

2004-2005 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT



ALAMEDA COUNTY BOARD OF SUPERVISORS

Scott Haggerty, Vice President, First District

Gail Steele, Second District

Alice Lai-Bitker, Third District

Nate Miley, Fourth District

Keith Carson, President, Fifth District

ALAMEDA COUNTY GRAND JURY

1401 Lakeside Drive, Suite 1104

Oakland, California 94612

Phone: (510) 272-6259

FAX: (510) 465-9547

E-mail: grandjury@acgov.org

Web: www.acgov.org/grandjury

**2004-2005 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT
TABLE OF CONTENTS**

Alameda County Board of Supervisors	1
Foreman's Letter	3
Grand Jury Members.....	4
Officers and Legal Staff.....	5
Grand Jury Photograph	6
Presiding Judge of the Superior Court	7
Grand Jury Committee Roster	8
INTRODUCTION	9
History of the Grand Jury.....	9
Functions.....	9
Selection Process	10
Qualification of Jurors	10
Commitment	11
Committees.....	11
Renumeration	11
Orientation and Training	12
How to Submit a Complaint.....	12
HEALTH COMMITTEE	13
Interim Report [issued May 11, 2005]	14
Alameda County Medical Center	24
EDUCATION COMMITTEE	25
Preventing School District Financial Crisis.....	25
Alameda County Board of Education	36
LAW & JUSTICE COMMITTEE	42
Jail Inspections	42
Glenn E. Dyer Detention Facility.....	42
Santa Rita Jail.....	43
Juvenile Hall	45
Oakland City Jail.....	46
Homeland Security	48
GOVERNMENT COMMITTEE	61
Introduction	61
City of Oakland Towed Vehicle Contract.....	62
Oakland Fire Department Hazardous Materials Training	66

Honorable Barbara J. Miller, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

June 30, 2005

Dear Judge Miller:

It has been my privilege and honor to serve as Foreman of the Alameda County Civil Grand Jury for the 2004-2005 term. There were four standing committees this year. They were: Health, Law & Justice, Government and Education. There were no ad hoc committees.

This final report is the thoughtful compilation of all major investigations and studies. There were twenty-two complaints from citizens during this term; however, not all were within the jurisdiction of the Grand Jury.

An interim report was issued on May 11, 2005, regarding the continuing fiscal difficulties at the Alameda County Medical Center. A number of recommendations were made to assist the Medical Center board of trustees in directing their efforts in arriving at a responsible budget.

The Law & Justice committee inquired deeply into Homeland Security as it applies to jurisdictions in Alameda County. The Government committee investigated the tow contract in the City of Oakland, as well as Oakland firefighter hazardous materials training. The Education committee made many recommendations after lengthy investigations relative to school financing and the Alameda County Board of Education.

The members of this Grand Jury were hard working and intense. They also maintained a sense of humor that helped us all through many meetings. My thanks to all of them. Mr. Jeffrey Stark, Senior Deputy District Attorney assigned to the Grand Jury, continued to guide us with good and timely counsel. Ms. Cassie Barner, Legal Staff Assistant, cannot be commended too highly for her diligent hard work. The Grand Jury operates well daily due to her invaluable assistance.

It is my pleasure to present to you the 2004-2005 Alameda County Civil Grand Jury Final Report.

Sincerely,

KEITH BOYER, Foreman
2004-2005 Alameda County Grand Jury

2004-2005 ALAMEDA COUNTY CIVIL GRAND JURY MEMBERS

Name	Supervisorial District and City	Nominating Judge
Keith Boyer*	District 4 – Castro Valley	Judge Jeffrey Horner
Lawrence S. Burne	District 3 – Oakland	Judge Barbara J. Miller
Joan M. Drum	District 5 – Piedmont	Judge Barbara J. Miller
Mary W. Glenn	District 2 – Hayward	Judge Barbara J. Miller
Judith Iglehart	District 5 – Piedmont	Judge Jon S. Tigar
Jaime Armando Jaramillo	District 2 – Fremont	Judge Frank Roesch
Charles J. Kadlecek*	District 4 – Castro Valley	Judge Kenneth Burr
Willie M. Love	District 5 – Oakland	Judge Gordon Baranco
Lawrence B. Lum	District 4 – Oakland	Judge Jeffrey Horner
Richard McDonald*	District 2 – Hayward	Judge Peggy Hora
LaVon Neveau*	District 2 – Hayward	Judge Peggy Hora
Rochelle M. Pola	District 3 – Alameda	Judge Yolanda Northridge
Mary E. Reynolds*	District 3 – San Lorenzo	Judge Harry R. Sheppard
Earl Robinson	District 3 – Oakland	Judge C. Don Clay
Steve Spellman	District 3 – Alameda	Judge Barbara J. Miller
Jana K. Turns*	District 1 – Pleasanton	Judge Harry R. Sheppard
Robert Williams	District 2 – Hayward	Judge Horace Wheatley
Paul P. Wong	District 4 – Oakland	Judge Vernon Nakahara
Karen Zeldin	District 5 – Berkeley	Judge Wynne Carvill

* Jurors held over for a second term by Presiding Judge Barbara J. Miller

**2004-2005 ALAMEDA COUNTY CIVIL GRAND JURY
OFFICERS & LEGAL STAFF**



FOREMAN: Keith Boyer
FOREMAN PRO TEM: Willie M. Love
SECRETARY: Charles J. Kadlecek
SECRETARY PRO TEM: Rochelle M. Pola
SERGEANT AT ARMS: Earl Robinson
SERGEANT AT ARMS PRO TEM: Richard McDonald

LEGAL ADVISOR: Jeffrey P. Stark, Senior Deputy District Attorney
LEGAL STAFF ASSISTANT: Cassie Barner



2004-2005 ALAMEDA COUNTY CIVIL GRAND JURY

Standing, left to right:

Willie M. Love, Rochelle M. Pola, Richard McDonald, Lawrence B. Lum,
Lawrence S. Burne, Joan M. Drum, Judith Iglehart, Keith Boyer, LaVon Neveau,
Mary E. Reynolds, Karen Zeldin, Jaime Armando Jaramillo, Steve Spellman,
Robert Williams and Paul P. Wong

Seated, left to right:

Earl Robinson, Honorable Barbara J. Miller (Presiding Judge), Charles J. Kadlecek

Not Pictured:

Mary W. Glenn, Jana K. Turns

ALAMEDA COUNTY SUPERIOR COURT PRESIDING JUDGE



Honorable Barbara J. Miller
Presiding Judge
January 1, 2004 – Present

**2004-2005 ALAMEDA COUNTY CIVIL GRAND JURY
COMMITTEE ROSTER**

Health

Willie M. Love, Chair
Jaime A. Jaramillo
Lawrence B. Lum
LaVon Neveau
Mary E. Reynolds
Steve Spellman
Jana K. Turns
Paul P. Wong
Karen Zeldin

Law & Justice

LaVon Neveau, Chair
Mary W. Glenn
Judith Iglehart
Jaime A. Jaramillo
Charles J. Kadlecek
Richard McDonald
Rochelle M. Pola
Mary E. Reynolds
Jana K. Turns
Karen Zeldin

Edit

Keith Boyer (Foreman)
Lawrence S. Burne
Judith Iglehart
Charles J. Kadlecek
Willie M. Love
LaVon Neveau
Steve Spellman
Karen Zeldin

Education

Steve Spellman, Chair
Lawrence S. Burne
Joan M. Drum
Mary W. Glenn
Willie M. Love
Richard McDonald
Earl Robinson
Robert Williams

Government

Lawrence S. Burne, Chair
Joan M. Drum
Judith Iglehart
Charles J. Kadlecek
Lawrence B. Lum
Rochelle M. Pola
Earl Robinson
Robert Williams
Paul P. Wong

INTRODUCTION

HISTORY OF THE GRAND JURY

The California grand jury dates back to 1849, with Alameda County's first grand jury being empaneled in 1850. The role of the grand jury was unique in that by 1880, its duties included investigation of county government. Only seven other states provide for investigation of county government by a grand jury beyond alleged misconduct of public officials.

FUNCTIONS

The grand jury is an investigative body. Its two predominant functions are:

Watchdog Responsibilities – The grand jury may examine all aspects of county and city government and over 100 special districts to ensure that the best interests of Alameda County citizens are being served. The grand jury reviews and evaluates procedures, methods and systems to determine whether more efficient and economical programs might be employed. The grand jury is authorized to: inspect and audit books, records and financial expenditures to ensure that public funds are properly accounted for and legally spent; inquire into the condition of jails, detention centers, and hospitals; and inquire into charges of willful misconduct in office by public officials or employees.

Grand jury “watchdog” findings are contained in reports that describe problems and recommend solutions. Interim reports are sometimes released upon completion of investigations. At the end of its term, the grand jury issues a final report on the operations of Alameda County government. The county Board of Supervisors must comment on the jury's recommendations within 90 days. Copies of the most recent final and interim reports can be obtained at the grand jury's web site at: www.acgov.org/grandjury.

Citizen Complaints – As part of its civil function, the grand jury receives letters from citizens alleging mistreatment by officials, suspicion of misconduct, or governmental inefficiencies. Complaints are acknowledged and may be investigated for their validity. All complaints are confidential. If the situation warrants, and corrective action is under the jurisdiction of the grand jury, appropriate solutions are recommended.

SELECTION PROCESS

Superior Court judges in Alameda County nominate individuals for grand jury service. It is not necessary, however, to know a judge personally in order to apply. Citizens who are interested, qualified, able to provide one year of service, and who desire to be nominated for grand jury duty may send a letter with their resume and request an application questionnaire from: *Office of the Jury Commissioner, Grand Jury Selection, 1225 Fallon Street, Room 100, Oakland, California 94612*. On the basis of supervisorial district, six members from each district for a total of 30 nominees are assigned for grand jury selection. After the list of 30 nominees is completed, the selection of 19 jurors who will actually be empaneled are drawn by lot. This is done in late June before the new grand jury term begins on July 1. For more information, please visit the Alameda County Superior Court web site at: www.alameda.courts.ca.gov and follow the links to “jury” then “grand jury.”

QUALIFICATION OF JURORS

Prospective grand jurors must possess the following qualifications pursuant to Penal Code section 893: be a citizen of the United States at least 18 years of age who has been a resident of Alameda County for one year immediately before being selected; possess natural faculties of ordinary intelligence, sound judgment, and fair character; and possess sufficient knowledge of the English language. Other desirable qualifications include: an open-mind with concern for others’ positions and views; the ability to work well

with others; an interest in community affairs; possession of investigative skills and the ability to write reports; and a general knowledge of the functions, authorities and responsibilities of county and city government.

A person may not serve on the grand jury if any of the following apply: the person is serving as a trial juror in any court in this state; the person had been discharged as a grand juror in any court of this state within one year; the person has been convicted of malfeasance in office or any felony or other high crime; or the person is serving as an elected public officer.

COMMITMENT

Persons selected for grand jury service must make a commitment to serve a minimum of one year (July 1 through June 30). Grand jurors should be prepared, on average, to devote two full days each week to grand jury business. Grand jurors will be required to complete and file Statements of Economic Interests as defined by the state's Fair Political Practices Commission, as well as a Conflict of Interest form.

COMMITTEES

In order to accomplish the county's watchdog functions, committees are normally established to address the following: Government, Education, Health, Social Services, Environmental, Emergency Services, and Law & Justice (public safety and detention facilities). One or more Ad Hoc committees may be established by each grand jury on special issues.

RENUMERATION

Grand jurors are paid \$15.00 a day for each day served, as well as a county mileage rate, portal to portal, for personal vehicle usage. Reserved parking is provided at a reduced rate.

ORIENTATION AND TRAINING

Persons selected for grand jury duty are provided with an extensive orientation and training program regarding grand jury functions. This program takes place immediately after selection and empanelment, and lasts approximately one month. This training includes tours of county facilities and orientation by county department heads. Those selected for grand jury service are required to attend.

HOW TO SUBMIT A COMPLAINT

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints from citizens in writing. Complaints should include the names of the persons or agencies in question, listing specific dates, incidents or violations. The names of any persons or agencies contacted should be included along with any documentation or responses received. It is preferred that the complainant's name and address also be included should the grand jury wish to contact the complaining party for further information. A complaint form is available on the grand jury's web site at: www.acgov.org/grandjury.

All complaints submitted to the grand jury are required by California law to be treated with the strictest of confidence. The grand jury reviews all complaints received; but due to time, staffing or resources, every complaint may not be investigated.

Complaints should be mailed to: *Foreman, Alameda County Grand Jury, 1401 Lakeside Drive, Suite 1104, Oakland, California 94612*. An acknowledgment letter is routinely sent within two weeks.

**INTERIM REPORT
ALAMEDA COUNTY MEDICAL CENTER**

Issued May 11, 2005

INTERIM REPORT
Issued May 11, 2005

ALAMEDA COUNTY MEDICAL CENTER

The 2003-2004 Grand Jury conducted a detailed analysis of the historical, financial, administrative and medical crises at the Alameda County Medical Center (Medical Center). This year the Grand Jury monitored the progress the board of trustees made in working the Medical Center out of its current financial crisis. Sadly, the news is disappointing. Instead of grasping the concept that the Medical Center is facing a dire financial crisis, the board of trustees has spent the last year preoccupied with infighting and has made little progress in coming to terms with difficult issues.

In conducting this investigation the Grand Jury interviewed members of the Alameda County Board of Supervisors; senior county management; members of the Alameda County Medical Center Board of Trustees; all senior Medical Center management; a Medical Center union representative; and representatives of Cambio Healthcare Solutions (Cambio), a consultant hired by the board of trustees to develop and implement solutions to the Medical Center's financial crisis. The Grand Jury also reviewed Medical Center budgets and supporting documents as well as Cambio reports reviewing all segments of Medical Center operations. The Grand Jury conducted site visits and inspections at Highland Hospital and John George Psychiatric Pavillion.

A number of significant issues face the Medical Center:

1. The 2003-2004 operating deficit was in excess of \$50 million. With the addition of approximately \$70 million in Measure A funds the 2004-2005 budget remains over \$3 million in deficit. Current projections call for the costs to increase by at least \$10 million in 2005-2006.
2. Further complicating the Medical Center's grim financial picture, in 2006 it must begin making annual reductions in its total borrowing from the County Treasury of at least \$10 million each year for 10 years.
3. Cambio's contract for providing workout services expires August 2005. A permanent chief executive officer will not be hired until July 2005. The Medical Center cannot begin to hire a senior management team until it hires a permanent chief executive officer.
4. The board of trustees appears incapable of acting with one voice. Preoccupied for much of the year by infighting, the board of trustees has repeatedly postponed dealing with difficult decisions. As a result, an already grim financial picture grows worse each day.

5. Worse still, the board of trustees has not aggressively supported the recommendations of its own consultant, weakening its ability to implement drastically needed changes.
6. Although communications between the Alameda County Board of Supervisors and the Medical Center board of trustees have improved due to regular meetings between members of each board, senior staff communication has suffered. Senior management of the county and Medical Center met regularly last year. Apparently insecure about its authority, Medical Center board of trustees forbade Medical Center senior staff from meeting with senior county staff. As a result, critical lines of communication have disappeared.

BACKGROUND

In California, responsibility for providing medical care to the indigent rests with the counties. Most large counties meet this responsibility by operating public hospitals. These hospitals serve patients who have no ability to pay for medical services and low-income people who have coverage under federal or state programs like Medicare and Medi-Cal. For many years, Alameda County operated the Alameda County Medical Center. The Medical Center delivered indigent medical services through Highland Hospital, Fairmont Hospital, John George Psychiatric Pavilion and a number of primary care clinics located throughout the county. For at least the last 30 years, the Medical Center has suffered from financial crises. They were brought on by a number of factors, among them: a reduction in fees paid to the Medical Center by Medicare and Medi-Cal; an increase in the indigent population; an increase in the number of low-income people who had no health insurance; increases in the cost of delivering medical services; and poor management.

The Medical Center delivers medical services for three main categories of patients: those who are covered by Medi-Cal; those covered by Medicare; and those indigent residents covered by Alameda County under its County Medical Services Program (CMSP). Alameda County contracts with the Medical Center for indigent health care services. For a flat fee, the Medical Center provides all indigent medical services for CMSP patients.

In 1995, the Alameda County Grand Jury reacted to this long-term history of financial crises, and recommended that Alameda County form an independent board of trustees to manage the Medical Center. The Alameda County Board of Supervisors sought legislation and voter approval to form an independent authority to operate the Medical Center. In 1998, control of the Medical Center transferred from Alameda County to an independent public hospital authority. (See California Health and Safety Code section 101850 and Alameda County Ordinance Chapter 6.100.) Although the authority operates the Medical Center, it is not completely independent from Alameda County. The Alameda County Board of Supervisors appoints ten of the eleven-member authority board. The Medical Center physicians elect the eleventh board member.

Instead of improving the Medical Center's financial health, the authority's board of trustees has continued to manage the Medical Center poorly. When the board of trustees took control of the Medical Center in 1998, it found the Medical Center could not deliver quality medical care. The Medical Center was in jeopardy of losing state and federal certifications that allow it to receive payment for delivering medical services to Medi-Cal and Medicare patients. The board of trustees moved aggressively to improve the quality of medical care. At the same time, the board of trustees ignored its responsibility to shore up management of the Medical Center.

A series of weak chief executives and senior managers negotiated employee contracts that included extremely generous benefits. Not only did the board of trustees approve benefit packages far more generous than that of Alameda County, they also agreed to work rules far more restrictive than any other public hospital in California. Through these negotiations, all approved by the board of trustees, the unions and bargaining groups gained unprecedented control over hospital operations. This control takes the form of negative power – it does not give any union or bargaining group the right to take affirmative action. Rather, the restrictive work rules give the employee groups the right to veto, or to prevent management from taking action. For example, the nurses' contract requires that patient wards be staffed. A nurse assigned to a patient ward cannot be transferred to another, identical patient ward, even if the assigned ward is overstaffed and the proposed ward understaffed. Instead, the Medical Center must hire a temporary nurse at a substantially higher cost.

Over time this neglect of the financial and administrative side of the Medical Center contributed to mounting deficits in Medical Center operations. The overly generous employee work rules severely restricted management's flexibility. In 2003, alarmed by the size of the operating deficit and his inability to manage the Medical Center in a climate of decreasing revenue and increasing costs, the then-chief executive, with board of trustees approval, hired a consultant to advise the Medical Center on how to continue to operate. He retained Price Waterhouse Coopers, a respected international accounting company that also provided health care consulting services.

In mid-2003, the Medical Center and Price Waterhouse Coopers made a presentation to the Alameda County Board of Supervisors requesting a bailout in the form of a gift of \$50 million. Without that infusion of cash, the Medical Center argued, it would not be able to continue to operate a full-service, acute-care hospital. Instead, it proposed that in the then-current climate it could only afford to operate an emergency room and several clinics. The Alameda County Board of Supervisors and senior county managers did not accept either alternative. Instead, they stripped the chief executive of voting rights on the board of trustees and directed the county auditor to discover the true financial condition of the Medical Center.

The Medical Center board of trustees, believing that the authority of their chief executive officer had been severely undermined, fired him and negotiated a generous severance. One week later, five members of the board of trustees resigned, expressing frustration that Alameda County had not acceded to their

demands for additional funding. The remaining members of the Medical Center board of trustees selected an interim chief executive and sought help in managing their way out of financial crisis.

In February 2004, acting on the recommendation of the interim chief executive officer, the board of trustees hired Cambio Health Care Solutions (Cambio) to make and implement changes in all aspects of the Medical Center to allow it to operate in a financially sound manner. The board of trustees contracted with Cambio to provide consulting services for a period of 18 months for a fee of \$3.2 million. Cambio agreed to work with the existing senior Medical Center management, rather than follow its usual policy of immediately replacing existing management. However, after a few months of working with the existing senior management, Cambio recommended replacing them. Following Cambio's recommendation, the board of trustees fired their senior management and replaced them with interim managers recommended by Cambio.

Since February 2004, Cambio has examined all areas of the Medical Center, including: financial and administrative management; billing; nursing contracts and staffing; and physician contracts and staffing. Cambio has also examined all other areas of Medical Center employee staffing, work rules and contracts. Since February 2004 Cambio has implemented a number of changes including a more efficient and streamlined billing process which has resulted in a huge decrease in the amount of time between medical services being provided and the Medical Center receiving payment for that service.

Cambio has also overseen changes in most physician contracts. Under the old contracts, physicians were paid a flat fee for all the services they provided. In that plan, a doctor received the same compensation if the doctor treated two patients in a day or twenty patients in a day. With the new contracts, physicians will be paid an individual fee for each service they provide. Doctors will be paid a fee for each patient treated. So a physician treating one patient will receive a fee for treating that patient. The same doctor treating 20 patients in one day will receive 20 fees.

The legislation that created the independent hospital authority allows the Medical Center to borrow funds from Alameda County. The legislation also allows the Medical Center to participate in the Alameda County Treasury. The Medical Center maintains accounts with the Treasury, and all its reimbursements are paid into the Treasury. The Medical Center does not always receive consistent or timely reimbursement from its three main payers for the health care services it provides.

To cover gaps in its cash flow, the Medical Center is authorized to borrow from the County Treasurer. The Medical Center began using this borrowing, originally designed to function as a short-term cash management tool, to fund its operating deficit. As the Medical Center's operating deficit grew, so did the amount the Medical Center borrowed from the Treasury. The Medical Center's cash account balance stood at negative \$6,170,267 on December 31, 2001. One year later the negative balance had grown to \$84,675,567. By December

31, 2003 it had ballooned to a negative \$116,264,661. At its height in 2004 it grew to a negative \$192,050,695.

In late 2003 the Alameda County Board of Supervisors tried to ease the Medical Center's financial crisis by seeking passage of a half-cent sales tax extension. This sales tax, authorized for 15 years, was designed to provide a stable source of funds for the Medical Center and also to provide funds for emergency room services throughout the county. In March 2004, Measure A passed with 71% of the vote. Due to the rapidly expanding borrowings from the Treasury, in August 2004, the Board of Supervisors imposed a cap on the Medical Center's ability to borrow. The Board of Supervisors limited the Medical Center's total debt to the Treasury to \$200 million and required the Medical Center develop a repayment schedule designed to reduce the total loan balance to \$30 million over ten years.

The Medical Center management and board of trustees have responded by focusing their efforts on improving cash flow. To an extent they have succeeded, and have reduced their total loan balance in the process, however, they have made no progress balancing their budget.

Passage of Measure A should have provided long-term relief to the Medical Center. The Medical Center's operating deficit was \$50 million in 2003-2004. Even applying \$70 million in Measure A funds in 2004-2005, the board of trustees failed to eliminate the budget deficit. Originally, the board of trustees adopted a 2004-2005 budget with a deficit of \$12 million. Cambio and the senior Medical Center staff have been able to reduce the deficit to \$3 million. However, as recently as April 2005, senior Medical Center management did not believe the deficit could be eliminated.

Looking forward, the picture gets worse. Current projections call for the Medical Center's costs to increase by about \$10 million in 2005-2006. Any revenue gain will be modest at most, currently estimated at \$1-2 million. The first reductions in the Medical Center's overall debt to Alameda County take place in March and June 2006. The overall debt reduction takes place by lowering the cap. In March 2006, the cap lowers from \$200 million to \$195 million. In June 2006, the cap lowers to \$190 million. If the board of trustees does not take immediate and aggressive action to lower Medical Center costs, the 2005-2006 budget deficit will balloon. Even Measure A revenue will not prevent the Medical Center from collapsing. The board of trustees' failure to take aggressive action to reduce costs has broken Measure A's promise of long-term financial stability.

The Medical Center's financial challenge is twofold. First, the Medical Center must manage its cash flow more efficiently. It can do that by making its billing procedures more efficient and reducing the time between the delivery of medical services and receiving payment for those services. Second, the Medical Center must become more efficient. It can do that either by reducing the cost of delivering its medical services or by reducing the amount of services it provides. The Medical Center can realize some savings by becoming more efficient at

billing, but to achieve financial stability the Medical Center must dramatically improve its ability to provide medical services at a lower cost.

Cambio-inspired changes have improved the Medical Center's efficiency in collecting payment for services. The Medical Center has made some small improvements at becoming more efficient in delivering medical services; for example, achieving better, more efficient contracts with its doctors. However, on the far more significant front of cutting Medical Center costs, the board of trustees failed to take aggressive action. In failing to take aggressive action, the board of trustees showed an amazing lack of fortitude.

While Cambio has made progress in reforming the Medical Center, its most important recommendation has been placed on hold by the board of trustees. To eliminate the 2004-05 budget deficit, Cambio urged the board of trustees to reduce costs by laying off employees. Cambio and senior management initially recommended laying off over 300 full- and part-time employees. After further study, the number of employees recommended to be laid off stood at about 120. Employee unions reacted by staging a one-day strike. The Medical Center hired temporary employees to provide medical services during the strike at a cost of \$1 million.

Instead of laying off employees, balancing the Medical Center budget and coming to terms with its employee unions, the board of trustees authorized senior management to form a labor-management committee. Once negotiations on the annual employee contracts were completed, the committee was to begin to meet. Those contract negotiations resulted in across-the-board increases to employee salaries and benefits. After those negotiations concluded, the committee began to meet.

Although the Grand Jury heard testimony suggesting the committee was charged with examining alternative strategies to close the then-\$6 million budget gap, the document authorizing the committee is drafted in such loose and vacuous language that its charge can mean almost anything. Significantly, the board of trustees gave this committee until September 2005, one month after the Cambio contract expires, to come up with alternatives. While this committee has held a number of meetings, to date it has made no apparent progress in closing the now-\$3 million deficit.

This weak-kneed approach to dealing with difficult decisions leaves the Medical Center in perilous condition. If the labor-management committee fails to find creative solutions to balance the budget, the Medical Center will return to square one and face the difficult decision of making layoffs to balance the budget and face labor unrest. Having waited a year to make these difficult decisions, the Medical Center will be confronting a worse financial picture with a larger deficit.

The Medical Center, like all other public entities in California, must balance its budget each year. Historically, the Medical Center has always spent over its budget. When the Medical Center was part of Alameda County government, only deft management and cutting other areas of the county health department

allowed the Medical Center to remain open. The original Grand Jury recommendation to spin the Medical Center off from Alameda County was made in part because the Grand Jury believed that a board made up of local business leaders could restore financial responsibility to the Medical Center. In the first years of board of trustees' management, the Medical Center balanced its budget; however, the recent financial crisis has forced the Grand Jury to reexamine its original recommendation.

In response to the combination of events that led to the current large annual operating deficits, the Medical Center has borrowed funds from the County Treasury in an attempt to bring its budget into balance. Even committing the Medical Center's entire share of the Measure A funds, \$70 million, to operations has not brought the current year budget into balance.

To eliminate its budget deficit the Medical Center has only two choices: it must raise additional revenue or reduce its cost. Having gone to the voters last year and received generous support, the Medical Center has exhausted its ability to raise additional funds. Plainly, the additional revenue from Measure A has not balanced the budget. As the deficit continues to grow, the board of trustees must aggressively begin to reduce costs.

To do so, it has two related options – eliminate jobs or reduce the amount of medical programs and services it provides. This year, the Grand Jury did not undertake a detailed analysis of the amount of medical service the Medical Center provides and accordingly cannot express an opinion or make recommendations in this area. Perhaps future Grand Juries may find this a fertile field to pursue. The Grand Jury did hear anecdotal evidence that the level of medical coverage provided is far in excess of what even high end private insurance provides. For example, the Medical Center provides complete dental coverage, including implants – coverage not typically available in private plans.

Unfortunately, the board of trustees has taken the head-in-the-sand approach of ignoring both alternatives. Shockingly, the Medical Center has not even reviewed the question of whether the scope of service it provides should be reduced to balance its budget.

The snail-like pace of recruiting a permanent chief executive for the Medical Center has further weakened the recovery process. Universally accepted as a critical piece in the Medical Center's recovery, the board of trustees has not placed enough importance on finding and hiring a qualified executive. In February 2005 a search firm was finally engaged, and the board of trustees hopes to have a new chief executive hired by July 2005.

The culture of the Medical Center, criticized in past Grand Jury reports, continues unabated. This culture has two obvious symptoms. One is characterized by the belief that no matter how bad the finances become, the county will bail out the Medical Center. Sadly, the board of trustees has embraced and encouraged this concept. In failing to come to grips with the difficult decision to lay off employees to balance the budget, the board of

trustees has left its senior management no alternative but to attempt to close their budget “gap” through attrition.

Instead of designing layoffs to help streamline operations resulting in more efficiencies, a strategy of not filling positions as employees leave puts even greater pressure on the Medical Center. Experience has taught them that the employees leaving most frequently are also the ones most in demand, for example registered nurses and respiratory therapists. Attrition inevitably results in shortages of certain employees, creating greater pressure on remaining staff and forcing the Medical Center into hiring new employees to meet critical staffing shortages. Attrition is simply a finger-in-the-dyke solution that makes a temporary fix but postpones true resolution of the problem.

In these difficult times the Medical Center trustees have abdicated their responsibility to exercise leadership and help break this troublesome culture. As mentioned, like all public entities, the Medical Center must balance its budget. Instead of making the tough decisions required to balance the 2004-2005 Medical Center budget, the board of trustees gave across the board pay raises to Medical Center employees and failed to balance the budget even with the large infusion of Measure A funds. At the same time, Alameda County faced serious financial crisis. The Alameda County Board of Supervisors made the difficult, but responsible and legally required, decision to lay off over 100 employees, make over \$100 million in budget cuts and balance its budget.

The second symptom of the dysfunctional Medical Center culture is that whatever the Medical Center’s problems, someone else is always at fault. This symptom has been characterized in the past as a “silo” mentality. In the silo system, each group (for example; doctors, nurses, and technicians) believes that they are doing an excellent job under very difficult working conditions. They believe that most problems at the Medical Center could be cured if other groups would perform at a higher level. This problem is characterized by a total lack of personal accountability.

This culture of failing to accept personal responsibility has contributed to a workers compensation problem that appears totally out of control. On any given day as many as 25% of the Medical Center employees are not at work because of an on-the-job injury or due to a long-term disability. Most employers respond to problems like these by paying more attention to the underlying causes. Historically, the Medical Center management and the board of trustees responded to increases in numbers of employees off work due to injury or disability by increasing benefits – hardly a responsible approach.

The Medical Center situation is complex. Past management and the board of trustees have negotiated enhanced workers compensation benefits for Medical Center employees. Management and the board of trustees have also negotiated work rules that prevent management from filling a vacant position if an employee is off work due to a work-related injury or disability. Nevertheless, at present the Medical Center has a totally inefficient system in place to track employees off work, either on workers compensation or long-term disability. Further, the Medical Center has no system that monitors an employee’s

progress or assists them in returning to work. The labor-management committee is currently examining the problems in this area and may introduce some much-needed reform.

The Grand Jury's concern with the Medical Center's ongoing fiscal problems has only been heightened by recent, highly publicized hospital closings in California.

CONCLUSION

Last year, the Grand Jury recommended the board of trustees carefully scrutinize their consultant's recommendations to insure that medical care did not suffer in bringing financial responsibility to the Medical Center. That Grand Jury could not have anticipated the lack of responsibility to the community and to the Medical Center demonstrated by the board of trustees.

The current board of trustees has done little to inspire confidence in the taxpayers and citizens of Alameda County. Trustees have shown more interest in petty squabbling over small issues like which trustees should occupy which board officer position and whether senior medical center management should be allowed to meet directly with senior county staff, than with vital issues like balancing the Medical Center's budget. The trustees have also demonstrated an astonishing lack of personal accountability by continuing to blame lack of "county" support, or Board of Supervisor interference for their poor performance.

Measure A was designed to close the gap between the Medical Center's cost of delivering medical care to the indigent and the reimbursement it receives. The Medical Center board of trustees seems to have taken the passage of Measure A as a signal to engage in irresponsible spending. Instead, the Medical Center board of trustees should make the cuts necessary to control runaway costs and balance the Medical Center budget, even if that means laying off employees or reducing the scope of medical services it provides. Prudent management will ensure that Measure A funds allow the Medical Center to continue to provide vital services. If the board of trustees continues on the current course, it guarantees that the Medical Center will collapse, crushed by its debt.

Instead of hiding from problems, the Medical Center board of trustees must take action now. To do so requires more responsibility and courage than this board has demonstrated. The board has been deeply divided. The Grand Jury believes it is time for the individual members of the board of trustees to set aside their personal agendas and begin to act for the common good.

RECOMMENDATIONS

Recommendation 05-1:

The board of trustees must immediately balance the Medical Center's budget.

Recommendation 05-2:

The board of trustees must stop the practice of borrowing from the Alameda County Treasury to balance the Medical Center budget.

Recommendation 05-3:

The board of trustees must take definitive action immediately to reduce the operating deficit to a level that allows some of the Measure A funds to be conserved for reserve funds and looming capital needs.

Recommendation 05-4:

The board of trustees must immediately undertake an examination of the amount of medical coverage and service the Medical Center provides to determine whether some services should be eliminated.

Recommendation 05-5:

The Alameda County Board of Supervisors must closely monitor the performance of their appointees on the board of trustees. If the board of trustees fails to balance the current year budget and fails to present a balanced budget with an adequate reserve fund next year, the Board of Supervisors should immediately replace them with appointees willing to face the difficult task of bringing financial discipline to the Medical Center.

RESPONSES REQUIRED

Medical Center Board of Trustees *Recommendations 05-1 through 05-4*

Board of Supervisors *Recommendation 05-5*

Responses are due no later than July 11, 2005

ALAMEDA COUNTY MEDICAL CENTER

The Grand Jury released the preceding interim report on the Alameda County Medical Center on May 11, 2005.

The legislation that created the independent Alameda County Medical Center Authority allowed the Board of Supervisors to appoint members of the board of trustees. The number established was eleven. After five members of the board resigned on September 22, 2003, the Board of Supervisors only appointed enough trustees to bring the total to eight. The Board of Supervisors has been reluctant to appoint a full board or at least an odd number of board members. As a result, the board of trustees has been polarized; and the even number of trustees has sometimes led to a deadlock, thus impairing the ability of the Medical Center to move forward on major issues. On May 17, 2005, the Board of Supervisors appointed three new members to the Medical Center Board of Trustees. This should alleviate some of the problems created by an even number of trustees.

RECOMMENDATIONS

Recommendation 05-6:

The Board of Supervisors must maintain an odd number of trustees on the Alameda County Medical Center board.

RESPONSES REQUIRED

Board of Supervisors

Recommendation 05-6

PREVENTING SCHOOL DISTRICT FINANCIAL CRISES

INTRODUCTION

In the past half-dozen years many school districts in Alameda County have faced serious fiscal crises. Two of these -- Oakland and Emeryville -- required state bail-out loans which resulted in the takeover of the districts by state-appointed administrators. Four others -- Hayward, Berkeley, Livermore and Albany -- involved the appointment of fiscal advisors who took control of the districts' financial affairs to one degree or another. Previous grand juries investigated these crises and reported on them.

A common pattern in all these grand jury investigations was that the statutory plan for preventing school district financial crises failed. Once a crisis developed, the county office of education or the state stepped in to clean it up, often with great disruption to the schools and everyone involved with them. The legal mechanisms intended to prevent fiscal crises from developing in the first place were not adequately administered. Because of this failure in several school districts across the state, a year ago the state legislature added new powers to the crisis prevention law on an urgency basis. State law clearly seeks to head off crises before they develop.

The 2004-2005 Grand Jury agrees with the concerns of previous grand juries and has undertaken to review the prevention responsibility of the Alameda County Superintendent of Schools. The Grand Jury reviewed the prevention process under state law and responses to a survey of all 18 school districts. The Grand Jury also met with six district superintendents, the county superintendent, the associate superintendent for business services (now retired), members of the Alameda County Board of Education, and the head of the state's Fiscal Crisis and Management Assistance Team (FCMAT).

BACKGROUND

At the outset, it must be acknowledged that school district budgeting is very difficult. This is particularly true for revenue. In the spring when the budget for the coming school year is prepared, enrollment in September must be estimated. A school district's revenue comes mainly from the state and depends on average daily attendance that is usually around 95% of enrollment. If enrollment is down, revenue will be down. Over the past half-dozen years, enrollment in about half of Alameda County's eighteen school districts has gone down.

In addition, the total amount of state funding has not been what state law has prescribed. The state's own fiscal crisis has led to a diversion of school funds to other areas. In the current fiscal year, \$2.3 billion in Prop. 98 school funds are being diverted elsewhere. The reduction (i.e., enactment of the state budget) occurs after the school districts' budgets must be completed.

School districts face great uncertainty on the revenue side of their budgets. A prudent district must estimate its revenues conservatively. It has almost no control over its revenues and must fit its expenditures to its revenues. When revenues decline, it must cut expenditures in order to operate with a balanced budget. School districts are not permitted to operate with a deficit. Neither can they borrow money to pay for operations.

School districts are controlled by locally-elected school boards and are run on a day-to-day basis by superintendents hired by the school boards. These are the people who face the tough choices involved in fitting expenditures to the revenues over which they have almost no control. They have not been able to make these necessary tough choices in many cases. School board members are elected by promising to do more for our children, not by promising to cut the budget. So there has sometimes been a problem of political will. In addition, school board members rarely have financial backgrounds. There is also a lack

of well-qualified school finance officials, part of what several witnesses referred to as the “human resources crisis.” In Alameda County over the past half-dozen years, there has been a frequent turnover among school board members, superintendents and chief business officials.

These difficulties are precisely what lay behind the state legislature’s decision to set up the fiscal crisis prevention system in which the county Superintendent of Schools closely monitors each school district’s budget and quickly intervenes when fiscal problems begin to develop. The goal of the system is to head off problems before they reach crisis proportions that usually lead to a loss of local control. Under the statutory scheme, the county superintendent is a partner in maintaining the fiscal solvency of each school district.

INVESTIGATION

Under state law, the county superintendent of schools has many responsibilities concerning school districts’ budgets. They can be discussed under three headings.

The Initial Budget

Each district must submit its annual budget to the county superintendent by July 1. The county superintendent has until August 15 to analyze the budget before approving, conditionally approving or disapproving it. During these six weeks, the superintendent’s staff of analysts evaluate key aspects of each budget; such as, whether the enrollment projections for the coming year are reasonable in light of historical trends and known recent developments and whether the number of teachers and other personnel can be supported by the revenue the projected enrollment will produce. Not every item in a budget need be analyzed, only a limited number of critical items. The county staff should work with the district during these six weeks to get the answers to its questions and to recommend changes in the district’s budget

that will permit the county superintendent to approve it. This should not be an adversarial process but a cooperative one. The county superintendent must ultimately be satisfied the district's budget is in balance.

The standard the county superintendent applies is two-fold: (1) whether the district's budget complies with the state's "standards and criteria adopted by the State Board of Education;" and (2) whether the budget will allow the district to meet its "financial obligations during the school year and its multiyear commitments" (for example, contracts calling for salary or benefit increases in future years). If the district's budget does not meet this standard the county superintendent must conditionally approve or disapprove it and tell the district what changes must be made to gain approval. At this point, the county superintendent can appoint a fiscal advisor to help the district. The district has until September 8 to revise its budget. The county superintendent then has until October 8 to analyze the revised budget and, if it balances, give final approval.

The detailed, step-by-step procedures in the law for the county superintendent's review of each district's budget makes clear the proactive, hands-on role the county superintendent is meant to play. If a district fails to adopt a balanced budget, the county superintendent and the State Superintendent of Public Instruction can impose a balanced budget on that district. Although this has never occurred in Alameda County, it is important to understand that the law puts the ultimate responsibility for balanced school budgets on the county superintendent.

The Alameda County Superintendent of Schools has been criticized in the past for taking too passive a role with this responsibility for preventing financial problems from developing into crises. As an elected official, aggressive intervention is necessary even though it may involve political risk. Preventing school district insolvencies is a superintendent's primary function under the law. Cleaning up after insolvency is a secondary function if a county superintendent fails in their primary function.

Interim Reports

Twice during each school year, on December 15 and March 15, districts must provide updated financial information to the county superintendent. This is to enable the county superintendent to determine that the districts will be solvent at the end of the school year and maintain the reserve required by state law. The districts certify themselves as:

- Positive if they *will* have a positive fund balance and the required reserve at the end of the current school year and the subsequent two school years;
- Qualified if they *may not* meet this test; or
- Negative if they *will not* meet this test.

The county superintendent must change a district's self-certification to qualified or negative if it is determined that the test for a positive certification has not been met. If a district is certified qualified or negative, the law again spells out in detail the steps the superintendent must take "to ensure that the district meets its financial obligations." There are several stages, including the right of the district to appeal the superintendent's decision to the State Superintendent of Public Instruction. In the end, however, if the superintendent's determination that the districts will not be able to meet its financial obligations is upheld, the superintendent, "in consultation with the [state] superintendent, *shall* take at least one of the actions described [below] and all actions that are necessary to ensure that the district meets its financial obligations...."

- In consultation with the district, the superintendent can impose a budget revision that will enable the district to meet its budget obligations;
- The superintendent can stay and rescind any action by the district inconsistent with its ability to meet its financial obligations;

- The superintendent can assist the district in developing a financial recovery plan to meet its future obligations;
- In consultation with the district, the superintendent can assist in developing the next year's budget;
- The superintendent can appoint a fiscal adviser to perform any of these duties on their behalf.

It is important to note that the law does not give the county superintendent discretion on whether to act or not to act. The burden of proof is on the school district. If a district cannot demonstrate through interim reports its ability to meet its financial obligations, the county superintendent must act. The law consistently uses the word "shall," not "may."

Going Concern

So far, the law has set up detailed procedures for the county superintendent to follow in reviewing districts' budgets at the beginning of the fiscal year and at fixed times twice during the year. But the 2004 law goes further. It requires each school district to give the county superintendent any study, report, evaluation or audit prepared for or by the district, the county or the state "that contains evidence that the school district is showing fiscal distress" or that 3 of the 15 "predictors of a school district needing intervention" are present (See Exhibit A, attached). If so, the county superintendent must "investigate the financial condition" of the district. This is a very broad responsibility and not tied to regularly scheduled budgetary submissions. The law says "if at any time...the county superintendent...determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years" they "shall" go through the intervention steps outlined in the section above on interim reports.

This "Going Concern" responsibility existed in the 1991 law but it has been substantially broadened in the 2004 law, particularly to obtain evidence of

fiscal distress and predictors of a need for intervention before the county superintendent.

Another section of law adds to this evidence. Any collective bargaining agreement negotiated by a school district must be certified by the district superintendent and its chief business official to be within its budgetary capabilities for the term of the agreement. If cuts elsewhere in the district's budget are needed to pay for any negotiated salary or benefit increase, they must be addressed in the district superintendent's and chief business official's certification. If the cuts are not made "in the current fiscal year" then the county superintendent must give the district a qualified or negative certification and follow-up with the intervention steps outlined in the section above on interim reports.

The fiscal crisis prevention law was revised in 2004 to reinforce the responsibility of the county superintendents and give them more authority. Additionally, the law provides that the state superintendent of public instruction "shall monitor the efforts of a county office of education in exercising its authority under this section and may exercise any of that authority if the superintendent of public instruction finds that the actions of the county superintendent of schools are not effective in resolving the financial problems of the school district."

In responding to previous grand jury recommendations that the superintendent be more proactive in preventing school district financial crises, the superintendent has emphasized the limitations on the superintendent's authority and the complexity of school finance. The superintendent has said that school district budgets are the districts' responsibility and the superintendent's office's responsibility is merely to monitor -- to perform oversight -- as if oversight did not have a clear purpose. The record shows the superintendent was more reactive to crises than proactive in preventing their development.

Specifically, a greater percentage of the superintendent's 620 staff members should be devoted to the task of monitoring school districts' budgets and investigating situations likely to cause "fiscal distress." Currently, there are four analysts and one manager with this assignment, less than 1% of the county office of education's staff. The superintendent points out this will require taking staff from other functions. Few functions are as important as preventing school district fiscal crises, particularly given the recent history of crises in Alameda County.

The superintendent has been reluctant to change a district's self-certification from positive to qualified or negative and has avoided qualified certifications based on first interim reports. This seems to be an avoidance of both the letter and the spirit of the law. The first interim report contains the first actual numbers on enrollment for the year and gives a district the most time to deal with financial difficulties. A qualified certification compels the superintendent to take action. Early use of the qualified certification alerts the public to the existence of a problem and brings to the district's attention the necessity of intervention by the county office of education. It should have the effect of assisting districts in convincing the public that tough but necessary choices must be made.

The superintendent should devote more staff effort throughout the year to investigating evidence of fiscal distress and known predictors of the need for intervention. Staff should be visiting with the districts and exploring the key areas that make or break a budget and not be waiting passively for periodic reports.

Finally, as the only county-wide elected education official and the one charged by law with preventing school districts from going into financial crises, the superintendent should become the very public champion of school district solvency. The media and public appearances at district school board meetings would be two means the superintendent could use.

CONCLUSION

The Alameda County Superintendent of Schools has not been effective in preventing school district financial problems from developing into crises. There have been a disproportionate number of fiscal crises in Alameda County in the past half-dozen years. The superintendent has taken a minimalist approach to the job of prevention.

The new law, AB 2756 of 2004, reemphasizes the primacy of prevention and adds substantially to the county superintendent's powers of prevention. The law intends that the county superintendent be a full partner with the local school districts in the maintenance of financial solvency.

The county superintendent has allocated too few staff to the task of analyzing school district budgets and interim reports and particularly to investigating evidence of financial distress.

The county superintendent has not publicly embraced the responsibility under the law for preventing school district financial crises. Nor has the superintendent shown leadership as the only county-wide elected education official by becoming a public champion of the tough but necessary choices that must be made by school districts to maintain balanced budgets.

-- EXHIBIT A --

**FCMAT PREDICTORS
OF SCHOOL AGENCIES NEEDING INTERVENTION**

The following list represents the 15 conditions that have been found most frequently to indicate fiscal distress and are those referenced in Assembly Bill 2756 (Daucher) and in the recently amended Education Code sections 42127 and 42127.6.

1. Governance crisis.
2. Absence of communication to educational community.
3. Lack of interagency cooperation.
4. Failure to recognize year-to-year trends.
5. Flawed Average Daily Attendance (ADA) projections.
6. Failure to maintain reserves.
7. Insufficient consideration of long-term bargaining agreement effects.
8. Flawed multi-year projections.
9. Inaccurate revenue and expenditure estimations.
10. Poor cash flow analysis and reconciliation.
11. Bargaining agreements beyond state COLA.
12. No integration of position control with payroll.
13. Limited access to timely personnel, payroll, and budget control data and reports.
14. Escalating general fund encroachment.
15. Lack of regular monitoring.

RECOMMENDATIONS

Recommendation 05-7:

The Alameda County Superintendent of Schools must use all of the authority state law provides to prevent school district financial difficulties from developing into crises.

Recommendation 05-8:

The Alameda County Superintendent of Schools must allocate more staff to district budgeting, interim report analysis, and particularly to investigating evidence of financial distress and known predictors of the need for intervention.

Recommendation 05-9:

Qualified certifications must be issued by the Alameda County Superintendent of Schools as soon as it appears that a district *may* not be able to meet its financial obligations.

Recommendation 05-10:

The Alameda County Superintendent of Schools must become a very visible and active champion of financial solvency.

Recommendation 05-11:

The Alameda County Superintendent of Schools must exert early leadership by appearing before district boards of education immediately upon learning that a district may be facing difficult budget decisions.

RESPONSES REQUIRED

Alameda County Superintendent of Schools	Recommendations 05-7 through 05-11
---	------------------------------------

ALAMEDA COUNTY BOARD OF EDUCATION

INTRODUCTION

The Grand Jury received a series of complaints regarding the conduct of the Alameda County Board of Education. The complaints concerned the usefulness and accuracy of the agendas for the board meetings and the lack of public availability of related information; the usefulness of the minutes of the board meetings; the lack of civility displayed by both board members and staff at board meetings; the obstacles facing certain board members when trying to place items on the agenda including alterations that had sometimes been made to those items; the uninformative nature of the budget document; and board meetings not being held in various locations in Alameda County.

Many of these complaints have been the subject of previous Grand Jury reports. To date there has been no satisfactory resolution of these basic issues. The Grand Jury has once again undertaken looking into these continuing complaints.

The Grand Jury has read the law governing public meetings in California. We interviewed members of the board of education as well as the county superintendent of education who also acts as the board's secretary.

BACKGROUND

Over 50 years ago the State Legislature enacted the Ralph M. Brown Act. Its statement of purpose reads: "... public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on

remaining informed so that they may retain control over the instruments they have created.”

Among other things, the Brown Act requires that meetings of public agencies be open, public and that all persons be permitted to attend and to make audio or video recordings, that agendas of the meetings be posted publicly at least 72 hours in advance, that any person be able to request agendas and all documents constituting the agenda packet be mailed to him or her, that members of the public be given the opportunity to address the meeting on any agenda item or any other subject within the agency’s jurisdiction, and that no discussion or action may be taken on an item not on the agenda.

California law requires that the public’s business be conducted in public meetings, that the public be informed of that business in advance so that it can participate in those meetings, and that the public be given a meaningful opportunity to participate. Beyond the requirements of the Brown Act, fundamental democratic process would seem to require that members of a voting minority be given the opportunity to put items of interest on the agenda and to present their case on every item on the agenda, to have it considered before a vote is taken. Even if it appears to the voting majority that the minority position will not carry, the public has a right to hear the minority position.

FACTUAL SUMMARY

Many of the complaints the Grand Jury received concerned the agendas of the meetings of the Board of Education. The Grand Jury can verify some of these complaints; some it cannot. We have examined board agendas that include very uninformative agenda items with little or no information to alert the public as to substance. For example, “Second Reading: BP 2000 Series -- Administration (Att. 10.B).” In this instance the lay reader has no opportunity to study in advance, as mandated by the Brown Act, the substance of the item being presented. Complaints included two examples of misleading agenda items. One of them was agendized as a budget committee report on the student

demographic information system when it was actually an action item to approve a \$1 million expenditure. The other was agendized as “Board Policy 9250, Sec. 1.A and Board Policy 9250, Sec. III, Item D” which was an increase in the board’s own stipend plus the provision of computers, faxes, phone lines and Internet service to board members at county expense. In both cases, there was no board packet (relevant information) available to the public at the meeting.

Both of the actions taken under these misleading agenda items may have been necessary and proper. What was unnecessary and improper was obscuring the public’s business from the public. State policy is to fully inform the public and to invite the public’s participation. This Grand Jury has been assured that corrective action will be taken, and informative descriptions will appear on future agendas.

There have been allegations of an inability of certain board members to place items on the agenda. The Grand Jury was unable to ascertain if these allegations were true. Since the Grand Jury did not receive these complaints until late in its term, and since much of what is alleged occurred outside public view, the Grand Jury was not able to come to a conclusion on this matter. The Grand Jury would like to repeat the fundamental democratic principle that board members rights must be protected. All board members have a right to raise issues that concern them and their constituents and have those items discussed in a public meeting.

The Grand Jury examined several examples of the board’s minutes. They are no doubt a legal record of the item, motion and vote. But they are not an adequate record of the substance of an issue. An important purpose of minutes is informing the public of what was done on its behalf and why. On this score, the board’s minutes are not helpful. Many issues before the board are routine and non-controversial and the vote unanimous. On these there is little to report. But others are controversial and the vote is split but the minutes disclose only that “Discussion ensued.” Sometimes speakers for and against an item are listed but not what was said for or against. The Grand Jury learned

that attempts to report a written summary of the discussion of controversial issues in the past led to more controversy regarding the adequacy of the synopsis. But avoiding controversy, or obscuring it in the public record, is not appropriate in the conduct of the people's business. Although it may require more work, including the amendment of the minutes in some cases, the public ought to be able to find out why an action was taken on their behalf. The fact that most items are non-controversial should make any additional work manageable.

The Grand Jury examined the county office of education's budget for 2004-2005. It is a typical line-item budget which states the total amount of money allocated to salaries, benefits, consultants, travel, supplies, etc. This is not very helpful to a public wishing to know what it is buying with its \$33 million of tax money. A program budget allocates the same total amount of money to programs such as operation of educational programs at Juvenile Hall or conferences for school district personnel to provide direction on new state budgeting requirements. Approximately one-quarter of the budget is allocated to pay consultants working on grant projects. In keeping with the theme of this report that a major objective of the board of education and the office of education should be to enable the public to know what is being done on its behalf, a program budget would be a good alternative to or supplement to the traditional line-item budget.

Board of Education meetings are held in the board's office in Hayward. Some issues are of greater interest in one part of the county than another. For example, 60% of the children educated at Juvenile Hall come from Oakland. The Alameda County Board of Education is the "school board" for Juvenile Hall, having complete control of education there. It could be beneficial to families if the board held a meeting on Juvenile Hall educational issues in Oakland and would engender greater community participation. Since the greater portion of juvenile hall clients live in Oakland, meetings regarding juvenile hall issues should be held in Oakland.

Members of the Grand Jury who have attended board meetings report a lack of professionalism and civility on the part of the board members and the staff, creating a somewhat hostile environment. This issue has been raised in prior Grand Jury reports. This Grand Jury, like its predecessors, urges all involved to conduct the public's business in a way that would make the public proud.

CONCLUSION

1. The Alameda County Board of Education's agendas do not fully inform the public of the substance of the issues coming before the board. In some cases, the agenda was actually misleading as to the substance.
2. The board's minutes do not provide information on the substance of controversial issues. The public can see from the minutes that an item passed or failed and who voted for and against it, but not the nature of the controversy.
3. The county office of education's line-item budget does not provide the public with useful information on the activities of the office and the cost of those activities.
4. Holding board meetings in different locations in the county, instead of always at the board's office in Hayward, would be beneficial to residents who have a stronger interest in some agenda items than others and could engender greater public participation.
5. Despite Grand Jury recommendations in the past, there continues to be a degree of incivility during board meetings.

RECOMMENDATIONS

Recommendation 05-12:

The Alameda County Board of Education must make available to the public advance agendas for their meetings that fully and accurately explain the substance of the issues to be discussed or decided.

Recommendation 05-13:

The minutes of the Alameda County Board of Education meetings must synopsise controversial issues with sufficient information so that the public can understand the different sides of an issue as well as the outcome.

Recommendation 05-14:

The Alameda County Office of Education must make available to the public a program budget as an alternative to or a supplement to its traditional line-item budget so the public can understand what activities its tax money is funding.

Recommendation 05-15:

The Alameda County Board of Education must hold some of its meetings in different locations in the county, particularly when the agenda contains items of greater interest to the people in one area. Specifically, the board ought to hold a meeting on juvenile hall issues in Oakland.

Recommendation 05-16:

The Alameda County Board of Education and its staff must make every effort to conduct its meetings in a professional and civil manner.

RESPONSES REQUIRED

Alameda County Board of Education	Recommendations 05-12, 05-13, 05-15 and 05-16
Alameda County Superintendent of Schools	Recommendation 05-14

JAIL INSPECTIONS

INTRODUCTION

Pursuant to Penal Code section 919(b), the Grand Jury of each county is charged with inspecting public prisons within the county. These inspections are conducted in order to observe the day to day operations of such facilities. The inspections address complaints as may be issued by the Alameda County Public Health Department or the California Board of Corrections for timely compliance to codes and regulations.

Three adult jails and one juvenile holding facility were inspected in Alameda County during the 2004-2005 term of the Grand Jury.

Glenn E. Dyer Detention Facility, Alameda County Sheriff's Office

The Glenn E. Dyer Detention Facility, located in downtown Oakland, is managed by the Alameda County Sheriff's Office and houses federal, state and county prisoners. The maximum capacity for this facility is 700 inmates with an average daily population of approximately 310. Of these 310 inmates, approximately two-thirds are federal (U.S. Marshal and Immigration) and the remaining are county inmates. Federal agencies have recently negotiated with the Sheriff's Office to increase the population of inmates housed at this facility. Female inmates and prisoners with special needs such as dietary or medical problems are housed at the Sheriff's Office main jail, Santa Rita, located in Dublin.

The Alameda County Grand Jury inspected the Glenn E. Dyer Detention Facility in December 2004. At the time of the inspection, only three floors were being used to house inmates. The Grand Jury inspected the housing floors, food storage facilities, holding cells, outdoor inmate recreation area,

receiving/transportation location, public visitation booths, and general administration. Additionally, the Grand Jury reviewed the Sheriff's Office inmate grievance procedures, finding the investigation and grievance procedures well documented and easily accessible to personnel and inmates.

The Grand Jury found no deficiencies at the Glenn E. Dyer Detention Facility and commends the Alameda County Sheriff's Office for maintaining high jail standards.

Santa Rita Jail, Alameda County Sheriff's Department

The Santa Rita Jail, located in Dublin, houses more than 3,600 federal, state and county prisoners.

The Alameda County Grand Jury inspected Santa Rita Jail in February 2005. The Alameda County Health Department and California Board of Corrections inspection reports were used as a basis to help the Grand Jury determine if state and county recommendations for improvement had been addressed.

The Grand Jury noted the following minor problems during its inspection:

- The inmate sick room and the Pod 32A sick call cell had medical equipment stored in the adjoining restrooms adjacent to the commodes. A wheelchair, oxygen tank, and crutches were all stored in an area next to a toilet. Additionally, the pulmonary air modules in both of these locations were dirty and in need of cleaning.
- In Pod 32A, dirt and debris from the multi-purpose room was swept into an empty closet rather than being disposed of and electrical plugs were burnt. Also, the exercise yard in Pod 32A was

not used for exercise but instead was used for storing cleaning equipment (e.g., brooms, mops, etc.)

- The Grand Jury noted an electrical hoist in the hot food preparation area of the kitchen directly over a pot of boiling potatoes that had paint chips which were peeling off the equipment. This hoist is used to move large vats of food, and the vats of food were uncovered. The peeling paint from the hoist could fall into the open food vats and cause contamination. Additionally, food lids in the cold storage area were damaged and did not seal properly.

The size of this jail, along with the quality of its staff, is impressive. The Alameda County Sheriff's jail system is continually awarded high honors by the American Corrections Association. The Sheriff's Office has also been awarded triple accreditation, and pursuant to the Commission on Accreditation for Law Enforcement Agencies (CALEA), a national organization, holds the highest honors in the state. It should be noted that the quest for accreditation has become woven into the fabric of the department and underlies training facilities, management, personnel decisions, administration, and policies and procedures. This quest for accreditation occurs every three years and is a continuous process. This accreditation pursuit is voluntary but ensures the department strives to meet the highest national standards of law enforcement.

The problems listed in this report, although requiring correction, are minimal considering the scope of services provided by this facility. Overall, the Grand Jury was impressed with this facility, the personnel, and with the maintenance of the jail.

RECOMMENDATIONS

Recommendation 05-17:

The Sheriff's Office must store medical equipment at Santa Rita Jail in a more sanitary location and away from the toilets.

Recommendation 05-18:

The Sheriff's Office must repaint or replace the hoist in the Santa Rita Jail kitchen to prevent possible food contamination from falling paint chips.

RESPONSES REQUIRED

Alameda County Sheriff

Recommendations 05-17 and 05-18

Juvenile Hall, Alameda County Probation Department

During this term, the Grand Jury toured Alameda County's Juvenile Hall. A new Juvenile Hall facility is under construction in San Leandro. Completion is expected in December 2006 with occupancy in January 2007. In fall 2004, the Probation Department held an open house for the public of the current facility, which was well received by those who attended.

The existing Juvenile Hall was found to be well maintained. Despite its age, the building was freshly painted and repairs were on going. The Grand Jury noted that the Probation Department staff members are involved in public outreach and are committed to the programs at Juvenile Hall, handling problems as they arise in spite of the conditions of the current facility.

Oakland City Jail

City jails are inspected by the health department annually, and inspected by the state Board of Corrections biennially in order to make sure jails are operating under the Title 15 and Title 23 minimal jail standard requirements. Police departments are required to make corrections in order to bring their facilities up to these health and safety standards regardless of the length of time between inspections. Once corrections are made, the state is informed.

In October, 2004, the Grand Jury made an unannounced inspection of the Oakland City Jail. Based on reports from the California Board of Corrections and the Alameda County Health Department, the Grand Jury inspected the jail to determine its status and to follow up on any deficiencies that were reported by those agencies.

The Oakland City Jail is a Type I and Type II facility, housing both city and federal prisoners prior to arraignment or while waiting for trial or sentencing. The average daily population of this facility is 140 inmates. Of those 140, approximately 90 are city inmates and 50 are federal inmates.

During the Grand Jury's inspection, dust and debris were found in the holding cells, hallways, and throughout the facility. The Grand Jury also noted damaged mattresses and mattress covers throughout the jail. The facility needs to be cleaned on a regular basis. Particular attention should be paid to making sure that walkways are clear of any type of obstruction that could lead to an injury. The replacement and repair of torn mattresses must be a priority as they are not only unsanitary, but conducive to hiding contraband.

The Grand Jury's overall assessment of the Oakland City Jail was unfavorable. The building is old with poor lighting; however, the general impression is of a depressive, dirty facility with an unfavorable work environment for staff. After being continually inspected for years, we find the

same problems as reported by previous grand juries. This aging facility continues to have problems and the Grand Jury found its overall condition to be substandard.

HOMELAND SECURITY

INTRODUCTION

During the 2004-2005 term, the Grand Jury investigated the way in which local agencies are meeting the challenges of responding to potential terrorist attacks. The Grand Jury reviewed documents, reports, and conducted a 14 city survey of current homeland security preparedness. The Grand Jury interviewed representatives from the Alameda County Sheriff's Office, the Alameda County Fire Department, the City of Oakland's Homeland Security Department including the Oakland fire chief and homeland security coordinator, the Fremont Fire Department battalion chief responsible for the local hazardous materials team, and members of the county Office of Emergency Services.

The Grand Jury also reviewed federal, state and local documents relating to terrorist threats, disaster and medical procedures for all first responders.

The Grand Jury toured the Fremont Fire Department's decontamination and hazardous materials units, attended the Alameda County weapons of mass destruction triage drill, and the 94th National Guard Unit drill that included county bomb squad training. The Grand Jury also toured the Alameda County Office of Emergency Services, located in Dublin, CA.

HISTORY

Following the terrorist attacks of September 11, 2001 (9/11), President George W. Bush signed an executive order establishing the Office of Homeland Security and the Homeland Security Council. The mission of that office is to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks. The

functions of the federal Office of Homeland Security include but are not limited to the following:

- * coordinate efforts at the state and local level, including development and monitoring of protocols and equipment needed in detecting the release of biological, chemical, and radiological hazards;
- * ensure that all necessary intelligence and law enforcement information relating to homeland security is disseminated to and exchanged among appropriate departments and agencies among state and local governments and private entities;
- * coordinate efforts to prepare for and mitigate the consequences of terrorist threats in working with federal, state, and local agencies;
- * coordinate federal assistance to state and local authorities;

and

- * ensure the readiness of federal response teams.

BACKGROUND

The terrorist attacks of 9/11 created new responsibilities for local emergency response agencies. The federal government now provides funding for local emergency response agencies to equip and train personnel to better meet the challenges of potential terrorist attacks including chemical, biological or radiological hazards. The federal government and the states have provided additional funding for training and equipment to help local agencies meet these new challenges.

As learned from 9/11, effective response to a terrorist attack requires training and preparedness of local first responders. First responders include

local city and county firefighters, law enforcement, and emergency medical response teams that arrive first at all emergencies. They rely on departmental and combined training whether they are local, state, or federal personnel. The federal Office of Homeland Security offers grants to states for training first responders, obtaining supplies, and improving emergency response at a local level. The federal Office of Homeland Security granted California more than \$283 million. It should be noted the California per capita share of federal funding for homeland security and terrorist incidents is less than the per capita amount received in less populous states with fewer terrorist targets. Individual jurisdictions within Alameda County have applied for and have been awarded grant money through various sources.

**City of Oakland –
Metropolitan Medical Response System Special Grant**

The City of Oakland is one of 124 cities nationally selected by the federal government as a Metropolitan Medical Response System (MMRS). The MMRS program has enabled Oakland to obtain federal funding for use in the event of a terrorist attack of a chemical, biological, radiological, nuclear, explosive nature or from an attack of other weapons of mass destruction (WMD). The MMRS brings together a wide variety of agencies to respond to a major emergency.

The City of Oakland MMRS maintains an ongoing relationship with the county, state and various local jurisdictions within the Bay Area. These associations include the Oakland/Alameda County/Contra Costa County Urban Area Working Group that was created as a result of Oakland's receipt of a federal Urban Area Security Initiative (UASI) grant. This \$6.2 million multi-jurisdictional grant (for 2005) funds projects such as: interoperable communications, information dissemination, and incident command teams.

Alameda County Office of Emergency Services

In the event of a biological, chemical, radiological, or other mass attack, the Office of Emergency Services (OES), under the command of the Alameda County Sheriff, is designated as the lead Law Enforcement Mutual Aid Coordinator for Region II in California. Region II extends from Monterey County to the Oregon border. OES maintains a 24-hour response capability that includes the mobilization of the air squadron, communications teams, mounted posse, search and rescue units, the sheriff's office homeland security patrol craft, bomb squad and underwater recovery units. All of the cities and municipalities located within Alameda County rely on the Office of Emergency Services.

First Responders

We learned from the events of September 11, 2001 that our county's first responders will be the first line of defense when our citizens are threatened by hostile forces. Local law enforcement, firefighters, and emergency medical professionals are the first to respond to the scene of an emergency disaster or other incidents. Properly trained and equipped, they have the greatest potential to save and protect lives.

In the event of a terrorist attack, the first few minutes are critical and require the initiation of immediate action by first responders. Recognizing the type of hostile activity used in the attack determines what plan of action should be implemented. First responders at a scene triage the situation to determine a plan of action, then prioritize efforts in order to minimize loss of life and potential dangers. For example, biochemical/hazardous materials require decontamination control. Their containment is critical to mitigate toxic substances. To prevent emergency and hospital workers from potential contamination, the victims of this type of attack must be decontaminated at the incident scene prior to being transported to a hospital for further care. Another example of triaging by first responders occurs in bombings. Bomb squads

respond to defuse bombs and to aid emergency workers seeking victims in damaged and dangerous structures. Search and rescue efforts require different protocols.

The Grand Jury interviewed numerous first responders and attended weapons of mass destruction drills. Various jurisdictions within the county are developing protocols to respond to emergencies using a unified approach. In the past, law enforcement and firefighters have maintained separate protocols. This is a breakthrough situation. On December 10, 2004, the Grand Jury observed law enforcement and fire personnel working from a cooperative protocol while attending a homeland security/hazardous materials county-wide drill.

While interviewing first responders, the Grand Jury found the overriding theme was concern about terrorist attacks, foreign and domestic. Of paramount importance to first responders is the desire to mitigate incidents with the least amount of casualties in the shortest amount of time.

A major challenge identified in the first responder training concerned limited funding to train existing county-wide personnel. The Grand Jury has determined that first responder training is critical to the safety of Alameda County citizens. Funds are currently not provided to pay for replacement personnel for employees participating in training. This is a major concern for law enforcement and fire departments when dealing with budgetary issues for training employees. The Grand Jury recommends that department heads obtain the necessary funding for back fill support while employees are participating in homeland security training.

Citizen Volunteer Programs

There are numerous citizen volunteer programs throughout Alameda County dealing with potential terrorist attacks or major emergencies. These are programs much like the civil defense organizations prevalent during World War

II. While they have different titles, they perform similar services for disaster response. Citizens of Oakland Responding to Emergencies (CORE), Community Emergency Rescue Teams or Community Education Response Teams (CERT) are examples of volunteer groups.

The duties of these groups vary slightly but have the same goals: to assist the community in times of heightened crisis. To succeed, volunteers must be trained in protocols developed by their governing agencies. At the completion of training, citizens are certified as emergency personnel who may be called upon to assist in times of disaster. Under the supervision of first responder teams, Alameda County Community Emergency Response Teams (CERTs) provide additional assistance to emergency workers and to victims. CERTs courses include terrorism definition, identification of potential targets within the community, operating procedures, and actions needed following a suspected terrorist attack.

Dedicated volunteers are critical in the event of an attack upon our communities. All communities need to encourage citizens to be prepared and knowledgeable in time of disaster.

INVESTIGATION

Fourteen City Survey

In November 2004, the Alameda County Grand Jury conducted a survey of all cities within Alameda County regarding each city's level of preparedness in the event of a major emergency or terrorist attack. All cities responded to this survey. In addition to each city's individual responsibility, the Alameda County Sheriff's Office and the Office of Emergency Services work together to provide mutual aid to cities within the county in the event of a large scale disaster. Mutual Aid is a statewide system developed under the California emergency services act, designated to ensure that adequate resources, facilities, and other support are provided to jurisdictions whenever their own resources prove to be

inadequate to cope with a given situation. Mutual Aid is a formal agreement among emergency responders to lend assistance across jurisdictional boundaries when necessary.

Designated Homeland Security Personnel

All 14 cities surveyed report that they have at least one part time employee designated to coordinate homeland security issues. While the cities of Dublin, Fremont, Hayward and Oakland all have full time personnel specifically designated to handle this responsibility, the rest of the cities have several part time personnel that share responsibilities; for example, law enforcement and fire employees. These employees attend regular meetings and have input into local, state and federal homeland security issues for their region.

Equipment and Supplies

Since 9/11, each of the 14 cities in Alameda County has purchased special equipment to defend against a terrorist attack. The item most frequently reported as having been purchased is gas masks for first responder use in rescuing citizens. Cities also reported purchasing items such as decontamination equipment, antidote kits, level C hazardous materials (HAZMAT) suits, radios, cell phones, and radiation detection kits. Although all cities report they have secured some special equipment, additional equipment would be required in the event of a major emergency.

Training

Most cities report that some level of specialized training in managing a terrorist attack has taken place for its law enforcement and fire department employees and for other first responders. This specialized training includes a broad range of risk assessment involving weapons of mass destruction, radiological/nuclear threats, hazardous materials, explosives, infectious diseases, search and rescue, and fire suppression. Only one city reported a lack of specified training, indicating that supervisory and management

personnel received Standardized Emergency Management System (SEMS) training and adding that its city has a mutual aid agreement with the county and OES. In the event of a mutual aid necessity, this city reports that highly trained personnel would step in and provide assistance to the community. Most cities have taken steps to ensure their staff has received appropriate training and is prepared to handle specific types of emergencies.

Many cities in Alameda County have conducted joint training in areas such as WMD and biological/radiological/hazardous materials recognition. The cities of Alameda and Albany have conducted city-wide disaster drills and have personnel attend monthly meetings throughout the county and state. The city of Albany received training in the Alameda County Operational Area Terrorism Response Plan. Nearly all cities report extensive training for their fire department personnel, including the use of injectors, WMD drills, radiological/nuclear awareness, HAZMAT and waste isolation training, as well as specialized training in other areas. For example, all sworn members of the Berkeley police department attended a terrorism class and WMD incident training, funded by a Homeland Security grant. The Berkeley police department also has specially trained command staff in threat assessment and special officers designated as chemical agent instructors. Its tactical team trains for eight hours each month in responding to terrorist attacks.

The city of Emeryville has trained its police and fire personnel in WMD/radiological/nuclear awareness and staff is proficient in infectious disease control. The city of Fremont has conducted two full-scale exercises in WMD training. In Newark, all police vehicles have been equipped with auto injectors that are used as antidotes for chemical exposure. Oakland's firefighters have all been trained as first responders and are specially trained in domestic preparedness, bioterrorism and mass casualty decontamination. Additionally, over 1,000 city employees in Oakland have received WMD training. City employees have also attended drills on how to prepare for and defend against a terrorist attack. In San Leandro, a number of employees from various

departments have received training from the National Emergency Response and Rescue Training Center.

City Coordination

All 14 cities within Alameda County report that in the event of a terrorist attack or a large scale disaster, they would coordinate rescue efforts with the Alameda County Office of Emergency Services, the Sheriff's Office, the National Guard, or the FBI via the mutual aid agreement. The cities of Livermore and Pleasanton have joined forces in an effort to be better prepared to assist their communities. Alameda County has a fire mutual aid plan, where inter-regional resources are mobilized through the state fire and rescue coordinator of the Office of Emergency Services. The Alameda County Office of Emergency Services is the official mutual aid coordinating agency for the Region II, Northern California area.

CERTs

Eleven of the 14 cities in Alameda County have Community Emergency Response Teams (CERT). CERTs are citizen volunteers who are specially trained by the local police or fire department in assisting emergency personnel in the event of a mass community disaster. Several cities report that their CERT volunteers have been specially trained in terrorist related incidents or have been provided with special equipment. The City of Alameda has 112 persons CERT trained. Berkeley reports that they not only have a CERT program, but a "cache of emergency equipment" that has been provided to selected neighborhood groups in each district based in CERT preparedness. Since 1995, the city of Fremont has conducted disaster preparedness training for over 3,500 community members and offers annual CERT training. The three cities that report no specific CERT group indicate that in place of a CERT their first responders are specially trained.

Overall Preparedness

Almost all cities responded they were confident they could provide various levels of assistance to citizens during a major terrorist event. However, the level of preparedness among agencies in Alameda County ranges from exceptional to minimal. It is difficult to determine a true level of preparedness, especially since the response would depend on the type of attack the city is facing. Mutual aid, or a multi-disciplinary response, is cited as the best avenue of protection by all cities in Alameda County. Law enforcement and fire personnel need to work together jointly to problem solve, relying on the mutual aid system to obtain the resources needed. Additional funding is being received for homeland security supplies and training. It is imperative that cities continue identifying these funding sources to continue to be up-to-date in response capabilities. The cooperation and communication of Alameda County agencies, especially since 9/11, has improved noticeably. While there is much more work to be done, the county is on its way to being prepared in the event of a terrorist attack. However, homeland security as an issue will never be fully resolved and is a work in progress.

Interoperability

Interoperability allows different governmental agencies or first responders to communicate within and across departmental jurisdictional boundaries in “real time,” the estimated time for arrival at the scene after receiving a call for help when needed. Public safety officials cite the need for interoperable communication systems as one of the most important success factors in large-scale disasters. Communication preparedness is a vital necessity. When emergency workers lack effective real time communication coordination, the potential for additional risks can be great. Responses from multiple local, state and federal agencies can be slowed down. Jurisdictional boundaries can create perceived barriers to action. Questions can arise involving control of the communication systems at a major incident, further hampering response.

Communication interoperability is often a challenge to achieve because public safety agencies use radios that operate on different bands. Part of the challenge is frequency unavailability, equipment incompatibility and lack of operational protocols. One example of this was the lack of clear communication that faced fire departments assisting in the 1989 Oakland Hills fire because they could not communicate with Oakland firefighters. Operational and technical problems are obstacles that need to be addressed. Common procedures and governance agreements are critical to the success of communication interoperability. By pooling financial resources, county and regional governments can avoid redundant designs and infrastructure costs in obtaining interoperable communication equipment. The federal Department of Homeland Security has provided grants to jurisdictions (UASI Grant) and mandated that some of that grant funding be used for preparing a tactical interoperability communication plan (TICP) in Alameda County.

Investigation by the Alameda County Grand Jury of local agencies discovered a common concern regarding interoperability. Mutual Aid in the mitigation of local incidents depends on quick response from the nearest district. Communication is hampered when the assisting districts cannot identify the needs of the local department managing the incident because of the differences in communication equipment. The injection of a terrorist attack or major disaster would compound this problem.

Interagency cooperation and coordination are critical. The disparity in communication systems of individual rescue agencies is a hindrance. Coordination for saving lives and property in a disaster could be hampered. One problem with achieving interoperability in the Bay Area is various agencies using different radio systems. In addition, available airwave systems for public safety agencies are almost depleted.

Trunked radio systems refer to the automatic sharing of a small number of radio channels between a large number of radio users, and is compatible

with the standards of federal Project 25 (P25). This system allows computers to take control of any of the limited frequencies of unused airwaves. P25 is a set of written interoperability standards. These standards, devised so that all radios communicate with one another, are the result of public and private radio experts working together with the Homeland Security Department's Interoperable Communications Technical Assistance Program (ICTAP). P25 standards for the trunked systems, most commonly used in the Bay Area, are necessary for the most efficient use of the airways. New standards continue to be developed. P25 compliance also allows standards based radio equipment manufactured by different companies to communicate, eliminating many immediate problems while new systems are developed. These standards offered by P25 to Alameda County deserve consideration by agencies purchasing new radio equipment.

Developing an interoperability plan will help prepare a community for quick and responsive interagency communication. A plan should include emergency categories, decision protocols, multiple agency coordination, technical and system support, training and funding.

Research is proceeding within the county, in cooperation with state and federal agencies, to identify and obtain the best equipment to solve the interoperability problem. This Grand Jury strongly recommends that interagency communication among first responders be a top priority in the county. Resolving this issue is critical. Time is of the essence.

CONCLUSION

Local agencies are attempting to meet the challenges of a local terrorist attack. Documents, reports, and a 14 city survey of homeland security preparedness illustrate the varying depth of preparation underway. Personnel from throughout the county presented a common picture of agencies working to fulfill a mandate. Overall, the Grand Jury is pleased that this work is ongoing, but stresses that preparedness for homeland security is not a static issue. It is

one that requires continuing attention and oversight by department heads and review by subsequent grand juries. Responding to a threat to homeland security continues to be a work in progress.

WHERE TO GO AND WHAT TO DO

Securing personal safety of citizens and families is a top priority in the event of a terrorist attack. Preparedness is critical. Information is available from various sources. Immediate information can be found in your local telephone book under the heading “Homeland Security Guide,” and the U.S. Department of Homeland Security brochure, “Preparing Makes Sense. Get Ready Now.” The brochure is available at 1-800-BE-READY (1-800-237-3230) or at www.ready.gov.

One constant piece of information the Grand Jury received during its term regarded “Shelter-In-Place.” When a hazardous material accident occurs, citizens have two basic choices in what to do: one is to evacuate the area affected by the hazardous material; the other is to “Shelter-In-Place” – that is, go indoors, close up the building, and wait for the danger to pass. The goal of sheltering in place is to avoid or minimize exposure to dangerous chemicals during a hazardous material emergency. Normal sheltering includes closing all doors and windows, and turning off all furnaces, air conditioners, and other ventilation equipment. In addition to normal sheltering, expedient sheltering involves taking extra measures to reduce exposure: placing plastic sheeting over windows and vents, taping over electrical outlets, around doors, and other openings. Normal and expedient sheltering are the most commonly used techniques in communities around the country. Both are easy and quick to implement if a chemical emergency occurs, and both will provide protection for occupants.

Additional information regarding “Shelter-In-Place” can be obtained at: www.cicsinfo.org/ShelterInPlace, or through the California Governor’s Office of Emergency Services at www.oes.ca.gov.

INTRODUCTION

The primary function of the Government committee is to investigate complaints pertaining to city, county and local agencies other than those involving health care, education, social services or law and justice. This year, the Government committee received several complaints, most of which were not within the Grand Jury's jurisdiction to investigate. Two of the complaints within the Grand Jury's scope related to the City of Oakland's towing contract, and hazardous materials training for Oakland firefighters. Reports on those investigations follow.

Members of the Government committee also participated in Alameda County's voting process as members of the Logic and Accuracy Board. Jurors witnessed activities on election night and interviewed the Registrar of Voters. The committee did not obtain sufficient information to report fully on the status of electronic voting in Alameda County. The Grand Jury believes that both this issue and mail-in balloting may be of interest to future grand juries.

CITY OF OAKLAND – TOWED VEHICLE CONTRACT

INTRODUCTION

The Grand Jury received complaints regarding contract towing services provided to the city of Oakland by the Oakland Tow Car Association (OTCA). The complaints included the adequacy of the agreements between the OTCA and the city, the methods of towed vehicle appraisal (important in determining the process of disposing of the vehicle), the lack of the city's financial oversight of the agreements, the lack of reasonable revenue, and other issues affecting proper business conduct in the towing of vehicles.

The Grand Jury reviewed documents including internal city communications, a contract compliance audit between the city of Oakland and the Oakland Tow Car Association from July 23, 1970 to May 4, 1999, that illustrates the evolution of the OTCA's towing ownership and contract extension authorizations, portions of agreements, city auditor reports, and other communications regarding the relationship between the OTCA and the city of Oakland.

Following this review, the Grand Jury heard testimony from current city, and Oakland police department, administrators regarding the contract evolution. The Grand Jury reviewed available portions of contract terms and conditions, and investigated the enforceability of the agreements to determine whether the city of Oakland has been operating in a prudent business manner.

HISTORY

Since the early 1980's, the city of Oakland has had an agreement with the Oakland Tow Car Association. The services provided under this contract include towing of vehicles ordered by the police department, appraising, storing, auctioning, dismantling and selling reusable parts, and sales of bulk scrap.

Recent information indicates that this agreement covers the towing of from 27,000 to 30,000 vehicles annually.

The OTCA originally consisted of several independent companies combined to provide towing services ordered by the Oakland Police Department. During the past two decades, the OTCA membership has diminished to the point that it now consists of only A&B Auto Company, Inc. Since the original contract, there have been twelve amendments, modifications or extensions, all made without competitive bid. According to records obtained by the Grand Jury, extensions and modifications were made well in advance of the expiration of the preceding agreement. No one at the Oakland Police Department or within the city of Oakland was able to locate the original contract or all twelve amendments. The current contract lacks provisions to provide revenue to the city for the sale of unclaimed impounded vehicles.

Due to the lack of specific provisions in the contract requiring OTCA to share financial information with the city, the city auditor's attempts to review financial records were unsuccessful. This leaves the city auditor in the position of being unable to determine what monies are owed to the city by the OTCA.

The finance committee of the Oakland City Council recommended correcting the existing contract in order to provide favorable and enforceable terms, or issuing a new request for proposal (RFP) that would allow a fresh approach to the contract process. The Oakland City Council took no action on these recommendations. Also, the relationship between the Oakland police department and the city's purchasing department deteriorated to the point where the city's purchasing department refused to coordinate with the Oakland police department in the oversight of the contract.

The Oakland police department has taken a leadership position in working to improve this situation. Although satisfied with the daily work provided by the OTCA, the police department has advocated a comprehensive change of the existing relationship. The police department and city staff has

researched other city towing contracts in California to develop a list of best practices to guide the city in creating a new RFP for the services now consolidated into the OTCA contract.

The city of Oakland has, over the years, allowed a contract involving very important and potentially revenue positive services to be performed by a single vendor. Over these decades, the city has opted to continue this business relationship by amending, modifying, and extending this contract, the terms and conditions of which are all but unenforceable. In this situation, city leadership has paid scant attention to requests to create a competitive business environment in which the city could enhance revenues, improve auditing provisions and provide business opportunities to organizations other than the OTCA. The continuation of this business relationship should be more in alignment with city purchasing policies. The preparation of a new RFP indicates a willingness by city leaders to return to an open competitive business process which should lead to contracts allowing improved revenue to the city, more opportunity for Oakland businesses, and complete accountability by service providers.

RECOMMENDATIONS

Recommendation 05-19:

The city of Oakland must issue multiple Requests for Proposals (RFPs) for the several services currently provided by the Oakland Tow Car Association that would provide maximum revenue to the city while assuring the city of efficient services. The RFPs must be crafted to provide maximum business opportunities to underrepresented small local businesses in keeping with established city policies.

Recommendation 05-20:

The city of Oakland must manage contracts in a specified, published manner that outlines the duration of contracts and limits the number and length of extensions.

RESPONSES REQUIRED

Mayor, City of Oakland

Recommendations 05-19 and 05-20

OAKLAND FIRE DEPARTMENT HAZARDOUS MATERIALS TRAINING

INTRODUCTION

The Grand Jury received a complaint regarding the Oakland Fire Department's hazardous materials training and the Department's attention to proper assignment of adequately trained personnel.

HISTORY

The Oakland Fire Department is the first responder for calls involving the spillage or leakage of hazardous material in any location under the jurisdiction of the Fire Department. To provide this critical service, the Fire Department is provided funding for training fire fighters for this difficult specialized work. The Grand Jury reviewed the Oakland Fire Department's training manuals and documentation regarding the assignment of specially trained fire fighters throughout the city. The training manuals used by the Oakland Fire Department are dated April, 1997.

CONCLUSION

The Oakland Fire Department is in compliance with the regulations regarding both hazardous materials training and the assignment of personnel charged with public safety pursuant to the 1997 training manual.

RECOMMENDATIONS

Recommendation 05-21:

The Oakland Fire Department must update its 1997 hazardous materials training manuals.

RESPONSES REQUIRED

Oakland Fire Chief

Recommendation 05-21