

## GOVERNMENT & ADMINISTRATION COMMITTEE

### *Subcommittee on Government Structure*

#### *Report Replying to Responses of Board of Supervisors to Dated Final Reports of October 4, 2001, October 10, 2001, January 16, 2002 and January 23, 2002*

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

The 2001/2002 El Dorado County Grand Jury (Grand Jury) adopted a new procedure of issuing periodic "Dated Final Reports" during the course of its term, rather than leaving all of its reports for issuance at one time by way of "year-end final reports" as had been the tradition with previous Grand Juries. One purpose of doing so was to enable the Grand Jury to Reply to Responses of the Board of Supervisors (Board) to those reports, instead of leaving matters of follow-up exclusively to succeeding Grand juries. Copies of the Board's Responses to the Grand Jury's Dated Final Reports of October 4, 2001, January 16, 2002 and January 23, 2002, are attached to this Report as exhibits. Also attached as an exhibit to this Report is the Grand Jury's Dated Final Report of October 10, 2001, to which the Sheriff has responded but the Board has not.

The Grand Jury has also issued two additional Dated Final Reports which are set forth in this Report by the Committees responsible for them. One, the result of inquiry by the Criminal Justice Committee, was issued on May 1, 2002 [Juvenile Hall Facility]. The other, the result of inquiry by the Special Districts Committee, was issued on May 15, 2002 [Golden West Community Services District]. The time available by law for the making of any responses to those Dated Final Reports has not yet elapsed, however, and accordingly, replies to any such responses are not possible.

This Report, by way of reply, constitutes the Grand Jury's follow-up with regard to the first four of those Dated Final Reports. Because there is not an express provision in the law requiring that there be responses to such replies, the Grand Jury has elected not to require a response to this Report. The Grand Jury would, however, certainly encourage and welcome any response which the Board might care to make.

#### **Findings re Responses to Dated Final Report of October 4, 2001**

- F1: The Grand Jury issued a Dated Final Report, dated as of October 4, 2001 (October 4 Report). The subject of that Report involved follow-through by the Board with regard to its promises and representations contained in responses to Grand Jury reports generally.
- F2: In its Response to Finding F15 of the October 4 Report, the Board "acknowledge[d] that future actions promised in prior Grand Jury responses have not always been

performed," and represented that "[a]s part of finalizing [its] responses to [that] Report, we **have established** procedures to avoid this problem in the future." (Emphasis supplied.)

- F3: Similarly, in its Response to Recommendation R1 of the October 4 Report, which recommended that the Board "implement and follow through" on its representations that it will take, and communicate to the Grand Jury, specific identifiable action, the Board stated that the recommendation "has been" implemented, and that it "ha[s] already established procedures" to avoid lack of follow-through in the future.
- F4: As part of that same Response, however, the Board also stated that it "directed the Interim Chief Administrative Officer (ICAO) to work with department heads **to develop a procedure** to schedule actions required to follow through on Board commitments to the Grand Jury, and that the ICAO "is in the process of carrying out that direction." (Emphasis supplied.)
- F5: Statements that the Board "has established" a procedure, on the one hand, and that it has directed the ICAO "to develop" a procedure and that the ICAO "is in the process of" doing so," are mutually inconsistent unless it is the intention of the Board to treat a delegation of responsibility as a "procedure."
- F6: In its Response to Recommendation R2 of the October 4 Report, the Board represented:
- that "it is the intention of the [Board] to implement" the Grand Jury's recommendation that it be supplied with certain information on the subject of "line authority" of the CAO over department heads, although not precisely in the manner recommended by the Grand Jury;
  - that "the CAO should return to the Board with a recommended third party and scope of work no later than **February 12, 2002;**" and
  - that "the review and report should be completed no later than **April 15, 2002,** and the report should be made available to the public and the Grand Jury." (Emphasis supplied.)
- F7: In its Response to Recommendation R4 of the October 4 Report, the Board represented that "a definite timeline is set by these responses to ensure that the work will be completed in a timely and appropriate manner."
- F8: The foregoing responses have merged and/or melded the Board's responses to two separate issues raised in the Grand Jury's reports. One issue is the procedural issue of follow-up. The other issue is the substantive issue of whether the position of CAO should be converted into a position of CEO. The latter issue is discussed below, in the Grand Jury's Reply to the Board's Response to the Grand Jury's Dated Final Report of January 23, 2002 (January 23 Report). It does not appear, however, that the Board has established a procedure for following up on the implementation of its

responses to Grand Jury Reports generally, as opposed to having furnished an ad hoc response to the January 23 Report.

### **Findings re Dated Final Report of October 10, 2002**

- F9: The Grand Jury issued a Dated Final Report, dated as of October 10, 2001 (October 10 Report). The subject of that Report involved the County Jail at South Lake Tahoe. Responses were requested from the El Dorado County Sheriff and from the Board.
- F10: The October 10 Report contained two Recommendations for construction repair and/or maintenance work, one of which was needed to correct a hazardous condition which created a potential liability for the County. The Grand Jury "strongly recommended" that that particular project "be completed before winter of 2001/2002."
- F11: On December 7, 2001, the Sheriff transmitted his Response to the October 10 Report to the Presiding Judge of the Superior Court, who in turn furnished that Response to the Grand Jury. No similar Response by the Board, however, has been furnished either to the Presiding Judge or to the Grand Jury.
- F12: Construction repair and maintenance projects are under the control of the Facilities Services Division of the County's Department of General Services (DGS), not the Sheriff's Department. This Grand Jury has reported elsewhere on the performance of DGS, including its Facilities Services Division. The Grand Jury is informed and believes that DGS has implemented a temporary repair of the hazardous condition and is in the process of taking steps to effect a permanent repair. It is disappointing to the Grand Jury, however, that the Board itself (as opposed to the Sheriff) has not seen fit to communicate a response to the Grand Jury's recommendation on the subject.

### **Findings re Dated Final Report of January 16, 2002**

- F13: The Grand Jury issued a Dated Final Report, dated as of January 16, 2002 (January 16 Report). The subject of that Report involved a review of the County's procedures pursuant to which the Board responds to Grand Jury Reports generally.
- F14: In several of its findings in the January 16 Report, in an effort at politeness, the Grand Jury prefaced its substantive findings with the statement "In the Grand Jury's view" or words of similar import. See, e.g., Findings F45, F49 and F51, and see also Findings F17 and F18 ("It was the view of the Previous Grand Jury, and is the view of this Grand Jury"). The Board, in responding to those findings, evaded the substance of the findings by agreeing that the statements represented the views of the Grand Juries, without either agreeing or disagreeing with the substance of the findings.
- F15: Responses of the type described in the preceding finding, while literally correct, exhibit a type of "gamesmanship" which makes it difficult to give credence to the

statement, prepared by county staff and adopted by the Board in its Response to Finding F15 of the October 4 Report, that the Board "disagree[s] that the Board or the Chief Administrative Officer's Office regards the work of ... Grand Juries as a nuisance."

F16: Responses of the type described in the two preceding findings appear to have been made selectively on the basis of some criteria unknown to the Grand Jury. It appears that when it has served the interests of the persons drafting the Board's responses, or the Board in adopting those responses, the Board has adopted and issued responses which reach the substance of Grand Jury Findings and Recommendations, even where they:

- are expressed as "the views of" the Grand Jury, see, e.g., Board Responses to Finding F3 of the January 23 Report ("generally agrees with the main thrust of the finding"); or
- contain obvious clerical or ministerial errors, see, e.g., Findings F27 and F42 of the January 16 Report.

F17: The Board, in its Response to Recommendation R3, states that "[t]he time within which the final responses of elected department heads are to be filed is established by statute." While that is true, the statute does **not** say that elected department heads **must take 60 days** to file their responses; it says that such responses shall be submitted **within 60 days**. See California Penal Code §933(c). This is consistent with the Board's direction to the ICAO "to incorporate into the Study consideration of a change to Policy A-11 that would simply encourage elected department heads to expedite their review of Grand Jury final reports and to file their responses as early as is reasonably feasible." It is also consistent with the fact that, where grand jury findings or recommendations "address[] budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors [sic] shall respond if requested by the grand jury, ... ." See California Penal Code §933.05(c). It is inconsistent, however, with the Board's Response that the "recommendation will not be implemented because it is not warranted." The Board cannot meaningfully respond to such budgetary and/or personnel findings or recommendations if the agency or elected department heads do not give the Board the relevant information in sufficient time for the Board to respond.

F18: The Board, in its Response to Recommendation R12, has properly articulated a distinction between "policies and procedures" and "more or less 'formal' practices." In moving forward with the study which the Board has directed the ICAO and the County Counsel to conduct, both "policies and procedures" and "all practices of the County" should be included.

## **Findings re Dated Final Report of January 23, 2002**

- F19: As indicated above in Finding F8, the Grand Jury issued a Dated Final Report, dated as of January 23, 2002 (January 23 Report). The subject of that Report involved the scope of authority of the County's Chief Administrative Officer (CAO), and a general recommendation that the occupant of that position be empowered to act more like a Chief Executive Officer ("CEO"), in various specified regards.
- F20: On **January 15, 2002**, prior to the January 23 Report and pursuant to the recommendation of a Supervisor that "discussion of a desired methodology for the Chief Administrative Officer position be scheduled," the Board had previously scheduled a "special Board meeting (workshop) on February 11, 2002 for [that] purpose." At that **February 11, 2002**, meeting, three consultants, one of whom was Don Peterson, were invited to, and did, make presentations. The Board resolved to "enter into a collaborative approach with staff to look at the issues identified in the Grand Jury Report on the matter of a CEO vs. a CAO, and to draft **by March 15, 2002**, a response to same, thereby, at the same time, providing clarity that will assist the Board in its decisions regarding recruitment of an administrative or executive officer." (Emphasis supplied.)
- F21: Such a response was not drafted by March 15, 2002, and the Board did not take any other public action on the subject by that date.
- F22: At its **April 9, 2002**, meeting, "Staff [was] directed [by the Board] to draft a response [to the January 23 Report] indicating that the Board generally supports the concept of a stronger Chief Administrative Officer but that further analysis is required to determine exactly what changes will require a Charter amendment and which would not."
- F23: On **April 16, 2002**, substantially adopting a proposed response which had been submitted to it by its consultant Don Peterson, the Board responded to the January 23 Report generally. It agreed "that the CAO should be given greater authority over and responsibility for the proper and efficient administration of the business of the County," including "a more direct reporting relationship between appointed department heads and the CAO, and a greater degree of accountability of the appointed department heads to the CAO." Board's Response to Recommendation R1 of January 23 Report. Also in that Response, however, the Board stated that:
- It "has not yet completed its review of this matter;" and
  - It "has [not] reached a final determination on the extent to which such authority should be vested in the CAO."
- F24: In that same Response, the Board stated that "the CAO, in conjunction with County Counsel, **is directed** to compile the available information which has been marshaled in the court of the Board's study of this matter, including any additional information deemed relevant, as well as a delineation of possible areas of delegation of authority

to the CAO along with analysis of the steps required to implement the alternative courses of action. The study shall be completed and returned to the Board within **six months** of the publication of the Grand Jury's report." (Emphasis supplied.) Similar comments were made in the Board's Response to Recommendation R2. The term of this Grand Jury will expire prior to that six-month return date.

F25: In Recommendation R3 of the January 23 Report, the Grand Jury recommended that the Director of Human Resources be directed to draft a revised job description for the CAO position. The Board responded to that Recommendation on April 16, 2002, by stating:

- that it "**has directed** staff to work with County consultants to develop and present to the Board a new job description for the CAO reflecting increased authority to the extent feasible without amendments to the County Charter" (Emphasis supplied.);
- that "[f]inalization of the job description will require the results of the studies being conducted under the responses to R1 and R2"; and
- that "[t]he job description will be presented to the Board not later than the studies referenced above," i.e., "within six months of the publication of the Grand Jury's report."

F26: Statements in the Board's April 16 Response to the January 23 Report that the Board "has directed" that a job description be developed and presented, on the one hand, and that County staff "is directed" by that Response to compile available information for purposes of a subsequent report to the Board, are mutually inconsistent.

F27: The Board received, and placed on its **April 30, 2002**, agenda, a recommendation from its consultant Don Peterson concerning a proposed job description to be used in connection with recruitment procedures for a new CAO. That recommendation, while substantially similar in tone and content to the Grand Jury's January 23 recommendations, did not specifically and formally set forth "a new job description for the CAO" as had been requested by the Board.

F28: The day before the April 30, 2002, meeting, the Director of the Department of Human Resources (HRD) submitted a proposed job description. Because that proposed job description had not been submitted in time to be made a part of the Board's public agenda packet, the Board continued the item once again, to **May 14, 2002**. One member of the Board indicated an intention, in the interim, to consider augmenting and/or revising some of the contents of the proposed job description. On May 14, however, that member was not present, and the matter was further continued by the Board to **May 21, 2002**, a date subsequent to the writing of this Reply.

F29: There does not appear to be any substantial reason, when the subject of CAO authority had first been agendaized on January 15, 2002, at the request of a member of the Board and without reference to the January 23 Report, why it should take

more than four months from the date of Board action on that agenda item for staff and the County's consultants to produce an acceptable job description. The Grand Jury is aware of various public statements which have been made and reported in the media as to the reason or reasons for that delay. Without attempting to place blame or fault, the Grand Jury believes that the relevant issue is progress, or lack thereof. Accordingly, the Grand Jury merely notes the fact of the delay and makes no finding as to the validity or invalidity of any of those conflicting public statements. The Grand Jury simply says, about the CEO project, "**GET IT DONE!**"

**EXHIBIT - Response to Report  
Dated October 4, 2001**

RESPONSE OF THE BOARD OF SUPERVISORS  
TO THE FIRST FINAL REPORT OF THE 2001-2002  
EL DORADO COUNTY GRAND JURY, DATED  
OCTOBER 4, 2001

**Findings**

- F1. THE AUDIT AND FINANCE COMMITTEE OF THE 1998-1999 ELDORADO COUNTY GRAND JURY, AS FINDING #7 OF ITS PORTION OF THE FINAL REPORT OF THAT GRAND JURY, MADE THE FOLLOWING FINDINGS:

"DURING THE EXAMINATION OF THE PURCHASES QUESTIONED BY THE AUDITOR/CONTROLLER, THE GRAND JURY EXAMINED THE RESPONSIBILITIES OF THE CHIEF ADMINISTRATIVE OFFICER.

"THE EL DORADO COUNTY CHARTER, ARTICLE III, SECTION 304 GIVES THE CHIEF ADMINISTRATIVE OFFICER SUBSTANTIAL RESPONSIBILITY FOR APPOINTED DEPARTMENT HEADS, EXCEPT FOR COUNTY COUNSEL. THE RESPONSIBILITIES INCLUDE REVIEWING AND APPRAISING THE PERFORMANCE OF APPOINTED DEPARTMENT HEADS. HOWEVER, AUTHORITY FOR APPOINTMENTS, ETC., IS RESERVED TO THE BOARD OF SUPERVISORS (ARTICLE II, SECTION 210A(3)). THE CHIEF ADMINISTRATIVE OFFICER DOES NOT HAVE ANY LINE AUTHORITY. THE BUDGET PROCESS DOES PROVIDE INDIRECT FUNCTIONAL AUTHORITY OVER ALL DEPARTMENTS.

"A SURVEY OF THE CHIEF ADMINISTRATIVE OFFICERS OF OTHER COUNTIES WAS CONDUCTED. THE SURVEY ASKED IF THEY HAD APPOINTING AUTHORITY OVER APPOINTED DEPARTMENT HEADS. THE RESPONSES WERE AS FOLLOWS:

YES:	21
QUALIFIED YES:	7
NO:	23
NO CHIEF ADMINISTRATIVE OFFICER POSITION:	3
TOTAL RESPONSES:	54

"THE QUALIFIED RESPONSES HAD APPOINTING AUTHORITY OVER SOME APPOINTED DEPARTMENT HEADS OR MADE RECOMMENDATIONS FOR APPOINTMENT OR TERMINATION TO THE BOARD OF SUPERVISORS. THE 'YES' RESPONSES WERE A MIXTURE OF SMALL TO LARGE COUNTIES."

Response:

The respondent agrees with the finding. The Audit and Finance Committee of the 1998-1999 Grand Jury made the Finding as stated.

- F2. THE AUDIT AND FINANCE COMMITTEE OF THE 1998-1999 ELDORADO COUNTY GRAND JURY, BASED ON ITS FINDING #7 QUOTED ABOVE, CAME TO THE FOLLOWING CONCLUSION:

"DAY-TO-DAY MANAGEMENT OF APPOINTED DEPARTMENT HEADS IS NOT POSSIBLE FOR A BOARD OF SUPERVISORS THAT NORMALLY MEETS ONCE A WEEK. THE COUNTY CHARTER RECOGNIZES THIS FACT **BY** THE RESPONSIBILITIES ASSIGNED TO THE CHIEF ADMINISTRATIVE OFFICER.

"IF THE CHIEF ADMINISTRATIVE OFFICER IS GIVEN LINE AUTHORITY OVER THE APPOINTED DEPARTMENT HEADS, IT SHOULD RESULT IN INCREASED EFFICIENCIES AND EFFECTIVENESS OF THE DEPARTMENTS. THE CHIEF ADMINISTRATIVE OFFICER CAN BETTER IMPLEMENT COST EFFECTIVE MEASURES WITH LINE AUTHORITY. THE BOARD WOULD HAVE MORE TIME FOR MAJOR DECISIONS, INCLUDING THE SEVERE LAND USE PROBLEMS THEY FACE TODAY. BASED ON THE SURVEY FINDINGS, COUNTY COUNSEL WOULD BE EXCLUDED FROM THE CHIEF ADMINISTRATIVE OFFICER LINE AUTHORITY AS IN OTHER COUNTIES. THE CHIEF ADMINISTRATIVE OFFICER WOULD RECOMMEND DEPARTMENT HEAD APPOINTMENTS, TERMINATIONS, ETC., BUT THE BOARD RETAINS FINAL APPROVAL AUTHORITY. THE GRAND JURY RECOGNIZES THIS RECOMMENDATION REQUIRES A BALLOT MEASURE TO REVISE THE COUNTY CHARTER."

Response:

The respondent agrees with the finding. The Audit and Finance Committee of the 1998-1999 Grand Jury came to the Conclusion as stated.

- F3. THE AUDIT AND FINANCE COMMITTEE OF THE 1998-1999 ELDORADO COUNTY GRAND JURY, BASED ON ITS FINDING #7 AND CONCLUSION #7 QUOTED ABOVE, MADE THE FOLLOWING RECOMMENDATION TO THE 1999 BOARD:

THE BOARD SHOULD DIRECT A STUDY TO DETERMINE THE POTENTIAL ADVANTAGES AND DISADVANTAGES OF THE CHIEF ADMINISTRATIVE OFFICER HAVING LINE AUTHORITY

OVER THE , APPOINTED DEPARTMENT HEADS. THE RESULTS OF THE STUDY SHOULD BE FURNISHED TO THE GRAND JURY."

Response:

The respondent agrees with the finding. The Audit and Finance Committee of the 1998-1999 Grand Jury made the Recommendation as stated.

- F4. IN RESPONSE TO THE FOREGOING FINDING, CONCLUSION AND RECOMMENDATION, THE RESPONSE OF THE 1999 BOARD WAS AS FOLLOWS:

" **THE RESPONDENT AGREES WITH THE FINDING.** THE BOARD WILL REQUEST THE CAO TO PREPARE A REVIEW AND REPORT ON THE MATTER OF LINE AUTHORITY OVER THE APPOINTED DEPARTMENT HEADS. THE REPORT WILL BE SHARED WITH THE GRAND JURY." (EMPHASIS IN ORIGINAL.)

Response:

The respondent agrees with the finding. The 1999 Board of Supervisors made the Response as stated.

- F5. NO SUCH REPORT WAS EVER FURNISHED TO, OR SHARED WITH, THE GRAND JURY.

Response:

The respondent agrees with the finding. Our records indicate that no such report was prepared; therefore, there was nothing to furnish or share with the Grand Jury.

- F6. THE GOVERNMENT & ADMINISTRATION COMMITTEE OF THE 1999-2000 ELDORADO COUNTY GRAND JURY CONDUCTED A "COUNTY OVERSIGHT & REVIEW" INVESTIGATION, AND RENDERED A FINAL REPORT [THEREON.IT](#) STATED THE FOLLOWING AS THE REASON FOR ITS INVESTIGATION:

"GRAND JURY INVESTIGATION OF VARIOUS DEPARTMENTS OF ELDORADO COUNTY GOVERNMENT INDICATES DEPARTMENT HEADS FAILED TO PROPERLY DIRECT OPERATIONS OR PROPERLY OVERSEE THOSE OPERATIONS WITHIN THEIR DEPARTMENTS. THE GRAND JURY CONDUCTED AN INVESTIGATION TO DETERMINE:

IF A SIMILAR MANAGEMENT OVERSIGHT PROBLEM EXISTS BETWEEN THE BOARD OF SUPERVISORS (BOS) AND THE VARIOUS APPOINTED DEPARTMENTS OR THE CHIEF ADMINISTRATIVE OFFICER (CAO) AND THE VARIOUS DEPARTMENTS HE IS CHARGED WITH OVERSEEING. IF THERE IS ANYTHING IN THE COUNTY CHARTER OR :COUNTY ORDINANCES WHICH INHIBITS THE ABILITY OF THE BOS OR THE CAO TO EFFECTIVELY MANAGE THE APPOINTED DEPARTMENTS OF THE COUNTY."

Response:

The respondent agrees with the finding. The Government & Administration Committee of the 1999-2000 El Dorado County Grand Jury gave the reason for its investigation as stated.

F7. IN ITS FINAL REPORT, THE GOVERNMENT & ADMINISTRATION COMMITTEE OF THE 1999-2000 EL DORADO COUNTY GRAND JURY MADE, AMONG OTHERS, THE FOLLOWING FINDINGS:

"#F1: THERE ARE PERIODIC EVALUATIONS OF DEPARTMENT HEADS BASED ON THEIR INDIVIDUAL GOALS AND THEIR PERFORMANCE WITH RESPECT TO THOSE GOALS.

#F2: INTERACTIONS BETWEEN THE BOS, CAO AND VARIOUS DEPARTMENT HEADS ON DAY-TO-DAY MATTERS PROVIDE ONLY LIMITED INSIGHT INTO THE EFFECTIVENESS OF DEPARTMENTS.

#F3: THERE ARE NO SYSTEMATIC, FORMAL PERFORMANCE AUDITS OF THE ACTUAL PRACTICES OF THE DEPARTMENTS WITH RESPECT TO DOCUMENTED POLICIES AND PROCEDURES AND THEIR EFFICACY.

#F7: THE CAD'S OFFICE IS CURRENTLY NEITHER STAFFED NOR BUDGETED TO CONDUCT PERFORMANCE AUDITS."

IN ITS RESPONSE, THE BOARD AGREED WITH FINDINGS F3 AND F7. IT WAS NOT REQUESTED TO RESPOND TO FINDINGS F1 AND F2, AND DID NOT DO SO.

Response:

The respondent agrees with the finding. The Government & Administration Committee of the 1999-2000 El Dorado County Grand Jury and the 2000 Board of Supervisors made the Findings and Responses as stated.

- F8. IN ITS FINAL REPORT, THE GOVERNMENT & ADMINISTRATION COMMITTEE OF THE 1999-2000 ELDORADO COUNTY GRAND JURY MADE, AMONG OTHERS, THE FOLLOWING RECOMMENDATION, #R3:

"THAT THE BOARD OF SUPERVISORS DELEGATE TO THE CHIEF ADMINISTRATIVE OFFICER THE POWER TO HIRE AND TERMINATE APPOINTED DEPARTMENT HEADS SUBJECT TO BOARD OF SUPERVISORS APPROVAL."

Response:

The respondent agrees with the finding. The Government & Administration Committee of the 1999-2000 El Dorado County Grand Jury made the Recommendation as stated.

- F9. IN ITS RESPONSE TO RECOMMENDATION #R3, THE RESPONSE OF THE 2000 BOARD WAS AS FOLLOWS:

"**THE RECOMMENDATION REQUIRES FURTHER ANALYSIS.** FURTHER DISCUSSION IS REQUIRED AMONGST THE BOARD BEFORE A FINAL DECISION CAN BE MADE. THE CAO WILL PREPARE INFORMATION FOR DISCUSSION AND DIRECTION FROM THE BOARD." (EMPHASIS IN ORIGINAL.)

Response:

The respondent agrees with the finding. The 2000 Board of Supervisors made the Response as stated.

- F10. ALTHOUGH NO SPECIFIC REPRESENTATION WAS MADE BY THE 2000 BOARD THAT ANY INFORMATION PREPARED BY THE CAO WOULD BE SHARED WITH OR FURNISHED TO THE GRAND JURY, OR TO THE PUBLIC, THE SUBJECT-MATTER OF THE GRAND JURY'S FINAL REPORT AND THE 2000 BOARD'S RESPONSE THERETO WAS SUFFICIENTLY RELATED TO THE 1999 BOARD'S RESPONSES TO THE 1998/1999 GRAND JURY THAT IT WOULD HAVE BEEN REASONABLE FOR ANY SUCH INFORMATION PREPARED BY THE CAO TO HAVE BEEN SO SHARED OR FURNISHED.

Response:

The respondent disagrees partially with the finding. We agree that no specific representation was made by the 2000 Board of Supervisors that any information prepared by the CAO would be shared with or furnished to the Grand Jury, or to the public. The finding has no specific reference to the facts in this case because such information was not prepared, and therefore was never provided to the Grand Jury. To the extent the finding is intended to reflect a general principle, we respectfully

disagree with the premise that a Board of Supervisors is duty-bound to take the initiative, absent any specific prompting by the Grand Jury, to 1) review past Grand Jury reports and responses, 2) determine whether there are relationships between the subject matter of the various reports and responses which come to the Board of Supervisors, and then 3) take some specific action to share such material with the same or subsequent Grand Jury in response to that determination. The availability of information and material to the public is governed by statute. Any information generated in response to a Grand Jury report would have been made available to the public, including the Grand Jury, absent some statutory or-common law exemption.

F11. BECAUSE NO INFORMATION OR REPORT ON THE FOREGOING SUBJECTS APPEARED IN THE GRAND JURY'S RECORDS, THIS GRAND JURY, BY LETTER DATED AUGUST 29, 2001, REQUESTED THAT THE INTERIM CHIEF ADMINISTRATIVE OFFICER, AND THE MEMBERS OF THE BOARD, "PRODUCE OR ARRANGE FOR THE PRODUCTION OF, TO THE GRAND JURY, THE FOLLOWING DOCUMENTS":

1. THE 'LINE AUTHORITY' REPORT WHICH THE BOARD OF SUPERVISORS AGREED IN ITS RESPONSE TO THE REPORT OF THE 1998/1999 GRAND JURY TO PRODUCE.

2. ANY 'LINE AUTHORITY' REPORT PREPARED BY THE OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER AND PRESENTED TO THE BOARD OF SUPERVISORS IN ACCORDANCE WITH THE BOARD'S RESPONSE TO THE 1998/1999 GRAND JURY REPORT, WHETHER OR NOT SUCH 'LINE AUTHORITY' REPORT WAS ACTUALLY ADOPTED AND/OR PRODUCED BY THE BOARD.

3. ANY 'LINE AUTHORITY' REPORT PREPARED BY THE OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER AND PRESENTED TO THE BOARD OF SUPERVISORS, SUBSEQUENT TO JUNE 30, 1999, UNRELATED TO THE 1998/1999 GRAND JURY REPORT, WHETHER OR NOT SUCH 'LINE AUTHORITY' REPORT WAS ACTUALLY ADOPTED AND/OR PRODUCED BY THE BOARD.

4. ANY 'DEPARTMENT HEAD HIRING AND TERMINATION' REPORT PREPARED BY THE OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER AND PRESENTED TO THE BOARD OF SUPERVISORS IN ACCORDANCE WITH THE BOARD'S RESPONSE TO THE 1999/2000 GRAND JURY REPORT, WHETHER OR NOT SUCH 'DEPARTMENT HEAD HIRING AND TERMINATION' REPORT WAS ACTUALLY ADOPTED BY, OR THE SUBJECT OF DIRECTION FROM, THE BOARD.

5. ANY 'DEPARTMENT HEAD HIRING AND TERMINATION' REPORT PREPARED BY THE OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER AND PRESENTED TO THE BOARD OF SUPERVISORS, UNRELATED TO THE 1998/1999 [SIC: 1999/2000] GRAND JURY REPORT, WHETHER OR NOT SUCH 'DEPARTMENT

HEAD HIRING AND TERMINATION' REPORT WAS ACTUALLY ADOPTED BY, OR THE SUBJECT OF DIRECTION FROM, THE BOARD.

6. ANY NOTES, MEMORANDA OR OTHER WRITING(S) RELATING OR PERTAINING TO ANY DISCUSSION AMONGST THE BOARD,' WHETHER OR NOT IN RESPONSE TO INFORMATION FOR DISCUSSION AND DIRECTION' PREPARED BY THE OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, AND WHETHER OR NOT ANY SUCH DISCUSSION RESULTED IN 'DIRECTION FROM THE BOARD,' ON THE SUBJECT OF POTENTIAL AUTHORITY ON THE PART OF THE CHIEF ADMINISTRATIVE OFFICER TO HIRE\_ AND/OR TERMINATE DEPARTMENT HEADS."

Response:

The respondent agrees with the finding. The 2001-2002 Grand Jury made the request as stated.

F12. BY LETTER DATED SEPTEMBER 12, 2001, THE OFFICE OF THE INTERIM CHIEF ADMINISTRATIVE OFFICER RESPONDED TO THE GRAND JURY'S LETTER OF AUGUST 29, 2001, BY STATING, IN RESPONSE TO EACH OF THE FOREGOING REQUESTS, THE WORD "NONE". THE LETTER ALSO STATED THAT "[S]TAFF HAVE REVIEWED OUR FILES AND REQUESTED THE CLERK OF THE BOARD TO COMPLETE A REVIEW UTILIZING THEIR QUESTYS SYSTEM AND HAVE DETERMINED THAT THERE ARE NO DOCUMENTS EXTANT WITH REGARD TO THE SIX ITEMS IDENTIFIED ABOVE."

Response:

The respondent agrees with the finding. We are informed and believe that the Office of the Interim Chief Administrative Officer made the response as stated.

F13. THE ABSENCE OF THE EXISTENCE OF ANY "NOTES, MEMORANDA OR OTHER WRITINGS" PERTAINING TO THE REQUESTED "INFORMATION FOR DISCUSSION AND DIRECTION" CAUSES THIS GRAND JURY TO CONCLUDE THAT, NOT ONLY WERE NO REPORTS GENERATED, BUT ALSO THAT THERE WAS NOT EVEN BOARD DISCUSSION ON THE INDICATED SUBJECTS.

Response:

The respondent agrees with the finding. We are not aware of any reports having been generated or any such discussions having occurred.

- F14. BY STATUTE, GRAND JURIES HAVE ONLY A ONE-YEAR TERM OF EXISTENCE. BECAUSE RESPONSES OF THE BOARD TO FINAL REPORTS OF GRAND JURIES HAVE CUSTOMARILY BEEN RETURNED TO NEWLY INSTALLED SUCCESSOR GRAND JURIES APPROXIMATELY NINETY (90) DAYS INTO THE TERM OF THE NEW GRAND JURY, RATHER THAN TO THE GRAND JURY THAT ISSUED THE FINAL REPORT, THERE HAS BEEN UNEVEN FOLLOW-UP BY GRAND JURIES WITH REGARD TO THE BOARD'S RESPONSES TO THE FINAL REPORTS OF PREVIOUS GRAND JURIES.

Response:

The respondent disagrees partially with the finding. We agree that by statute, Grand Juries have a one-year term of existence. We have no knowledge of the degree or uniformity of follow-up by subsequent Grand Juries regarding Board responses to prior Grand Jury reports. Nor do we have any information as to whether any such uneven follow-up by Grand Juries is a result of the timing of the responses to Grand Jury reports or is the result of other factors. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree, with each finding, we agree with this portion of the finding because we have no knowledge to the contrary. We respectfully disagree with the statement that Board responses are returned to any Grand Jury. In compliance with Penal Code section 933(c), all Board responses to Grand Jury reports are made to the Presiding Judge of the Superior Court, rather than to any Grand Jury. It is a matter for each Grand Jury to determine the scope of its study and the extent to which it wishes to follow-up on the work of prior grand juries.

- F15. THE FOREGOING SEQUENCE OF FACTS AND EVENTS CREATES A PERCEPTION, AND CAUSES THIS GRAND JURY TO CONCLUDE, THAT THE WORK (FINDINGS, CONCLUSIONS AND RECOMMENDATIONS) OF ITS PREDECESSORS HAS BEEN TREATED AS A MERE NUISANCE TO BE ENDURED, WITH VARYING DEGREES OF PATIENCE OR IMPATIENCE, BY THE BOARD AND THE CHIEF ADMINISTRATIVE OFFICER'S OFFICE, WITH THE BOARD'S REPRESENTATIONS OF PROMISED ACTION TO BE IGNORED BY THEM AFTER HAVING BEEN MADE, BECAUSE OF THE ABSENCE OF FOLLOW-UP BY SUCCESSOR GRAND JURIES.

Response:

The respondent disagrees partially with the finding. We respectfully disagree that the Board or the Chief Administrative Officer's Office regards the work of predecessor Grand Juries as a nuisance. We also respectfully disagree that the Board makes representations of future action with the intent of ignoring them in reliance upon a lack of follow-up by subsequent Grand Juries. Although we do not condone it, we acknowledge that future actions promised in prior Grand Jury responses have not always been performed. As part of finalizing our responses to the 2001-2002

**EXHIBIT - Response to Report  
Dated January 16, 2002**

## BOARD OF SUPERVISORS OF ELDORADO COUNTY

*Response to the Final Report of the  
2001/2002 El Dorado County Grand Jury  
as of January 16, 2002, on Procedures for  
the Board of Supervisors in Responding  
to Grand Jury Final Reports*

### **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 its 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 ... ."

Response to F1: **Respondent agrees with the finding.**

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 recommend-ations

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."

Response to F2: Respondent agrees with the finding.

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

Response to F3: Respondent agrees with the finding.

- 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."

Response to F4: Respondent agrees with the finding. The Respondent has no contrary information and therefore agrees that the view of the previous and current Grand Juries is as stated.

- 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.

Response to F5: **Respondent disagrees partially with the finding.** Respondent agrees with the first sentence of the finding.

To the extent the remainder of the finding is intended to indicate that the Grand Jury can impose a requirement that non-elected department heads provide a response separate from that of the response provided by the Board of Supervisors, Respondent disagrees with the finding. It is the understanding of the Respondent that responses are required only from the legislative body of the governmental agency and from other elected officers. This is based on a reading of all applicable code sections. With particular reference to Penal Code section 933.05(c), that code section does not refer to any "requirement" being "imposed." It merely states that the responding party, which may be the legislative body, shall provide a timeframe for completion of the analysis. It is within the discretion of the legislative body, in that case, to determine who will actually conduct the analysis.

- F6. Section 933.05(c) of the Penal Code provides that "if a finding or recommendation of the grand jury addresses budgetary or personnel matters of 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."

Response to F6: **Respondent agrees with the finding.**

- 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.

Response to F7: **Respondent disagrees with the finding.** Based upon its reading of all applicable code sections, responses in addition to those issued by the Board of Supervisors may only be

required from elected officers. The response by the Board of Supervisors is to include all information relevant to departments that have appointed department heads. In fact, a careful reading of Section 933.05(c) leads to a conclusion contrary to that reached by the Grand Jury. By expressly authorizing dual responses by both an elected officer and the governing body, but limiting the scope of the response by the Board of Supervisors to matters within its decisionmaking authority, the language indicates that such separate responses are not contemplated in matters affecting departments with appointed department heads and that the Board of Supervisors has complete authority to respond in those matters since it has ultimate decisionmaking authority in those cases, in contrast to cases where that authority may be shared with other elected officers.

- 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.

Response to F8: **Respondent disagrees with the finding.** Respondent does not believe that the grammatical interpretation made by the Grand Jury is correct. Particularly in light of the absence of any punctuation setting the term "agency head" apart from "county officer," it is our interpretation that the term "elected" applies to both. This conclusion is further supported by the language of Section 933(c) that states that the governing body shall comment on the findings and recommendations pertaining to matters "under the control of the governing body." Typically, the Board of Supervisors maintains ultimate control over matters relating to departments having appointed department heads. Elected officers and department heads, however, frequently have areas of independent authority over which they exercise ultimate control.

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.

Response to F9: Respondent agrees with the finding.

Respondent agrees that it is the view of the Board of Supervisors that the term "elected" applies to both the terms "county officer" and "agency head." Respondent also agrees that the Grand Jury believes that the County's view is incorrect.

F10. Section 703 of the El Dorado County Charter provides that "[t]he Board of Supervisors shall establish the format for county responses to the Grand Jury report."

Response to F10: Respondent agrees with the finding.

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

- (i) provision to the Board of a structurally consistent document,
- (ii) assistance to appointed department heads and the CAO in providing appropriate draft responses,
- (iii) assistance to the Board in evaluating the proposed responses,
- (iv) ensuring continuity in the grand jury process from year to year, and
- (v) assistance to the Grand Jury in tracking its findings and recommendations.

Response to F11: Respondent agrees with the finding.

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

a. 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 forty-five (45) days from the issuance of the Grand Jury report.

b. 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.

c. 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."

d. Paragraph 4 provides that, after the review and comment period described in Paragraph 3 has elapsed, the CAO shall

i. 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  
ii. cause copies of the final Draft Response to be  
(a) distributed to all members of the current and immediate past grand juries and  
(b) made available to the public in the office of the Board Clerk.

e. 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."

f. Paragraph 8 requires that "[r]esponses received from the elected department heads ... be appended to the Board's final response."

g. Paragraph 9 provides (i) 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, (ii) that the CAO shall request a courtesy copy of their response, and (iii) that such courtesy copies shall be made available for public viewing in the Board's office.

h. 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.

Response to F13: Respondent agrees with the finding.

- 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, forty-eight (48) hours prior to public release. Some department heads, both elected and non-elected, were designated in that Report as "Respondents."

Response to F13: Respondent agrees with the **finding**.

- F14. Numerous responses from Respondents who were elected county officers or elected department (agency) heads were received by the 2001 /2002.E1 Dorado County Grand Jury ("this Grand Jury") in July and August, 2001.

Response to F14: **Respondent agrees with the finding.**  
Respondent has no information as to the number of responses received by the Grand Jury during that time frame. Therefore, Respondent agrees with the finding.

- 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.

Response to F15: **Respondent agrees with the finding.**

Respondent has no information as to the number of such responses received by the Grand Jury during that time frame. Therefore, Respondent agrees with the finding.

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.

Response to F16: **Respondent agrees with the finding.**

Respondent understands this finding to refer to appointed department heads of the County. Such responses separate from the response of the Board of Supervisors would be inconsistent with Respondent's understanding of the law as set forth in its response to prior findings, and would be inconsistent with Policy A-11. Information provided by appointed department heads was included in the draft responses prepared for the Board of Supervisors.

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.

Response to F17: **Respondent agrees with the finding.**

Respondent agrees that the finding represents the view of the previous and current Grand Juries.

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.

Response to F18: **Respondent agrees with the finding.**  
Respondent agrees that the finding represents the view of the previous and current Grand Juries.

- 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.

Response to F19: **Respondent disagrees partially with the finding.** Copies of some responses from elected county officer or elected department heads were received by the CAO's office prior to September 7, 2001. It is not clear that they were actually submitted to the Board of Supervisors prior to that date. Respondent assumes that the originals of any such responses were submitted to the Presiding Judge and that the copies received by the County were courtesy copies.

- 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. (But see Finding F12-b).

Response to F20: **Respondent agrees with the finding.**  
Information from the proposed responses prepared by appointed department heads was used in preparing the draft responses for the Board of Supervisors. The proposed responses prepared by appointed department heads were available to the Board of Supervisors if they wished to review them. Notwithstanding Policy A-11, it is our understanding that prior Boards had

requested that proposed responses from appointed department heads not be physically provided to Board members in order to reduce the amount of paper included in the packets.

- 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, to the Previous Grand Jury or to this Grand Jury. (But see Finding F12-d).

Response to F21: **Respondent agrees with the finding.** With respect to the reference to Finding F12-d, Respondent notes that nothing in the portion of Policy A-11 cited in Finding F12 indicates that the proposed responses prepared by appointed department heads are to be submitted to either the Presiding Judge or the Grand Jury.

- 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.

Response to F22: **Respondent agrees with the finding.** The prior response to F20 is incorporated here as it relates to the fact that the proposed responses prepared by appointed department heads did not accompany the draft response.

- 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.

Response to F23: **Respondent disagrees partially with the finding.** Respondent agrees that the Draft Response was not disseminated publicly and that notice of its availability was not

given. However, upon distribution to the Board, the document became a public record available upon request.

- 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.

**Response to F24: Respondent agrees with the finding.** September 23, 2001, was the 90th day after submission of the Previous Grand Jury's Final Report to the County. September 23, 2001, was a Sunday. Technically, the response therefore was not due until Monday, September 24, 2001. Respondent makes mention of this for possible reference in future instances, not to take issue with the finding.

- 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.

**Response to F25: Respondent agrees with the finding.** Respondent notes that this response is made in light of the events of September 11, 2001, and its aftermath, which occurred in that timeframe. Respondent expresses no opinion on the adequacy of that time in the absence of those events, although it is noted that the time afforded was consistent with Policy A-11 which requires the draft response be available to the Board at least one week prior to the draft response being included on the Board's agenda.

- 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.

Response to F26: **Respondent agrees with the finding.**

Respondent notes that the material received by the Board member actually consisted of two documents. One was a two page list of the findings and recommendations which Respondent understood identified the particular proposed responses as to which the author had concerns. The second was a six page letter-memorandum containing more detailed comments. Finding F26 accurately characterizes a principal concern voiced in the document. The document also contained substantially more information than is summarized in F26.

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."

Response to F27: **Respondent disagrees partially with the finding.** On September 18, 2001, the Board actually continued the item to its meeting of September 25, 2001. At the September 25, 2001, meeting, the Board adopted the motion referenced in F27.

F28. The "attached list" appended to the Motion described in Finding F27 identified sixty (60) specific Findings, and twenty-six (26) specific Recommendations, contained in the Previous Grand Jury's Final Report.

Response to F28: - Respondent agrees with the finding. The list is the two page list referenced in the response to F26.

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.

Response to F28: Respondent agrees with the finding. Respondent has no information or basis on which to determine what the Grand Jury believed. Therefore, Respondent agrees with the finding.

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).

Response to F30: Respondent agrees with the finding. It is not clear that the Grand jury has the authority to extend the statutory deadline. The Board did direct that a letter be sent to both the Presiding Judge and the Grand Jury explaining the situation and indicating that the Board would take additional time to review the response. This may well have been construed as a request for an extension. Under the circumstances, and particularly taking into account that the undated letter was received from a person who was a member of the prior Grand Jury, the Board believed that the best course of action was to take the time necessary to respond to the comments that had been received. Respondent has no information that would allow it to assess the reason the Grand jury

did not object to the Board's failure to approve the response within the statutory time frame. Therefore, Respondent agrees with that portion of the finding.

- 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, and 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.

Response to F31: **Respondent agrees with the finding.** Although no specific actions were developed or agreed upon, the concerns expressed in the written materials received was discussed, as were various approaches to addressing them. It was and is the understanding of Respondent that the issues raised in the material received reflected concerns of the current Grand Jury or members of the current Grand Jury. Respondent does not know whether the transmittal of those concerns to the County was the result of formal action by the Grand Jury as a body.

- 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.

Response- to F32: **Respondent agrees with the finding.** Based upon consideration of the issues, the results of the October 5, 2001, meeting, and discussions with the Board subcommittee, it was determined to recommend a workshop of the Board to address the issues.

- 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.

Response to F33: **Respondent agrees with the finding.** The Board determined to take the additional time in order to allow the Board workshop to take place. The Board did inquire of the Grand Jury whether that additional time was acceptable.

- 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.

Response to F34: **Respondent agrees with the finding.**

- 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.

Response to F34: **Respondent agrees with the finding.** The memorandum, addressed to Supervisors Baumann and Borelli (the subcommittee) and copied to the remainder of the Board, actually was completed on Friday, November 2, 2001, as indicated in the header of the document, although the date on the face page was not changed.

- F36. The November 1 Memo did not discuss, on an item-by-item basis, the sixty (60) Findings or the twenty-four (24) Recommendations which 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 "rais[ing] 1 four 'generic' objections and seven specific concerns" regarding the proposed Response to the Previous Grand Jury's Final Report.

Response to F36: **Respondent agrees with the finding.**

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.

Response to F37: **Respondent disagrees partially with the finding.** Respondent agrees that portion of the November 1 memorandum that discussed "Generic Objections" did not identify specific findings or recommendations by number or page. Respondent disagrees with the finding that much of the memorandum was not responsive to the Board's action of September 16 [25], 2001. The September 25, 2001, motion authorized Supervisors Baumann and Borelli to work with the Interim CAO and County Counsel to prepare "potential alternative responses." The motion does not expressly call for an alternative to be prepared for each finding and recommendation whether or not deemed warranted. The motion implicitly includes authority to recommend whether or not alternatives were deemed warranted. The memorandum identifies a proposed approach to responding to the concerns expressed and specific alternatives or modifications deemed warranted. The memorandum was developed after discussions with Supervisors Baumann and Borelli and in light of the meeting with members of the Grand Jury on October 5, 2001. Based on all of those interactions, County Counsel believed that the November 1 memorandum was responsive to the

Board's direction.

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.

Response to F38: **Respondent agrees with the finding.**

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

a. "In the final analysis, the critical requirement is that the Board feel confident in adopting the [draft] response as its own." (Page 1)

b. "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)

c. "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)

d. "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)

e. "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)

f. "... '[P]ast 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)

g. "In a time-pressured environment, the focus naturally is more on meeting legal requirements than on providing the most comprehensive response possible." (Page 8)

Response to F39: Respondent agrees with the finding. With respect to paragraph (b) of F39, Respondent notes that an important portion of the quoted language was omitted. Finding F39 quotes the memorandum as saying that "[T]iming problems are driven by the size and complexity of the required responses,..." In the full text, that language is followed by the phrase "... and the limited time afforded by the law, not by any dereliction of anyone's duty ." Respondent believes that the reference to the statutory limitation is significant to a full understanding of the comment.

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

a. "[C]ommunication 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.

b. "Given that each Grand Jury report requires responses to literally hundreds of factual findings and recommendations within ninety days, it is simply infeasible for Boardmembers 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

- (i) serious and substantial disagreements appear between findings and recommendations of a grand jury and responses thereto proposed by staff, and
- (ii) the reasons 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

- (i) those responses which agree with the findings and/or recommendations,
- (ii) 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
- (iii) 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.

c. "The CAO and other senior staffmembers do spend considerable time providing review, oversight and drafting for Grand Jury responses." (Page 3) The December 17 Letter (page 3) states "that 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 staffmembers," 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 subjects of grand jury reports, and it is they who should have the primary responsibility for the preparation of proposed responses to factual findings in those reports, with the department heads, the CAO's office, and perhaps County Counsel having only minimal editorial oversight responsibility with regard to such findings. Moreover, Board Policy A-11 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.

d. "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.

e. "[T]he 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

(a) directing the establishment of a subcommittee to inquire into the issue of record keeping at closed sessions, and

(b) adopting, on December 11 as Agenda Item No. 67, a Resolution establishing that, henceforth,

- (i) County Counsel would take limited notes [i.e., motions and votes] of actions taken in Closed Session,
- (ii) those notes would be circulated to and initialed by the Board members indicating their concurrence, and
- (iii) the initialed notes would then be delivered to the Board's Clerk for safekeeping.

Response to F40: **Respondent agrees with the finding.** The portions of the November 1 memorandum and the December 17 letter are accurately quoted in F40. The remainder of F40 constitutes statements of the views of the Grand Jury. Respondent has no information indicating that these do not reflect the views of the Grand Jury and therefore accepts the finding as an accurate reflection of the Grand Jury's views. The positions taken by the County Counsel are set forth in the November 1 memorandum and are cited by the Grand Jury. F40 does not call for a substantive response to the views expressed by the Grand Jury. Any such response would be lengthy and might be considered argumentative. Therefore, no such response is made. To the extent the Respondent's position on any of these issues is relevant to explain a response to any recommendation made by the Grand Jury in this report, that information will be provided in response to any such recommendation. There is one exception that deals with a procedural matter.

Paragraph (a) of F40 partially quotes the November 1 memorandum as saying "[C]ommunication 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." The Grand Jury interprets that statement to refer to the Board's response to the Grand Jury's final report and disagrees with it. However, the full sentence from which the quote is extracted reads, "In light of the time constraints involved, it is suggested that *as to those items where the responses in question are factually correct and legally sufficient,* but may raise issues concerning the phrasing

or' attitude" of the response, 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." (Emphasis added.)

Read in full, this sentence clearly advises the Board that any changes required to make the formal responses accurate or legally sufficient should be made as amendments to those responses. In fact, certain changes were made and the final response was forwarded to the Presiding Judge on November 7, 2001. The December 17, 2001, letter to the Presiding Judge was in response to issues raised in the undated letter, which constituted public comment on the Board's proposed responses. The December 17 letter contained information the Board did not feel was required in the formal response to the previous Grand Jury's report. It was not intended as a substitute for the formal response, but rather as an additional communication expressing opinions of the Board which the Board hoped would foster an improved relationship with the Grand jury. In that context, the Board believes that the letter was an appropriate form of communication.

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

- (i) 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;
- (ii) 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;
- (iii) 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; and
- (iv) 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 to be completed.

Response to F41: **Respondent agrees with the finding.**

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).

Response to F42: **Respondent agrees with the finding.** The Board's action of November 6, 2001, did not contain an item-by-item action on each of the 84 findings and recommendations contained in the two page list that had been provided on September 17, 2001. Respondent has no information to the contrary and therefore assumes that the Grand Jury did anticipate such an item-by-item action after the September 18[25], 2001, motion. Nevertheless, the Board took its action after extensive deliberation, including its subcommittee's meeting with grand jurors on October 5, 2001, and believes its action was appropriate. As stated in the response to F40, the Board's action was in response to public comments, separate from and in addition to finalizing a formal report to the Grand Jury. The Board of Supervisors believes the form of its response was appropriate in that context.

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.

Response to F43:

**finding.** Respondent agrees that the November 1 memo specifically mentions only a limited number of the 84 findings and recommendations. However, the response contained in the memorandum was broader than that. On September 17, 2001, a Board member had received two documents. One was simply a list of the 84 findings and recommendations being questioned. No explanation or statement of any specific concern was given with respect to any particular finding or recommendation. There was no basis on which to respond to the list alone without some information regarding the specific concerns the author had as to each finding and recommendation.

In addition, the Board member received the six page letter which expressed substantive concerns. The "Specific Concerns" referenced in the November 1 memorandum were set out in the undated letter in a series of seven numbered paragraphs. In most of the paragraphs, one or more of the specific findings or recommendations were cited as *examples* of the particular concern expressed. However, the letter did not contain a systematic discussion of each finding and recommendation. The November 1 memorandum was formatted to respond to the specific concerns identified in the letter in the same manner as those concerns were expressed. It was presumed that the substantive concerns expressed in the letter covered the range of concerns applicable to all of the findings and recommendations contained in the list although they were not necessarily correlated in the letter.

- 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)

Response to F44: Respondent disagrees with the finding. The Conformed Agenda for the meeting of November 6, 2001, does not reflect such action.

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.

Response to F45: Respondent agrees with the finding. In the absence of any information to the contrary, Respondent acknowledges that the finding accurately represents the view of the Grand Jury.

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).

Response to F46: Respondent disagrees partially with the finding . To the extent the use of the word "purported" is intended to imply that the letter did not constitute actual compliance with the Board's direction, Respondent maintains that the letter did constitute actual compliance with that portion of the Board's direction.

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."

Response to F47: Respondent agrees with the finding.

F48. The December 17 Letter does not constitute an adequate or proper Board Response, or amendment or modification to the Board's Response, to the Prior Grand Jury's Final Report for- the reasons set forth above in Findings F36, F37 and F40-a.

**Response to F48 - --- Respondent disagrees with the finding.**  
As stated in the response to F40, the December 17, 2001, letter does not purport to be a formal response to the report of the previous Grand Jury, nor does it purport to amend the response to that report. The Board of Supervisors, on November 6, 2001, separately approved the formal response to the report of the prior Grand Jury which was forwarded to the Presiding Judge on November 7, 2001. The December 17, 2001, letter was intended as an additional response to the public comments received on the draft responses, not as a response to the Grand Jury's report. The Board determined, as quoted in F47, that these responses to the public comments were "more appropriately addressed in correspondence to the Grand Jury than in its formal responses."

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.

Response to F49: Respondent agrees with the finding. In the absence of any contrary information, Respondent agrees that the finding accurately represents the view of the Grand Jury.

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.

Response to F50: Respondent disagrees with the finding. As stated in the response to F20, the draft departmental responses were available to the Board if Board members chose to review them.

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.

Response to F51: Respondent agrees with the finding. In the absence of any contrary information, the Respondent agrees that the finding accurately reflects the view of the Grand Jury.

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.

Response to F52: Respondent agrees with **the finding.**

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.

Response to F53: Respondent agrees with the finding. In fact, no separate final Draft Response was prepared since no changes

were made in the Draft Response until the meeting of November 6, 2001.

- 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.

Response to F54: **Res finding.** The County did not individually invite each of the members of the immediate past Grand Jury to the September 18, 2001, public hearing. However, clerical staff of the CAO's office confirm that the secretary to the Grand Jury was advised of the hearing date and responded that she would pass the information on to members of both the past and current Grand Juries.

- 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.

Response to F55: **Respondent disagrees partially with the finding** . Clerical staff in the CAO's office confirm that correspondence was sent to entities identified in the Grand Jury report requesting courtesy copies of any responses filed. The response to such correspondence from non-County entities is sporadic. If received, such responses are transmitted to the Board along with the County's draft response. They are included at the back of the County's final response. They become available to the public at the time the draft response is sent to the Board. Respondent acknowledges that responses by non-County entities have not been made available for viewing on a routine basis earlier than the transmittal of the County's draft response.

## 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 forty-five (45) days to twenty-one (21) days or less. (See Finding F40-c)

Response to R1: **The recommendation requires further analysis.** Respondent agrees that Board Policy A-11 needs to be reviewed and revised in various respects. The Board of Supervisors also agrees with the goal implicit in the recommendation and does not necessarily disagree with the specific recommendation. However, the Board believes that a comprehensive review of Policy A-11 should be undertaken and that specific modifications should be reviewed and undertaken only in the context of such a comprehensive review. This will ensure that the goals are achieved and Policy A-11 is revised in the most effective and internally consistent manner. The Interim CAO, in conjunction with County Counsel, is directed to review Board Policy A-11 and present a recommendation to the Board of Supervisors regarding its possible amendment no later than six months from the date of publication of the Grand Jury's report. The comprehensive review to be conducted is referred to hereinafter as the "Study ."

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 twenty-one (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.

Response to R2: The recommendation requires further analysis. Respondent agrees that Board Policy A-11 needs to be reviewed and revised in various respects. The Board of Supervisors also agrees with the goal implicit in the recommendation and does not necessarily disagree with the specific recommendation. However, the Board believes that a comprehensive review of Policy A-11 should be undertaken and that specific modifications should be reviewed and undertaken only in the context of such a comprehensive review. This will ensure that the goals are achieved and Policy A-11 is revised in the most effective and internally consistent manner. The Interim CAO, in conjunction with County Counsel, is directed to incorporate analysis of the recommendation in the Study for review and recommendation.

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 twenty-one (21) days or less, rather than sixty (60) days, from their receipt of those final reports.

Response to R3: **The recommendation will not be implemented because it is not warranted.** The time within which the final responses of elected department heads are to be filed is established by statute. The statute presumably reflects a legislative determination that the deadline selected satisfies both the needs of the Grand Jury and the responding officers. Reports of the Grand Jury are of varying lengths and complexity. The amount of time

needed to respond varies based on the nature of the report. The responses referenced in R3 are final responses being filed with the Presiding Judge, not preliminary drafts that are incorporated into another process for preparation of a final report. Under these circumstances, no reason or basis is apparent that would support a request by the Board of Supervisors that elected department heads shorten the time for submitting their final reports from that which is statutorily provided, or for the suggestion of any particular deadline. However, the CAO is directed to incorporate into the Study consideration of a change to Policy A-11 that would simply encourage elected department heads to expedite their review of Grand Jury final reports and to file their responses as early as is reasonably feasible.

- 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.

Response to R4: **The recommendation requires further analysis.** Respondent agrees that Board Policy A-11 needs to be reviewed and revised in various respects. The Board of Supervisors also agrees with the goal implicit in the recommendation and does not necessarily disagree with the specific recommendation. However, the Board believes that a comprehensive review of Policy A-11 should be undertaken and that specific modifications should be reviewed and undertaken only in the context of such a comprehensive review. This will ensure that the goals are achieved and Policy A-11 is revised in the most effective and internally consistent manner. The Interim CAO, in conjunction with County Counsel, is directed to incorporate analysis of the recommendation in the Study for review and recommendation.

- 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 twenty-one (21) days," to allow sufficient time thereafter for the agendizing of the Draft Response on the Board's calendar for review, consideration, adoption and/or modification ("adoption hearing").

Response to R5: **The recommendation requires further analysis.** Respondent agrees that Board Policy A-11 needs to be reviewed and revised in various respects. The Board of Supervisors also agrees with the goal implicit in the recommendation and does not necessarily disagree with the specific recommendation. However, the Board believes that a comprehensive review of Policy A-11 should be undertaken and that specific modifications should be reviewed and undertaken only in the context of such a comprehensive review. This will ensure that the goals are achieved and Policy A-11 is revised in the most effective and internally consistent manner. The Interim CAO, in conjunction with County Counsel, is directed to incorporate analysis of the recommendation in the Study for review and recommendation.

- 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 agendizing of that Draft Response on the Board's calendar for adoption hearing.

**Response to R6: The recommendation requires further analysis.** Policy A-11 contains express direction regarding certain actions, such as that referenced in R6, which are to be taken. It is not clear what form procedures designed to ensure compliance with existing procedures would take, or whether any such efforts would be

redundant. The Interim CAO, in conjunction with County Counsel, is directed to incorporate this issue into the Study and recommendation called for under the response to R1, and to present the recommendation concurrent with recommendations made under that study.

- R7. 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 issuing Grand Jury prior to the agendaing of that Draft Response on the Board's calendar for adoption hearing.

Response to R7: **The recommendation requires further analysis.** Policy A-11 contains express direction regarding certain actions, such as that referenced in R7, which are to be taken. It is not clear what form procedures designed to ensure compliance with existing procedures would take, or whether any such efforts would be redundant. The Interim CAO, in conjunction with County Counsel, is directed to incorporate this issue into the Study and recommendation called for under the responses to R1, and to present the recommendation concurrent with recommendations made under that study.

- 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.

Response to R8: **The recommendation requires further analysis.** Policy A-11 contains express direction regarding certain actions, such as that referenced in R8, which are to be taken. It is not clear what form procedures designed to ensure compliance with existing

procedures would take, or whether any such efforts would be redundant. The Interim CAO, in conjunction with County Counsel, is directed to incorporate this issue into the Study and recommendation called for under the responses to R1, and to present the recommendation concurrent with recommendations made under that study.

- R9. The Board should establish a procedure which assures that there will be compliance with the provisions 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
- (i) alerting them to their reporting obligation under Section 933(c) of the Penal Code,
  - (ii) requesting that those entities supply a courtesy copy of their responses to the County, and
  - (iii) making such courtesy copies available for public viewing in the Board Clerk's Office.

Response to R9: The recommendation requires further analysis. Policy A-11 contains express direction regarding certain actions, such as that referenced in R9, which are to be taken. It is not clear what form procedures designed to ensure compliance with existing procedures would take, or whether any such efforts would be redundant. The Interim CAO, in conjunction with County Counsel, is directed to incorporate this issue into the Study and recommendation called for under the responses to R1, and to present the recommendation concurrent with recommendations made under that study.

- 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.

Response to R10: The recommendation requires further analysis. Based upon input from the County Counsel, it is the Respondent's position that the recommended action is not required by Penal Code section 933(c). (See responses to findings F17 and F18.) R10, however, recommends that the practice be implemented as policy whether or not required by Penal Code section 933(c). It appears that most counties in the state do not follow the procedure recommended by the Grand Jury. Nevertheless, at least two counties have been identified as following a procedure similar to that proposed and, therefore, the proposal should receive further study. Issues to be incorporated in the study include, but are not limited to: (1) more detailed legal analysis of the requirements of Penal Code section 933 (c); (2) legal analysis of potential conflicts created by a County policy requiring the submittal of documents to the Presiding Judge, when they are neither required nor expressly authorized by law to be submitted to the Presiding Judge; (3) analysis of the impact such a policy could have on the process of preparing the Board's response to Grand Jury reports; (4) issues of conflicting jurisdiction and the effect of potentially conflicting responses being made by appointed department heads and the Board when the latter may have ultimate control over the matter under consideration; (5) consideration of alternative policies that might accomplish the desired goals without potentially negative impacts; (6) further review of the positions taken by other counties and the results achieved; (7) consider the possible impact of the recommendation on prior Grand Jury recommendations that the CAO position be restructured to give it broader powers; and, (8) any other relevant issues identified in the course of the study. The Interim CAO, in conjunction with County Counsel, is directed to undertake the study and return recommendations to the Board within six months of the publication of the Grand Jury's final report.

R11. The Board should amend Board Policy A-11, referenced in Finding F11, by adopting the County Counsel's suggestion that it "clarify, where appropriate, whether (and why) it has adopted an elected official's response without review, or only after some exercise of independent judgment."

Response to R11: The recommendation has not been implemented but it is the intention of the Respondent to implement it. The recommendation will be implemented concurrent with recommendations resulting from the Study directed to be performed pursuant to the response to R1.

R12. The Board, as substantially suggested by County Counsel in the November 1 Memo, should adopt a Resolution requiring that all County policies and procedures be set forth in writing, and that, in the absence of emergency circumstances and for reasons specified in writing at the time, there be no reliance upon "past practices" or "unwritten policies," as referenced in Finding F39-f, particularly in connection with personnel matters.

Response to R12: The recommendation requires further analysis. Respondent agrees with the goal and intent of the recommendation. However, the manner in which the goal and intent are implemented and the timeframe involved require further study. The scope of the issue (i.e. how many undocumented policies and procedures exist) is not known. In addition to items that might accurately be referred to as ALPO policies and procedures," like any large organization, the County and its departments undoubtedly have developed more or less formal "practices" for the conduct of business. Some of these may have legal effect whether or not written. For example, state law may require consultation with employee organizations before some unwritten practices can be changed. Therefore, further study is needed to identify the scope of the issue to be addressed, to define the term ALPO policies and procedures" that will be the subject of the effort, to determine whether an effort will be made to document all practices

of the County, and to identify the time and resources needed to accomplish the project. The Interim CAO, in conjunction with County Counsel, is directed to conduct a study of the issue and return to the Board with recommendations not later than six months from the date of the publication of the Grand Jury's report.

- R13. The Board should establish a procedure which assures that the contents of its final responses to grand jury final reports are accurate as of the date of its adoption of those responses, rather than as of some unknown prior date.

**Response to R13:** The recommendation requires further analysis. Respondent agrees with the goal and intent of the recommendation. However, further study is needed to determine the manner in which the recommendation should be implemented and the degree to which the strict language of the recommendation should be implemented. Respondent agrees that current information in the possession of the County should be incorporated in the final response. The recommendation could be read, however, to require ongoing active investigation throughout the course of preparing the final response. The extent to which such an effort should be undertaken requires additional study. The Interim CAO, in conjunction with County Counsel, is directed to study the issue further and return to the Board with recommendations not later than six months from the date of publication of the Grand Jury's report.

- R14. The Board should establish a procedure whereby its members can discuss with division heads and/or managers those proposed responses to final grand jury report findings which disagree with grand jury findings for reasons which do not fully satisfy the members of the Board. Such a procedure could involve the establishment of workshops or other discussion groups at which the members of the Board, the affected division heads and/or managers, and one or more members of the Grand Jury and/or the

issuing Grand Jury, would participate. Such discussions, in any event, should occur during the twenty-one (21) day period prior to the commencement of the agendaing of the Draft Report for final action by the Board.

Response to R14: **The recommendation requires further analysis.** The Board of Supervisors already has the authority to hold special meetings, workshops, discussion groups and other mechanisms to engage in dialogue with staff on these or any other matters related to its response to Grand Jury reports. The need for establishing a formal procedure for that interaction is unclear and needs to be further considered. To the extent such a procedure is deemed warranted, further consideration needs to be given to the instances in which it would be invoked, the nature of the process and the participants. The Interim CAO, in conjunction with County Counsel, is directed to further study this issue and return to the Board with recommendations not later than six months from the date of publication of the Grand Jury's report.

EXHIBIT - Response to Report  
Dated January 23, 2002

**BOARD OF SUPERVISORS**  
**RESPONSE TO THE**  
**EL DORADO COUNTY GRAND JURY**

**Government & Administration Committee**

*Final Report as of January 23, 2002, on  
Duties and Responsibilities of the Chief Administrative Officer*

Reason for the Report

The 2001/2002 El Dorado County Grand Jury ("Grand Jury") issued a Final Report dated as of October 3, 2001, dealing with "lack of follow up" regarding the responses of previous Boards of Supervisors to previous grand jury reports. The substantive subject-matter of that particular Report dealt with the management structure of the County of El Dorado ("County"), and recommendations concerning possible changes to that structure.

The Grand Jury has observed a widespread lack of accountability in connection with the performance of the duties required of County employees. Some department heads, division heads and supervisors are attentive to this problem, while others are not. Lack of accountability for non-performance has a negative effect upon County efficiency. Many employees perform "above and beyond" the requirements of their positions. Outstanding performance is often unrecognized and uncompensated, and is of substantial benefit to the County. Employees who do not meet

performance standards, however, cause considerable expense to the County. The Grand Jury will continue to inquire into this accountability issue within the County and will disseminate a more comprehensive Final Report on the subject at the end of the Grand Jury's term.

Concurrently with the issuance of the Grand Jury's October 3 Report, the Board of Supervisors ("Board") initiated inquiry into procedures (i) for the recruiting, interviewing and hiring of a new Chief Administrative Officer ("CAO"), and (ii) for defining the duties of the CAO position. Because of the Board's initiation of that study and the Grand Jury's views (i) that "accountability starts at the top," (ii) that the County's present management structure fails to provide the CAO with authority commensurate with responsibility, and (iii) that there is a lack of adequate accountability on the part of department heads for the performance and functioning of their departments, the Grand Jury has elected to commence its review of County government structure and accountability by focusing its first report on the CAO position.

In the Grand Jury's view, the County's highest administrative officer should be a Chief Executive Officer or County Manager (collectively, "CEO"). The CEO should be accountable to the Board for the proper and efficient administration of the affairs of the County, including the implementation of Board policy and the execution of budgetary requirements. All appointed department heads should operate under the authority of, should report directly to, and should be accountable to, the CEO.

Because whatever final action the Board takes on the subject of its inquiry into the duties and responsibilities of the CEO/CAO position will be of considerable consequence to the County for many

years to come, the Grand Jury has elected to express its view on the subject, and the reasons for that view, in this Report.

### Scope of the Investigation

The Grand Jury reviewed:

1. The County's Charter ("Charter");
2. The County's Ordinance Code ("Ordinance Code");
3. The County's present job description for the position of CAO ("Job Description"); and
4. Eighteen (18) responses to a survey questionnaire prepared by the Grand Jury and submitted to twenty-nine (29) demographically and/or geographically similar counties ("Survey Responses").

The Grand Jury also interviewed numerous employees of the County, including department heads, division heads, supervisors and clerical and field workers.

### Findings

- F1. El Dorado County is a Charter County, governed by a Charter which was ratified by the voters on November 8, 1994, which became effective as of December 27, 1994, and which has been amended thereafter from time to time.

Response to F1: The respondent agrees with **the finding**

- F2. **The position of CAO**, as presently described in the

Charter, the Ordinance Code, and the CAO Job Description, imposes various duties and responsibilities upon the occupant of that position, particularly with regard to the administration of County business by appointed department heads, without delegating the commensurate authority of a true CEO to perform those duties and responsibilities.

Response to F2: Respondent agrees with the finding

The County Charter, Ordinance Code and job description for the CAO do assign certain responsibilities **and** authority to the CAO. To the extent the CAO is desired to act as a CEO, it is agreed that the powers expressly assigned to the CAO by the Charter and Ordinance Code are not commensurate with such a role. A framework is provided by which additional powers can be granted by the Board of Supervisors. Other powers, such as the appointment or removal of appointed department heads, are specified in the charter and would require amendments to the Charter to transfer those powers.

- F3. The existing provisions of the Charter and the Ordinance Code are ambiguous in their description of the nature of the CAO position. Those provisions appear to have been the result of a compromise. On the one hand, the Charter and the Ordinance Code describe the CAO position as that of a true executive officer. On the other hand, the Board retains significant authority to micromanage the administrative affairs of County government, in addition to its appropriate policy-making authority.

This ambiguity is clearly set forth in Section 2.13.005 of

the Ordinance Code, entitled "Statement of Intent." The Statement recites that "it is the intent of the board of supervisors of the county that the CAO exercise overall responsibility for the coordination of department activities to ensure the sound and effective management of county government, pursuant to board policy and adopted budget. The board fully intends to assign to the CAO more clear and direct management authority and responsibility, and to hold him/her specifically accountable, although nothing in this chapter should be interpreted to preclude direct communication and interaction between department heads and the board of supervisors." Further, pursuant to Section 2.13.040 of the Code, "the CAO shall advise, assist, and act as the agent for and be responsible to the board of supervisors for the administration of the affairs of the county as directed by the board, and shall enforce ordinances, orders, policies, or regulations as directed by the board." (Emphasis supplied.)

Response to F3: Respondent disagrees partially with this finding. Respondent generally agrees with the main thrust of the finding, but respondent has no knowledge as to whether the form of the Charter and Ordinance Code was a compromise. Respondent further disagrees with the characterization of Board involvement as "micromanagement." Supervisors are elected by district. Most residents of those districts view "their" Supervisor as "their" direct contact with County government and the person to see to solve problems. The Board sees no inherent conflict between delegating to and holding a county administrative officer responsible for and with the authority to manage county government while retaining for the Board the

necessary authority to solve individual constituent problems. The Board does not view its responsibility to respond to constituent complaints as micromanaging.

- F4. Section 200 of the Charter provides that "the governing body of the county is a Board of Supervisors ... of five members elected by district." Section 2.13.005-A of the Ordinance Code recites that "the board of supervisors acts primarily on establishing a strategic vision, goals, policies and budgets to meet legal mandates and the needs of county residents, on carrying out its legislative and decision-making responsibilities, and on communicating with and serving the citizens of the county."

Response to F4: Respondent agrees with the finding

- F5. The Board is the chief policy-making body of the County. It is an inefficient use of the time and energy of the members of the Board, and thus is counterproductive to the best interests of the County, for the members of the Board, collectively or individually, to spend substantial amounts of their time managing matters of administrative detail, particularly in the area of personnel. County affairs can be more efficiently managed by a greater delegation of authority to the present CAO position.

Response to F5: Respondent agrees with the finding. The finding concludes that a "greater" delegation of authority can result in more efficient management. The precise extent of that delegation needs to be further defined in implementing any such action.

- F6. Section 301 of the Charter provides that "the CAO is the chief executive officer of the county." (Emphasis supplied.) Section 210-a(2) of the Charter provides
- that the Board shall "appoint or remove the [CAO];
  - that at least once each year, the Board shall review and evaluate the CAO's performance; and
  - that the Board shall (1) review, and (2) accept, reject or modify all performance evaluations performed by the CAO pursuant to section 304(h) of this charter.

Section 302 of the Charter provides, in part, that "the CAO ... is evaluated by the Board, serves at its pleasure and may be removed at any time by an affirmative vote of three or more of its members." This status is also reflected in Section 2.13.020-B of the Ordinance Code, pursuant to which the CAO is "appointed by, and serves] at the pleasure of the board of supervisors. The CAO may be removed from office by majority vote of the board of supervisors at any time."

Response to F6: Respondent agrees with the finding

- F7. Section 210-a(3) of the Charter provides that the Board shall "appoint, suspend or remove all department heads except those for whose election or appointment this charter makes other provision," and that, "except as otherwise provided for herein, non-elected department heads shall serve at the pleasure of the Board of Supervisors." With regard to the selection and termination of appointed **department heads, the role of the CAO is advisory only.** Pursuant to Section 2.13.050-E of the Ordinance Code, the CAO shall "assist the board of supervisors in the recruitment and appointment of department heads in accordance with county personnel

ordinances, resolutions and policies and procedures." Section 304-h of the Charter provides that the CAO shall have the duty and power, on at least an annual basis, to "review and appraise the performance of all appointed department heads, .except County Counsel, and submit the appraisal to the Board of Supervisors." And pursuant to Section 2.13.080-B of the Code, the CAO shall "assist the board, as directed, in the filling of vacant department head positions." But Section 404 of the Charter provides, among other things, that "the position of department head shall be designated by ordinance," and that "[d]epartment heads serve at the pleasure of their appointing authority, the Board of Supervisors."

Response to F7: Respondent agrees with the finding

F8. Section 304 of the Charter provides, in part, that "the CAO shall be responsible to the Board of Supervisors for the proper and efficient administration of such of the affairs of the county as are or hereafter may be placed in the charge of the CAO, or under the jurisdiction or control of the CAO, pursuant to the provisions of this Charter, or of any ordinance, resolution or order of the Board of Supervisors." **Thus, the CAO has responsibility, but no authority.** For example:

- Pursuant to Section 210-b(1) of the Charter, the Board retains direct authority, without the participation of the CAO, to "create, abolish, consolidate, segregate, assign or transfer the powers and duties of any appointive office, department, division, board or commission to the extent not in conflict with this charter;"
- Pursuant to Section 2.60.060-B of the Code, appointed department heads are exempt from the County's civil

service system, but pursuant to Section 2.13.070-1 of the Code, the CAO is required to "carry out all responsibilities in a manner which recognizes the basic responsibility and authority of the board of supervisors to determine county policy and department heads to communicate directly with the board of supervisors on issues of policy;"

- Section 304-a of the Charter provides that the CAO shall have the duty and power to coordinate the work of all offices and departments, both elective and appointive, and devise ways and means to achieve efficiency and economy in all county operations;
- Section 401 of the Charter provides that department heads and officers of the county, both elected and appointed, are to cooperate with the CAO so that the CAO may achieve complete coordination of all county activities;
- Section 2.13.005-C of the Ordinance Code recites that "the board of supervisors continues the historical direct relationship with department heads on matters of policy, and encourages them to work closely with the board and the CAO in recommending and implementing effective policy. The CAO shall act as an advisor to the board of supervisors to provide objective commentary on policy considerations;" and
- Pursuant to Section 2.13.070-F of the Code, the CAO shall "assist department heads in solving problems which inhibit efficient operation within a department or require **coordination** between departments." (Emphasis supplied.)

Response to F8: Respondent disagrees partially with the finding. Respondent disagrees with the statement that the CAO has no authority with which to carry out his or her responsibilities. Certain authority is granted by the Charter and Ordinance Code. However, Respondent agrees that the express delegation of authority is not reflective of the authority that normally would be associated with the position of a CEO.

F9. The County's Job Description, last revised in June 1990, for the position of CAO, states, among other things:

- that the CAO "**coordinates** and administers through management staff, all County functions and activities;"
- that the CAO "coordinates the activities of department heads;"
- that the CAO "has overall responsibility for ... administration and operation of all county functions, programs and activities;"
- that the CAO "is responsible for":
  - "accomplishing Board of Supervisors and County goals and objectives;" and
  - "ensuring that the community is provided with desired and mandated services in an effective, cost efficient manner;" and

that the CAO "directs through County elected officials, department heads and support staff the work of the County."  
(Emphasis supplied.)

Response to F9: Respondent agrees with the finding.

F10. The independent status of elected department heads

requires a different analysis of the relationship between those department heads and the CAO. This fact is recognized in Section 2.13.005-D of the Ordinance Code, which recites that "the CAO acts as the board's representative on matters of management. The board provides department heads with the policy direction authority and resources to carry out their budgeted programs. The CAO is charged with evaluating the effective management of all county resources, and holding appointed department heads accountable for results in accord with board goals, policies and budget allocations. Well-coordinated executive management should be encouraged by the CAO. The board and administrator recognize the unique legal responsibilities and voter accountability of independently elected county executives. The CAO is responsible for working with elected officials to ensure management accountability for the resources allocated to them by the board of supervisors."

Response to F10: **Respondent agrees with the finding**

F11. Consistent with the foregoing, the Grand Jury concludes that the primary duties and responsibilities of the CAO position, as presently defined, involve (i) preparation and presentation of the County's budget, and (ii) monitoring the implementation of County programs and reporting on such implementation to the Board. For example:

- Section 304-d of the Charter provides that the CAO shall have responsibility for the administration of the budget after its adoption by the Board;
- Section 304-e of the Charter provides that the CAO shall provide for in-depth analysis and review of all

county programs on a regular basis in such a manner that the Board may make policy decisions;

Section 2.13.005-B of the Ordinance Code recites that "the CAO acts primarily on effective overall management of county resources, long-range financial and organizational planning, ensuring that county departments are producing services and results in accord with board goals, policies and budgets, improving management and information systems to ensure the most effective use of county personnel, money, facilities and equipment, and other specific duties assigned by the board of supervisors;" and

0 Pursuant to Section 2.13.070-A of the Code, the CAO is to "monitor the overall performance of departments and review methods and procedures and formulate recommendations to the board for increased efficiency."

Response to F11: Respondent agrees with the finding:

F12. The 1999-2000 Grand Jury Final Report ("2000 Report") included findings and recommendations pertaining to (i) management oversight, and (ii) charter and ordinance review.

Response to F12: Respondent agrees with the finding

F13. The 2000 Report included findings that "interactions between the BOS [Board], CAO and various department heads on day-to-day matters provide only limited insight into the effectiveness of

- departments;" and that
- "there are no systematic, formal performance audits of the actual practices of the departments with respect to documented policies and procedures and their efficacy."

No response to those findings was requested by the 1999-2000 Grand Jury.

Response to F13: **Respondent agrees with the finding.&**

- F14. The 2000 Report also included a finding that "the GAO's office is currently neither staffed nor budgeted to conduct performance audits." The then-sitting Board, in its Response to the 2000 Report, agreed with that finding.

Response to F14: **Respondent agrees with the finding**

- F15. The 2000 Report contained a recommendation "that the Board of Supervisors develop and implement a program for periodic performance audits of the various appointed departments." The then-sitting Board, in its Response to this recommendation in the 2000 Report, stated, among other things,

- that "the recommendation has been implemented,"
- that "it appears that a system of contracting for performance audits will be cost effective and serve this purpose,"
- that "there could be one or two done on an annual basis by contracting with firms that have expertise in the various areas,"

that "all departments should be considered -for inclusion," and that "the Board has approved the circulation of a Request for Proposal (RFP) in order to assess '- --the efficiency and effectiveness of the El Dorado County Department of Transportation (DOT)."

Response to F15: **ResPondent agrees with the finding.**

- F16. This Grand Jury does not disagree with the desirability of such performance audits of appointed departments, see Finding F15. This Grand Jury also concludes, however, that the results of those audits will not significantly improve the efficiency of County government unless and until a single responsible authority is empowered to implement appropriate recommendations contained in the audits. This Grand Jury concludes that accountability by department heads to everybody, i.e., to the members of the Board collectively, effectively means accountability to nobody, at least until such time as inadequacies of performance have become so extreme as to be publicly intolerable. That, in this Grand Jury's view, is not an appropriate way to administer County government.

Response to F16: **Respondent disagrees partially with the finding.** The Respondent does not agree with the statement that concludes that " . . . accountability by department heads to everybody, i.e., to the member of the Board collectively, effectively means accountability to nobody . . ." We believe that the current structure does provide for accountability of department heads through oversight by the Board and through the evaluation of the performance of the department

heads. This has resulted in performance shortcomings being brought to the attention of department heads.

FIT            The Grand Jury received a 62% rate of [responses.to](#) its survey questionnaire. Approximately 50% of the counties responding stated that they had either a County Manager or a Chief Executive Officer with "full executive authority over all aspects of county administration, including department heads." Only three of the responding counties indicated that their department heads reported directly to the Board of Supervisors, and one indicated that its department heads reported to both the Board and the CAO.

Response to F17: Respondent agrees with the finding

## Recommendations

R1.            The County's highest administrative officer should be a CEO. The CEO should be accountable to the Board for the proper and efficient administration of the business of the County, including the implementation of Board policy and the execution of budgetary requirements. All appointed department heads should operate under the authority of, should report directly to, and should be accountable to, the CEO.

Response to R1: **The recommendaton requires further analysis.** Based upon review already undertaken, the Board agrees that the CAO should be given greater authority over and responsibility for the proper and efficient administration

of the business of the County, including the implementation of Board policy and execution of budgetary requirements. The Board agrees that this includes a more direct reporting relationship between appointed department heads and the CAO, and a greater degree of accountability of the appointed department heads to the CAO. However, the Board has not yet completed its review of this matter nor has it reached a final determination on the extent to which such authority should be vested in the CAO, and the extent to which such a change can, or if it should, be accomplished without amendments to the Charter that would require voter approval. Therefore, the CAO, in conjunction with County Counsel, is directed to compile the available information which has been marshaled in the course of the Board's study of this matter, including any additional information deemed relevant, as well as a delineation of possible areas of delegation of authority to the CAO along with analysis of the steps required to implement the alternative courses of action. The study shall be completed and returned to the Board within six months of the publication of the Grand Jury's report.

- R2. The Board should take all necessary and appropriate steps to establish accountability in the management structure of the County by making the highest administrative position within County Government a position that allows its occupant to exercise strong executive authority commensurate with the responsibilities of the position.

Response to R2: **The recommendation requires further analysis.** As noted in the response to R1, the Board is supportive of giving the CAO increased authority over the

operations of the County. However, the study referenced in that response is needed before the Board can commit to specific actions to effect that change. The Interim CAO, in conjunction with County Counsel, shall analyze the extent to which such an increase in the authority of the CAO can, or if it should, be accomplished without Charter amendments and shall identify specific changes in ordinances or policies that would provide for such increased authority. This analysis shall be done in conjunction with the study referenced in the response to R1 and shall be presented to the Board not later than six months after the publication of the Grand jury's report. Issues related to whether changes should be proposed to the Charter should be referred to a Charter Review Committee that is expected to be convened within the year.

- R3. . To the extent necessary to accomplish the purposes described in Recommendations R1 and R2, the Board should direct the Department of Human Resources to draft a revised Job Description to provide that the occupant of the highest administrative position within the County be called the CEO and perform all the functions of a CEO. The Grand Jury recognizes that, in order to implement this recommendation, the Board may be required to make changes to the Ordinance Code and/or to proposed changes to the Charter.

Response to R3: **The recommendation has been partially implemented. The recommendation requires further analysis in certain respects.** The Board has directed staff to work with County consultants to develop and present to the Board a new job description for the CAO reflecting increased authority to the extent feasible without amendments to the

County Charter. Finalization of the job description will require the results of the studies being conducted under the responses to R1 and R2. The job description will be presented to the Board not later than the studies referenced above. Any changes in the position of CAO that require amendments to the County Charter shall be referred to the Charter Review Committee to be convened.

**Responses Required:**

Findings:

F1 through F17: El Dorado County Board of Supervisors

Recommendations:

R1 through R3: El Dorado County Board of Supervisors

EXHIBIT - Report  
Dated October 10, 2001

# EL DORADO COUNTY GRAND JURY 2001/02

Criminal Justice Committee  
Final Report as of 10/10/01  
El Dorado County jail, South Lake Tahoe

## Reason for the Report

The California Penal Code authorizes and directs Grand Juries to inspect and report annually on the operations of all public prisons located within the boundaries of each county.

## Scope of the Investigation

Members of the Grand jury made an announced inspection of the South Lake Tahoe jail facility on August 15, 2001.

- Members of the Grand jury were given a comprehensive tour of the jail by the Administrative Sergeant;
- Members of the Criminal Justice Committee had a post-tour meeting with the jail Commander;
- The following written materials were reviewed by the Committee and discussed with the jail Commander:
  - Policy and Procedures Manual
  - Inmate Orientation Booklet
  - Job Description Manual
  - Statistical Reports regarding Inmate Population
  - Board of Corrections Inspection Report
- Grand Jury Reports for 1998/99, 1999/00, and 2000/01 were reviewed.

## Findings

- F1. All areas of the jail were exceptionally clean.
- F2. The jail is generally well maintained -painting, equipment, appliances, etc.
- F3. Staff were well groomed and cooperative.
- F4. When arrestees are received and booked, the process is taped.
- F5. Personal visits are restricted to immediate family members; the visits are non-contact.
- F6. Staff training appears to be adequate.
- F7. Every security position has written orders, which are reviewed by the assigned correctional officer, and are signed and dated by that officer.

- F8. Non-lethal weapons, such as gas, are stored in a locked room - only staff have access. Within the room, the non-lethal weapons are in a locked locker - only the jail Commander and the Sergeants have keys. Note: The 2000/01 Grand jury found a problem with weapons storage. The problem has been corrected.
- F9. Staffing appears adequate considering the type of facility, construction, and numbers and kinds of inmates:
- 1 Lieutenant
  - 6 Sergeants
  - 26 Correctional Officers
  - 7 Sheriffs Assistants
  - 1 Aide
- Note: Only the Lieutenant is a Peace Officer. Therefore, the Sergeants and Correctional Officers cannot use lethal weapons (i.e. guns).
- F10. The medical program is provided by a contract company - RN on days, LVN at night, and an MD always on call.
- F11. Programs such as AA, Narcotics Anonymous, and Anger Management are provided to inmates by volunteers from the community.
- F12. Inmate appeals and discipline are handled appropriately as prescribed by the Board of Corrections, Title 15, California Code of Regulations.
- F13. No "musty odor" was noticed. The 2000/01 Grand Jury Report documented a "musty odor" especially in the access area.
- F14. All members of the Grand jury were impressed by the knowledge, dedication, and high level of interest of the jail Commander.
- F15. Cracks in the concrete were observed in various parts of the jail. Of special concern were the cracks found in the kitchen.
- F16. The ADA pedestrian ramp located in the front of the jail is cracked and buckling. This is an obvious safety issue. Approval was granted to fix the ramp in 1998 and no action has been taken.

### **Recommendations**

- R1. The cracks in the concrete found in various parts of the jail need to be fixed - especially the one in the kitchen.

The ADA pedestrian ramp located in front of the jail should be removed, redesigned and replaced. In addition, a canopy should be placed over it so that in the winter ice and snow are not a problem. This project has been authorized and approved since 1998, however has still not been started. This creates a hazard for all who need to

