



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2012-2013

APRIL 25, 2013

FINAL REPORT

ON THE INTEGRITY OF GRAND JURY INVESTIGATIONS

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NAPA COUNTY GRAND JURY

P.O. BOX 5397
NAPA, CALIFORNIA 94581

April 25, 2013

The Honorable Mark S. Boessenecker
Supervising Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, California 94559

Re: 2012-2013 Grand Jury Final Report: On the Integrity of Grand Jury Investigations

Dear Judge Boessenecker,

Pursuant of Section 933 (a) of the California Penal Code, the 2012-2013 Napa County Grand Jury submits its final report: On the Integrity of Grand Jury Investigations.

Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury, to pursue the interests of the residents of Napa County.

This is first in a series of final reports we will be issuing during our term. I would like to acknowledge the dedication of the Grand Jurors, which our report reflects.

Respectfully submitted,

Victor J. Connell
Foreperson
2012-2013 Napa County Grand Jury



NAPA COUNTY GRAND JURY

P.O. BOX 5397
NAPA, CALIFORNIA 94581

April 25, 2013

To the Residents of Napa County:

Our first Grand Jury Final Report deals with the integrity of the Napa County Grand Jury process.

During the course of executing our statutory responsibilities, the 2012-2013 Napa County Grand Jury conducted extensive inquiries and investigations into the operations of certain agencies and departments within the Cities and County of Napa. By law, these investigations are confidential and will remain so either until the Grand Jury issues a Final Report or the Superior Court releases those concerned from the bounds of confidentiality.

While performing its responsibilities the Grand Jury became aware that certain witnesses appearing before it had violated the secrecy admonition applicable to its proceedings. This conduct created an atmosphere within the concerned departments which caused other witnesses to feel pressure, apprehension and intimidation, resulting in their being less than forthcoming in subsequent testimony. The witnesses' violation of the admonition of confidentiality created an atmosphere which impeded the work of the Grand Jury.

The Napa County Office of County Counsel has reviewed this final report. The Napa County Superior Court Presiding Judge, pursuant to California Penal Code Section 933(a), has found that this report complies with California Penal code Part 2 Title 4. This report has been accepted and filed as a public document by the County Clerk.

Copies of this report are available for review in the Napa City-County Library and online at www.napa.courts.ca.gov (follow the link to the Grand Jury).

We hope you find this report informative. It is an honor and privilege to serve you during our 2012-2013 Grand Jury term.

Respectfully submitted,

The 2012-2013 Napa County Grand Jury

ON THE INTEGRITY OF GRAND JURY INVESTIGATIONS

SUMMARY

During the course of executing its statutory responsibilities, the 2012-2013 Napa County Grand Jury conducted extensive inquiries and investigations into the operations of certain agencies and departments within the Cities and County of Napa, some of which have or will result in formal written reports and others will not. By law, these investigations are confidential and will remain so either until the Grand Jury issues a Final Report or the Superior Court releases those concerned from the bounds of confidentiality. While performing its responsibilities the Grand Jury became aware that certain witnesses appearing before it had violated the secrecy admonition applicable to its proceedings. This conduct created an atmosphere within the concerned departments which caused other witnesses to feel pressure, apprehension and intimidation, resulting in their being less than forthcoming in subsequent testimony. The witnesses' violation of the admonition of confidentiality created an atmosphere which impeded the work of the Grand Jury.

BACKGROUND

In California, unlike most other states, a grand jury has three functions: to weigh criminal charges and to determine whether indictments should be returned (Penal Code 917); to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office (Penal Code, 922); and to act as public "watchdog" by investigating and reporting upon the affairs of local government and its subordinate agencies and commissions to determine whether those operations are being conducted efficiently and in the public interest (Penal Code 919). In the County of Napa, its annually empanelled Grand Jury primarily serves the second and third functions.

The proceedings of grand juries, whether acting in a civil or criminal function, are, by law, secret. Its proceedings are closed to the public (Penal Code, 915, 939, 939.1), and grand jurors take an oath not to disclose any evidence brought before the grand jury under penalty of misdemeanor (Penal Code, 911). Witnesses appearing before a civil grand jury, whether voluntarily or by subpoena, are also bound by the secret nature of the proceedings. At the outset of testimony, every witness is admonished not to reveal which questions were asked or what responses were given or any other matters concerning the nature or subject matter of the grand jury's investigation. (Opinion of Atty. Gen. 02-1108). The California Supreme Court has affirmed the strong historic policy of preserving grand jury secrecy (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal. 3d 1162).

The justification for the secrecy requirement is that in fact, an effective "watchdog" investigation can only be conducted if witnesses are free to testify before the grand jury without fear of disclosure, recrimination, intimidation or retaliation.

The Attorney General has concluded in a persuasive public opinion (Opinion of Atty. Gen. 02-1108) that a violation of the admonition given to a witness by a grand jury, sitting in its civil watchdog capacity, may constitute contempt of court. As was stated in another opinion of the Attorney General:

A grand jury is a judicial body (citations omitted). Grand Jurors are officers of the court (citations omitted), and the jury itself is a component part to the superior court (citations omitted). The relationship and unity of the court and jury is such that contempt of the grand jury is contempt of the superior court (citations omitted). (*25 Ops. Cal. Atty. 259 (1955)*).

DISCUSSION

In following its sworn responsibilities, the 2012-2013 Grand Jury, among other things, conducted extensive investigations into the operations of several City and County agencies and departments. In connection with these investigations a number of department employees, supervisory and otherwise, were interviewed by the Grand Jury. Some were asked to bring department records with them, pursuant to the Grand Jury's power to inspect public records.

Prior to the commencement of an interview each interviewee was given the following admonishment which has been approved by the California Attorney General:

You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court. (Opinion of Atty. Gen. 02-1108).

Each interviewee was further asked whether he/she understood the admonition. The reply in every instance was in the affirmative.

As certain investigations progressed and in subsequent interviews of individuals, it became quite obvious to the Grand Jury that the admonition was violated. Certain individuals in City or County departments, who were sometimes interviewees themselves, were in flagrant and knowing disregard for the secrecy of the investigation and the binding nature of the admonition by pointedly interrogating co-workers about questions the Grand Jury asked, what answers they had given, who spoke about a certain subject, what records were disclosed and the like. The employees so interrogated subsequently expressed to the Grand Jury a deep concern about the conduct of these individuals, particularly when the persons so questioned served in a supervisory capacity over them. It was stated that the inappropriate conduct created an

environment of intimidation and fear of retaliation for their lawful cooperation with the Grand Jury investigation. This Grand Jury has found its investigation impeded by this contemptuous disregard of the secrecy admonition.

Though we find the evidence to be ample and compelling, this Grand Jury has chosen not to apply to the Superior Court for the issuance of a contempt citation against those persons who have willfully violated the lawful secrecy admonition of this Grand Jury. Rather, we have chosen to issue this report with its attendant recommendation, in the hope that through example and education, public officials and employees might better understand their ethical responsibilities towards the Grand Jury in its "watchdog" capacity and to the public both serve.

While violations of the secrecy admonition were not endemic throughout the various public agencies, they happened enough times to seriously impede the Grand Jury's investigations. It is clear that if a grand jury is to fulfill its statutory mandate to investigate local agencies of government, it must be able to do so in an environment where witnesses interviewed in its quest for truth are free to speak without fear, restraint or intimidation. It is only in this way that the full truth can be ascertained and the public assured of the efficacy of its government. County and citywide training of employees regarding grand jury confidentiality rules would be an important step in remedying this problem.

FINDINGS

- F1.** Certain witnesses interviewed by the Grand Jury, knowingly, repeatedly and willfully, violated their lawful secrecy admonition.
- F2.** The conduct of the witnesses in repeatedly violating the Grand Jury's lawful secrecy admonition created an atmosphere of apprehension and intimidation which impeded the proper investigation of the Grand Jury.
- F3.** The conduct of the witnesses who violate the secrecy admonition is punishable as contempt of the Superior Court.

RECOMMENDATION

- R1.** That the County Board of Supervisors, the City Council of each incorporated jurisdiction, the County Counsel and every publicly elected official not under the authority of the foregoing provide instruction to all county employees within their jurisdiction regarding their duties and responsibilities towards the grand jury process and that said instruction be completed prior to the end to this calendar year.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from as follows:

From the following individual:

- Napa County Counsel: **R1.**

From the following governing bodies:

- Napa County Board of Supervisors: **R1.**
- Napa City Council: **R1.**
- American Canyon City Council: **R1.**
- St. Helena City Council: **R1.**
- Calistoga City Council: **R1.**
- Yountville City Council: **R1.**

From the following elected officials:

- Napa County Auditor: **R1.**
- Napa County Assessor, Recorder-County Clerk: **R1.**
- Napa County Tax Collector: **R1.**
- Napa County District Attorney: **R1.**
- Napa County Sheriff: **R1.**