

Our grand juries: Their strengths, weaknesses

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(First of two parts.)
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One of the institutions the American democracy has devised to allow ordinary citizens to monitor the functioning of their local governments is the county grand jury.

Descended from the grand jury system that developed in England through the centuries as a safeguard against arbitrary actions by the king's men against the common citizenry, most local grand juries today — particularly in California and certainly in Santa Cruz County — have as their principal function the investigation of the conduct of local governmental bodies.

The grand jury's function as a body where criminal indictments are brought is withering away under the fire of critics who say it is a function that's unfair to the accused. When a prosecutor seeks an indictment before a grand jury, the accused has no right either to be present or to be represented by counsel. As a result, although an indictment is itself no presumption of guilt and the accused has full rights to a regular court trial on the charges, courts have now ruled that the accused can demand a preliminary hearing — at which he or she is entitled to full representation — to determine whether charges are to be brought.

In Santa Cruz County, no district attorney has taken a criminal case before a grand jury for five years. That has meant that the grand juries in this county have devoted their full attention to what was once only one of their duties: investigating local government.

Hardly anyone objects to the concept of opening government books to a panel of 19 ordinary citizens every year. It is part of the tradition of viewing the people and their government as indivisible, and grand juries have an honorable history of uncovering graft, waste and other forms of misconduct in county and city governments through the years.

But the very broadness of powers granted to grand juries, combined with the looseness of the structure and the

frequent lack of expert knowledge among the jurors, increases the possibility of faulty investigative techniques that could lead to serious abuses, including unfair accusations against institutions and individuals.

The county grand jury, for example, has no investigative staff (although the law authorizes the hiring of experts in certain situations, this is seldom done for budgetary reasons) so that whatever expertise is available to a particular grand jury must come from among the jurors themselves.

The jury's "investigations" therefore are usually confined to questioning or interviewing persons who have been involved in one way or another with whatever or whomever is being investigated. Such interviewing is frequently done quite informally — sometimes with the full jury present; at other times by committees of as few as two jurors; and sometimes by just an individual grand juror.

It's a little as if, in a regular court trial, the judge and the lawyers for both sides were to leave the courtroom and the jury was to summon whatever witnesses it desired to hear, or go out in groups or singly and interview whomever it pleased.

Such a procedure is an excellent way to obtain information, but some critics doubt that it provides the wherewithal to determine the quality of that information.

In certain respects, indeed, grand juries have an air of the star chamber about them. Jurors are sworn to secrecy so that accusations can be brought against institutions or individuals anonymously. While this protects witnesses against retaliation, it also opens the way for false accusations under cover of anonymity.

This potentiality for abuse is recognized in law and the grand jury guidelines of Santa Cruz County take particular cognizance of the problem.

"To avoid unfounded implications of public officials appearing before the grand jury," those guidelines say, "the jury shall conduct civil investigations with a minimum of publicity and with extreme caution."

But witnesses themselves cannot be sworn to secrecy and a certain amount of leakage can usually be expected to occur from the grand jury, so that the confidentiality is often more theoretical than real.

Some people believe that the opportunity for abuse by grand juries has been increased by recent efforts to "democratize" the institution. For years county grand jurors were selected solely by judges, with few or no restrictions on their prerogatives of choice. The result was often grand juries composed mostly of white, upper middle class males with such occupations as banker, accountant, insurance agent, etc., and whose social milieu was the same as the appointing judge's.

While this system may have been more likely to produce a grand jury with people of expertise in such fields as finance and budgeting than a more random selection would, it also resulted incontestably in grand juries of a narrow social and political outlook.

Today, grand jurors in Santa Cruz County are chosen from a pool of names drawn from the voter rolls and the lists of the state Department of Motor Vehicles. But the appointing judge still retains the right to select from that huge pool a certain number of names, usually in the neighborhood of 30. And it is from that limited pool of 30 or so that the names of the 19 people who will actually serve on the grand jury for that year are randomly drawn. (Grand juries are impaneled in June of every year and serve for a year).

As a result of that system, county grand juries in recent years have had on their rosters more women and minorities, more ordinary working people and fewer businessmen than in the past.

At the same time, local government has grown more complex, imposing an even greater burden on the talents and time available to any grand jury seeking to examine its multiple functions.

It should be obvious also that one jury can differ radically from another both the competence and diligence

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membership; that because the life of an individual grand jury expires after a year there is often little or no continuity in its work; and that there is opportunity in the loosely structured system for bias on the part of one or more grand jurors to color an investigation or report.

With all that, the grand jury as an institution is defended by most of those who are familiar with its functions, including some who have been the targets of its investigative powers, as, if nothing else, a necessary "safety valve" for public discontent with one or another of the actions of local government.

Superior Court Judge Harry F. Brauer, who was the supervising judge of the just-disbanded 1981-82 grand jury, has appointed many grand juries and recognizes the opportunities for abuse in the system. But he believes the system to be basically sound and considers the 1981-82 grand jury — which has issued some of the most controversial reports of recent years — to be one of higher than usual caliber.

Judge Brauer said he always instructs his grand juries not to abuse their powers and warns them not to go off on individual tangents but to act always as "a collegiate body" — an injunction the just-expired grand jury has been accused of violating.

But the judge actually has very little control over the jury's activities, and none over its choices of investigation. In effect, he is little more than an adviser and a sort of

editor of the jury's report in that he scrutinizes it for possible legal violations.

Robley Levy, the chairman of the county Board of Supervisors, is able to look at the grand jury from a perspective not shared by her fellow supervisors. Mrs. Levy served on the 1974-75 grand jury, so that she was an investigator before becoming one of the investigated.

"I think it is an important institution," Mrs. Levy. But she said it has its limitations and it is vital for grand juries at any given time to recognize that.

"What we encountered," she says of her grand jury experience, "was a recognition of how ignorant we were" of how county government actually functioned and of the mandates and limitations under which it labored.

But she said that even if she disagrees with the methods or conclusions of

a particular grand jury, she considers the institution a positive force in the community.

"I think it's important for the grand jury to be there as an independent panel to be available to the community," Mrs. Levy said.

Supervisor Gary Patton, whose length of service on the board is exceeded only by that of Dan Forbus, agrees.

"I've always supported the concept of having 19 ordinary citizens who are willing to spend a year out of their lives in a public service," Patton said.

He said that "government doesn't really investigate itself" so that the existence of a citizens' body that keeps an eye on government conduct is a valuable part of a government by the people.

But he said the grand jury should be viewed in the context that reflects its limitations as well as its positive aspects.

Patton, who is also a lawyer, said that people should realize that just because the grand jury says something is so that doesn't always mean it's so.

He noted that some grand jury reports reflect sloppy investigative techniques and others reveal a lack of knowledge about how a particular unit of government works. For those reasons, he said, the chief value of a grand jury in its investigative functions often is simply to bring into the open complaints against various government activities so that they can be investigated thoroughly.

"The real significance of a grand jury often is it's a sort of safety valve" for public complaints, the Santa Cruz supervisor said.

But Patton agreed there is "a real potential for abuse" in the grand jury system and said that the public should recognize the weaknesses that are inherent in the system.