

Admin.

November 18, 1999

## Memorandum 99-89

### New Topic Suggestions

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At the Commission's October 1999 meeting, the Commission made decisions concerning new topics and priorities, but deferred decision on several matters:

**Grand jury selection and procedure.** The Governor's veto message on AB 527 (Baugh) had suggested the matter had not been studied or recommendations made by the Law Revision Commission.

**Subdivision Map Act.**

**Development fees under the Government Code.**

**Conflicts of interest under Government Code Section 1090 et seq.** These three subjects had been suggested by Commissioner Skaggs. The Commission deferred decision until he could be present to explicate them.

This memorandum presents additional information concerning these matters.

#### Grand Jury Selection and Procedure

The matter of grand jury selection and procedure is both politically sensitive and the subject of ongoing litigation and legislation. In addition to the legislative enactment and gubernatorial veto of which we are already aware, there is a recent court of appeal decision that deals with both the selection and procedure issues. *People v. Brown*, 1999 Daily Journal D.A.R. 10769 (October 21, 1999), involves a constitutional attack by a criminal defendant on his grand jury indictment. The defendant argues that the exclusion of a number of minority groups from the grand jury foreperson position denies him equal protection under the law and abridges his right to due process. He also contends that he was impermissibly denied his right to counsel during the grand jury proceedings. The court rejects these arguments.

We have received a letter from Professor Kelso indicating that the Institute for Legislative Practice is initiating a Grand Jury Reform project. A copy of the letter is attached as Exhibit pp. 1-2. This project responds to a number of concerns, including that expressed in the Governor's veto message on AB 527 that any major departures from existing practice warrants thorough and thoughtful

consideration and debate within the legal community and among legal scholars. Professor Kelso indicates that the project should take 12 to 18 months, and will follow a process similar to that used by the Law Revision Commission.

**In light of the Institute for Legislative Practice project, and to avoid unnecessary duplication of effort, the staff recommends that the Commission not seek authority to study this politically charged area of law.**

### **Subdivision Map Act**

The Subdivision Map Act is found at Government Code Sections 66410 to 66499.37. It is a statutory framework under which a local public entity regulates land use and development within its jurisdiction by controlling the design and improvement of subdivisions. The purposes of the law include uniformity of mapping procedures (for conveyancing and title insurance regularity), regulation and control of development (for consumer protection), and dedication of land within a subdivision, such as for streets, sewers, and parks (to ensure public use and protect the public from undue maintenance burdens).

The staff will defer to Commissioner Skaggs to elaborate at the Commission meeting the sort of revision of this statute that is needed.

### **Development Fees under Government Code**

Government Code Section 66000 *et seq.* governs imposition of fees by a local public entity as a condition of approval of a development project. The staff will defer to Commissioner Skaggs to elaborate at the Commission meeting the sort of revision of this statute that is needed.

### **Conflicts of Interest under Government Code Section 1090 *et seq.***

These Government Code provisions prohibit a public officer or employee from being financially interested in any contract made by the officer or employee or by any board of which the officer or employee is a member. The penalties for violation of this prohibition are severe — felony prosecution, bar from public office, and voidability of the contract. A violation occurs even if the officer or employee does not participate in the decision — membership on a board that makes such a contract is in itself a violation of the statute.

These statutes are heavily litigated and frequently amended. Most of the amendments involve exceptions, such as for an officer or employee whose financial interest is “remote”. See Sections 1091-1091.5. For example, during the 1999 legislative session, these provisions were amended to deal with the situation

where two governmental entities contract with each other; in that situation, a violation does not occur if the only financial interest of the officer or employee is receipt of salary or per diem, or reimbursement for expenses, from the governmental entity. 1999 Cal. Stat. ch. 349.

**Because this deals with a sensitive political topic, and in light of the fact that these provisions are the subject of ongoing legislative scrutiny and adjustment, the staff recommends against Commission study of the matter.**

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

UNIVERSITY OF THE PACIFIC  
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INSTITUTE FOR LEGISLATIVE PRACTICE

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Law Revision Commission  
RECEIVED

October 18, 1999

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Mr. Nathaniel Sterling  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

File: \_\_\_\_\_

Dear Mr. Sterling:

Thank you for forwarding to me the September 24 letter from the Attorney General's office regarding a possible study of issues regarding the grand jury. I recently moderated a panel at the annual meeting of the California Grand Jurors Association, and in the course of preparing for that panel, I had the opportunity to read through all of the grand jury provisions in the Penal Code. The grand jury statutes are sorely in need of a systematic review and redrafting.

Two of my colleagues, Professors Michael Vitiello and Jed Scully, have agreed to take on a Grand Jury Reform project. The project seems particularly appropriate in light of Governor Davis' veto of AB 527, where he notes that "any major departures from existing practice warrants thorough and thoughtful consideration and debate within the legal community and among legal scholars."

We plan on following loosely the Commission's methodology of inviting stakeholders to meetings here at McGeorge first to gather suggestions for an agenda and then to comment upon specific changes to the statutes as we propose them. I suspect the entire project will take 12 to 18 months. Preliminarily, we have identified the following questions for consideration:

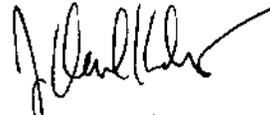
1. How can racial, ethnic, gender, age, and occupational diversity among grand jurors be ensured?
2. Should grand jurors be paid more for their services?
3. Should the current one-year tenure of grand jurors be reduced, extended or otherwise modified (e.g., tenure for as long as necessary to finish its inquiry or tenure dependent upon nature of the investigation)?
4. Should grand jurors be required to meet minimum standards of expertise or competence?

5. Should grand jurors undergo additional training after being selected?
6. Should counties have separate grand juries for criminal and civil matters?
7. Should witnesses and those being investigated by grand juries have counsel present during the proceedings?
8. How can grand jury recommendations be better implemented?

In addition to these substantive matters, there are, as you know, a number of technical drafting issues that can be usefully addressed in the grand jury statutes.

I will let you know as soon as we have scheduled our first meeting, and I will keep you informed of our progress.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Clark Kelso", with a long horizontal flourish extending to the right.

J. Clark Kelso

cc: Mr. Demetrios Boutris  
Assemblyman Scott Baugh  
Mr. Robert L. Mukai, Counsellor to the Attorney General