

Attachment C

Grand Jury Power

The U.S. Attorney Manual (Department of Justice) states to the “prosecutor”, that when in front of the grand jury,

“The prosecutor must recognize that the grand jury is an independent body.” USAM Chapter 9-11.010 – Introduction.

What? Yes, even the Justice Department knows that the grand jury is an independent body. How independent? The U.S. Supreme Court has spoken. In *United States v. Williams*, 504 U.S. 36 at 48 (1992), Justice Scalia commented:

“[R]ooted in long centuries of Anglo-American history,” *Hannah v. Larche*, 363 U.S. 420, 490 (1960) (Frankfurter, J., concurring in result), “the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. ‘[It] is a constitutional fixture in its own right.’” *United States v. Chanen*, 549 F.2d 1306, 1312 (CA9 1977) (quoting *Nixon v. Sirica*, 159 U.S. App. D.C. 58, 70, n. 54, 487 F.2d 700, 712, n. 54 (1973)), cert. denied, 434 U.S. 825 (1977).

..... Continuing.....

“In fact, the whole theory of its function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people. See *Stirone v. United States*, 361 U.S. 212, 218 (1960); *Hale v. Henkel*, 201 U.S. 43, 61 (1906); *G. Edwards, The Grand Jury* 28-32 (1906). Although the grand jury normally operates, of course, in the courthouse and under judicial auspices, its institutional relationship with the Judicial Branch has traditionally been, so to speak, at arm’s length. Judges’ direct involvement in the functioning of the grand jury has generally been confined to the constitutive one of calling the grand jurors together and administering their oaths of office. See *United States v. Calandra*, 414 U.S. 338, 343 (1974); *Fed.Rule Crim.Proc. 6(a)*. [504 U.S. 36, 48] “

Regarding a “suspicion”, even based upon “hearsay”, the grand jury can investigate:

“[The grand jury] can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” U.S. vs. Morton Salt Co., 338 U.S. 632, 642-643 (1950)
(emphasis added)

Supreme Court Justice Robert Houghwout Jackson

From Arizona:

“A county grand jury is responsible for investigating possible public offenses, including corrupt or willful misconduct in office by public officials ...[and] ...return a criminal indictment or true bill, formally accusing someone of a crime.....

.....The powers and duties of the state grand jury are similar to those of the county grand jury, except they extend statewide.”

(emphasis on corrupt government officials.)

Rebecca White Berch - Chief Justice of the Arizona Supreme Court.¹

Leo Denofrio a retired attorney coined the phrase of the grand jury as the “4th Branch of government.” In a 1906 landmark case, *Hale v. Henkel*, 201 U.S. 43 (1906) the U.S. Supreme Court wrote that the grand jury was not only capable of proceeding on what they knew (without a prosecutor), the grand jury was independent. **It was never created for the courts or the prosecutor.**

“Under the practice in this country, the examination of witnesses by a Federal grand jury need not be preceded by a presentment or formal indictment, but **the grand jury may proceed, either upon their own knowledge** or upon examination of witnesses, to inquire whether a crime

¹ **Arizona Grand Jury Responsibilities:** The above text was authorized for the Arizona State website page “Players in the Court” via forward letter by Rebecca White Berch, the Chief Justice of the Arizona Supreme Court.

cognizable by the court has been committed, and, if so, they may indict upon such evidence.” (Emphasis added)

"The grand jury have the undoubted right to send for witnesses..."

"...It has been **alleged** that grand juries are confined in their inquiries to the bills offered to them, to the crimes given them in charge, and to the evidence brought before them by the prosecutor. But these conceptions are much too contracted; they present but a very imperfect and unsatisfactory view of the duty required from grand jurors and of the trust reposed in them. **They are not appointed for the prosecutor or for the court; they are appointed for the government and for the people;** (Emphasis added)

In *Hale vs. Henkle*, the court referenced a previous case, *Frisbie v. United States*, [157 U. S. 160](#), (1895) where Justice Brewer wrote:

"But, in this country, it . . . is for the grand jury to investigate any alleged crime, no matter how or by whom suggested to them, and, after determining that the evidence is sufficient to justify putting the party suspected on trial, to direct the preparation of the formal charge [presentment] or indictment."

Notice, I'm going back in time with these court cases. It is important to see the thinking of judges in the late 1700's, near the intent of the grand jury investigating and indicting (or presenting) the soldiers of the 1770 Boston Massacre. Here is a charge to a grand jury by a federal judge in 1795:

*"As this is a point of law in which the rights of man are deeply interested, I shall detain you one minute longer, was this territory to be honored with a visit from our illustrious and well beloved **President** [George Washington] who is known to have a soul elevated above all that is mean; nevertheless as he is human and it is the lot of humanity to err; suppose he should fall beneath himself as to strike, beat, wound and commit a violent battery on the body of a poor citizen, while you were sitting and within your knowledge, would it not be your duty to make a **presentment**? Certainly it*

would, if you did not, he might pity you as men; but as cowards he would despise you.”²

Judge William Goforth, NW Territory, 1795

John Jay was the first Chief Justice of the United States, and he ordered the convening of grand juries, and then charged them personally. In 1790 he charged grand juries in the Eastern federal Circuit, including Connecticut, Massachusetts, New Hampshire and New York. These charges were as follows:

“We are now a nation, and equally becomes us to perform our duties as to assert our rights.....Direct your attention also to the conduct of the national officers, and let not any corruptions, frauds, extortions, or criminal negligences, with which you may find any of them justly chargeable, pass unnoticed. In a word, gentlemen, your province and your duty extend as has been before observed to the inquiry and presentment of all offences of every kind committed against the United States in this district. ... if in the performance of your duty you should meet with difficulties, the court will be ready to afford you proper assistance.”³ -- John Jay, 1st Chief Justice of the U.S. Supreme Court

Notice his charge directed at “national officers”, and to look for corruption... then the grand juries duty to inquiry and author a “presentment”?

What is displayed then is that grand juries hold the power and duty to investigate, including calling forth witnesses in their investigation. For example, in California, the Civil Grand Jury can leave the grand jury room to investigate county offices. This is done in small committees of two or three grand jurors. They can even work on typing up a report of their findings at home, then, bring it to the main grand jury body. I find no restrictions in California Statutes that they can only do their work in the grand jury room.

The Statutes of California discuss this power further in **Attachment D**

² <http://www.amazon.com/Gentlemen-Grand-Jury-Surviving-Colonial/dp/1594608156> Page 732

³ The charges of Chief Justice Jay to the Grand Juries on the Eastern circuit at the circuit Court's held in the Districts of New York on the 4th, of Connecticut on the 22nd days of April, of Massachusetts on the 4th, and of New Hampshire on the 20th days of May, 1790."
<http://www.johnjayinstitute.org/resources/publications/john-jays-charge-to-the-grand-jury-of-ulster-county-1777-and-charge-to-the/>

Attachment D – California State Statutes on the Power of the Grand Jury

California Statutes (2012): (Emphasis added in some locations by underlined and bold text. Notes added by “Note:”)

Note: The Statutes apparently display that there appears to be no distinction of the difference between the county Civil Grand Jury and the Criminal Grand Jury. It appears that if only one grand jury is convened in the county as a Civil Grand Jury, then that grand jury may also issue an indictment. Apparently, when there are two grand juries (Civil & Criminal Grand Juries, the Civil Grand Jury can't issue an indictment. However, the Civil can issue a “Report”, or a “Presentment.”) It is important to know this, as the state statutes do not distinguish any other difference in the power of either (Civil or Criminal) Grand Juries. Ie... they have the same power!

California Statutes require all individual grand jury members to make an oath, which includes, “...*will diligently inquire into, and true presentment[s] make, of all public offenses against the people of this state....*” (Calif. P.C. §911)

Calif. P.C. §892 “The grand jury may proceed against a corporation.”

Note: electronic election machines, and all appurtenances (including software) are typically manufactured/ maintained by corporations.

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

Each grand jury or, if more than one has been duly impaneled pursuant to Sections 904.5 to 904.9, inclusive, one grand jury in each county, shall be charged and sworn to investigate or

inquire into county matters of civil concern, such as the needs of county officers, including the **abolition** or creation of offices for, the purchase, lease, or sale of equipment for, or **changes in the method or system** of, performing the duties of the agencies subject to investigation pursuant to Section 914.1.

(Emphasis added)

§917: The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

Note: - QUESTION - Is ballot tampering in any way, a public offense? (Including electronic tampering?)

§919: (c) The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county.

Note: Although the grand jury may investigate willful misconduct of Colleen Setzer (Siskiyou County Clerk), Petitioner does not believe that Ms. Setzer has committed any willful or corrupt misconduct in office. **Petitioner compliments Colleen Setzer in her hard work, openness and integrity.** The problem is that Colleen Setzer may not be fully aware of the potential for

electronic election fraud. In addition, the grand jury can and should make a statement of their findings of Ms. Setzer to protect her integrity.

§921: The grand jury is entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

§925: The grand jury shall investigate and report on the **operations**, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the **operations**, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 926.

(Emphasis added above. Bold on "Operations", which include vendors under contract/ use by the County Clerk's office. Ie.... electronic election machines as made/ maintained by corporations.)

§928: Every grand jury may investigate and report upon the needs of all county officers in the county, including the **abolition** or creation of offices and the **equipment for**, or the method or system of performing the duties of, the several offices. Such investigation and report shall be conducted selectively each year. The grand jury shall cause a copy of such report to be transmitted to each member of the board of supervisors of the county.

(emphasis added on "Abolition"... of the "Equipment for")

QUESTION: Does P.C. **§928** provide the authority for the CIVIL Grand Jury to investigate the "equipment for" the County Clerk to perform their duties? Ie... electronic voting equipment?

§936: When requested so to do by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury.

FROM THE COUNTY WEBSITE IN 2012: While it is a part of the judicial system [Arguably not, see *U.S. vs. Williams*], a civil grand jury is an entirely independent body. Judges of the Superior Court, the district attorney, the county counsel, and the state attorney general may act as its advisors *but*

cannot attend jury deliberations nor control the actions of the Grand Jury.
Penal Code § 934, 939

Source: <http://www.siskiyou.courts.ca.gov/Page.asp?NavID=508>

(Note: Source may have been relocated.)

[Note: The below is not from the website]:

*“It would therefore appear that the office of the district attorney and that of the grand jury are not **interdependent** but each supreme in their respective spheres.”*

In the Matter of the Application of MAURICE PEART for a Writ of Habeas Corpus

Crim. No. 1415

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

5 Cal. App. 2d 469; 43 P.2d 334; 1935 Cal. App. LEXIS 1091

March 22, 1935, Decided