

## **Government & Administration Committee**

### ***Procedures for the Board of Supervisors in Responding To Grand Jury Final Reports***

#### **Reason for the Report**

The 2001/2002 El Dorado County Grand Jury ("Grand Jury") has generally been pleased with the responsiveness of the members of the current Board of Supervisors in considering its concerns. The Grand Jury, however, is dissatisfied with the process followed by the Board in connection with its adoption of a Draft Response to the Final Report of the 2000/2001 El Dorado County Grand Jury ("Previous Grand Jury"), and with the manner in which the Board's ultimate Response to that Final Report was modified and then finalized. In particular, the Grand Jury is dissatisfied with the Board's failure, in several instances, to follow its own policies and procedures. Accordingly, the Grand Jury elected to inquire into methods and procedures whereby the response process can be improved.

#### **Scope of the Investigation**

The Grand Jury reviewed the following:

- Sections 933 and 933.05 of the California Penal Code;
- Section 703 of the El Dorado County Charter;
- Policy No. A-11 of the El Dorado County Board of Supervisors ("Board");
- Final Report of the Previous Grand Jury;
- Responses of public entities other than the County of El Dorado ("County") to that Final Report;
- Responses of the County's elected department heads to that Final Report;
- Draft Response of the Board to that Final Report, as disclosed in the Board's agenda packet for its September 18, 2001 regular meeting;
- Undated, unaddressed, unsigned letter-memorandum commenting on the contents of that Draft Response;
- Motion adopted by the Board at its September 18, 2001 regular meeting, directing further study of the Draft Response in light of that letter-memorandum;
- Memorandum from the El Dorado County Counsel ("County Counsel") to the Board, dated November 1, 2001;
- Conformed Agenda of the regular meeting of the Board on November 6, 2001; and
- Letter dated December 17, 2001, to the Honorable Suzanne Kingsbury, Presiding Judge of the El Dorado County Superior Court ("Presiding Judge"), from Penny Humphreys, Chair, Board of Supervisors.

The Grand Jury also considered reports of discussions which occurred at a meeting on October 5, 2001, between the Foreman and one member of the Grand Jury, the County's

Interim Chief Administrative Officer ("CAO"), County Counsel, and a board committee consisting of two of its members.

Members of the Grand Jury also attended the regular meetings of the Board on September 18, October 16, and November 6, 2001, at which there were agenda items addressing the subject of the Board's Response to the Previous Grand Jury's Final Report.

Members of the Grand Jury also attended a special workshop meeting conducted by the Board, dealing with the subject of its Response to the Final Report of the Previous Grand Jury, on November 5, 2001.

### **Findings**

F1: Section 933(a) of the California Penal Code ("Penal Code") provides, in part, as follows:

"Each grand jury shall submit to the presiding judge of the superior court a final report of hits findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors ... ."

F2: Section 933(c) of the Penal Code provides, in part, as follows:

"No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls."

F3: Penal Code § 933(d) provides that, as used in Section 933, the term "agency" includes a department.

F4: For the reasons stated in Findings F5 through F8, it was the view of the previous Grand Jury, and is the view of this Grand Jury, that the word "elected" as used in Section 933(c) of the Penal Code applies only to the term "county officer," and does not apply to the term "agency head."

F5: Section 933.05(b)(3) of the Penal Code provides that if a response to a grand jury's recommendation is that the recommendation requires further analysis, the response

shall include a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This requirement of agency or department head action is not limited to elected persons. The reference to “including” governing bodies of public agencies “when applicable” implies that the requirement may be imposed upon both non-elected agency or department heads and the governing bodies of those agencies.

- F6: Section 933.05(c) of the Penal Code provides, “If a finding or recommendation of the grand jury addresses budgetary or personnel matters or a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, ... .” (Emphasis supplied.) Thus, Section 933.05(c) expressly addresses only county agencies or departments “headed by an elected officer.”
- F7: The difference in language between Section 933.05(b)(3) and Section 933.05(c) of the Penal Code, by referring to elected officers in the latter but not to elected agency or department heads in the former, implies that non-elected department heads may be required to respond, directly to the Presiding Judge, at least to some portions of some Grand Jury Final Reports.
- F8: Further, the use of the word “or” rather than of the word “and,” in Section 933(c) of the Penal Code, implies that the terms “county officer” and “agency head” refer to separate and distinct categories of respondents, and that the word “elected” is intended to refer only to the description which it immediately precedes and not to all descriptive terms within the sentence in which it appears.
- F9: Even ignoring the matters set forth in Findings F1 through F8, however, it appears to be the view of the Board of Supervisors that the word “elected” applies to both the terms “county officer” and “agency head.” The Grand Jury believes this view to be incorrect.
- F10: Section 703 of the El Dorado County Charter provides, “The Board of Supervisors shall establish the format for county responses to the Grand Jury Report.”
- F11: Board Policy No. A-11, “Responding to Grand Jury Reports,” has been adopted “to specify a uniform procedure and a standard format for all departments to follow when responding to the annual Grand Jury Report.” Among the stated benefits anticipated from Board Policy No. A-11 are the following:
- Provision to the Board of a structurally consistent document;
  - Assistance to appointed department heads and the CAO in providing appropriate draft responses;
  - Assistance to the Board in evaluating the proposed responses;
  - Ensuring continuity in the Grand Jury process from year to year; and
  - Assistance to the Grand Jury in tracking its findings and recommendations.

F12: Board Policy A-11 contains the following relevant requirements and provisions:

- Paragraph 1 requires each county appointed department head to prepare responses in accordance with the Board Policy A-11 format, and to submit those responses to the CAO within 45 days from the issuance of the Grand Jury Report.
- Paragraph 2 requires that the CAO, after receiving the responses of the appointed department heads, prepare a draft response, and that both the departmental responses and the draft response be presented to the Board. No time period for the preparation of that draft response, or for the presentation of the departmental responses and the draft response to the Board, is specified in Board Policy A-11.
- Paragraph 3 provides that the members of the Board “shall be allowed at least one week to review the departmental responses and to comment on the draft response prior to including it on their agenda.”
- Paragraph 4 provides that, after the review and comment period described in Paragraph 3 has elapsed, the CAO shall:
  - Prepare a proposed Final Draft Response and a proposed letter of transmittal from the Board Chairman to the Presiding Judge of the Superior Court (“Presiding Judge”), and
  - Cause copies of the Final Draft Response to be (1) distributed to all members of the current and immediate past grand juries and (2) made available to the public in the office of the Board Clerk.
- Paragraph 5 provides that members of the immediate past Grand Jury “shall be invited to participate in the public hearing review of the responses to the Final Grand Jury Report which they offered.”
- Paragraph 8 requires that “responses received from the elected department heads ... be appended to the Board’s final response.”
- Paragraph 9 provides (1) that the CAO shall send correspondence to all entities identified in the Grand Jury Report alerting them to their reporting obligation under Section 933(c) of the Penal Code, (2) that the CAO shall request a courtesy copy of their response, and (3) that such courtesy copies shall be made available for public viewing in the Board’s office.
- Paragraph 10-E provides, where a response to a recommendation is that further analysis is required, that there be a detailed explanation stating the scope and parameters of the study with a time frame stating when, not to exceed six (6) months from the date of publication of the Grand Jury’s report, the matter will be prepared for discussion and disposition.

F13: The previous Grand Jury publicly issued its final report on June 27, 2001. As required by Section 933.05(f) of the Penal Code, copies of that final report were delivered on June 25, 2001 to all persons and entities designated as “Respondents,” including but not limited to the members of the Board, 48 hours prior to public release. Some department heads, both elected and non-elected, were designated in that report as “Respondents.”

- F14: Numerous responses from respondents who were elected county officers or elected department (agency) heads were received by the 2001/2002 El Dorado County Grand Jury (“this Grand Jury”) in July and August, 2001.
- F15: Numerous responses from respondents who were public agencies and/or entities other than the County were received by this Grand Jury in July and August 2001.
- F16: No responses were received by the Presiding Judge or this Grand Jury at any time from respondents who were neither elected county officers nor elected department (agency) heads.
- F17: It was the view of the previous Grand Jury, and is the view of this Grand Jury, that responses and/or proposed responses to the previous Grand Jury’s Final Report, from respondents who were both elected and non-elected county officers or elected department (agency) heads, were required to be submitted to the Presiding Judge, on or before August 24, 2001.
- F18: It was the view of the previous Grand Jury, and is the view of this Grand Jury, that responses and/or proposed responses to the previous Grand Jury’s Final Report, from respondents who were both elected and non-elected county officers or department (agency) heads, were required to be submitted to the Board, on or before August 24, 2001.
- F19: Responses from elected county officers or elected department heads to the previous Grand Jury’s Final Report were submitted to the Board on some date, unknown to this Grand Jury, prior to preparation by county staff and submission to the Board of the Draft Response on September 7, 2001.
- F20: Proposed responses to the previous Grand Jury’s Final Report from respondents who were neither elected county officers nor elected department (agency) heads were not submitted to the Board. (See Finding F12-b.)
- F21: Proposed responses to the previous Grand Jury’s Final Report from respondents who were neither elected county officers nor elected department (agency) heads have never been submitted either to the Presiding Judge, the previous Grand Jury, or this Grand Jury. (See Finding F12-d.)
- F22: The Draft Response to the previous Grand Jury’s Final Report, prepared by the CAO, was not submitted to the Board until September 7, 2001. That draft response was not accompanied by proposed responses from respondents who were neither elected county officers nor elected department (agency) heads.
- F23: The Draft Response to the previous Grand Jury’s Final Report was not made available to the public until it was included within the publicly available Board

Agenda Packet for the Board's September 18, 2001 regular meeting on September 13, 2001.

- F24: The Board was required by Section 933(c) of the Penal Code, and Board Policy A-11, to submit its final response to the Previous Grand Jury's Final Report on or before September 23, 2001.
- F25: Insufficient time existed between September 7, 2001 when the Draft Response was submitted to the Board, and September 18, 2001 when the Board was scheduled to review, modify, change and/or adopt the Draft Response as its own Response, for the members of the Board to carefully and critically review and assimilate the contents of the Draft Response.
- F26: On September 17, 2001, an unaddressed, undated, and unsigned letter-memorandum ("Undated Letter") was delivered to a member of the Board. In summary, that Undated Letter asserted that the Draft Response appeared to contain and consist of responses from county staff rather than responses from the Board. The Undated Letter also asserted that, by adopting the Draft Response in response to the previous Grand Jury's Final Report without careful and critical review and assimilation of its contents, the Board would simply be "rubber stamping" the views of county staff rather than communicating its own views.
- F27: On September 18, 2001, at the Board's regularly scheduled meeting and in response to that Undated Letter, a motion was made, seconded and carried, that the Board "adopt the staff's recommended responses, with the exception of the responses listed on an attached list, and that two supervisors work with the CAO and the County Counsel to prepare potential alternative responses and bring them back to the Board no later than October 16, 2001.
- F28: The "attached list" appended to the Motion described in Finding F27 identified 60 specific Findings, and 26 specific Recommendations, contained in the previous Grand Jury's Final Report.
- F29: This Grand Jury believed that, pursuant to the Motion described in Findings F27 and F28, the Board intended, in fact, to review and consider "alternative responses" to each of the Findings and Recommendations identified therein, on an item-by-item basis, and that such review and consideration would have constituted appropriate action on the part of the Board.
- F30: No formal request was made to the Grand Jury by the Board at that September 18, 2001 meeting, or otherwise, for an extension of the September 23, 2001 deadline for responding to the previous Grand Jury's Final Report. Nevertheless, based on its understanding, as set forth in Finding F29, the Grand Jury did not object to the implicit extension of time to October 16, 2001, set forth in the Motion and action of September 18, 2001. (See Finding F27.)

- F31: On October 5, 2001, the Foreman and one member of the Grand Jury met with the CAO, the County Counsel, and a committee consisting of two Board members, to discuss the Undated Letter, specifically, the perceptions articulated in the Undated Letter that the Draft Response presented to the Board appeared not to view the previous Grand Jury's Final Report as a matter deserving of serious consideration by the Board itself. The meeting was an amicable one, although no specific actions were developed or agreed upon at the meeting.
- F32: By October 16, 2001, when the Board's regularly scheduled meeting was held, no "alternative responses" to the Draft Response, as required by the Board's action of September 18, 2001, had been prepared or brought back to the Board.
- F33: Accordingly, on October 16, 2001, the Board requested that the Grand Jury further extend the deadline for its response to the previous Grand Jury's Final Report to November 6, 2001. The Board represented to the Grand Jury that it would conduct a workshop devoted to that subject on November 5, 2001.
- F34: The foregoing request was presented to the Grand Jury on October 17, 2001 and was approved by the Grand Jury. The Grand Jury directed the Foreman to advise the Board that the Grand Jury would not look favorably upon any further request by the Board for extended time to submit its response. The Foreman so advised the Chairperson of the Board.
- F35: Thereafter, the County Counsel submitted to the Board a twelve-page memorandum dated November 1, 2001 ("November 1 Memo"), to which the Undated Letter was attached. A copy of that November 1 Memo was first delivered to the Grand Jury on the morning of November 5, 2001, shortly before the Board's Workshop on the afternoon of November 5, 2001.
- F36: The November 1 Memo did not discuss, on an item-by-item basis, the 60 Findings or the 24 Recommendations that were the subject of the Board's September 18, 2001 Motion and action described in Findings F27 and F28. Instead, it set forth a discussion of the Undated Letter described in Finding F26, characterizing that letter as "raising four 'generic' objections and seven specific concerns" regarding the proposed Response to the previous Grand Jury's Final Report.
- F37: None of the matters discussed in the "generic objections" portion of the November 1 Memo identify, by number or page, any specific Finding or any specific Recommendation in the previous Grand Jury's Final Report. Much of the content of the November 1 Memo, while legally and factually correct, was not responsive to the Board's action of September 18, 2001 for the reasons set forth in Finding F36.
- F38: Numerous statements made in the November 1 Memo were incorporated either verbatim or substantially verbatim into a nine-page letter dated December 17, 2001, described in Findings F45 and F46 ("December 17 Letter"), signed by the Chairperson of the Board and addressed to the Presiding Judge.

F39: The November 1 Memo contains the following policy statements, which the Grand Jury agrees:

- “In the final analysis, the critical requirement is that the Board feel confident in adopting the draft response as its own.” (Page 1)
- “For this process to work properly, of course, the Board must have sufficient time to review and consider the proposed responses before finally adopting them. County Counsel agrees that there is valid concern in this regard. ... {T}iming problems are driven by the size and complexity of the required responses, ... .” (Page 2)
- “Because there are areas of *overlapping* control, of course, it may often – although not necessarily always – be appropriate for the Grand Jury to receive responses from both [elected officials and the Board] on a single issue.” (Emphasis in original.) (Page 2)
- “County Counsel suggests that the Board clarify where appropriate whether (and why) it has adopted an elected official’s response without review, or only after some exercise of independent judgment.” (Page 3)
- “Developing a recommendation to address the timing issues raised by this portion of the letter is challenging. The fundamental problem is the tight statutory timelines.” (Page 3)
- “... ‘Past practice’ and unwritten policies are a poor basis for County operations – a point with which County Counsel, and no doubt the Board, agrees.” (Page 7)
- “In a time-pressured environment, the focus naturally is more on meeting legal requirements than on providing the most comprehensive response possible.” (Page 8)

F40: The November 1 Memo contains the following policy statements, which the Grand Jury disagrees, either in whole or in part:

- “Communication of the Board’s position to the Grand Jury may be by letter rather than amendment to the formal responses in order to avoid further delay.” (Page 1)

In the Grand Jury’s view, the exclusive procedure for responses to grand jury final reports is mandated by Section 933.05 of the Penal Code, as implemented by Board Policy A-11.

- “Given that each grand jury report requires responses to literally hundreds of factual findings and recommendations within ninety days, it is simply infeasible for Board members to personally investigate and respond to each one without staff assistance.” (Page 2) That statement is also set forth in the December 17 Letter. (Page 2)

In the Grand Jury’s view, that statement begs the relevant question. Because it is agreed (See Finding F39-a above.) that the Board must “feel confident in adopting

the response as its own,” the question is how the Board reaches that “confidence level.”

In the Grand Jury’s view, an investigation by Board members is required where:

- Serious and substantial disagreements appear between findings and recommendations of a grand jury and responses thereto proposed by staff.
- The reason for the staff’s disagreement do not appear convincing or conclusive on their face.

This would not require investigations by Board members of “literally hundreds” of proposed responses, because it would not require investigations of:

- Those responses which agree with the findings and/or recommendations;
- Those responses which, although disagreeing in whole or in part with a finding or recommendation, set forth convincing explanations of reasons for such disagreement; and
- Those responses which propose a further investigation of the subject.

It is only those findings and/or recommendations which do not fall into any of the foregoing categories that the Grand Jury believes should be the subject of independent inquiries by the members of the Board before the Board adopts the responses which are proposed by staff.

- “The CAO and other senior staff members do spend considerable time providing review, oversight and drafting for Grand Jury responses.” (Page 3) The December 17 Letter (page 3) states, “The CAO and other senior staff members do spend considerable time providing review, oversight and drafting for *all* Grand Jury responses.” (Emphasis in original.)

The Grand Jury does not necessarily disagree with this statement as an accurate representation of present practice. Depending upon the meaning of the term “other senior staff members,” however, the Grand Jury may disagree that this is the way the process should operate. In the Grand Jury’s view, it is the division heads and managers who have the most hands-on operational knowledge of the matters which are the subject of Grand Jury reports. It is they who should have the primary responsibility for the preparation of proposed responses to factual findings in those reports, which the department heads, the CAO’s office, and perhaps County Counsel have only minimal editorial oversight responsibility with regard to such findings. Moreover, Board Policy A11 requires that the original proposed responses of the department heads, as well as the Draft Response of the CAO, be presented to the members of the Board, but this policy has not been followed in practice.

- “The issue, therefore, is whether the Board should engage in a practice of ongoing updates and amendments to Grand Jury responses when relevant new information

comes to light. County Counsel does not recommend adopting this practice, because it would turn the annual Grand Jury process into an ongoing, evolutionary dialogue with no finality. As a practical matter, Grand Jury reports and responses necessarily reflect snapshots in time.” (Page 10) The December 17 Letter (page 7) states that “the fundamental issue is whether the Board should engage in a practice of ongoing updates and amendments to Grand Jury responses when relevant new information comes to light. We respectfully decline to adopt this practice, because it would turn the annual Grand Jury process into an ongoing, evolutionary dialogue with no finality. As a practical matter, Grand Jury reports and responses necessarily reflect snapshots in time.”

The Grand Jury does not assert that “the annual Grand Jury process” should involve “an ongoing, evolutionary dialogue with no finality,” but precisely because Responses “necessarily reflect snapshots in time,” they should accurately reflect the facts as of the point in time at which they are adopted by the Board, and not at some undefined prior point. In the example referenced in the previous paragraph, the Draft Response was agendized for action to be taken on September 18, but new information was available to the public at least by September 13, and was possibly available to at least some of the members of the Board prior to that date.

Additionally, the December 17 Letter (Page 9) refers to a subcommittee which “will be reporting back to the Board on December 11.” On December 11, however, as indicated in Findings F40-e and F46, the Board took action on the subject of closed session record keeping, but that action was not reflected in the December 17 Letter. It appears, from the dates set forth on Pages 2 through 9 of the December 17 Letter, that that letter may actually have been produced on November 21, 2001. The “snapshot in time” approach should have focused on information available as of the proposed response adoption date, September 18, and on the date of transmittal of the December 17 Letter to the Presiding Judge, respectively, and not some undefined prior date or dates.

Aside from “the annual Grand Jury process,” the Grand Jury believes that “an ongoing, evolutionary dialogue” between the Board and the Grand Jury is a desirable thing.

- “The Grand Jury’s convenience needs to be weighed against the chilling effect of a tape recorder’s presence in closed session discussions ... .” (Page 12) That statement was not included in the December 17 Letter. As indicated above, however, the December 17 Letter (Page 9) does recite that the Board “is still weighing the issue of closed session record keeping,” and that a “subcommittee will be reporting back to the Board on December 11.”

The Grand Jury does not believe that its efforts to obtain the most accurate information possible in pursuing its statutorily authorized and/or mandated

investigations are matters of mere “convenience,” as indicated by County Counsel. The Grand Jury is heartened, however, by the Board’s actions in:

- Directing the establishment of a subcommittee to inquire into the issue of record keeping at closed sessions; and
- Adopting, on December 11 as Agenda Item No. 67, a resolution establishing that, henceforth:
  - County Counsel would take limited notes [i.e., motions and votes] of actions taken in Closed Session.
  - Notes would be circulated to and initialed by the Board members indicating their concurrence.
  - The initialed notes would then be delivered to the Board’s Clerk for safekeeping.

F41: At its regular meeting of November 6, 2001, the Board:

- Adopted the Response to the Previous Grand Jury Report as originally recommended by staff, subject to a rewriting of the response to Recommendation R1 on page 8 of the Draft Response, the specifics of which were to be developed by staff and brought back to the Board for approval.
- Appointed two of its members as a subcommittee to work on possible solutions to the issue of record keeping of closed sessions and to report back to the Board by December 11, 2001.
- Directed the CAO to establish a methodology to ensure that departments follow up on those recommendations for which the Board’s Response states that follow up will occur.
- Directed County Counsel to prepare for signature by the Board’s Chair, a letter to the Grand Jury transmitting the responses to “Generic Objections” as set forth on Pages 2-5 of the November 1 Memo, including clarifications proposed in the County Counsel’s November 1 Memo to specific concerns, numbers 2, 3, 4, 7B, 7D and 7E. The Board’s action on this point did not specify any date by which the letter is to be completed.

F42: The Board’s action of November 6, 2001 was not a response to the eighty-four (84) specific items contained in the previous Grand Jury’s Final Report as had been anticipated by the Grand Jury following the Board’s Motion and action of September 18, 2001. (See Findings F27 and F28.)

F43: The matters discussed in the “Specific Concerns” portion of the November 1 Memo specifically identify eleven (11) [out of 60 listed on September 18] Findings, and seven (7) [out of 24 listed on September 18] Recommendations for specific response. Some other Findings and Recommendations may also have been intended for response, but they are not specifically identified by number or page in the November 1 Memo.

- F44: The Board, on November 6, 2001, also adopted the County Counsel's recommendation "that staff be directed to contact other counties to see if they experience the same [insufficiency of time to prepare responses to grand jury reports] difficulties and report back on [his] findings." (Page 3 of November 1 Memo.)
- F45: In the Grand Jury's view, the proposed contact and inquiry described in Finding F44 is inadequate, in that it does not include inquiry of the grand juries in those other counties to ascertain whether those grand juries believe their counties' responses to their reports to be adequate or appropriate. Counties that profess to have no problems in rendering their responses to grand jury reports, but which submit responses that their grand juries believe to be inadequate or inappropriate, are not models which this Board should follow.
- F46: On or about December 17, 2001, the December 17 Letter was transmitted to the Presiding Judge. That letter purported to constitute compliance with the Board's directive of November 6, 2001. (See Finding F36.)
- F47: The contents of the December 17 Letter are substantially similar, but not totally identical, to the contents of the November 1 Memo. The December 17 Letter asserts that it "is meant to clarify some of the Board's adopted responses and to address certain objections and concerns ... that the Board believes are more appropriately addressed in correspondence to the Grand Jury than in its formal responses."
- F48: The December 17 Letter does not constitute an adequate or proper board response, or amendment or modification to the Board's Responses, to the prior Grand Jury's Final Report for the reasons set forth above in Findings F36, F37 and F40-a.
- F49: In the Grand Jury's view, the length of the 45-day response period for appointed department heads referenced in Finding F12-a creates an unnecessarily short period of time for independent review, consideration, and analysis of those responses by the Board.
- F50: Because departmental responses of the type described in Findings F12-b and F20 were not presented to the Board separately from the Draft Response presented by the CAO, the Board was unable to review or consider any changes that may have been made by the CAO to the departmental responses, in connection with the preparation of the Draft Response.
- F51: In the Grand Jury's view, a period of one week for the members of the Board to review departmental responses and to comment on a draft response, as referenced in Finding F12-c, is inadequate time for serious and thoughtful review and analysis of those documents, and for further inquiry by the Board members into the details contained therein.

- F52: No distribution of departmental responses of the type described in Findings F12-b and F20 was required by law or existing policy to be made, and no such distribution was made, to either the previous Grand Jury or this Grand Jury.
- F53: No distribution of the Final Draft Response was made to the members of either this Grand Jury or the previous Grand Jury, as required by Paragraph 4 of A-11 and described in Finding F12-c.
- F54: No invitation of the type referenced in Paragraph 5 of A-11, as described in Finding F12-e, was made. One member of the previous Grand Jury became aware of the contents of the Draft Response prior to the Board's September 18 meeting. That awareness occurred, however, only because the Draft Response was contained in the Board's Agenda Packet for its September 18 meeting, available in the Board Clerk's office.
- F55: No correspondence of the type referenced in Paragraph 9 of A-11 and described in Finding F12-g was sent, or request made, or copies of non-County responses made available for public viewing in the Board's office.

### **Recommendations**

*"Work expands so as to fill the time  
available for its completion."*

C. Northcote Parkinson, 1958

- R1: Because division heads and managers are presumed to be familiar with the operations of their units, the Board should amend Paragraph 1 of Board Policy A-11, referenced in Finding F12-a, to shorten the time period set forth for input to the CAO from 45 days to 21 days or less. (See Finding F40-c.)
- R2: Because input to the CAO should be submitted in substantially finished form, the Board should amend Paragraph 2 of Board Policy A-11, referenced in Finding F12-b, to establish a time period of 21 days or less from the date the CAO receives the responses of the appointed department heads for transmittal of the Draft Response to the Board, and to establish a procedure which assures that the responses of the appointed department heads are transmitted to the members of the Board concurrently with the transmittal of the Draft Response.
- R3: Whether or not it can require responses within such a time period, the Board should also amend Paragraph 2 of Board Policy A-11, referenced in Finding F12-b, to encourage elected department heads to respond to final reports of grand juries within 21 days or less, rather than 60 days, from their receipt of those final reports.
- R4: The Board should also amend Paragraph 2 of Board Policy A-11, referenced in finding F12-b, to require that the items to be presented to the Board also be presented concurrently to the Grand Jury.

- R5: In order to comply with the 90-day requirement of Penal Code § 933(c) while allowing the Board adequate time to perform its required duties, and in light of the foregoing recommendations and Paragraph 7 of Board Policy A-11, the Board should amend Paragraph 3 of Board Policy A-11, referenced in Finding F12-c, to expand its review and comment period from “at least one week” to “not more than 21 days,” to allow sufficient time thereafter for the agendaing of the Draft Response on the Board’s calendar for review, consideration, adoption and/or modification (“adoption hearing”).
- R6: The Board should establish a procedure which assures that there will be compliance with the provisions of Paragraph 4 of Board Policy A-11, referenced in Finding F12-d, requiring that copies of the Final Draft Response be distributed to all members of the current and/or issuing Grand Jury prior to the agendaing of that draft response on the Board’s calendar for adoption hearing.
- R7: The Board should establish a procedure which assures that there will be compliance with the provision of Paragraph 4 of Board Policy A –11, referenced in Finding F12-d, requiring that copies of the Final Draft Response be distributed to all members of the issuing Grand Jury prior to the agendaing of that draft response on the Board’s calendar for adoption hearing.
- R8: The Board should establish a procedure which assures that there will be compliance with the provisions of Paragraph 5 of Board Policy A-11, referenced in Finding F12-e, requiring that the members of the issuing Grand Jury be invited to participate in the public hearing review of the Final Draft Response to the Final Report of that issuing Grand Jury.
- R9: The Board should establish a procedure which assures that there will be compliance with the provision of Paragraph 9 of Board Policy A –11, referenced in Finding F12-g, requiring that the CAO send correspondence to all entities identified in the Final Report of the issuing Grand Jury:
- Alerting them to their reporting obligation under Section 933(c) of the Penal Code.
  - Requesting that those entities supply a courtesy copy of their responses to the County.
  - Making such courtesy copies available for public viewing in the Board Clerk’s office.
- R10: Whether or not such action is required by Section 933(c) of the Penal Code, the Board should amend Board Policy A-11 to require that non-elected County agency or department heads, when requested to do so by a grand jury, respond to final reports of grand juries in the same manner as elected County agency or department heads.



