult Protective Services has not pursued Targeted Case Management funding. Although TCM provides money at a 50% reimbursement, it is additional funding separate from their current revenue source.

Recommendation #3.

- a. Adult Protective Services should explore the possibility of additional funding through Targeted Case Management or MediCal Administrative Assistance.
- b. If APS no longer maintains an MAA/TCM Coordinator, then it would be advisable for APS to hire a consultant to determine if they qualify for a coordinator and how best to increase reimbursement for services.
- c. APS should consider the purchase of appropriate software to assist in proper documentation.

Finding #4. There appears to be a philosophy within APS of using crisis intervention and quick closure as the primary remedy. If the cases opened from January 1998 through January 2002, as noted, had been effectively resolved through case management, they would have resulted in savings of approximately \$2,700,000 over that four-year period. The savings would be greater if the impact to other systems, such as emergency rooms, law enforcement, etc. were considered.

Recommendation #4. Adult Protective Services should reconfigure its system of triaging/prioritizing cases after the initial response in order to better determine the need for type and length of continued services to reduce re-opening of cases.

Finding #5. APS workers and staff of other agencies regularly consult on individual cases for multi-problem individuals which can become time intensive. Sacramento County's Multidisciplinary Team (MDT) with its composition of numerous community agencies, meets one time per month for two hours. Given the number of cases that are processed through APS, the use of the MDT only once a month is not adequate. The Grand Jury determined that Adult Protective Services could expand on its coordination with community agencies, and it could utilize this collaboration and coordination more effectively through an expanded use of the MDT.

Recommendation #5.

- a. The MDT should meet on a weekly basis to alleviate the burden/workload of each individual agency involved in each case by allowing presentation and follow up in less than 30 days as needed.
- b. APS needs to develop continued and expanded collaboration with social service, health, and criminal justice agencies in order to link clients with necessary services and supports to more effectively create stability. Beyond the scope of referral, APS should collaborate on the cases and follow up on the success of the referral.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002 from:

- **Director, Department of Health & Human Services**

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Bureau of Family Support

Subject of Investigation

The operations of the Sacramento County Bureau of Family Support.

Reason for Investigation

The Bureau of Family Support has a well-publicized history of being overwhelmed by its workload. The Grand Jury opened an investigation to determine if there were any opportunities to improve its efficiency.

Method of Investigation

Members of the Grand Jury conducted interviews with staff of the Bureau of Family Support and examined written materials provided by the Bureau.

Background

The Bureau of Family Support provides child support enforcement and collection services for custodial parents (its clients), and attempts to obtain reimbursement from non-custodial parents for funds expended by the County. Historically, it has functioned as a part of the Office of the District Attorney, but on July 1, 2002 it will become a separate county department. Recent legislation has established the California Department of Child Support Services and a plan for a state-directed, locally delivered, child support program to be uniformly administered in all 58 counties.

The Bureau of Family Support provides services to its clients in an environment of urgency and anxiety. It has done so for several years while maintaining a high caseload per worker and periods of understaffing. Disagreements frequently arise between the

Bureau and its clients as to level of service and the appropriateness of priorities. As a result, clients are frustrated and bureau staff is stressed. So far as the public is concerned, these conflicting views, to which client advocacy groups contribute, tend to mask true conditions in the Bureau.

Facts

The Bureau has in the past been overwhelmed by its workload. This has largely been the result of processes and procedures that relied on “hardcopy” files, notorious for generating frustrations and delays when they are “out” or are misplaced or lost. The labor intensive nature of maintaining records in this format, and the sheer physical limitations which it imposes, created a situation in 1994-1995 which forced the Bureau to employ temporary workers to do location searches on non-custodial parents, case evaluations, and case closures as required by federal funding mandates. The Bureau also relied on a state-approved and funded computer project that ended up having to be abandoned.

Personnel turnover has exceeded 20%, in part because of the movement of some employees to the new California Department of Child Support Services. The current vacancy rate is over 10% of all full time equivalent staff positions, and the understaffing is critical because it exists in entry-level positions where client contacts and services occur. Apart from stress on staff and clients, this understaffing inhibits the Bureau’s ability to locate and recover funds.

In the last several years there have been a number of improvements in processes and procedures, that have partially offset the Bureau’s continuous understaffing. Despite these improvements the Bureau had to reduce the time a case can remain open from three years to two. This is due in part to the need to maintain statistics within approved federal guidelines. Because of these guidelines, there is no procedure for maintaining cases in a semi-inactive status. As a result, semi-annual or quarterly asset location checks are not done.

The Grand Jury learned the Probate Department of the Sacramento Superior Court has no process or procedure requiring the entry into an electronic database of the personal identification of individuals who are to obtain funds from probated estates. Such a requirement would enable the Bureau to locate non-custodial parents and their assets. Currently, the Bureau must rely on tips from custodial parents to learn of pending disbursements from probated estates.

Findings and Recommendations

Finding #1. The public and clients do not appear to understand the scope of client services offered by the Bureau of Family Support. This causes stress to bureau staff and inhibits good relations between the Bureau, its clients, and client advocacy groups.

Recommendation #1. The Board of Supervisors should publish an annual audit of the Bureau of Family Support. At a minimum, the findings should include scope of service, waiting periods, unfilled positions, progress in collections, and cases opened and closed.

Finding #2. The 10% vacancy rate of all full time equivalent staff positions in the Bureau of Family Support has a substantial negative impact on the Bureau's operating objectives, and creates an environment in which staff feels overwhelmed and clients feel frustrated and unhappy.

Recommendation #2. The Board of Supervisors should provide for urgent or emergency funding of staff positions whenever the Bureau's vacancy rate is over 10% of all full time equivalent staff positions.

Finding #3. Closing cases for an inability to locate non-custodial parents after two years does not allow the fullest opportunity to locate highly mobile absent parents.

Recommendation #3. The Bureau should negotiate with the California Department of Child Support Services and other county child support agencies to create a common category of semi-inactive cases to be kept open for at least three years for location purposes.

Finding #4. The availability of a database containing the names and Social Security numbers of persons to whom probate distributions are made would aid the Bureau in locating non-custodial parents to collect child support and other obligations.

Recommendation #4. The Bureau should seek a change in the rules of the Probate Department of the Sacramento Superior Court to establish such a database. In addition, the Bureau should undertake an initiative with the California Department of Child Support Services, other county child support agencies, and revenue agencies, to obtain legislation requiring the establishment of such databases by probate departments statewide.

Responses Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002, from:

- **Sacramento County Board of Supervisors: Findings and Recommendations # 1 and 2**
- **Director, Bureau of Family Support: Findings and Recommendations # 3 and 4**

Changes Needed in Juvenile Mental Health Services

Subject of Investigation

Mental health services for juveniles processed through the Sacramento County Juvenile Justice System, with emphasis on Juvenile Hall.

Reason for Investigation

A distinct double standard appears to the Grand Jury to exist when we compare the treatment of health problems with visible symptoms to mental health problems with no outwardly visible symptoms. An example of this would be the public outcry that would result from a high school coach forcing a student with a broken leg to run in a 100-yard sprint and the equally unreasonable expectation of a student with untreated mental health problems to “be normal”.

The Grand Jury for 2000-2001 published a report addressing the status of mental health services in the county juvenile justice system. Within that report there were a number of findings and recommendations. In follow-up to the previous report, the 2001-2002 Grand Jury investigated current conditions in the Sacramento County Juvenile Justice System.

Method of Investigation

The Grand Jury toured Juvenile Hall, the Warren E. Thornton Youth Center (WETYC), Boys Ranch and the Sandra Larsen Facility. Members of the Grand Jury also interviewed Mental Health employees, the Mental Health Program Manager at Juvenile Hall, the Deputy Chief of Probation and Probation Department personnel at Juvenile Hall. The Grand Jury also reviewed the responses to the previous reports and looked for evidence of their implementation.

Background

As evidenced by previous Grand Jury reports, there is an increasing concern, not only locally but nationally, for the growing number of juveniles with serious mental health issues who are housed in detention instead of mental health facilities. The juvenile justice system continues to be inadequately equipped to serve the mental health needs of the juvenile population. The system continues to focus on custody rather than treatment.

The 2000-2001 Grand Jury's report, *Mental Health Services in the County Juvenile Justice System*, cited a number of previous reports on these issues.

The 1999-2000 Jury estimated 22% of juveniles in detention were suffering some form of mental illness. In the 2000-2001 report the estimation of those needing treatment had grown to 25%.

Currently, approximately one of every three juveniles in the juvenile justice facilities displays psychiatric problems. A report by the Criminal Justice Research Foundation states, "Youth Profile data developed has revealed that a significant number of youth in our system are in need of expanded and specialized mental health services. For the past 36 months, about 29.2% of the custody population or approximately 132 juveniles residing in Juvenile Hall, WETYC, and the Boys Ranch need mental health services. System-wide, on an average daily basis, about 78 youth in detention are receiving psychotropic medications." Limited housing is available for those with psychiatric and other special needs and therefore a large percentage of these youth remain housed in the general population where the probability of behavior problems is greatly increased.

Lack of psychiatric facilities is a system wide problem. There is a lack of facilities to adequately serve the number of individuals that need hospitalization. Such facilities need to include acute and sub-acute care and be able to provide short-term diagnosis and stabilization as well as longer-term care.

If adequate mental health services in the County were available; the county mental health system could be more proactive in treating youth before their behavior results in entry into the criminal justice system. More appropriate treatment after entry into the juvenile justice system would also allow mentally ill youth to be stabilized for outpatient care or increase their possibility for placement. Having juveniles receive treatment within an appropriate mental health facility could assist in alleviating the impacted housing problem that currently exists at Juvenile Hall. Many of the criminal behaviors exhibited by juveniles are due in large part to their psychiatric issues. These issues end up causing contact with the juvenile justice system. If left untreated, these behaviors will ultimately lead to contact with the adult criminal justice system and an added and unnecessary burden to taxpayers. Proper treatment in a mental health facility while still a juvenile offers a possibility of avoiding this situation.

Facts

Catholic Healthcare West (CHW) provides mental health services within Juvenile Hall. The Mental Health Division (MHD) under the Department of Health and Human Services (DHHS) of Sacramento County has recently taken over the monitoring of Catholic Healthcare West. Although there has been little time to assess the impact this change will have on services, it does provide direct oversight.

The 2000-2001 Grand Jury's Final Report recommended that MediCal funds be accessed for the post-adjudicated juveniles. CHW has initiated a new program that can utilize the MediCal funding that is available for post-adjudicated juveniles. MHD and CHW have taken a positive step by initiating a field visit model in order to provide mental health service for juveniles while awaiting placement. They are able to obtain MediCal reimbursement for these services.

CHW clinicians from their outpatient clinics are making contact with the juveniles while still in Juvenile Hall. This provides the opportunity to begin counseling and establishing a relationship. When the juvenile is placed within the Sacramento area, that clinician can follow the juvenile to provide continuing services. It is hoped the juvenile will live within the area served by the CHW clinics. If not, at least the clinician has been able to get to know the child, his/her needs, and a treatment plan that may be shared with the youth's new clinician.

Juvenile Hall currently houses approximately 300 juveniles on a daily basis. On a single day in April 2002, during a repeat visit by the Grand Jury, the population was 358. This placed the facility well above the Board of Corrections' rated capacity of 261 beds and in a condition that can only be considered as overcrowded. The Grand Jury learned this overcrowded situation continues on a regular basis and that the State Board of Corrections has granted a temporary increase in detention capacity.

Statistics obtained by the Grand Jury show that there could be approximately 40-60 juveniles awaiting placement on any given day. It became apparent to the Grand Jury that a lack of appropriate resources for placement creates a backlog within Juvenile Hall. Many of these juveniles are difficult to place due to a variety of needs including mental health needs and behavior problems. The Grand Jury also learned that many juveniles are placed out of the county and sometimes out of state in order to provide adequate treatment.

Currently only one psychiatrist serves all of the sites for the juvenile justice system and this is at a 0.8 capacity rather than full time. This staffing level remains unchanged from previous Grand Jury findings. According to those interviewed, there continues to be a shortage of available child psychiatrists. The compensation and stressful working environment make it more difficult to recruit both psychiatrists and other clinical staff to meet the needs of youth in the juvenile justice system.

Space for mental health clinical staff to perform their duties at Juvenile Hall is limited. This results in an environment that is not conducive to the delivery of mental health

services and counseling. The Probation Department and CHW staff confirmed that the planned new building expansion at Juvenile Hall will provide CHW staff more accessibility to juveniles with mental health issues. The Probation Department staff, however, indicated that they are unable to designate psychiatric housing because of mandated regulations and their belief that Juvenile Hall is a detention facility, not a treatment facility.

Title 15 of the California Code of Regulations provides the Minimum Standards for Juvenile Facilities. Although Juvenile Hall is a detention facility, Title 15, Section 1356 provides that a facility shall develop written policies and procedures ensuring the availability of appropriate counseling and casework services for all minors. Section 1437 further specifies that the facility shall establish policies and procedures to provide mental health services. Some of the services indicated include screening, crisis intervention, stabilization and prevention of deterioration, and medication support. It also states that a minor whose needs exceed the capability of the facility shall be referred and transported for admission to a licensed mental health facility.

A limited number of beds are available in Sacramento County at Sutter, Sierra Vista, and Heritage Oaks Hospitals for youth requiring psychiatric hospitalization. However, Sacramento County frequently sends juveniles to San Francisco, Vallejo, and Modesto in order to house them within a psychiatric facility. Some youths are also sent as far as Metro Hospital in Los Angeles. This movement and housing incurs a greater cost to the county for their care. This is not unique to this county, but should not deter Sacramento County from pursuing a local juvenile psychiatric facility.

The Minor Emergency Response Team (MERT) sees approximately 160 juveniles requiring crisis intervention or authorization for inpatient care per month. This team is housed directly adjacent to the adult crisis unit at Sacramento County Mental Health Treatment Center. This facility used by the Minor Emergency Response Team is not adequate to handle the number of juveniles requiring crisis services. By regulation, MERT staff is only allowed to hold a youth for 23 hours.

In its 2000-2001 report, the Grand Jury recommended the County provide a "25-bed free standing, secure facility for juveniles whose mental conditions require acute and sub acute levels of care." In their response to the report, county officials stated, "the Criminal Justice Cabinet has contracted for a feasibility study that will evaluate the needs, including the number of beds, the various funding sources, the costs, and the feasibility of building such a facility." The results of this study have not been made public.

The Grand Jury learned from information provided by the Mental Health Division for FY 2001-2002 that:

- 22.5 Clinicians, 6.5 Administrative Staff, and 2.0 Child Psychiatrists for all three facilities are allocated. Within the allocations there are 3.0 vacant clinician positions at the Sandra Larsen Youth Facility, 1.2 vacant psychiatrist positions, and 2.0 vacant clinician positions at Juvenile Hall.

- Because of cost increases, DHHS/MHD is requesting additional funding authority from the Board of Supervisors, through the 380 (Final Budget) Process, to fund the additional positions present in the FY 2001-2002 agreement. This will include 2.6 Clinicians and 1.13 Child Psychiatrists. Subsequent to the approval of additional funding, positions will be added by agreement through an amendment.
- In the FY 2002-2003 agreement, the Behavior Improvement Program (BIP) will not be funded. BIP will be funded through a separate contract between Probation and Catholic Healthcare West (CHW). The staffing for the FY 2002-2003 agreement between DHHS/MHD and CHW, assuming no increase in funding is: 15.9 Clinicians, 6.0 administrative Staff, and 0.87 Child Psychiatrist.

It is evident to the Grand Jury that, while allowing for the transfer of the Behavior Improvement Program to a contract overseen by Probation with CHW, the statistics still show a decrease of 2.6 Clinicians and 1.13 Child Psychiatrists for FY 2002-2003.

Findings and Recommendations

Finding #1. Approximately 160 juveniles per month need crisis intervention. Additionally, 132 juvenile wards need daily mental health services. Limited facilities are available to house youths with mental health and psychiatric needs in the juvenile justice system of Sacramento County. This inability frequently requires sending juveniles out of the area to San Francisco, Vallejo, Modesto and Los Angeles in order to house them within a psychiatric facility at significant additional cost to the county.

Recommendation #1. The 2000-2001 Grand Jury recommended Sacramento County build a 25-bed free standing` secure facility for juveniles. In its response DHHS indicated they had initiated a feasibility study for such a facility. This Grand Jury reaffirms that recommendation. Further, Sacramento County should now move forward and build such a facility.

Finding #2. There are currently vacant staff positions and an urgent need for additional mental health positions within the juvenile justice facilities of Sacramento County that should be immediately filled.

In spite of a demonstrated and urgent need for mental health staff, Sacramento County proposes to decrease the number of mental health positions for FY 2002/03.

Recommendation #2. The Board of Supervisors, DHHS, and the Mental Health Division should find the financial means to hire additional staff willing to work in a detention facility. This may require a restructuring of the pay scale or offering other incentives in order to recruit additional qualified staff.

Finding #3. Clinical staff is forced to work in limited space within the existing juvenile justice facilities. This environment is not conducive to mental health counseling and treatment.

Recommendation #3. Sacramento County needs to provide adequate and sufficient space in the juvenile centers for clinicians to provide mental health services.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this Report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002, from:

- **Sacramento County Board of Supervisors**
- **Chief Probation Officer, Sacramento County Probation Department**
- **Director, Department of Health and Human Services**

The Directed Brokerage Program of the Sacramento County Employees' Retirement System

Subject of Investigation

The directed brokerage program of the Sacramento County Employees' Retirement System (SCERS).

Reason for Investigation

The Grand Jury initiated an investigation to determine whether the Sacramento County Employees' Retirement System has a directed brokerage program in place and, if so, is it being managed in as efficient a manner as possible.

Method of Investigation

Information concerning the directed brokerage program, and the policies and procedures under which it operates, was obtained from SCERS. Additional information was obtained from brokers.

Background

SCERS is a public employees retirement system managed and administered in accordance with provisions of the County Employees' Retirement Law of 1937 (California Government Code Section 31450, et seq.). The purpose is to provide retirement, disability and/or survivor benefits to eligible members and their beneficiaries. As of December 31, 2001 SCERS had assets of \$3.369 billion held in trust for pension benefit obligations.

The Board of Retirement has chosen to employ external investment managers to invest the fund's assets. As of December 31, 2001 there are seventeen investment managers investing eighteen portfolios. SCERS also has investments in five commingled real estate funds. To assist the Board in carrying out its responsibilities, SCERS hires professional investment consultants and legal counsel who, along with investment and accounting staff, closely monitor the activity of the managers and assist the Board in developing and implementing investment policy.

SCERS has a widely diversified portfolio designed to reduce risk and achieve a return of greater than 8% over a period of five or more years. This objective is being achieved and the fund is meeting its performance objective.

"Directed brokerage" exists when a pension plan directs its investment managers to execute a portion of their trades through a selected brokerage firm or list of brokers with whom the plan has a directed brokerage agreement. A broker who is willing to participate in a directed brokerage program allows the pension plan to recapture a portion of the commissions directed to it by the plan's money managers in exchange for an assured order flow of business.

By participating in a directed brokerage program, a plan can either recapture a portion of commissions as cash to the plan or defray research expenses that it would otherwise pay out of its operating budget. In all cases, trades and transactions must be made so as to obtain the best execution for the plan. Since the major transaction cost is not the commission but other implicit risks in market movement, liquidity, etc., directed brokerage and commission recapture are very minor components in the decision to purchase or sell securities.

The main objective of a properly run directed brokerage program is to make the process transparent and complementary to the money manager trading style and profile, as well as avoid problems or conflicts in execution of a trade. Since most retirement plans do not have portfolios of sufficient size to require a dedicated staff person, a number of firms provide administration and implementation of directed brokerage programs. These firms relieve the plan of the need to enter into multiple broker agreements. By using "corresponding brokers," a plan can provide its money managers with enough broker choice and flexibility to make the program effective.

The main means of determining whether a directed brokerage program is effective is to review and evaluate the percentage of yearly commissions that a plan requires its managers to direct, and the conversion ratio that the plan is able to negotiate with brokers.

Facts

In 1996 SCERS adopted a policy that directed its investment managers to negotiate for a commission of three cents a share or less, as long as the manager can obtain “best execution.” Based on the information provided to the Board by its Chief Investment Officer and its investment consultant, the Board of Retirement decided not to direct managers to use discount brokers or directed brokerage.

At the time of adoption of the 1996 policy, SCERS’ Chief Investment Officer estimated that the policy adopted could save approximately \$150,000 annually. Reports received by the Grand Jury indicate that commission costs have varied from 2.6 cents to 3.4 cents per share for all managers.

In early 2001, after a review of trade costs and a report from SCERS’ investment consultant on directed commissions and commission recapture, the Board initiated a commission recapture program to lower trade costs further than its 1996 policy. The Board considered and agreed to accept a proposal from State Street Bank to administer a commission recapture program through its network of recapture brokers. State Street Bank estimated that SCERS would earn approximately \$250,000 annually from commission recapture, given their trade volume.

After SCERS investment managers were contacted for an evaluation of their trade volume through brokers in the State Street Bank network, a goal was set for each manager for the first year. The overall objective was for domestic equity managers to direct 25% of their trades, and for international equity managers to direct 20% of their trades. SCERS is currently evaluating the first year of the program to determine its effectiveness.

SCERS accepted a Letter of Understanding with State Street Bank dated February 27, 2001 establishing the Bank as the sole source to provide the administration of its directed brokerage program and to be its correspondent broker. Further, State Street Bank is SCERS’ Custodian Bank. SCERS initiated its program after State Street Bank offered to lower its custody fees by \$5,000, an estimated 50% a month, if State Street Bank was selected to administer the program. SCERS began its directed brokerage program in March 2001.

SCERS has been receiving commissions recaptured at a conversion of 1.428:1 (70%) on U.S. equities and 2:1 (50%) on international equities. The directed commission target (the percentage of total annual commissions to be “directed”) for U.S. commissions is 30%, and the target for international commissions is 20%. In ten months of operation in 2001, SCERS had directed brokerage commissions of \$203,000 in domestic equities and \$36,000 in international equities.

Directed brokerage is not a new or emerging part of the securities industry. Other public retirement systems have had programs in place since the early 1990s. The average amount of commissions recaptured by SCERS in ten months of operation in 2001 amounted to approximately \$287,000 per year. In addition to the recaptured commissions, SCERS is saving \$60,000 a year in reduced custody fees by participating in a directed brokerage plan run by its Custodian Bank.

During initial discussions, the Grand Jury learned from SCERS the commission recapture percentage for international equities was 50%. The industry averages provided by a survey of directed brokers ranged between 60 and 62.5%. SCERS has subsequently negotiated an increase in the commission recapture percentage from 50 to 60%, an increase to the plan of 20%.

Findings

The manager target of 20% is low for directed trades of international securities compared to conservative targets of other plans. A target of 30% is acceptable to money managers, but it would be appropriate to raise the target by at least 5%.

It would be appropriate for SCERS to receive monthly money manager reports of commissions independent of reports supplied by State Street Bank. Without independent reports, it is difficult to audit the actual commissions and to reconcile variances that continually occur between manager and brokers. This is especially true for international trades.

The fact that State Street Bank sought a directed brokerage arrangement with SCERS instead of SCERS proactively seeking to establish a directed brokerage program on its own initiative, indicates a breakdown in the yearly review process. The arrangement between SCERS and State Street Bank has resulted in savings of approximately \$310,000 a year. Had a directed brokerage arrangement been in place from 1997, upon a one year review from the 1996 Board decision, the savings to SCERS would have amounted to an estimated \$1,500,000.

It appears that SCERS' lack of annual review of best practices in the industry resulted in their not taking advantage of discounted commissions and directed brokerage. Directed brokerage arrangements have the ability to reduce net commission costs to the lowest level of discounted commission.

Findings and Recommendations

Finding #1. The commission recapture rate for the SCERS directed brokerage program should be evaluated annually.

Recommendation #1. The Board of Retirement should adopt a policy requiring SCERS to review annually the commission recapture percentage for securities, ensuring that the plan maintains best practices in the industry.

Finding #2. Although intended as a trial target during the first year of the directed brokerage program, a 20% international target for money managers of the SCERS directed brokerage program is substantially less than that acceptable to money managers.

Recommendation #2. SCERS should readjust the international target for money managers upward to 30% if possible, but to not less than 25%.

Finding #3. It does not appear that SCERS is receiving monthly money manager reports of commissions independently of reports supplied by State Street Bank.

Recommendation #3. In order to maintain a proper audit trail and enable the reconciliation of variances, SCERS should direct its money managers to supply monthly reports of all commissions generated in a portfolio that identifies directed commissions.

Finding #4. SCERS Board and management have not made regular reviews of directed brokerage issues or surveyed best practices in the industry. This has resulted in SCERS not achieving the significant savings available through a directed brokerage arrangement.

Recommendation #4. The Board of Retirement should direct its Chief Investment Officer to begin a practice of periodic attendance at directed brokerage conferences and seminars, and follow up such attendance with in-service workshops for the Board and SCERS management.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002, from:

- **Board of Retirement, Sacramento County Employees' Retirement System**

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Domestic Violence Batterer Treatment Programs in Sacramento County

Subject of Investigation

Court-ordered batterer treatment programs for domestic violence offenders, certified by the Sacramento County Probation Department.

Reason for Investigation

The Grand Jury received two complaints regarding batterer treatment programs. The first complaint alleged that the Probation Department is allowing a particular batterer treatment program to operate under different standards than those required of all other such programs in the County. The second complaint alleged that the Domestic Violence Unit of the Public Defender's office is directing clients to avoid certain programs which are officially certified by the Probation Department.

Method of Investigation

Members of the Grand Jury interviewed key personnel in the County Probation Department, the District Attorney's office, the Public Defender's office, program providers, and several participants in batterer treatment programs. The Grand Jury also reviewed the authorizing legislation for court-ordered batterer treatment programs, Batterer Treatment Provider Standards implemented by the County Probation Department, the Certification and Renewal checklist used by the Sacramento County Probation Department, and other documents relating to batterer treatment programs. Grand Jurors also made unannounced visits to several certified programs and, with permission of the participants, attended a two-hour class at each site.

Background

California Penal Code Section 1203.097 provides that persons convicted of domestic violence crimes and sentenced to formal probation are required to participate in a fifty-two week batterer treatment program. Section 1203.097 establishes specific requirements for training, staff, the number and duration of sessions per week, and absence and payment policies. Successful completion of the fifty-two week program and payment of fees are conditions of probation. Failure to complete the program is a violation of probation and results in the issuance of an arrest warrant.

The goal of batterer treatment programs, as stated in Section 1203.097, “shall be to stop domestic violence,” and county probation departments are given “sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a Batterer’s program . . . ”

In response to this mandate, the Sacramento County Probation Department established Batterer Treatment Provider Standards for these programs. The Provider Standards also include a fee schedule set by the Superior Court, based on ability to pay, which all certified programs are required to use. The sliding scale ranges from \$0 up to \$45 per class, and fees may change over the fifty-two weeks of the program as the income levels of participants fluctuate.

Once a defendant is convicted of a domestic violence crime and placed on formal probation, he or she is required to report to the Probation Department. Penal Code Section 1203.097 provides that the Department “shall determine which batterer’s program would be appropriate for the defendant,” and a probation officer shares the list of “certified” providers in the county with the probationer and notifies him or her to enroll. Certified programs have met all requirements of the Probation Department, and have been placed on an official list.

Facts

Several interviews with providers and Probation Department personnel established that the Domestic Violence Unit in the Public Defender’s office often directs defendants to certain programs on the certified list and away from others. The Public Defender attorney interviewed expressed that attorneys in the unit have the right to give advice to clients concerning such a choice, that advice to clients is an attorney’s prerogative, and is based on problems other clients have had with certain programs. The attorney had never visited any of the certified programs. Probation Department personnel indicated their awareness of this problem and stated that they have been unsuccessful in resolving it.

Grand Jurors were told by the former director of a discontinued domestic violence batterer treatment program that this practice of directing clients to certain programs and

away from others was the main factor leading to reduced numbers of participants and ultimate closure of that program.

Penal Code Section 1203.097 mandates that “in making referrals of indigent defendants to approved batterer’s programs, the probation department shall apportion these referrals evenly among the approved programs.” The practice of the Public Defender’s office in directing clients to certain programs makes it difficult for the Probation Department to ensure that indigent clients are spread evenly among the certified programs. Although the Public Defender’s office attorney stated that advice regarding programs was not a binding referral, providers interviewed commented that advice from an attorney to a client is taken very seriously and often results in defendants selecting programs based on that advice.

Grand Jurors were informed by a variety of sources that the intent of the law is to ensure that no program has an inordinate number of non-paying clients that might jeopardize its solvency. Penal Code Section 1203.097 provides that certified programs “. . . shall allow up to 10% of the total Probation/Court referrals per group as indigent, but no program shall be required to maintain more unless stipulated by the program.” This mandate is difficult to achieve if the Probation Department lacks control over referrals.

The Probation Department currently has twelve certified batterer treatment program providers, and has succeeded in obtaining a good geographical distribution around the county. Two of the twelve were certified as recently as April 2002.

One certified program, operated through the Grant Joint Union High School District’s Adult Education Program, is not required by the Probation Department to adhere to the fee schedule adopted by the Superior Court, and charges a flat \$10 fee to all participants. According to Grant District personnel, the program is an authorized Adult Education class and the District is therefore able to collect Average Daily Attendance (ADA) funds to supplement its batterer treatment program fees. Participants in the Grant District’s program who are indigent may have the \$10 fee waived if they sign up for an additional adult education class.

Members of the Grand Jury were told that Grant District’s program was put in place in response to a need expressed by the courts for a more economical program. However, a number of providers are concerned that not all providers are being held to the same standard of payment. They rely on referrals of court-ordered offenders to stay in business. These providers believe that a “level playing field” must be maintained and client referrals distributed throughout the area to ensure the continuance of an appropriate number of programs.

Findings and Recommendations

Finding #1. The Probation Department does not have total control of the referral process for batterer treatment programs in Sacramento County, as assigned by Penal Code Section 1203.097. The Public Defender's office has assumed a role in advising clients to enroll in certain programs and to avoid others.

Recommendation #1. The Probation Department should assume total control of the referral process. The Public Defender's office should stop advising its clients to enroll in specific batterer treatment programs and to avoid others. The Public Defender's office should refer specific problems identified with certain providers to the Probation Department, which has authority to monitor programs and ensure compliance with standards.

Finding #2. The Probation Department is allowing one of its certified batterer treatment program providers to be in noncompliance with its prescribed standards and fee schedules in violation of Penal Code Section 1203.097.

Recommendation #2. The Probation Department should immediately remedy this violation, and require all batterer treatment programs to comply with the approved standards and fee schedules.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002 from:

- **Public Defender, Sacramento County Public Defender's Office:
Finding and Recommendation #1**
- **Chief Probation Officer, Sacramento County Probation Department:
Findings #1 and 2 and Recommendations #1 and 2**

Grand Juror Vicki Cody recused herself from any participation in the investigation, discussion, preparation, editing and approval of this report.

Elk Grove Unified School District Fails Fiduciary Responsibilities

Reason for Investigation

The Grand Jury received a complaint alleging that the Elk Grove Unified School District paid more than twice the fair market value for a property located at the intersection of Bond and Bradshaw Roads.

Method of Investigation

Members of the Grand Jury interviewed the District Superintendent and members of his staff, the Elk Grove Unified School District Board President, the complainants and other interested parties. Because of the reluctance of some witnesses to appear before the Grand Jury and the sensitive issues involved, the Grand Jury requested the assistance of the Attorney General's office. Subpoenas were prepared and served, and on April 24, 2002, under questioning from a Deputy Attorney General, sworn testimony was received from additional witnesses.

Background

The Elk Grove Unified School District (District) encompasses an area that includes the southern portion of the City of Sacramento as well as the recently incorporated City of Elk Grove. The City of Elk Grove has experienced phenomenal growth over the past decade, and for that reason the District has had to construct new schools at a rapid pace.

A four year school construction bond measure was passed by the State of California in 1998.

During the first several months of 2000, the District attempted to purchase property for the construction of a mega-school to be located in the area of Elk Grove Florin and Gerber Roads. The District met with considerable resistance from residents who objected to a school in that area, and decided to look for property elsewhere. In order to take full advantage of the bond issue the District had to move quickly in purchasing an alternate site.

Facts

One of the areas the District identified as a possible school site was in the vicinity of the intersection of Bond and Bradshaw Roads. To locate available parcels of land in the area, the District contacted several well-known land developers/real estate brokers.

One land developer identified a 106 plus acre parcel that was for sale on the northwest corner of Bond and Bradshaw Roads. The Grand Jury understands that neither the previous owner of this land nor his real estate broker was aware of the District's interest in purchasing land in the area. The land developer purchased the parcel of land for \$4,000,000 (roughly \$37,000 an acre).

Within days of entering into this purchase contract, the land developer informed the District that he had property for sale at the corner of Bond and Bradshaw Roads. The District entered into negotiations with the land developer for the purchase of this property.

Two independent appraisals were commissioned by the District to determine the fair market value of the land. The first appraisal placed the value of the land at \$4,350,000 (roughly \$41,000 per acre). The second appraisal placed the value at \$6,942,000 (roughly \$65,000 an acre). Both appraisers used the same standards, but differed as to which properties were to be compared. Although the two appraisals differed greatly, District staff did not question the value set by the second appraisal. The Grand Jury was told the difference between the two appraisals was probably caused by the volatility of the real estate market during this time, July 2000.

According to testimony received by the Grand Jury, the District is required by law to base its sales price negotiations on the appraised value of the land plus or minus 10%. The Grand Jury also learned the District had the opportunity to negotiate a price with the seller of the property based on either appraisal. The District accepted the higher appraisal because it believed that it more accurately reflected the market value of the land. The District purchased the property for \$6,928,400 (roughly \$63,000 an acre).

The District admits that it was unaware the parcel had previously been for sale over a year at approximately \$4,000,000. The District staff did not canvass the area looking for property for sale but instead turned to a select group of real estate agents and land developers to locate desirable property. District staff also admitted that the original broker for this piece of property was not among the group contacted. Had District staff members responsible for property acquisition driven by the corner of the property, a short distance from District Headquarters, they would have seen a large broker's sign advertising the property. Also, had the District advertised its interest in purchasing property in the area, the original broker for the property told the Grand Jury he would have contacted the District.

Finding and Recommendation

Finding #1. District staff members exhibited a very careless attitude toward their fiscal responsibilities when negotiating the purchase of property. The Grand Jury also concluded that had the District been more diligent in its search for school property, it might have purchased the property for a price closer to the lower appraised value of \$4,350,000. The Elk Grove Unified School District failed in its fiduciary responsibility to taxpayers in the purchase of property located at the intersection of Bond and Bradshaw Roads. This failure resulted in a loss to taxpayers of approximately \$2.4 million.

Recommendation #1. The Elk Grove Unified School District should:

- a. develop formal policies and procedures for the purchase of school site property that protect financial interests of the taxpayers and eliminate the appearance of favoritism to any landowner, land developer or real estate agent;
- b. publish in a newspaper of general record an official notice of any decision by the District to establish a new school or seek a new site location. An official notice should also be delivered to the local Board of Realtors;
- c. direct staff to use all available resources for the selection of property for school construction including physical inspection of properties for sale within the area of interest as well as Multiple Listing and newspaper ads.

Response Required

Penal Code Section 933.05 requires that specific responses to both the finding and recommendation contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002 from:

- **Board of Education, Elk Grove Unified School District**

The following grand jurors recused themselves from any participation in the investigation, discussion, preparation editing or approval of this report:

- **Rhea Brunner**
- **A. Michael Koewler**
- **James M. Moose, Jr.**
- **Jimmie E. Ward**

The Grand Jury Advisor Judge also recused himself from providing legal advice on this report.

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Encroaching Land Use Imperils Sacramento's Airport System

Subject of Investigation

The present and prospective negative impact on current and future plans for operations, growth and development of Mather Field and Sacramento International Airport by encroaching land development.

Reason for Investigation

The Grand Jury has concerns about the negative impact to the Sacramento County Airport System's current and future plans for operations, growth and development at both Sacramento International Airport and Mather Field as a result of planning, zoning and land use decisions made by local political bodies.

Land use decisions made by the Board of Supervisors, County Planning Department and Commission, the City of Sacramento Planning Department, and the City of Sacramento may seriously affect both airports' operational status as well as future expansion plans. These decisions create a high probability for curfews, limited operations, restricted flight paths and the necessity of obtaining operational variances for continuation or expansion of air transit operations.

These decisions have and will continue to expose Sacramento International Airport, Mather Field, and the taxpayers of Sacramento County to potential liability for damages from lawsuits brought against airport operations at both facilities. This liability arises from lawsuits that could be brought by surrounding commercial operations and residential homeowners in new developments allowed to build in close proximity to known and pre-existing major aviation facilities.

Method of Investigation

The Grand Jury has sought to determine the nature of the challenges and difficulties facing the operation and development of both Sacramento International Airport and Mather Field. The Grand Jury has also looked for effective solutions and remedies to these difficult problems. Documents obtained from the Sacramento County Airport System (System) and the Sacramento County Planning Department were reviewed and interviews conducted with members of these departments and the Sacramento City Planning Department. The Grand Jury also searched out and reviewed media articles and other publications available in the public record.

Background

"Since Sacramento International opened Oct. 29 1967, the 5,500-acre airport site has been a virtual island in a vast sea of farmland. The \$22 million airport, which drew thousands of sightseers during the opening weekend, was the first new major commercial airport west of the Mississippi that was built from the ground up.

The economic impact of the airport is enormous. A county report issued two years ago revealed Sacramento International, Mather and Sacramento Executive airports pack a \$2 billion-a-year economic punch - twice as much as a decade earlier.

'It's important for the airport and the areas around us to move forward in a complementary way," said Robert Leonard, assistant director of airports.'

-The Sacramento Bee, April 7, 2002-

Sacramento County has been in the enviable position of not having Sacramento International Airport be a nuisance to the surrounding area. By design or good fortune Sacramento International Airport has had the luxury of not having to operate under many of the limiting restrictions that other major airports suffer such as curfews, limited flights, restricted flight paths and the need for operational variances. Sacramento International Airport has benefited from its strategic placement in a "sea of farmland." That benefit is now rapidly eroding.

Similarly, Mather Field was protected from the encroachment of residential building and development while a United States Air Force Base. In the late 1980s the Air Force announced the closing of Mather Field with operations turned over to the County of Sacramento. On May 5, 1995 the Board of Supervisors voted to promote development of Mather Field as an air cargo facility. At that time there was minimal residential housing in close proximity.

Operations at Mather Field decreased significantly after the Air Force ceased operations, and the airfield has not operated near its peak capacity since that time. However, operations have continually increased since the base started operations as a civilian airfield. At present there are no operating limitations or restrictions. The chance of this

being the situation in the future is in serious doubt given the development and building that has been allowed and approved by the Board of Supervisors.

One of the most important responsibilities of the System is to plan, develop and operate the airports in ways that maximize the benefits to the six-county Sacramento region. To carry out the objectives of the System, the Board of Supervisors has deemed it appropriate to have an Airport Master Plan. One segment of this plan will address Mather Field. Another segment will address Sacramento International. The Airport Master Plan, when adopted, becomes an integral part of the County General Plan. The current Airport Master Plan, under which the System operates, dates back to the early 1980s and does not include Mather Field. This master plan deals with the development of airport projects and operations, and at this time provides the basis for land use planning surrounding only Sacramento International. The revised Airport Master Plan will address land uses surrounding both major airports.

The Board of Supervisors has responsibility for planning, zoning, development and land use through its control of the General Plan. The Board of Supervisors controls any land use, development, zoning, and construction project within the unincorporated areas of the county. Within the Sacramento city limits, the City Council has independent and exclusive control of planning, zoning, development and land use.

Facts

The State of California Department of Transportation's method of handling land use issues surrounding an airport provides for the creation of an Airport Land Use Commission (ALUC) made up of representatives from various governmental entities (cities and counties) in the immediate area. The ALUC makes an evaluation based on projected airport operations and produces a Comprehensive Land Use Plan (CLUP).

The ALUC determines the noise contours surrounding the airport and establishes land uses that are consistent with the airport's measured noise contours averaged over a 24-hour period. Under the state regulations, the ALUC is required to prepare a CLUP up to a 65dB contour line. The 65dB contour line (the outer perimeter of the CLUP) represents points from the airport that will have an average noise level of no more than 65dB over a 24-hour period. The Airport Land Use Commission does not have any enforcement ability for a CLUP. The adoption of the ALUC's Comprehensive Land Use Plan rests with the city or county's governing body. At Sacramento International Airport, the Board of Supervisors requested the CLUP outer perimeter be extended to the 60dB contour line. This CLUP is the most progressive in the state. No residential construction restrictions or airport protections result from the operation of Sacramento International Airport beyond the current CLUP. At Mather Field, the Board of Supervisors adopted a Mather Airfield Policy Area (MAPA) larger than the governing CLUP that also extends to a 60dB contour line.

Mather Field started its civilian use by having an Airport Layout Plan developed. Since planners were unable to determine the future extent of the airfield's use, the maximum

capacity was employed. An Airport Layout Plan is a basic requirement for permission to operate. The plan was also needed in order to develop an Environmental Impact Report and Comprehensive Land Use Plan. Unsure whether air cargo carriers would locate at Mather Field, the System decided to delay the development of a master plan segment for Mather Field.

In Comprehensive Land Use Plans that use noise contour lines for their perimeters, measurements are averaged over a 24-hour period. Since an average is used, there can be single events that can be significantly higher. Sound level is measured on a logarithmic scale, and thus an event of 90dB is much higher than the current CLUP perimeter line of 60dB. The significance of this issue can be compared to living on a street that is the main route to a hospital but ten blocks away. The disturbance of allowing ambulances to run their sirens along the street may only occur four or five times a day so that the "average noise level" on the street is low. However, if these events occur routinely or exclusively between 11 p.m. and 2 a.m., they could be termed a nuisance because of the time and intensity of these "single" events.

The operational spheres of influence (5-mile radius) of both Sacramento International Airport and Mather Field, the area where noise from single events can easily exceed 60dB, are larger than the current CLUPs identify. Currently school sites are prohibited from being located within a 2-mile radius of a major airport.

The operational sphere of influence (5-mile radius) of Mather Field (the area where noise from single events can exceed 60dB) is much larger than the current CLUP or MAPA identifies. Currently school sites are prohibited from being located within a 2-mile radius of a major airport. Although the Board of Supervisors has allowed the Village of Zinfandel project to be approved for development and proceed as a residential housing project, the Sacramento Bee reported:

"the Aeronautics Division at Caltrans denied permission to the developers to build schools on the Zinfandel site because state airport safety experts concluded that aircraft operations at Mather 'will present a safety hazard and subject the school sites to disruptive noise levels.' In a 1998 letter Caltrans outlines its objections – 'The entire project site is within the base and crosswind legs of the traffic pattern. In these areas, aircraft will be at lower altitudes, descending to land or climbing after departure; pilots are making considerable aircraft configuration changes, air speed and power changes, flap changes, etc. Pilot workloads in these areas of the traffic pattern require maneuvering the aircraft while scanning for traffic and communicating with either air traffic control or directly to other pilots.....aircraft operations at Mather will present a safety hazard and subject the school sites to disruptive noise levels..... We conducted a review of the entire project area and determined the Zinfandel Project Site will not offer a suitable school site because of overflight hazard.'"
-Sacramento Bee 3/18/2000-

As stated previously, a new Airport Master Plan is being developed. The Board of Supervisors and the Sacramento City Council have allowed plans and projects to be put in place that encroach on the operational sphere of influence of both Sacramento

International and Mather Field. This encroachment is commonly called “moving to the nuisance.” This has allowed builders and developers to place residential housing in close proximity to the airport.

In the Mather Field area, the Board of Supervisors has allowed residential encroachment into the operational sphere of influence needed for full long-term growth and development of the airport. In the absence of a master plan for Mather Field, the Board of Supervisors could have declared a building and developmental moratorium until a master plan was adopted. Instead the Board of Supervisors has allowed builders and developers to foreclose future growth options at Mather Field. The Villages of Zinfandel project is a prime example. Approval of the Villages of Zinfandel project prevented any possibility of extending Mather Field's current northern runway and making it a Category 3 (Cat 3) runway. Category 3 runways are capable of total instrument landings and takeoffs in all kinds of weather, day or night. These runways require more safety clearance on the ground.

The Grand Jury also learned that any proposed new runway to the south of the current southern runway would be prevented from becoming a Cat 3 runway, if the proposed developments immediately to the south, southeast and east are permitted. As a result of the lack of definitive land use planning that addresses the needed infrastructure for the airport, plans and projects have been put into place that "move to the nuisance" next to and into the flight paths of Mather Field.

The Grand Jury learned that existing and planned developments are rapidly encroaching on the operational sphere of influence at Sacramento International. The preferred site for a new Category 3 runway directly to the east of the airport had previously been preempted by a planning decision made many years ago. The Board of Supervisors declined to revisit this issue and directed staff to find another location.

The concept of “moving to a nuisance” has been routinely upheld in legal cases. Moving to the nuisance is a situation where expanding land development and home building slowly but steadily begins to move toward what is commonly held to be an obvious nuisance such as a dairy, a land fill, an industrial plant or an airport. Unpleasant noises, smells, fumes or health issues can be used to either shut down or curtail the operations of the offending entity. It does not matter that homeowners knew of the location and nature of the nuisance before they purchased. Airport defenses of "being there first" and "being on notice" of airport operations have not been successful against plaintiff lawsuits for monetary damages or specific relief i.e. curfews, limiting operation or forced removal of the operation. Airports in particular have been subject to many restrictions relating from lawsuits brought by landowners. San Diego's Lindbergh Field has an 11:30 p.m. departure curfew. Orange County's John Wayne airport has similar restrictions. San Jose airport has had lawsuits filed over “nuisance” at each end of the runway that taken together come close to \$100 million in damages.

The Board of Supervisors has delayed adopting a master plan segment for Mather Field while stating to the public the County's intention to develop the airfield into a busy, “World Class” air cargo hub. These planning decisions encroached upon the planned

long-term operational sphere of influence of the airfield. These actions by the Board of Supervisors were in direct conflict with the projected growth and development plans for Mather Field as an air cargo hub. As a result, the air cargo operators have been operating in a climate of business uncertainty on issues related to the airfield's infrastructure and future. This uncertainty has continued until recently when many of the infrastructure improvements sought by major carriers were met. A major exception is the request for two Cat 3 runways. The carriers cite accident potential and/or regularly required maintenance as the need for redundant runways to avoid flight diversions to another airport. Currently there are no Cat 3 runways at Mather Field.

The Grand Jury is aware that there is in Sacramento County, as in most counties everywhere, a persistent and unrelenting pressure for growth and development which most political entities have been unable to resist. Pressure could force decisions to be made that are in direct contradiction to planning and land use professionals expert opinion and advice.

The Board of Supervisors and the City of Sacramento have consistently allowed developers and residential builders to "move to the nuisance." The reluctance of the Board of Supervisors to create a buffer zone around Mather Field beyond the current CLUP has allowed builders and developers of residential housing projects to encroach on the flight paths of runways to the east and southeast. Similarly, the City of Sacramento and the Board of Supervisors have allowed new housing and planned development to the south and east of Sacramento International that approach the existing CLUP perimeter.

The reluctance to create a buffer zone around the airports beyond the current CLUPs has allowed developers to plan projects and homeowners to move into homes that suffer from the nuisances of being located near a major aviation facility. New homeowners complain of airport noise and threaten lawsuits because the responsible agencies have not required a mandatory Grant of Avigation and Noise Easement.

A Grant of Avigation and Noise Easement is similar to utility company easements contained in most residential deeds that allow a limited use of property by another. An Avigation and Noise easement grants permission to use the airspace above the identified property to the holder of the easement. An Avigation and Noise easement prevents the landowner from suing the holder of the easement for nuisance and monetary damages except in extreme and unusual cases.

The System developed maps (see Figures 1 and 2) defining the expected noise contour lines for Sacramento International Airport. These maps show the expected noise contours at both 60dB and 55dB for the years 2005, 2010, 2015 and 2020. The 55dB lines were projected to show the potential impact that may be considered as residential development continues to encroach on the airport. The noise contour lines at 55dB for 2005 reach past Highway 99 at Elverta Road on the east, an area where there are thousands of proposed houses being planned for construction, and past I-80 at I-5 on the southeast, completely encompassing all the new residential construction permitted by the City of Sacramento west of I-5 and north of I-80.

For land uses within the noise contour of 65dB, the State of California has deemed the following land uses to be incompatible:

- Residential dwellings
- Public and private schools
- Hospitals and convalescent homes
- Churches, synagogues, temples and other places of worship

In essence, the state has mandated that high concentrations of people are incompatible with airport operations in an area encompassed by an expected sound level of 65dB. Sacramento County has elected to extend this zone to include the 60dB level. The Grand Jury learned from Airport System staff that this zone could soon be expanded to include the 55dB level at Sacramento International. As the area around Mather Field continues to develop, it would seem prudent to expect a similar extension to the 55dB level.

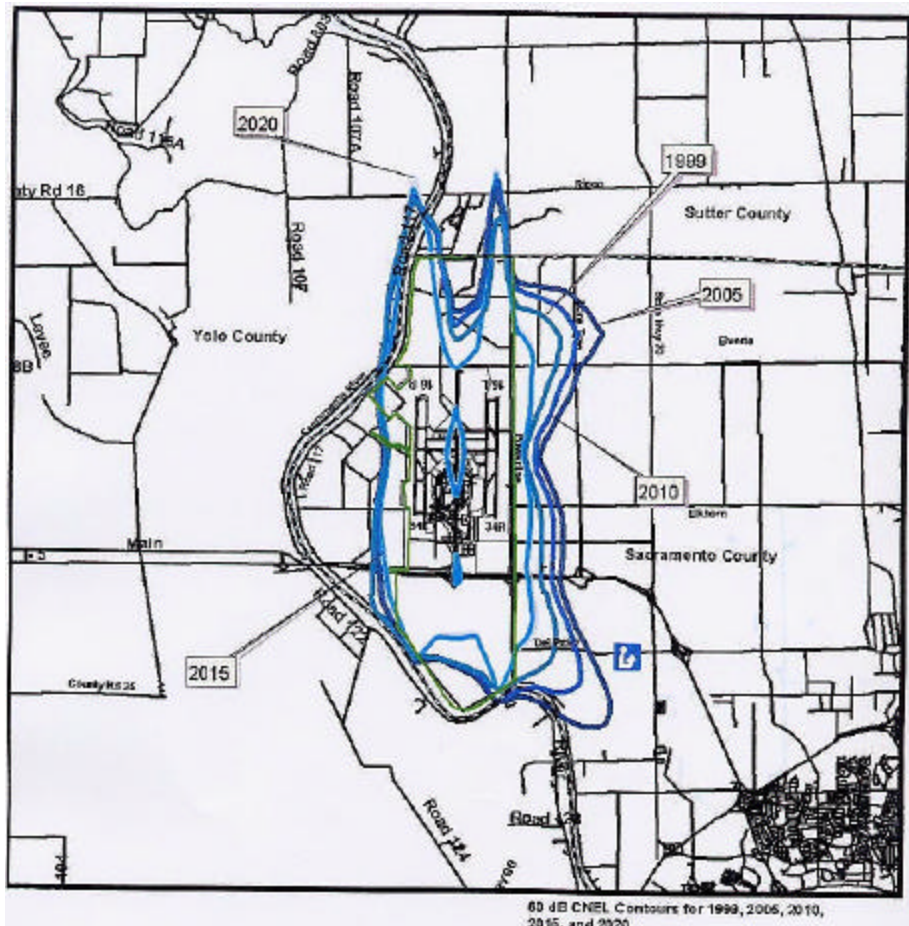


Figure 1- 60dB Contour Lines at Sacramento International Airport

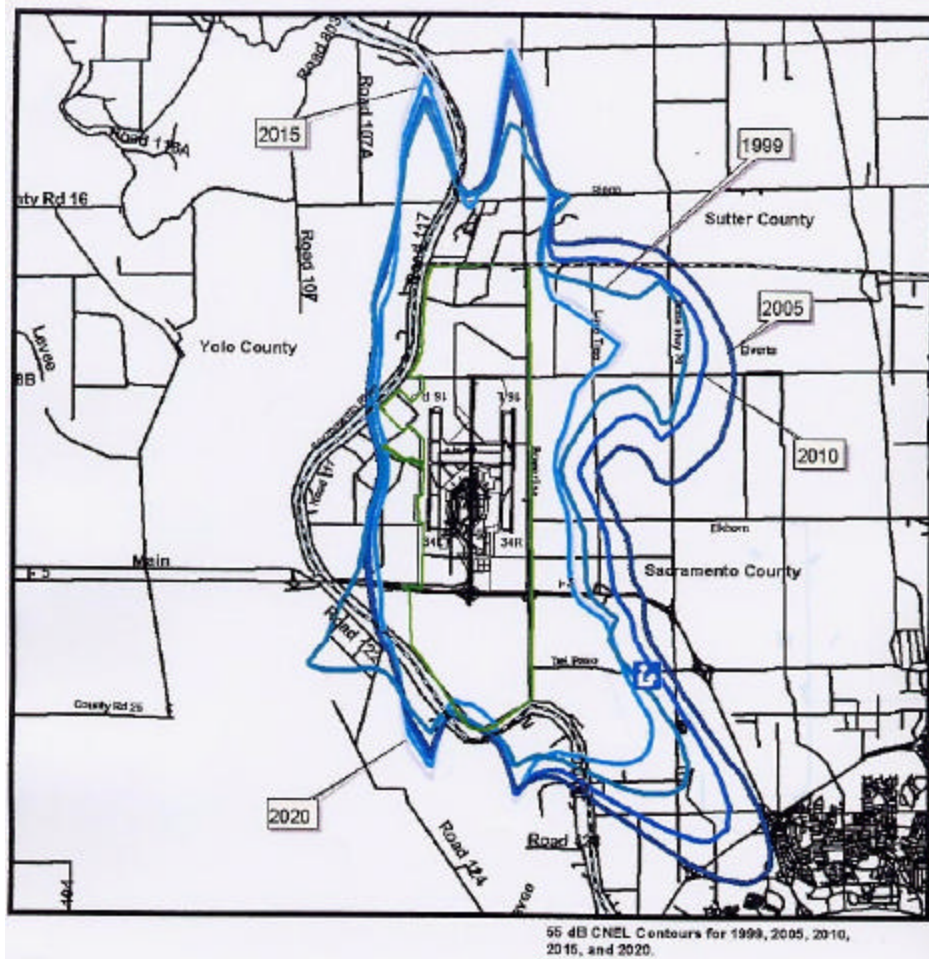


Figure 2 – 55dB Contours at Sacramento International Airport

Findings & Recommendations

Finding #1. The existing Airport Master Plan is over 20 years old and is currently being revised.

Recommendation #1. With regard to Sacramento International Airport, the Board of Supervisors should:

- a) expedite the revision and approval of the Airport Master Plan.
- b) make the growth, development and operation of Sacramento International Airport the highest planning, development, zoning and land use priority and objective for the airport's operational sphere of influence, a 5-mile radius of the airport.
- c) show on the Airport Master Plan all future runways and operations planned through 2035.
- d) work with local cities and counties surrounding Sacramento International Airport to prevent residential and commercial/industrial encroachment into flight paths of all current and planned runways.
- e) provide planning for additional Category 3 runways.
- f) enact and enforce changes needed in the General Plan to insure that no land use decision will be approved that restricts, conflicts or interferes with Sacramento International's growth, development and operation.

Finding #2. The Board of Supervisors did not include plans for Mather Field in the Airport Master Plan or in the alternative did not impose a developmental moratorium upon acquisition from the U.S. Air Force.

Recommendation #2. With regard to Mather Field, the Board of Supervisors should:

- a. expedite the development and approval of the Airport Master Plan incorporating Mather Field.
- b. make the growth, development and operation of Mather Field as a "world class" air cargo hub the highest planning, development, zoning and land use priority within a 5-mile radius of the airfield.
- c. include a requirement for two Category 3 runways.
- d. enact and enforce changes needed in the General Plan to insure that no land use decision will be approved or allowed to continue that restricts, conflicts or interferes with Mather Field's growth, development and operation.

Finding #3. There are currently no plans by the Board of Supervisors and the City of Sacramento to prevent residential construction from encroaching into the operational sphere of influence of either Mather Field or Sacramento International airports.

The Grand Jury believes it is therefore logical, relevant and instructive to consider the evaluations and determinations by state safety experts of what is considered safety and overflight hazards and disruptive noise levels when deciding on appropriate land uses. If prohibiting a school site within a 2-mile radius of an airport is required by the state, and children are at school only part of the day, it only seems logical that allowing residential construction within that zone where parents and children would live 24-hours a day, seven days a week is also inadvisable and inappropriate for exactly the same reasons.

Recommendation #3.

- a. The Board of Supervisors should require mandatory Grants of Avigation and Noise Easements in favor of the Sacramento County Airport System, Sacramento County and the City of Sacramento be obtained and required of anyone issued a permit or given permission to build within the sphere of influence (5-mile radius) of either airport.
- b. The Board of Supervisors and/or Local Agency Formation Commission (LAFCO) should require and make it a mandatory condition that a Grant of Avigation and Noise Easement be granted to Sacramento County Airport System and Sacramento County for any property located within a 5-mile radius of Sacramento International Airport or Mather Field prior to any incorporation of a new city or annexation of land by an existing city.
- c. That a requirement for disclosure of these easements be included in any property transfer, lease or other use within the operational sphere of influence of both airports.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002, from:

- **Sacramento County Board of Supervisors**
- **Sacramento City Council**
- **Director, Sacramento County Airport System**
- **LAFCO: Finding and Recommendation #3**

Folsom Sewage Spills Continue

Subject of Investigation

Investigation into the cause and responsibility for a series of sewage spills in the City of Folsom between 1995 and 2000.

Reason for Investigation

The pollution involved the American River and some of its tributaries. The Grand Jury felt that it was appropriate to investigate because there is danger of environmental damage to this source of drinking water, and to this area of recreation for a large number of Sacramento County residents.

Method of Investigation

The Grand Jury interviewed management staff and a consultant to the City of Folsom, Department of Public Works; representatives of the State of California, Central Valley Regional Water Quality Control Board (CVRWQCB); representatives of the Sacramento Regional County Sanitation District (SRCSD); and members of the Save the American River Association (SARA). Members of the Grand Jury also reviewed press reports concerning the spills and attended Folsom City Council meetings and CVRWQCB meetings.

Background

In the late 1980s the Folsom City Council adopted a general plan that allowed Folsom to grow to approximately 70,000 residents by 2010. That general plan is still in place today. By 1991-1992 the demand for housing accelerated to meet the needs of new business moving to Folsom. Recently, the Local Agency Formation Commission (LAFCO) granted to Folsom "sphere of influence" designation to acreage south of Highway 50. This sphere of influence designation gives the Folsom City Council an important voice in the use and development of this property. It will eventually lead to the annexation of the property and expansion of the city borders. The Grand Jury is unaware of any plans the Council has for this property.

In 1995 the first of a series of sewage spills occurred. Subsequent studies conducted by independent consultants contracted by the City of Folsom demonstrated the increased risk for spills if needed maintenance and repair were not provided. The city administration and city council failed to increase the maintenance and repair of its system but rather relied on increased flow capacity being installed by the SRCSD to solve the problem. This increased flow capacity was not provided until two weeks after the January 2000 spill.

Facts

The amount and frequency of sewage spills in Folsom has been well documented by public agencies as well as the press. Between 1995 and January 2000 there were at least five sewage spills from the City of Folsom that flowed into tributaries of the American River. These include the 650,000-gallon spill in 1997 and a 700,000-gallon spill in January 2000. This latest event combined with the history of a number of lesser spills culminated in the state CVRWQCB fining the City of Folsom \$700,000 for the January 2000 spill. In addition, in late spring of 2000, the CVRWQCB issued a Cleanup and Abatement Order to the City. Subsequently, on March 1, 2002, the CVRWQCB approved the issuance of a Cease and Desist Order and a National Pollutant Discharge Elimination System (NPDES) permit. The Cease and Desist Order requires the City of Folsom to put in place a system that repairs, replaces and monitors the Folsom sanitary sewage collection system. It also requires Folsom to report periodically to the Regional Water Quality Control Board the progress it is making towards updating the sewer system. The Cease and Desist Order specifies April 2009 as the final date for the elimination of all sanitary sewer overflows.

Findings and Recommendations

Finding #1. The City of Folsom is largely responsible for the sewage spills that occurred from 1995 to 2000 including the January 2000 spill that resulted in a \$700,000 fine.

Recommendation #1. The City of Folsom should fully comply with the NPDES permit and the Cease and Desist Order issued by the Central Valley Regional Water Quality Control Board. By readily accepting the actions the permit and order requires, the City of Folsom can demonstrate to its residents and those who live downstream that Folsom is committed to the best sewer system possible. These actions would also demonstrate leadership in preventing damage to the surrounding environment.

Finding #2. The City of Folsom has been granted “sphere of influence” to acreage south of Highway 50 by LAFCO.

Recommendation # 2. In view of the history of aggressive growth allowed by the City of Folsom, no action should be taken by the current city council or future city councils to annex the land south of Highway 50.

This recommendation should remain in effect until the expiration and completion of the Cease and Desist Order by the Regional Water Quality Control Board in April 2009. Should the City of Folsom want to expedite development south of Highway 50, it should fulfill the requirements of the Cease and Desist Order earlier than April 2009.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002 from:

- **Director of Public Works, City of Folsom**
- **Folsom City Council**

Grand Juror James M. Moose, Jr. recused himself from any participation in the investigation, discussion, preparation, editing, or approval of the report.

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Status of Volunteer Firefighters Serving as Members of the Board of Directors of the Wilton Fire Protection District

Subject of Investigation

Wilton Fire Protection District.

Reason for Investigation

The Grand Jury received a complaint regarding possible violations of the Health and Safety Code, the Brown Act (Government Code Sections 54950 et seq.), and other provisions of the Government Code.

Method of Investigation

Members of the Grand Jury interviewed the complainant, the Chairman of the Wilton Fire Protection District Board of Directors, and the Sacramento County Counsel, who is the Grand Jury's legal adviser. A review was also made of the District Board of Directors' meeting minutes and the Wilton Fire Protection Policy and Procedure Manual.

Background

The Wilton Fire Protection District is a special district formed under Health and Safety Code Sections 13800 et seq. The purpose of the District is to respond to all reported emergencies in the community of Wilton and surrounding area.

A Board of Directors, consisting of five members, is responsible for the management of the District. The citizens of the community elect all members of the Board. The District has approximately 42 staff, of whom 35 are community volunteers trained to respond to emergencies.

Volunteers are paid \$8.00 per call plus \$8.00 for any mandatory drill or training. Changes in salary are approved by the Wilton Fire Protection District's Board of Directors.

Facts

Three of the directors were also employed as volunteer firefighters at the time of this complaint. One has since resigned from the Board, but continues to work as a volunteer firefighter.

Government Code Sections 1090 through 1098 prohibit public officers from being financially interested in contracts made by them in their official capacity. The provisions apply to members of the Legislature, and to state, county, district, judicial districts, and city officers and employees. "District," as used in these Sections, includes any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

Government Code Sections 53227 through 53227.2 provide that a salaried employee of a local agency may not be sworn into office as an elected or appointed member of the legislative body of the agency unless he or she resigns as an employee of the local public agency. Subsection (c) of Section 53227 provides that the Section does not apply to a volunteer firefighter who does not receive a salary, or where the salary the volunteer firefighter would otherwise receive is applied directly by the local agency to the purchase of disability, life, health, or similar insurance coverage. With these exceptions, if the person does not resign, his or her employment with the agency "shall automatically terminate upon being sworn into office."

State Health and Safety Code Sections 13840 through 13857 establish the manner of selection, composition of boards of directors of fire protection districts, the manner in which board members are selected, and provide that the number of directors may be changed only by the voters of the district. These Sections specifically provide the method by which the composition and the size of boards may be changed, and the method by which board members are appointed or elected.

Section 13855 of the Health and Safety Code declares that the meetings of a district board are subject to the provisions of the Ralph M. Brown Act, Government Code Sections 54950 et seq. This Act governs meetings conducted by legislative bodies of all local agencies. Section 13856 provides that a majority of members of an entire board of directors, not simply a quorum of those present, is required in order for an agenda item to be considered. In the case of the Wilton Fire Protection District, a majority of the five elected members is required to pass an item, not merely a majority of members present. Without proper vote, an action can be nullified.

Interviews and a reading of the Wilton Fire Protection District Board of Directors' minutes indicate a disagreement as to the role volunteer firefighters play in the administration of District operations. The main question seems to be whether a volunteer firefighter, an employee of the District, should be a voting member of the District's governing board, and thereby an administrator of the District.

The Grand Jury's legal counsel further advises that a salaried employee elected or appointed to a local board may not be sworn into office unless he or she resigns as an employee of the district. A member of the board who is also receiving a salary is unlawfully holding a position on the board.

The Brown Act requires that meetings must, with some exceptions, be open to the public, who are allowed to participate. The Act also provides that the regular meeting agenda be announced in public at least 72 hours prior to the meeting. Special meetings may be called at any time, but notice must be posted at least 24 hours prior. Emergency meetings, which are rare, may be called on one-hour notice.

The Grand Jury received information that serial meetings have occurred on several occasions. "Serial" meetings are prohibited by the Act. Serial meetings are defined as a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members.

Findings and Recommendations

Finding #1. Members elected to the Wilton Fire Protection District Board of Directors continue to work as volunteer firefighters in violation of Government Code Section 53227.

Recommendation #1. The Wilton Fire Protection District Board of Directors should request the Board of Supervisors increase the composition of the current five member Board to seven members, consisting of five voting members, not volunteer firefighters, and two non-voting members who are volunteer firefighters. The two non-voting members would serve in an advisory capacity to the elected board.

Finding #2. As reflected in Wilton Fire Protection District Board of Directors' meeting minutes, certain agenda items were passed by a majority of members voting rather than a majority of elected members in violation of the provisions of Section 13856 of the Health and Safety Code.

Recommendation #2. The Wilton Fire Protection District Board of Directors should develop and adopt a written policy on Board procedures and make this policy available to all Board members and the general public. The policy should contain applicable laws and a legal interpretation of those laws by County Counsel.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002, from:

- **Board of Directors, Wilton Fire Protection District**

Transportation of Prisoners for Non-Emergency Medical Care by California Department of Corrections

Reason for Investigation

Penal Code 919(b) requires the Grand Jury inquire into the condition and management of all prisons within Sacramento County. During its investigation, the Grand Jury learned that inmates in prisons in or near Folsom were being transported by the Department of Corrections to Doctors Hospital in the City of Manteca for non-emergency medical care.

Method of Investigation

Members of the Grand Jury conducted interviews with Department of Corrections prison officials. In addition, the Grand Jury examined a summary of all trips made in the year 2001 when prisoners were transported to Doctors Hospital of Manteca. Members of the Grand Jury also reviewed the contract between the Department of Corrections and Doctors Hospital of Manteca.

Background

There are two prisons operated by the California Department of Corrections (CDC) located in Sacramento County: Folsom State Prison and California State Prison, Sacramento. The Department of Corrections has divided the state into three regions, Northern, Central, and Southern. Both Sacramento County prisons along with California Correctional Center, Susanville; California Medical Facility, Vacaville; Deuel Vocational Facility, Tracy; Mule Creek State Prison, Ione; Northern California Women's Facility, Stockton; Pelican Bay State Prison, Crescent City; Sierra Conservation Center, Jamestown; California State Prison, Solano; Valley State Prison for Women, Madera; and High Desert State Prison are located in the Northern California Region. In 1998 the Department of Corrections entered into a contract with Doctors Hospital of Manteca, located in the City of Manteca, to provide inmates of prisons located in the Northern Region of California with non-emergency medical care. Before that time, inmates needing non-emergency medical care were transported to medical facilities located near the prison where the

inmate was housed, and there was a service contract with each of these medical facilities. The Department of Corrections began to establish "cluster contracts" which were entered into by the CDC Medical Care Division to locate one full service medical facility that could serve all prisons in the region under one "Master Contract." Therefore, Doctors Hospital of Manteca has a Master Contract with CDC.

Facts

During tours of two Department of Corrections prisons located in Folsom, members of the Grand Jury were informed that all prisoners in need of non-emergency medical care and diagnostic tests including CT scans, MRIs, and X-rays, are transported to Doctors Hospital of Manteca, 80 miles away. Prisoners needing follow-up care after initial treatment for trauma, or surgery requiring continued medical care are also transported to Manteca. This is despite the fact that secure facilities for medical care are available in the cities of Folsom and Sacramento.

Upon further questioning of prison officials, and on reviewing the summary of trips presented by them, the Grand Jury learned that 442 prisoners in 36 separate trips were transported from Folsom area prisons to Doctors Hospital of Manteca during 2001. The route from Folsom to Manteca is west on Highway 50 from Folsom to Sacramento and then south on Highway 99 to Manteca. A typical round trip of 160 miles from each of the prisons takes 12 to 15 hours that includes travel and examination time. Each trip requires one sergeant and four correctional officers to provide adequate security. There is also a "chase vehicle" for each trip that is driven by one of the four correctional officers.

From information provided by prison officials, the total transportation cost of these trips can be calculated as follows:

- Four Senior Correctional officers with an hourly pay scale of \$25.62 plus a benefit factor of 34% equals a total hourly wage of \$34.34 times four officers, times 12 hours for each trip, multiplied by 36 trips for the year equals nearly \$60,000.
- One sergeant with an hourly pay scale of \$29.48 plus the benefit factor, times 12 hours, multiplied by 36 trips equals more than \$17,000. Therefore the total cost for staff salaries alone is over \$76,000 per year. The cost for overtime over eight hours per day was not included in these calculations but was almost certainly incurred.
- The operation of two vehicles at an estimated \$1.00 per mile times 160 miles multiplied by 36 trips during 2001 equals a total cost of over \$11,000. Accordingly, the total cost of this contract, including staff overtime, could amount to over \$100,000 per year.

The Grand Jury was unable to provide any comparison of medical costs with local facilities because of restrictions placed by the Department of Corrections on a review of the Master Contract.

Aside from these actual costs, there is a public safety factor to be considered when prisoners are transported miles through a highly populated metropolitan area on busy freeways that are frequently hampered by dense fog. The possibility of an escape by these prisoners, who are classified security level two (medium security) through security level four (maximum security), increases with the distance traveled away from the prison complex. Although the Department of Corrections has gone to great lengths to prevent an escape by manacled prisoners, posting correctional officers inside the van and using chase vehicles, any traffic disruption or accident may be enough to allow a prisoner to flee. One incident of escape could create public alarm and the possibility of panic.

Findings and Recommendations

Finding #1. The California Department of Corrections (CDC) does not appear to have taken into consideration all costs required to transport prisoners to Doctors Hospital in Manteca over the four years this contract has been in effect.

Recommendation #1. The Department of Corrections should factor in the correctional officer salaries and benefits, overtime payments and all vehicle expense involved in transporting prisoners to Doctors Hospital in Manteca in order to correctly determine the full cost of services incurred under this contract.

Finding #2. The CDC has not fully considered the safety of the community and the prisoners when convicted felons are transported great distances through major metropolitan areas on a regular basis.

Recommendation #2. The CDC should consider the distance from its facility, the highways to be traveled and other inherent hazards to its personnel, prisoners, vehicles and the public.

Finding #3. The CDC Health Care Service Division has not informed the local prisons of their ability to negotiate locally based medical service contracts, including services provided under the Master Contract.

Recommendation #3. The CDC Health Care Division should inform the local prisons of their ability to negotiate locally based medical service contracts, including services provided under the Master Contract.

Finding #4. The CDC Health Care Service Division advised the Grand Jury that correctional facilities have the authority to negotiate medical service contracts for similar services by local medical service providers.

Recommendation #4. The correctional facilities in Sacramento County should solicit informal bids from medical facilities that are available in and around Folsom.

Finding #5. Other modalities such as tele- and video-conferencing via closed circuit television are available whereby physicians and technicians can consult with one another over long distances.

Recommendation #5. The Department of Corrections should expand the use of tele- and video-conferencing capabilities where applicable from the prison to any local hospital, whereby physicians and technicians could communicate over long distances to perhaps mitigate the costly transportation problems.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento County Superior Court by September 30, 2002 by:

- **Director, California Department of Corrections: Findings and Recommendations #1, 2, 3 and 5**
- **Warden, California State Prison, Sacramento: Finding and Recommendation #4**
- **Warden, Folsom State Prison: Finding and Recommendation #4**

Unequal Treatment of Sentenced Female Inmates in Sacramento County

Subject of Investigation

The housing and care of female inmates in correctional facilities operated by the Sheriff's Department of Sacramento County.

Reason for Investigation

During tours of correctional facilities operated by the Sheriff's Department of Sacramento County, the Grand Jury observed that female inmates were being treated inequitably compared to male inmates.

Method of Investigation

Members of the Grand Jury visited and revisited both the Main Jail and the Rio Cosumnes Correctional Center, interviewed correctional officers, spoke to inmates at both sites, and examined documents supplied by the Sheriff's Department.

Background

Men sentenced to terms of one year or less in Sacramento County are housed at the Rio Cosumnes Correctional Center (RCCC) south of Elk Grove. Exceptions to this are men who serve their sentences in the Main Jail as inmate workers. All women sentenced to one year or less are housed at the Main Jail.

The Main Jail, located in downtown Sacramento, was opened in 1989. It was built with a designed capacity of 1,252 single cells. The jail currently houses an average of 2,150 prisoners, mostly in single cells converted to double cells. The original design was

intended for persons awaiting trial, not for those convicted and sentenced. RCCC was the primary custody facility for sentenced inmates, both male and female.

In October 1999, all sentenced female inmates in Sacramento County were moved from the Rio Cosumnes Correctional Center to the Main Jail.

Facts

Housing

The Board of Corrections, in its 1999 biennial inspection of RCCC and the Women's Detention Facility (Sandra Larsen Facility), located at RCCC, noted "crowding...so severe as to call into question any expressed concern for the women living in these units." According to Sheriff Department personnel interviewed by members of the Grand Jury, the move to the Main Jail was to have been temporary while repairs were made to the Sandra Larsen Facility.

In September 2001, 20 juvenile offenders were moved from Juvenile Hall to the Sandra Larsen Facility, where 57 juveniles are currently housed. The housing of juveniles at RCCC is a consequence of severe overcrowding at Juvenile Hall. A *Sacramento Bee* article dated September 30, 2001 quoted a state investigator with the Board of Corrections as stating that Sacramento County Juvenile Hall was, "a stone's throw away from being deemed unsuitable." Conditions were so overcrowded that the Board of Corrections believed the safety and security of wards could not be guaranteed. In response to this crisis in the County's juvenile justice system, the Sheriff's Department entered into an agreement with the Probation Department to lease the Sandra Larsen Facility for three years, through August 2004. During a tour, grand jurors were informed that the Sandra Larsen Facility housed 57 juveniles in a space designed for over 250 female inmates.

Females in the Main Jail are double-celled in spaces designed for single occupancy. Sentenced male inmates, on the other hand, are housed primarily in barracks-style quarters at RCCC. The most significant difference in living conditions between male and female inmates, however, is the number of hours women spend in their cells compared to men. In the Main Jail, many sentenced female inmates are in their cells well over 20 hours per day. Females enrolled in the limited educational classes are out of their cells for additional time. The Grand Jury found that the Main Jail is meeting its obligation to provide three hours of yard time per week - the minimum standard. The Sheriff's Department does its best to provide yard time, but scheduling all inmates to the limited yard space is a challenge. Inmates spend additional time outside their cells in the day room - at least one hour per day according to the minimum standards. Such time is limited, however, because the day room is unavailable when classes are in session.

Female inmates in the Main Jail eat all their meals in their cells. They leave their cells to pick up their trays and return to eat their meals. By contrast, nearly half the male inmates at RCCC (those who are housed in the honor barracks) are out of their barracks for most

of the day, either working or going to class or recreating outdoors. They take their meals in a central dining unit.

During a tour of the juvenile facilities in Sacramento County, members of the Grand Jury were informed that discussions are under way to utilize the Sandra Larsen Facility to house juveniles beyond August 2004, pending expansion of other juvenile facilities in Sacramento County.

Educational Opportunities

The Elk Grove Unified School District (EGUSD) Adult Education Program provides a number of academic classes to male and female inmates at the Main Jail and to male inmates at RCCC. The curriculum consists of vocational training, personal development, and treatment programs. Members of the Grand Jury were impressed with the level of dedication of teachers working in both settings and the positive collaboration between the Sheriff's Department and the School District.

Educational offerings for females at the Main Jail are limited, and the setting in which classes are offered varies dramatically between the men and women. At RCCC, the male inmates are in classrooms in separate buildings from their living quarters. At the Main Jail classes offered to the female inmates are in the day room of the living area. Grand Jury members sat in the day room and witnessed first hand the noise from women in their cells. The noise of yelling inmates and the flushing of toilets echo in the day room as teachers are conducting classes and student inmates are trying to focus on teaching materials.

Final interviews with Sheriff's Department personnel on April 16, 2002 revealed their awareness of the limited educational offerings for female inmates. Grand Jury members were told that the Department is considering the reintroduction of the General Equivalency Diploma (GED) preparatory class for inmates desiring a high school equivalency diploma. This class is currently offered to male inmates at RCCC, but is not available to sentenced female inmates at the Main Jail. Grand Jurors were also told that the computers currently used by men at RCCC would be moved to the Main Jail for use in a computer class for women. (The men at RCCC are receiving new computers for their classroom.) Grand Jurors were encouraged by the apparent desire to bring about equity between the males and females. Sheriff's Department and EGUSD Adult Education personnel are beginning to work together on a plan to provide more educational offerings to female inmates at the Main Jail. However, the lack of classrooms and space makes it difficult to bring equal offerings as long as women continue to be housed at the Main Jail.

Vocational Opportunities

Three hundred (300) sentenced males are serving their time at the Main Jail as inmate workers. By contrast, only six (6) sentenced female workers are eligible to work at the Main Jail. Sentenced male inmates at the Main Jail work daily in a variety of settings,

including booking, kitchen, laundry, grounds keeping, janitorial, and clerical work. Men are afforded the opportunity to be away from their cells and living area, while the women's work restricts them to their living area.

Male inmates housed at RCCC have many vocational opportunities. RCCC has two industrial programs: an engraving shop and a welding shop. These programs train inmates in skills that can translate to gainful employment upon completion of sentences.

In addition to the industrial programs just mentioned, the EGUSD Adult Education Program offers four vocational training programs at RCCC: cooking, general office clerical, janitorial and landscaping. The landscaping program for male inmates at RCCC is a 240-hour curriculum, which results in a certificate of completion. This certificate is of material assistance to inmates in finding work in various facets of the horticulture field, including work in wholesale and retail nurseries, landscape installation and maintenance, and turf management. The general office clerical program provides instruction in keyboarding, computer applications, telephone communications, mail procedures, and other office skills helpful in finding employment upon completion of sentence.

The cook training program is a 360-hour, three-month curriculum. It was first offered in 1992, and was available to female inmates at the Sandra Larsen Facility at RCCC. Before women were moved to the Main Jail, 25 to 35 female inmates were enrolled each session, and over 100 women per year participated in the program. When female inmates were moved downtown, they lost this opportunity. The program remains available to male inmates at RCCC. The instructor told members of the Grand Jury that this has been an extremely successful program, and has enabled many inmates to find work in hotels and restaurants upon release from custody.

Recreational Opportunities

RCCC has six full time positions for recreational technicians, but two were unfilled as of April 17, 2002. Recreation specialists provide an extensive schedule of planned indoor and outdoor activities, for the male inmates at RCCC, including softball, basketball, horseshoes, chess, handball, card tournaments, dominoes and ping pong. These activities supplement educational classes and the work activities required of inmates. Male inmates, going to and from work details, classes, and participating in planned activities are outdoors much of the day.

The Main Jail has only two recreational technician positions for female inmates, and one of these was unfilled as of April 16, 2002. Female inmates are given at least three hours of outdoor recreation time each week. This takes place in the "yard," which is an upstairs concrete area with one outside open-air wall and little sunlight.

Beyond the discrepancy in the activities and outdoor time afforded male and female inmates, RCCC, currently housing only men, is situated on a large parcel of land (40 or 50 acres) with outdoor grassy areas, more conducive to meaningful recreation than the Main Jail.

Visitation Settings

Because the Main Jail was designed as a pre-sentence detention facility, the visitation area is more limited than RCCC. The Grand Jury toured the visitation area for sentenced female inmates at the Main Jail and found that there is no physical contact allowed. Inmates and visitors are separated by a glass wall and speak to each other by phone. All floors at the Main Jail have this design except for the floor housing the sentenced male inmate workers. Inmates on this floor have a visiting area where an inmate sits at a table across from his visitor and is allowed limited contact at the beginning and end of the hour-long visit. Visitation at the Main Jail between children and their mothers is less than desirable. At RCCC, the setting is more conducive to family visits, since there is an outside visiting area and an indoor building designed for visits in inclement weather. Male inmates are able to hold their children on a limited basis in a less sterile, institutional setting.

Findings and Recommendations

Finding #1. Housing, educational, vocational, recreational and visitation opportunities for sentenced female inmates at the Main Jail are inferior to those afforded to male inmates housed at RCCC and at the Main Jail. All offerings for women at the Main Jail are significantly fewer than those afforded to women when they were housed at the Sandra Larsen Facility.

Recommendation #1.

- a. The Sheriff's Department should immediately develop an interim plan to improve housing, educational, vocational, recreational and visitation opportunities to sentenced females at the Main Jail until the women are moved to a more appropriate setting. This plan should also include additional day room and indoor recreational activities.
- b. The Board of Supervisors and the Sheriff's Department should immediately develop a plan to return sentenced female inmates to RCCC.
- c. The Sheriff's Department should explore the possibility of renovations and necessary fencing to the nearby unused Roger Bauman Facility for possible use for women as an alternative to the Sandra Larsen Facility at RCCC.

Finding #2. In correcting one problem in the juvenile justice system by using the Sandra Larsen Facility for housing juvenile offenders, the County has created another in the care and housing of female inmates.

Recommendation #2. The Board of Supervisors should recommend to the Probation Department that it seek alternative housing for juvenile offenders, in order to make the Sandra Larsen Facility once again available for the housing of female inmates.

Response Required

Penal Code Section 933.05 requires that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by September 30, 2002 from:

- **Sheriff, Sacramento County Sheriff's Department**
- **Sacramento County Board of Supervisors**
- **Chief Probation Officer, Sacramento County Probation Department**

Grand Juror Vicki Cody recused herself from any participation in the investigation, discussion, preparation, editing or approval of this report.