

**2003-2004
ALAMEDA COUNTY CIVIL GRAND JURY
FINAL REPORT**



ALAMEDA COUNTY BOARD OF SUPERVISORS

Scott Haggerty, First District

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ALAMEDA COUNTY GRAND JURY

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June 30, 2004

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

Dear Judge Miller:

Once again it has been both a privilege and a pleasure to serve as Foreman of the Alameda County Civil Grand Jury. This 2003-2004 annual report is a compilation describing hundreds of hours of thoughtful consideration and participation by all members of the Grand Jury.

There were four standing committees: Health & Social Services, Education, Law & Justice, and Government.

The Health & Social Services Committee spent innumerable hours pursuing the management, personnel and budgetary problems associated with health care at the Alameda County Medical Center. Their portion of this report is clearly the largest and has been accessed from many varied aspects. Their recommendations are contained herein.

The Education Committee performed an in-depth study of special education spending in Alameda County school districts. Additionally, they investigated fiscal oversight of school districts within the county. Their findings are reported at length in this report.

The Law & Justice Committee has provided an in-depth review and inspection of jail facilities within the county and local jurisdictions. This committee has once again spearheaded a closer inspection of the Alameda County Sheriff's Office coroner's bureau, communications division, crime laboratory, and patrol and investigative services. These facilities continue to be inadequate. A brief review of each is related here.

The Government Committee oversaw the finalization of the new Grand Jury web site and e-mail. The web site contains specific information for the citizens of our county on the mandates of the Grand Jury, how to become a member of the Grand Jury and how the complaint process is initiated and managed. This proposal was started during the 2002-2003 Grand Jury term and

Hon. Barbara J. Miller
Page two
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finalized during the current term. The web site can be accessed at www.acgov.org/grandjury.
Our e-mail address is grandjury@acgov.org.

There were 28 citizen complaints during this term. These complaints were reviewed by the Grand Jury and either referred to committee or did not rise to the level required by the Grand Jury for further investigation.

I would particularly like to thank Senior Deputy District Attorney Jeff Stark for his guidance, and Legal Assistant Cassie Barner for her unstinting work on our behalf. She is continuously called upon to assist the Grand Jury and maintains a very cordial demeanor.

The members of this Grand Jury are owed a rousing thank you from me for their continuous hard work coupled with a good sense of humor that helped me through many a hectic meeting.

It is with pleasure that I provide you with the 2003-2004 Alameda County Civil Grand Jury Final Report.

Sincerely,

KEITH BOYER, Foreman
2003-2004 Alameda County Grand Jury

2003-2004 ALAMEDA COUNTY CIVIL GRAND JURY MEMBERS

NAME	SUPERVISORIAL DISTRICT – CITY	NOMINATING JUDGE
Leonard C. Beckum*	District 5 – Piedmont	Judge Julie Conger
Keith Boyer	District 4 – Castro Valley	Judge Jeffrey Horner
Bert Brook*	District 1 – Pleasanton	Judge Harry R. Sheppard
Patrick Devine	District 3 – Oakland	Judge Harry R. Sheppard
Oliver M. Ewing, Jr.*	District 3 – Oakland	Judge Horace Wheatley
Patricia Fitzpatrick	District 5 – Piedmont	Judge Harry R. Sheppard
Jack Garfinkle	District 5 – Piedmont	Judge Ronald Sabraw
Charles J. Kadlecek	District 4 – Castro Valley	Judge Kenneth Burr
R. Thomas Layton	District 1 – Livermore	Judge Joseph Hurley
Peter C. Ley	District 3 - Alameda	Judge Harry R. Sheppard
Dan Lindheim*	District 5 – Berkeley	Judge Jon Tigar
Richard McDonald	District 2 – Hayward	Judge Peggy Hora
LaVon Neveau	District 2 – Hayward	Judge Peggy Hora
Mary E. Reynolds	District 3 – San Lorenzo	Judge Harry R. Sheppard
Nathan Shoehalter	District 5 – Berkeley	Judge Robert Fairwell
Charles B. Simkins*	District 3 – Oakland	Judge Carl Morris
Jack Summerfield*	District 5 – Piedmont	Judge Henry Needham
Donn Trousdale	District 4 – Oakland	Judge Harry R. Sheppard
Jana K. Turns	District 1 – Pleasanton	Judge Harry R. Sheppard

* jurors held over for a second term by Presiding Judge Harry R. Sheppard

2003-2004 ALAMEDA COUNTY CIVIL GRAND JURY



OFFICERS

FOREMAN: Keith Boyer

FOREMAN PRO TEM: Dan Lindheim

SECRETARY: Charles J. Kadlecek

SECRETARY PRO TEM: Oliver M. Ewing, Jr.

SERGEANT AT ARMS: Peter C. Ley

LEGAL STAFF

LEGAL ADVISOR: Jeffrey P. Stark, Senior Deputy District Attorney

LEGAL ASSISTANT: Cassie Barner



2003-2004 ALAMEDA COUNTY CIVIL GRAND JURY

Standing, left to right:

Patrick Devine, Charles B. Simkins, Donn Trousdale, Richard McDonald, Nathan Shoehalter, Bert Brook, Keith Boyer (*Foreman*), Leonard C. Beckum, Patricia Fitzpatrick, Oliver M. Ewing, Jr. (*Secretary Pro Tem*), Mary E. Reynolds, Dan Lindheim (*Foreman Pro Tem*), Jana K. Turns, Jack Garfinkle, LaVon Neveau and Peter C. Ley (*Sergeant at Arms*)

Seated, left to right:

Jack Summerfield, Honorable Barbara J. Miller (*Presiding Judge*) and Charles J. Kadlecek (*Secretary*)

Not Pictured:

R. Thomas Layton

ALAMEDA COUNTY SUPERIOR COURT PRESIDING JUDGES



Honorable Harry R. Sheppard
Presiding Judge
July 1, 2003 - December 31, 2003



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

**2003-2004 ALAMEDA COUNTY CIVIL GRAND JURY
COMMITTEE LIST**

GOVERNMENT

Bert Brook, Chair
Oliver M. Ewing, Jr.
Jack Garfinkle
Charles J. Kadlecek
R. Thomas Layton
Dan Lindheim
Nathan Shoehalter
Charles B. Simkins
Jack Summerfield
Donn Trousdale

EDUCATION

Dan Lindheim, Chair
Leonard C. Beckum
Patricia Fitzpatrick
Peter C. Ley
LaVon Neveau
Mary E. Reynolds
Donn Trousdale
Jana K. Turns

HEALTH & SOCIAL SERVICES

Jack Summerfield, Chair
Leonard C. Beckum
Patrick Devine
Oliver M. Ewing, Jr.
Peter C. Ley
Richard McDonald
Mary E. Reynolds
Jana K. Turns

LAW & JUSTICE

Richard McDonald, Chair
Bert Brook
Patrick Devine
Patricia Fitzpatrick
Jack Garfinkle
Charles J. Kadlecek
LaVon Neveau
Nathan Shoehalter
Charles B. Simkins

HISTORY OF THE GRAND JURY

One of the earliest concepts of a Grand Jury dates back to ancient Greece where the Athenians used an accusatory body. While others claim the Saxons initiated the Grand Jury system, the Grand Jury can be traced back to the time of the Norman Conquest of England in 1066. In the United States, the Massachusetts Bay Colony empaneled the first Grand Jury in 1635 to consider cases of murder, robbery and wife beating. Colonial Grand Juries expressed their independence from the Crown by refusing to indict leaders of the Stamp Act on libel charges against the editors of the Boston Gazette (1765). By the end of the colonial period, the Grand Jury had become an indispensable adjunct of government.

The California Grand Jury dates back to 1849, with Alameda County's first Grand Jury being empaneled in 1850. The role of the California 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. The 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: 1) inspect and audit books, records and financial expenditures to ensure that public funds are properly accounted for and legally spent; 2) inquire into the condition of jails, detention centers, and hospitals; and 3) 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 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.

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

Each of the Superior Court Judges in Alameda County may nominate at least one person 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, Alameda County Superior Court, 1225 Fallon Street, Room 209, 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.

QUALIFICATIONS OF JURORS

Prospective Grand Jurors must possess the following qualifications pursuant to Penal Code section 893: 1) 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; 2) possess natural facilities

of ordinary intelligence, sound judgment, and fair character; and 3) possess sufficient knowledge of the English language. Other desirable qualifications include: 1) good health; 2) an open-mind with concern for others' positions and views; 3) the ability to work with others; 4) an interest in community affairs; 5) possession of investigative skills and the ability to write reports; and 6) a general knowledge of the functions, authorities and responsibilities of county and city government and other civil entities.

A person may not serve on the Grand Jury if any of the following apply: 1) the person is serving as a trial juror in any court of this state; 2) the person has been discharged as a Grand Juror in any court of this state within one year; 3) the person has been convicted of malfeasance in office or any felony or other high crime; or 4) 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 one to two full days each week to Grand Jury business. Grand Jurors will be required to complete and file a Statement of Economic Interests as defined by the state's Fair Political Practices Commission, as well as a Conflict of Interest form upon being selected.

COMMITTEES

In order to accomplish the county's watchdog functions, committees are normally established to address the following: Government, Audit, Education, Health, Social Services, Environmental, Emergency Services, and Law and Justice (Public Safety and Detention Facilities). One or more Ad Hoc committees may be established by each Grand Jury on special issues.

REMUNERATION

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.

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 acknowledgement letter is routinely sent within two weeks.

ALAMEDA COUNTY GRAND JURY WEB SITE

www.acgov.org/grandjury

The Alameda County Grand Jury has initiated its own web site. The purpose is to provide information on the functions of the Grand Jury as well as instructions on how to become a Grand Juror. General background information on the duties and responsibilities of the Grand Jury are posted here. The site provides instructions on how to file a complaint as well as the matters in which a complaint may be filed. A complaint form can be downloaded for public utilization. The web site allows public access to the most recent Grand Jury Final Reports as well as a brief explanation of the Alameda County Criminal Grand Jury's duties. There is also a link to the Alameda County Superior Court's web site, where an application for civil Grand Jury service can be obtained. The site can be found at **www.acgov.org/grandjury**.

The initial response by the public to the web site has been positive even though it was not publicized. In the time following the site's debut, the Grand Jury received numerous calls from citizens interested in serving as well as an increase in the number of complaints filed. The majority of these citizens credited the web site with making their application and complaint processes easier.

The Grand Jury encourages citizens who are interested in serving on the Grand Jury, or who need assistance in investigation of local government, to utilize the information provided on the web site. Additionally, citizens may submit complaints to the Grand Jury by writing to the address listed below.

Alameda County Civil Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612
grandjury@acgov.org

ALAMEDA COUNTY MEDICAL CENTER

INTRODUCTION

During the 2003-2004 term, the Grand Jury investigated the Alameda County Medical Center (Medical Center). The review of the Medical Center was a result of requests by one or more individuals concerned with financial deficits, administrative difficulties, and personnel problems. Information contained in this report was derived from many sources, including county officials, health care experts and numerous investigative and financial reports.

HISTORY

The Medical Center is a public hospital authority governed by an independent Board of Trustees. Members of the Board of Trustees are appointed by the Alameda County Board of Supervisors (BOS). The county has responsibility for providing medical care for all indigent persons in Alameda County. The Medical Center provides treatment for a large number of patients who qualify for Medi-Cal and Medicare benefits. The Medical Center includes Highland and Fairmont Hospitals, John George Psychiatric Pavilion, and five outpatient clinics. Services provided to the community include emergency and trauma care for Northern Alameda County, and comprehensive in-patient surgical care including cardiac, cancer, HIV/AIDS, orthopedics, maternal and child health, and a complete birthing center. The Medical Center is also an accredited training center for emergency and internal medicine, general surgery, oral and maxillofacial surgery, and transitional programs. Inpatient and outpatient psychiatric care, crisis consultation and substance abuse programs are available at John George Psychiatric Pavilion. At the community health care centers, services such as pediatrics, immunizations, family planning, dental care, podiatry, social work and primary medical care are available. The Medical Center receives over 80,000 emergency room and trauma visits per year, as well as 200,000 outpatient visits per year.

Until mid-1998 the Board of Supervisors had direct control over the hospitals and clinics that make up the Medical Center. Due to long standing financial and administrative difficulties, it was recommended during the 1995 Grand Jury's term that an independent Board of Trustees be created to oversee the functions of the Medical Center. In 1997, the Grand Jury reported that the Board of Supervisors, in agreement with the Grand Jury's recommendation, changed the governance to an independent Hospital Authority, completely replacing the Board of Supervisors as the governing body. The Board of Supervisors obtained the state legislation necessary to allow this independent board to be legally empaneled. Effective July 1, 1998, governance, operation and management of the Medical Center was transferred from the Board of Supervisors to the Hospital Authority. This independent authority consists of an eleven member Board of Trustees appointed by the Alameda County Board of Supervisors. California Health & Safety Code section 101850 states, in part: "... a hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of the [Alameda County] medical center."

FACTUAL SUMMARY

For at least the past twenty years, the Medical Center has experienced financial and administrative problems. During this time, Grand Juries have made over 70 recommendations for improvement. Financial deficits have been accruing at a faster rate since the year 2000, forcing the Hospital Authority to borrow money from the County of Alameda. These deficits expanded in large part because of reductions in reimbursements from Medicare and Medi-Cal, slow reimbursements by these state and federal health programs, an increase in the cost of pharmaceuticals and medical technology, and an increase in the number of uninsured residents in Alameda County. In Spring 2003, the Board of Trustees was forced to close two of the five outpatient clinics, including those at Fairmont Hospital, in an attempt to reduce the overall deficit. The Board of Trustees also proposed additional cuts in services if a balanced budget

could not be reached. By mid-2003, confidence in the Medical Center's management team and their ability to provide correct financial reports had eroded.

The financial crisis at the Medical Center accelerated dramatically in 2003. The Chief Executive Officer (CEO) developed a plan to continue to provide medical services based on drastically reduced revenue. This plan, as presented to the county, provided two options to continue to provide medical services for the indigent. Under one alternative, the Medical Center would severely scale back the services it offered, treating primarily only those patients that the county had financial responsibility to treat. This plan would have dramatically affected the treatment of patients covered by Medicare and Medi-Cal. A second alternative would have required the county to provide a massive infusion of cash. This new capital would have allowed the Medical Center to upgrade its medical treatment and financial and management systems. The cash infusion would also have provided relief from the tremendous cash flow problems for the Medical Center. Under this alternative, the Medical Center would have tightened its belt gradually and with a smaller reduction in medical services.

As first steps in this process, in Spring 2003, the Medical Center closed two clinics. The CEO hired PriceWaterhouseCoopers (PWC), a national accounting firm with a highly regarded health care consulting group. The CEO planned to use PWC to assist him in communicating the extent of the financial crisis to the county and to validate his alternative solutions.

By mid-summer 2003, the county had almost completely lost confidence in the Medical Center's management team and their ability to provide correct financial reports. When PWC and the Medical Center CEO presented alternative plans, the county reacted with disbelief. The county rejected both plans, believing that other alternatives needed to be explored, including the possibility of raising additional revenue with a parcel tax or a sales tax extension. The county opposed any plan that reduced the amount of medical services provided. In any event, the county did not have the necessary funds available to assist the Medical Center. As a result, a strained relationship developed between the Board of Supervisors, the Board of Trustees, and the Medical Center management.

The CEO of the Medical Center also served on the Board of Trustees. In September 2003, the Board of Supervisors removed him from the Board of Trustees. Following this action, the Board of Trustees fired the CEO, charging that the county's action limited his ability to provide effective leadership. One week later, five members of the Board of Trustees resigned, alleging the county was routinely intimidating the board and hampering their ability to manage the Medical Center. The Board of Supervisors subsequently appointed new members to the Board of Trustees. The Board of Trustees then appointed a new interim administrative team (CEO) and Chief Financial Officer (CFO). Additionally, the Alameda County Auditor-Controller was asked by the BOS to determine the true extent of the fiscal crisis.

In February 2004, the Board of Trustees hired Cambio Healthcare Systems, a well-respected national firm, to help repair the damage to the fiscal and administrative structure of the Medical Center. Cambio was retained for an 18-month period at a cost of \$3.2 million. The Board of Trustees believed that the interim management team was already stretched to capacity in running the Medical Center and that help was needed in both analyzing the current problems and formulating and implementing changes in order to provide higher quality medical care more efficiently.

Previously, in 1998, when the Board of Trustees took over responsibility for operating the Medical Center they found that medical care had deteriorated. The Medical Center had recently lost its Joint Committee on Accreditation of Healthcare Organizations (JCAHO) accreditation. This was due in part to the Medical Center's inability to provide clean, antiseptic emergency rooms. In one case, AIDS contaminated blood was disposed of in ordinary trash. This loss of certification jeopardized their ability to obtain reimbursements for providing Medicare and Medi-Cal services. The Board of Trustees placed their highest priority on improving the quality of medical care at the expense of financial, administrative, and management systems and failed to:

- Implement an efficient system for managing time and attendance of employees;
- Charge accurate prices for supplies;

- Classify and file patient records;
- Bill for services rendered;
- Account for revenues and expenses so that the amount of the actual deficit could be clearly determined; and
- Control personnel expenses (a 61% increase from 1999 to 2003) while operating deficits were expanding.

In February 2004, Cambio Health Services reported the following deficiencies in billing, staffing and patient financial services:

- 36.3% of the total accounts receivable had not been billed, totaling approximately ten million dollars in net revenue lost.
- 46% of the number of billed accounts were more than 180 days past due. (The industry standard is 5%.)
- Medi-Cal outpatient claims were denied at a 31% rate, and pharmacy claims were denied at a 48.6% rate. (The industry standard is 4% to 6%.)
- There is no effective program to track, summarize and resubmit claim denials.
- No formal on-going training programs exist, and staff are not routinely tested on job competency and performance.
- The Medical Center has no pre-admission program. Neither doctors nor patients were notified of limitations of coverage when a patient arrived for service.
- There is currently no Advance Beneficiary Notice to Medicare recipients by the Medical Center, explaining which services Medicare will and will not cover. The Medical Center is required to bill and advise the patients of charges. This is a Medicare requirement.

The Grand Jury's investigation substantiated these findings.

Many of the problems at the Medical Center are due to poor management and a lack of oversight by the Board of Trustees and the Board of Supervisors, for example:

- The county provides a block grant reimbursement to the Medical Center for services to the indigent. This grant is not adjusted by the Alameda County Health Care Services Agency to reflect the actual costs. As a result the reimbursement each year has been inadequate.
- The Alliance for Health, chaired by the director of the Alameda County Health Care Services Agency, directs Medi-Cal patients (a positive source of revenue) to private providers and away from the Medical Center. Even though the Medical Center performs some tests for Alliance patients, it is not reimbursed by the Alliance for those services.
- The Medical Center uses obsolete computers and software. Financial records and patient billing would be improved with updated equipment.
- There is a lack of utilization of additional funding sources that could generate needed funds for operating expenses. The Medical Center does not have contracts with private insurance companies; for example, Blue Cross and HealthNet. Therefore, if patients are brought to the Medical Center for trauma care, they are transferred after their condition is stabilized to a hospital that accepts their private insurance because the Medical Center does not contract with individual insurance providers.
- The Medical Center needs to expand its urgent care system in order to divert patients to clinics and out of the more expensive emergency room.
- Management does not have the ability to reassign nursing staff from department to department due to collective bargaining agreements. When one department has adequate nursing staff but has a decreased patient load and another department is understaffed, nurses cannot be shifted to assist in the department that is in need of help.
- The Medical Center uses a nurses' registry service to fill positions when needed. If vacant positions were filled by hiring more nurses, it would cost less than the more expensive registry. (Use of the registry costs more than \$8 million dollars per year.)

- When labor negotiations took place, the administration permitted management union members to meet, confer, and negotiate with their own union.
- Due to a lack of financial controls, there was inadequate oversight in approving expenditures, and there was a failure to keep accurate and timely records for financial reports.
- There have been nine CEO's in the past eleven years. This has led to instability in the work environment and uncertainty in the management of the Medical Center.
- Lack of adequate control systems and training for employees has resulted in the Medical Center's inability to correctly bill for services.

CONCLUSION

It is the opinion of the Grand Jury that the Board of Supervisors made the correct decision when they created an independent authority to operate the Medical Center. Under the leadership of the independent Board of Trustees, the Medical Center has dramatically improved the quality of medical care it provides. However, while focusing on improving medical care, the Board of Trustees and management lost sight of their responsibility to make parallel improvements with the financial and administrative sides of the hospital.

The Board of Trustees did not do an adequate job in selecting either the last permanent CEO or the interim CEO. Neither was competent to deal with the financial crisis of the Medical Center. As a result of turnover in the CEO position, the administration is in shambles. Entire departments of employees have not received sufficient training or supervision to be able to adequately perform their duties.

The Medical Center stands at a crossroad. The recent passage of Measure A should assure a stable revenue base and financial health for the Medical Center. However, if reform does not take place and if changes are not made in the way in which the Medical Center does business,

this new source of revenue will be squandered and conditions will rapidly deteriorate into a far worse crisis.

The Grand Jury found that over a long period of time, due to lax executive management and insufficient attention from the Board of Supervisors and later, the Board of Trustees, a culture developed that “the county will always pay.” This meant employees lost sight of the idea that funds should be spent efficiently.

This culture manifested itself in small ways and large. For example, should a mechanical pencil run out of lead, a new mechanical pencil would be acquired instead of simply adding a replacement lead. Similarly, should a computer break down, it was never repaired, but replaced with the most up-to-date models while running outdated software. Spending decisions were consistently made by all levels of personnel and in all operations of the Medical Center. As a result, there was great waste of public funds. This spending was not driven by a desire to deliver the best possible medical care or even to improve the quality of medical care. It was a failure of management to designate conscientious employees and instill in them a responsible manner of spending. The Grand Jury found this culture has developed over a long period of time and that responsibility must be shared. The Board of Supervisors and later the Board of Trustees allowed top managers over the years to ignore fiscal efficiency and responsibility. This situation is unacceptable and must be continually monitored so that it will never again exist.

In moving forward, both management and employees must work together to improve the quality of the medical care provided and become more efficient in the way they deliver medical services. This may require employees and management to make sacrifices. Both sides should keep in mind the great importance the citizens of the county place on the Medical Center’s ability to provide high quality medical care in the most efficient and cost effective way.

The Grand Jury expects the Board of Trustees will move ahead with the reform efforts they have initiated. The Board of Supervisors needs to exercise patience with the current governance

structure and support the Board of Trustees as they move forward with their efforts to make the Medical Center an efficient public hospital. In the past, the Board of Trustees has ignored substantial portions of the Medical Center, to its detriment. The Board must exercise fiscal restraint as they move ahead, including closely scrutinizing the on-going recommendations of their consultant, Cambio Healthcare Services. Before implementing Cambio recommendations, the Board of Trustees has to be assured that the proposed changes will serve the dual purpose of improving the quality of care and fiscal efficiency.

The Board of Trustees needs to carefully review any Cambio recommendation that involves increased payment to Cambio. The Cambio contract is extremely expensive. At a time when employees may be asked to make sacrifices, it would only increase strife and ill will to enter into further contracts with already highly paid consultants.

The Board of Trustees should be allowed to maintain its independent governance over the Medical Center. Without interference, the Board of Trustees needs to be allowed to do the job they were originally designated to do. They should have the authority as an autonomous group to implement the approved recommendations made by Cambio and PriceWaterhouseCoopers. Delay in implementing recommendations will further increase costs.

RECOMMENDATIONS

Recommendation 04-01:

The governance of the Medical Center must remain the sole responsibility of the Board of Trustees without intervention from the Board of Supervisors as members of the Board of Trustees.

Recommendation 04-02:

The Board of Trustees must carefully scrutinize Cambio recommendations, implementing those which improve financial efficiency without sacrificing medical care.

Recommendation 04-03:

The Board of Trustees must carefully review any proposed increase in fees and payments to Cambio.

Recommendation 04-04:

The Board of Trustees must make it a top priority to eliminate wasteful spending of public funds and hold Medical Center management accountable to spend those funds efficiently.

* * * * *

RESPONSES REQUIRED

Alameda County Board of Supervisors

Recommendation 04-01

Medical Center Board of Trustees

Recommendations 04-02, 04-03 and 04-04

SCHOOL DISTRICT FINANCIAL VIABILITY: THE IMPACT OF SPECIAL EDUCATION ENCROACHMENT

INTRODUCTION

The 2002-2003 Grand Jury reported that special education encroachment (i.e., spending for special education from a district's general fund over and above earmarked special education funds) was a major contributor to the financial crises in the Oakland Unified School District (OUSD) and the Berkeley Unified School District (BUSD). The current Grand Jury investigated whether this was a problem specific to OUSD and BUSD or a countywide problem requiring more general attention.

The Grand Jury surveyed each school district in writing concerning special education funding and spending. The Grand Jury also interviewed district and county officials concerning special education funding and spending and the financial difficulties of districts throughout the county.

The Grand Jury did not look at the specifics or appropriateness of special education programs. The Grand Jury's focus was limited to investigating the magnitude of the financial impact on districts of having to cover shortfalls in special education funding from already limited general education resources.

BACKGROUND

To counteract a history of neglect for the education of children with disabilities, various pieces of federal legislation have been enacted. In particular, Congress passed the 1970 Education of the Handicapped Act; the 1975 Education for All Handicapped Children Act and the 1990 Individuals with Disabilities Education Act (IDEA). The 1990 Act renamed and amended the previous Acts and, as amended, the IDEA is the principal federal law regarding special education. Of particular importance, the 1975 Act required states to provide a "Free and

Appropriate Public Education" (FAPE) to all children with disabilities. The 1986 amendments authorized attorneys' fees for parents who prevail in due process proceedings and judicial actions against school districts.

The FAPE goal is an important one. However, as with many important social programs, the objectives outpace the funding. Also, in many special education contexts, the word "appropriate" has been defined to mean – appropriate, regardless of cost. As a result, special education has become an underfunded, virtually uncapped, federal mandate. Unfortunately, no such rights to an "appropriate" education exist for non-special education populations. As such, when funding is tight, there is an inherent conflict in trying to meet the needs of both the special and general education students.

In passing the IDEA, the federal government committed to provide 40% of necessary special education funding. Actual federal funding, however, is estimated at 17% of school district special education spending, and state contributions to these programs are insufficient to cover the shortfall. Worse, last year the state took most of the federal cost of living adjustment intended to increase special education funding for school districts and used it to help cover the state's special education contribution. As a result, local school districts are required to supplement the shortfalls in special education funding with already scarce general education funds. While the specific impact varies from district to district, almost all districts complain that insufficient resources are provided for special education.

In addition, special education costs are increasing rapidly. Various explanations are given. These include: increases of various diseases and conditions (e.g., autism); an increasing demand by parents and their attorneys for more extensive and expensive "appropriate" educational services; and a reluctance by school districts to challenge parent conceptions of "appropriate" services given the high cost of legal proceedings.

SURVEY RESULTS

1. The magnitude of special education encroachment varies by district. In some Alameda County districts, encroachment is approximately 2-3% of total unrestricted fund spending (e.g., Newark, San Leandro, New Haven, and Piedmont). In other districts, it is in the 4-7% range (e.g., Emery, Hayward, Pleasanton, San Lorenzo, Livermore, Alameda, Castro Valley). In Albany (10%) and Oakland (10%), it is substantial. In Berkeley (22%), it overwhelms the budget process.
2. All districts, whatever their encroachment percentage, complain about having to pay for federally mandated special education services with local funds. Similarly, all districts are adamant in calling for full state and federal funding for special education.
3. There is also substantial variation in special education spending. On average, most districts spend on the order of \$10,000 per special education student. This amount is over and above the regular general education spending that the majority of special education students also receive. While difficult to estimate precisely, this is roughly double what is spent on non-special education students. In contrast, on average, Oakland is spending over \$12,000 per student, while Berkeley spent almost \$14,000 per student last year and expects to spend over \$17,000 per special education student in the current 03/04 year. The difference in spending is not explained by differences in the number of special education students in the district, as this is essentially constant across all districts (10 - 11%).
4. Districts complain of a mismatch between the rights and financing of special and general education students. As one superintendent stated,

“If special education services are ‘appropriate,’ educational services to all other students are deplorably inadequate (underlined in original). On the other hand, if educational services to all students are ‘appropriate,’ then special educational services are lavishly

excessive (underlined in original). Currently, school districts are forced to raid (unrestricted) funds that would otherwise pay for general education services and use those funds to provide a level of services for special education that is inconsistent with the level of service provided to other students.”

Or, as stated by a second official,

“The ongoing shortfall in funding special education needs to either be eliminated or the stringent compliance requirements for the protection of the special education student needs to be re-examined. The question appears to be why are the rights of the special education student stronger than for the average or gifted student ... while state funding is reduced, and therefore average student funding is reduced, the (local resource spending) per special education student increases annually.”

CONCLUSION

1. State and federal funding for special education is insufficient to cover special education costs in all 18 Alameda County districts. All districts spend substantial general education resources to cover the shortfall in special education funding.
2. Special education encroachment is putting substantial pressure on local resources and is threatening the financial viability of many districts.
3. In many cases, the magnitude of special education encroachment is the difference between financial health and the need for massive budget reductions and for external financial intervention.

For example, if the Berkeley and Livermore districts were able to reduce just their special education encroachment by half, their budget deficits would disappear; their budgets would receive county approval, and they would no longer require county-appointed fiscal advisors. In HUSD, encroachment this year is about half the estimated operating deficit for next year. In OUSD, encroachment last year was approximately 2/3 of their operating deficit.

4. Shortfalls in special education funding must be covered from a district's unrestricted general fund. This means reducing spending for non-special education students. When this shortfall is large, general fund resources are insufficient to avoid a conflict between both covering the shortfall and meeting obligations to all students.

The point is not that special education funding is excessive to meet the needs of special education students. Even at present levels, special education funds may be seriously inadequate. The point is that where encroachment is substantial, it creates an unfortunate competition between special and general education programs for already scarce funds.

5. Districts are constrained in their ability to limit special education spending. Special education students are entitled to an "appropriate" education. Appropriate has come to mean appropriate regardless of cost. Even when districts prevail, legal costs to determine the limits of "appropriate" can be substantial. Districts must make calculated decisions weighing the cost of providing additional services vs. the costs of challenging the need for such services in legal proceedings. Federal "maintenance of effort" regulations, which generally require states and school districts to maintain special education spending at no less than the prior year level, further limit district efforts to reduce spending.
6. Given inadequate state and federal funding, encroachment cannot be eliminated. Districts should make efforts to make programs more cost effective.

7. Where state special education funds are allocated based on ADA (average daily attendance), declining enrollment affects special education, as well as overall funding levels. This does not appear to be well understood by school districts.
8. All students should be entitled to an “appropriate” education.

FINAL OBSERVATIONS

The importance of special education encroachment is not well understood by legislators or by the general public. Districts must work together to educate state and federal authorities as to the urgent need to adequately fund special education: for special education students, for general education students, and for the fiscal viability of school districts.

Policy makers are all too accustomed to un-funded mandates. When such mandates seriously impact the adequate funding of public education, and create unfortunate conflicts in spending priorities between different groups of students, then much greater concern is warranted.

An important guarantee of the IDEA, is that special education students are entitled to an “appropriate” education. Ultimately, all students should be entitled to an appropriate education. Unfortunately, most students have no such entitlement. School districts should work with their communities and their legislators to make this a reality.

While many school districts complain of the impacts of encroachment, they do not routinely monitor its magnitude or its overall impact. Districts must pay specific attention to special education spending and to the impact of funding shortfalls on general unrestricted spending and on the district’s financial stability.

In addition, while most districts understand the relation between declining enrollment and declining overall state revenue, some fail to clearly understand that declining enrollment results in reduced funding for special education as well.

There is substantial variation in special education spending and encroachment from district to district. It is important for districts with substantial encroachment (e.g., Oakland and Berkeley) to investigate why their special education spending, and encroachment, is so high as compared with other districts.

Finally, the Alameda County Office of Education, in its fiscal oversight role, should pay specific attention to special education encroachment in determining the current and prospective financial viability of the districts under its jurisdiction.

ALAMEDA COUNTY SCHOOL DISTRICTS: FINANCIAL OVERSIGHT AND FISCAL CRISIS

INTRODUCTION

In recent years, an excessive number of Alameda County school districts have been in serious financial difficulty. Grand Juries have investigated various aspects of this problem. The 2000-2001 Grand Jury reported on Emeryville. The 2001-2002 Grand Jury reported that of the eight school districts in California in serious financial difficulty, three were located in Alameda County. The 2002-2003 Grand Jury investigated the Oakland crisis, which developed into the largest school system bankruptcy in California history, a \$100 million state bailout, the imposition of a state-appointed Administrator, and the elimination of local control.

By the end of the 2002-2003 Grand Jury term, Albany, Berkeley, Oakland, and Emeryville all had outside fiscal advisors appointed by the Alameda County Office of Education (ACOE) or state-appointed administrators. Shortly after the current 2003-2004 Grand Jury term began, the ACOE appointed additional fiscal advisors for the Hayward (HUSD) and Livermore (LVJU) districts, while removing the fiscal advisor in Albany. At present, four of the eight most financially troubled districts in the state (i.e., districts with “negative certifications”) are in Alameda County.

To better understand why so many Alameda County school districts were in trouble, the 2003-2004 Grand Jury undertook its own investigation. It again reviewed the fiscal oversight process and looked at the specific situations in both HUSD and LVJU. The Grand Jury reviewed numerous documents and met with officials from various school districts, the ACOE, and other state and county oversight agency representatives.

The investigation found limitations in the current system of fiscal oversight, at least as practiced in Alameda County. The ACOE has a good record of taking decisive action once crises are

brought to its attention. However, the ACOE has done little to prevent financial crises from occurring in the first place. To be more effective, active oversight must occur much earlier in the process. At the very least, districts and their respective communities need to be made aware of serious problems in their districts as they arise.

Effective fiscal oversight is only part of the issue. Unless adequate funding (federal, state, local) is provided, increasing numbers of school districts will be in severe fiscal crisis, no matter how well managed and no matter how effective the system of fiscal oversight.

BACKGROUND

Following the Richmond bankruptcy in 1991, and in an effort to forestall additional bankruptcies, the state enacted a system of fiscal oversight known generally as AB1200 (for more detailed information see Education Code §§42100-42134, www.fcmat.org and the 2002-2003 Alameda County Grand Jury Final Report). This legislation gave county offices of education (COEs) fiscal oversight authority over districts within the county. It also created a Financial Crisis Management Team (FCMAT) to provide financial advice and management assistance to school districts.

At a minimum, this oversight scheme requires districts to submit their budget for approval to the COE for the next fiscal year by June 30. Budgets are either approved or disapproved. When disapproved, various corrective measures are triggered. Districts must also submit two interim reports covering the first four and seven months of the fiscal year. Interim reports receive positive, qualified, or negative certifications. A positive certification is assigned when the district is expected to meet its financial obligations for the current and two subsequent fiscal years. A qualified certification is assigned when the district may not meet its obligations for the current or two subsequent fiscal years. A negative certification is assigned when a district will be unable to meet its financial obligations for the remainder of the current year or for the subsequent fiscal

year. The caveat in all cases is that the certifications are “based upon current projections.” These certifications are first voted on by the local school board and ratified or modified by the COE.

Where a district cannot demonstrate that it can meet its obligations for the current and two subsequent years, the COE is authorized to bring in external financial assistance and place certain restrictions on district spending. This is the case in Berkeley, Hayward, and Livermore. In particularly serious situations, when state loans are needed to cover a district’s operation, state administrators are appointed as a condition of the loan legislation. In such cases, the administrator replaces the district superintendent and school boards lose decision-making authority. This was the case for the Oakland Unified School District (OUSD) and Emeryville.

New legislation is moving through the legislative process to provide additional oversight authority to COEs. One proposal is to provide for conditional approval of annual budgets. Current law only allows for approval or disapproval of budgets, and COEs are apparently reluctant to disapprove annual budgets. A second proposal would give COEs authority to review and analyze collective bargaining contract proposals before they are enacted and to indicate whether these proposals will place the district in fiscal jeopardy. In contrast, current law only allows for the COEs to be notified within 45 days of enactment of those contracts.

RECENT FISCAL CRISES: HAYWARD AND LIVERMORE

Since fiscal administrators had just been appointed for HUSD and LVJU at the start of the current Grand Jury term, the Grand Jury was interested if the crises in other districts had changed how fiscal oversight was being carried out. What the Grand Jury quickly learned was that the situation in both HUSD and LVJU were actually concurrent with the problems in the OUSD. As such, there was no opportunity for change to have taken place.

Hayward Unified School District

The HUSD financial crisis became public on September 30, 2002. At that time, the top HUSD business official declared an urgent management crisis and called upon the ACOE and FCMAT to “take full control of the district, including financial and business operations.” Two weeks later, the ACOE superintendent brought in FCMAT to conduct an assessment of HUSD, primarily to look at possible illegal fiscal practices. While questionable practices were found by FCMAT, its focus quickly broadened to general concern for the declining fiscal solvency of the district.

Accordingly, in December 2002, the HUSD reached agreement regarding the superintendent’s resignation. By the end of January 2003, the superintendent had resigned. Given the apparent deficit, interim authorities prepared a budget reduction plan which included large numbers of March 15 layoff notices to teachers (by law, teachers not guaranteed jobs the following Fall must be notified prior to March 15). Shortly thereafter, the board rescinded the March 15 notices, thereby also rescinding a substantial part of the proposed budget reduction plan.

In early June 2003, FCMAT expressed doubts regarding the fiscal solvency of the HUSD. A week later, the ACOE determined that the district would not be able to meet its obligations and appointed FCMAT as fiscal expert to conduct a study of the financial condition of the district.

In August 2003, FCMAT reported that HUSD was in a serious financial and management crisis and questioned HUSD’s ability to remain fiscally solvent. Days later, the ACOE disapproved the district’s budget and appointed School Services of California (SSC) as the fiscal advisor to provide management assistance and fiscal crisis intervention.

Since that time, a new HUSD management team has been hired (an interim superintendent and business officials) and the district is working to approve a deficit reduction plan to close the now estimated \$12 million operating deficit.

It is interesting to review some of the basic facts in the Oakland case as they closely parallel those in HUSD.

Oakland Unified School District

While the OUSD situation was reported in last year's Grand Jury report, the OUSD timeline was roughly concurrent with that of HUSD. In August 2002, the OUSD discovered that it was in serious financial difficulty. At the time, the ACOE was about to approve the budget for the 2002-2003 fiscal year. OUSD brought in outside fiscal experts (SSC) to help analyze the fiscal situation. Once this was reported to them, the ACOE began to take action. In October 2002, ACOE finally rejected the OUSD 2002-2003 budget and called in FCMAT as fiscal advisor to determine the exact nature of the 2001-2002 deficit, to rework the 2002-2003 budget, and to assist in the preparation of the 2003-2004 budget due in June 2003. In less than six months, \$100 million bailout legislation was passed, a state administrator was hired, the OUSD superintendent was terminated and the OUSD school board was rendered powerless.

Livermore Valley Joint Unified School District

LVJU financial problems unfolded in a somewhat different manner. During the 2002-2003 school year, the school district realized it would have to make substantial cuts. Its interim reports each received "qualified" certifications. It embarked on a deficit reduction effort and proposed substantial cuts. Both Livermore and the ACOE expected that budget reduction efforts were on track and that the requisite cuts would be made. Late in the budget process for the current 2003-2004 year, an additional shortfall was discovered. LVJU determined that they were not willing to make additional cuts. LVJU submitted a place-holder, non-balanced, budget to the ACOE, which they knew would be disapproved. ACOE then proceeded to disapprove the budget and appointed a fiscal advisor.

Last year's Grand Jury raised questions about whether the ACOE, in its oversight role, had intervened quickly enough in Oakland. Similar questions can be asked concerning ACOE's actions with regard to HUSD. In both HUSD and OUSD, the crises were self-discovered by the districts themselves, and not because of the oversight process. In both cases, once the crises were discovered, the ACOE acted quickly and decisively. While debate exists as to the appropriateness of the ACOE intervention in OUSD, the ACOE did act aggressively.

The Livermore situation is in contrast to that of OUSD and HUSD. Both the district and ACOE knew of the difficulties. Both 2002-2003 interim reports resulted in qualified certifications. Both ACOE and LVJU expected that requisite budget reduction efforts would be made. It was only when LVJU would not make additional required cuts that their budget was disapproved, the negative certification made, and a Fiscal Advisor appointed.

DISCUSSION

- In the HUSD case, once the chief business official declared an urgent crisis, the ACOE moved quickly and aggressively. Within a few months the HUSD superintendent was removed and FCMAT was actively involved. In less than a year, a fiscal advisor (not FCMAT) was in place.
- In the OUSD case, once the chief business official discovered the large budget deficit and declared an urgent crisis, the ACOE also moved quickly and aggressively. Within a few months, FCMAT was actively involved. In less than a year, the legislature approved the largest school district in history, the superintendent was removed, the school board was stripped of its authority, and a state administrator was in place.
- Both HUSD and OUSD had long histories of financial problems and the lack of coherent financial systems. Both had major disconnects between their planning, budgeting, hiring, and payroll systems. Both had histories of substantial deficit spending. In both cases, the

fiscal oversight system was on notice of serious financial problems in these districts. In both cases, the oversight system did not demand changes in either district until large deficits were discovered.

- The LVJU case was substantially different. In LVJU, the system's infrastructure was adequate. Instead, the LVJU board was confronted with having to make larger cuts than they were willing to make. After already making substantial cuts, the board determined that it would make no additional cuts, submitted a pro forma budget, and essentially asked for the appointment of the fiscal advisor.
- The ACOE maintains that it is not an audit agency and districts are responsible for sound financial management and having their books reviewed by independent auditors. ACOE further maintains that their role is, in addition to ensuring basic reporting compliance, to review budgets and interim reports for reasonableness and overall trends in expenditures, revenues, and attendance.
- The ACOE is adamant that under AB1200, until a district can be shown to be unable to meet its financial obligations for the current or subsequent two fiscal years, the ability of the oversight agency to intervene in that district is highly limited. Others involved in the oversight process (other COEs and state level authorities) argue that AB1200 provides sufficient mechanisms to make earlier interventions.
- Recently proposed legislation would provide additional oversight authority to COEs. Conditional approval of budgets would give COEs an additional foot in the door at the beginning of the budget year. Authority to review and analyze collective bargaining contract proposals should act as a counter-weight to school boards offering pay increases the district cannot afford.

CONCLUSION

Any conclusion regarding the fiscal oversight of school districts must start with the obvious: school districts are responsible for running their districts in a fiscally sound, properly managed manner. COE fiscal oversight must provide an early warning so that changes and corrections can be made before disaster strikes.

1. Districts throughout Alameda County, and increasingly throughout the state, are in serious financial difficulty with many facing financial disaster. The system for financing public school districts requires overhaul. Absent substantial increases in public education funding, school districts throughout the state will fail in ever increasing numbers.
2. Inadequate funding does not excuse districts from understanding the difficult constraints under which they have to operate and to work within those constraints. Similarly, it does not excuse those responsible for oversight from acting aggressively before financial crises erupt.
3. The HUSD and OUSD cases illustrate limitations of the current system of fiscal oversight, at least as practiced in Alameda County. Once disaster strikes (or is brought to their attention), the ACOE takes decisive action. However, ACOE fiscal oversight does little to prevent disasters from occurring in the first place, even when districts have long histories of financial difficulty.
4. The ACOE is adamant that under AB1200 it has no real authority to act absent financial disaster. Other COEs and oversight experts argue that AB1200 does provide sufficient authority for forestalling serious financial problems. Regardless, the net result is that the ACOE fiscal oversight is of limited utility in helping districts avoid fiscal disaster or even to help them know that disaster is imminent. Until both OUSD and HUSD self-reported their

precarious financial situations, ACOE acted as if it were seemingly unaware of these difficulties.

5. That said, the ACOE deserves commendation for quickly intervening in both OUSD and HUSD once alerted to the scope of the financial problems in these districts. Similarly, their actions in LVJU seem measured and appropriate. Both 2002-2003 interim reports resulted in qualified certifications. It was only when LVJU would not make additional required cuts, that their budget was disapproved, the negative certification made, and a fiscal advisor appointed.
6. Proposed legislation, giving COEs the authority to comment on the financial implications of prospective collective bargaining agreements before they occur, rather than the current situation of 45 days after they occur, will allow COEs a voice on an important determinant of school district expenditures.
7. The HUSD fiscal crisis seemingly followed that of OUSD. In fact, the crises were concurrent and shared many similar causes: lack of financial systems; lack of position control; lack of communication between the principal finance and administrative units (e.g., planning, budget, finance, payroll, and Human Resources).
8. There is an interesting line between the rights of a district to act autonomously, and the need for meaningful external financial oversight of that district. Whatever that boundary, it must be stated explicitly that it is the district's responsibility for operating in a financially sound manner. At best, county financial oversight can act as a check on the responsibility. For the oversight function to be meaningful, it must require detailed and accurate documentation of the financial status of the district. Where the ACOE has any questions concerning the financial viability of a district, it has the requisite authority to require that district to demonstrate its current and prospective viability.

FINAL OBSERVATIONS

School Districts in Alameda County

School districts in Alameda County should work together to make clear to the legislature and governor that current school funding resources are seriously inadequate. No amount of fiscal oversight or efficient management can address the fundamental reality of inadequate resources.

However, until funding substantially increases, school districts must carefully manage their scarce resources to both live within their means and minimize the impacts on their students of this inadequate funding. At a minimum, school districts must have comprehensive financial and management systems in place including accurate position control and financial systems with tight integration between planning, budgeting, human resources and payroll. In addition, school districts need to constantly monitor the key revenue and expenditure items in their budgets (e.g., ADA actuals and trends, salary and compensation packages for all types of employees, restricted fund encroachments on the unrestricted general fund, etc.).

Alameda County Office of Education

The ACOE must give greater priority to efforts to forestall financial crises, rather than just acting aggressively once crises have occurred. If the ACOE feels it lacks authority to intervene in districts in a timely manner, it should band with other COEs to seek greater authority from the state. The ACOE should be more proactive in issuing qualified certifications of district interim reports and to demand sufficient data to ascertain that district finances are in order. At a minimum, where the ACOE suspects problems, it should make its concerns public so that the community is properly alerted. Finally, to the extent that the ACOE cannot provide sufficient oversight of Alameda County school districts with its current staff, it should request additional fiscal oversight staff.

JAIL INSPECTIONS

California Penal Code section 919 states, in part: *the grand jury shall inquire into the condition and management of the public prisons within the county.*

This year, for the first time, the Grand Jury conducted unannounced inspections of jail facilities in Alameda County. These unannounced inspections were conducted to observe the operations of the facilities on a day-to-day basis.

The Grand Jury inspected holding facilities or jails at the following locations: the Hayward Hall of Justice, the Glen Dyer detention facility, the city jails of Oakland, San Leandro, Albany, Union City and Newark police departments, and the juvenile jail facility at Camp Sweeney.

HAYWARD HALL OF JUSTICE COURT HOLDING FACILITY

In September 2003, the Grand Jury inspected the Hayward Hall of Justice court holding facility. This facility is operated by the Alameda County Sheriff's Office and is open only on weekdays from 7:00 a.m. until 5:45 p.m. Prisoners are held at this 18-holding cell facility while awaiting appearances in court. Prisoners are transported to the Hayward Hall of Justice from Santa Rita county jail. The Grand Jury's inspection found hallways and cells clean, toilets and water fountains in good working order, and surveillance cameras operational. No deficiencies were found.

GLEN DYER DETENTION FACILITY

In February 2004, members of the Grand Jury inspected the Glen Dyer detention facility in Oakland. Additionally, the Alameda County health department, the state Board of Corrections, and the Oakland fire department had recently inspected this facility. The Alameda County Sheriff's Office operates this eight level jail. In July 2002, the jail was closed for budget

reasons. In order to relieve over crowding at Santa Rita Jail, this facility was reopened in October 2003. The Glen Dyer detention facility houses county, state and federal prisoners. All areas of this jail, including the kitchen, food storage, freezer rooms, and holding cells, were found to be clean and in excellent condition. The facility had been freshly painted and no deficiencies were noted.

OAKLAND CITY JAIL

The Oakland City Jail was inspected by the Grand Jury in September 2003. This facility was built in 1962 and is operated by the Oakland police department. Emeryville, Piedmont, the California Highway Patrol (CHP), and the Bay Area Rapid Transit (BART) police departments contract with Oakland to utilize this jail. The Oakland City Jail houses city, state, and federal prisoners. The state and federal agencies pay a per diem to the Oakland police department for use of this facility. The Oakland City Jail houses an average of 90 prisoners per day. City prisoners are booked at this facility and held on average for 48 hours, then either released or transferred to Santa Rita jail for long-term housing. At times, state and federal prisoners remain for longer periods of time while in trial or awaiting transfer to other facilities.

During the Grand Jury's inspection, drinking fountains in two cells were found to be inoperable. Several toilets needed cleaning. Food and non-food items in the jail's kitchen pantry were not stored as required by the California Health & Safety Code. Although infestation was not found during the Grand Jury's inspection, food products may become vulnerable to rodent and insect infestation. When these shortcomings were presented to Oakland police officials, they were corrected.

SAN LEANDRO POLICE DEPARTMENT JAIL

The Grand Jury's November 2003, inspection of the San Leandro police department jail revealed a clean and well-operated facility. Prisoners are booked and temporarily held at this facility until being transferred to Santa Rita jail. Both the men's and women's cells and showers were in good working order. Microwaves used to prepare prisoner food, as well as the food storage freezers, were found to have no deficiencies. No problems were found.

ALBANY, UNION CITY AND NEWARK POLICE DEPARTMENT HOLDING FACILITIES

The Albany and Union City police department holding facilities were inspected by the Grand Jury in September 2003. The Newark police department facility was inspected in February 2004. These three police departments have small holding facilities with a limited number of cells. Prisoners are not held overnight and no food is served. All holding cells were found to be clean and in good condition. No deficiencies were noted at any of these facilities.

CAMP SWEENEY

Camp Wilmont Sweeney is a residential program for delinquent boys aged 16 through 18. It is a 105-person residential program. Deputy probation officers are case managers. Skilled group counselors guide the youth through daily programs. Typically, residents remain at the camp for 6-12 months. Camp Sweeney is an alternative to Juvenile Hall's more restrictive setting. The courts determine which offenders are placed at the camp. The emphasis of the camp is on rehabilitation, education and counseling. Organized team sports, an on-site school, and activities that stress self-esteem, companionship, and teamwork are part of the program.

This campus is 50 years old. Senior staff members described the philosophy and methodology of the camp. The barracks, dining hall, classrooms, recreation hall and outdoor facilities were

inspected. At the time of the inspection 88 boys were in residence. The cost of housing juveniles at this facility is less expensive than Juvenile Hall and also offers a greater chance of rehabilitation. The Grand Jury was impressed with the dedicated staff.

The operation of this camp is not mandated by law; and for that reason, the camp could be adversely impacted by the current budget reductions. This facility fulfills a vital function within the juvenile justice system. The Grand Jury encourages the county to maintain Camp Sweeney.

ALAMEDA COUNTY SHERIFF'S OFFICE

The Grand Jury toured the Alameda County Sheriff's Office Eden Township Substation (ETS) located in San Leandro in March 2004. This facility contains the crime lab, patrol center, investigations and communications. A tour of the coroner's bureau, located in Oakland, was conducted in September 2003.

EDEN TOWNSHIP SUBSTATION

The Sheriff's Office Eden Township Substation (ETS) building houses the crime lab, sheriff's investigations and patrol. ETS is also the location for the youth & family services division, traffic, narcotics and vice, a crime suppression team, special operations, hostage negotiation unit, a new identity theft unit, air squadron, underwater search & rescue units, DARE, neighborhood watch, and the school resource unit. Over 425 employees are assigned out of this facility.

Eden Township Substation is overcrowded, dilapidated and outmoded. The building is built on an earthquake fault. The building is too small to accommodate staff, offices are overcrowded, one of the three locker rooms does not contain restroom or shower facilities, the public waiting area is too small, there is only one small conference room for use by all employees, and there is not enough storage space for necessary supplies. The employees do a remarkable job working under such inadequate conditions.

Past Grand Juries have reported on the sheriff's proposal to replace this facility. The Grand Jury also understands the enormous financial problems facing Alameda County and most other counties around the state. Due to the current financial problems, the Grand Jury makes no recommendation regarding replacing the existing facility. The Grand Jury urges future grand juries to closely monitor the sheriff's on-going planning process, paying close attention to the ability to provide a source of funding for this sorely needed project.

CORONER'S BUREAU

The Grand Jury found the following problems at the Alameda County Coroner's Bureau:

- Inadequate work space for dissection and preparation of bodies
- Inadequate ventilation system to control odor and airborne pathogens
- Visibility of corpses in receiving area to the public
- The offices have no effective climate control system
- No handicapped accessibility
- No public waiting room
- Limited restroom facilities
- Inadequate public and employee parking
- Inadequate staff shower facilities

Despite the fact that cosmetic improvements have been made, the coroner's bureau remains inadequate for Alameda County's purposes.

COMMUNICATIONS CENTER

The sheriff's office communications center, located on a San Leandro hillside in a bunker built during the Cold War, is the receiving point for all public and police calls (emergency and non-emergency) for unincorporated Alameda County. The windowless communications center is a dark and crowded facility that makes for a dismal work environment. Additionally, the communications building is built on an earthquake fault. In spite of the cramped conditions of the building, the sheriff's office staff performs in an efficient manner.

CONCLUSION

All three facilities – Eden Township Substation, the coroner’s bureau, and the communications center - are in serious need of replacement as soon as possible.

VIOLENCE IN OAKLAND

The Grand Jury, based upon public information, instituted a review of the level of violence and homicides in Oakland. The Grand Jury met with the Oakland City Manager and the Chief of the Oakland Police Department to determine what plans are in place to reduce the violence and homicides plaguing the city. The following plan was presented.

PROJECT S.A.F.E.

On October 1, 2003, the Oakland police department implemented Phase I of their Violence Reduction Plan, Project S.A.F.E. (Supplemental and Focused Enforcement). This plan was designed to coordinate and focus department resources towards well-defined violence crime objectives. The plan also increases the effectiveness of specialized and undercover operations and holds personnel at all levels accountable for their violence reduction efforts.

The S.A.F.E. Plan has five goals: 1) Reduce injuries and deaths, especially from gun-related conflicts; 2) Reduce community fear and violent crime; 3) Reduce incidents that discourage the use of public places such as parks and businesses open to the public; 4) Improve Oakland's image as a safe place to conduct business and recreational activities; and 5) Create public trust and confidence in the police department.

This plan requires that patrol officers, detectives, corrections officers and special crime reduction teams work together to solve problems that arise in the city. There are six police service areas in Oakland. Each of these areas has a commander who will identify problems, decide the type of specific enforcement action to be taken, and then monitor the results.

Police seize approximately 90 guns per month in the city of Oakland. There are 17,000 individuals on probation in the city and 4,000 of these are considered "high risk." There are approximately 3,000 parolees living in Oakland. As of October 14, 2003, 41 of the 96 murder

victims in 2003 were on probation or parole; and 80% of these victims had at least one felony arrest.

The S.A.F.E. plan was instituted on October 1, 2003. Statistics for the period ending April 25, 2004, indicate violent crime and murders have been reduced by 35% over the same period one year earlier. Chief Richard Word and his department are to be commended for this major reduction.

The complete text of the City of Oakland's Violence Prevention Plan can be accessed on the city's web site at <http://www.oaklandnet.com/violence.pdf>; or, may be accessed at the public library.

COMMUNITY ACCESS TELEVISION

INTRODUCTION

Meetings of two of Alameda County's highest profile governmental agencies are currently not broadcast on local community access television (CATV). The two agencies are the county Board of Supervisors (BOS) and the county Board of Education (BOE). The Grand Jury undertook an examination of the practicality of broadcasting these meetings.

HISTORY

As part of the consideration for granting cable television broadcast rights, local government is entitled to the use of Community Access Television (CATV). Through negotiated contracts between each local government and the cable company, the cable company becomes obligated to transmit from particular locations to subscribers' residences. Typically, these locations are the sites of local governmental meetings. The cable company uses a percentage of its revenue to pay for the operating costs of CATV. These payments are generally made to each local government's general fund, which in turn funds its own CATV.

In Alameda County most cities have both a contract with a cable television provider and facilities to broadcast programs which they deem to be of public interest. Generally these include city council meetings, boards of education and other local agency meetings. These meetings are frequently broadcast live with subsequent rebroadcasts to assure the widest possible dissemination.

Contracts currently exist between the County of Alameda and cable companies to provide cable services to unincorporated areas of the county. These contracts provide CATV service to unincorporated areas of the county. These contracts generate annual revenues for the county of

approximately \$100,000, which currently go into the county's general fund. The county, in its contract with the cable companies, has not required the installation of equipment at meeting places, or the provision of a studio to facilitate live broadcasts or taped meetings. Unlike local municipalities, the county has not developed its own TV station and has no means for distributing programming countywide.

FINDINGS

The Grand Jury interviewed a city administrator responsible for CATV, representatives from the county administrator's office, and members of the BOS and the BOE. The Grand Jury also examined existing contracts between various cities, the county, and cable providers. In addition, each city in Alameda County was surveyed to determine its degree of involvement in CATV in order to establish the capabilities and interest in airing county agency meetings.

Individual members of the BOS and the BOE expressed interest in having their meetings broadcast. There have been discussions of broadcasting the meetings, and a preliminary Request For Proposal (RFP) has been developed by the BOE. The County of Alameda receives approximately \$100,000 annually from cable providers as a licensing fee. None of this money is currently earmarked for CATV services. Some of these funds might be redirected for televising BOS meetings. The BOE, however, has no direct access to these funds.

For production, the entities can avail themselves of the capabilities of one of the cities with production equipment. For distribution, the actual telecast will have to be shown on the stations of the various cities. Scheduling conflicts with existing programming may preclude live broadcasts. As such, videotape rebroadcast of the meetings is the most pragmatic approach to having the proceedings made available to the public. Videotaping meetings, rather than live telecast, would also be the most cost effective approach. It would require none of the cost and equipment required for producing and distributing live broadcasts.

Webcasting is an alternative to video broadcasting meetings. Currently, BOS meetings are audio cast over the internet in real time. Adding video to the audiocast would be feasible at a reasonable cost. The additional advantage of the webcast is that archiving of meetings is feasible and inexpensive. The disadvantage of webcasts is the limited number of households that can receive the webcast as compared to conventional television.

The Alameda County Office of Education is currently preparing a Request For Proposal (RFP) to develop comprehensive production facilities. While this may be a useful capability for the ACOE, it would delay broadcasting of the BOE meetings. Far less expensive and a more immediate means exist for providing television coverage of meetings. The pursuit of a comprehensive production facility should not be allowed to delay the televising of board meetings.

Each municipality surveyed indicated that it was interested and capable of broadcasting the proceedings of both the BOS and the BOE. However, they would need to receive a videotape of the meeting(s) and be able to use their own discretion in determining when the program is broadcast. There would be no cost to the county to broadcast the meetings in any of the municipalities.

Representatives from the cities of Berkeley, Livermore and Oakland have reported that they have the capabilities of providing equipment and personnel to videotape and disseminate both the BOS and the BOE meetings. While the cost to broadcast these meetings is minimal, the cost to videotape these meetings would need to be negotiated. Among the options, the least expensive rates appear to be in the range of \$250-\$300 for the cost to videotape a four-hour meeting. There is no requirement that the funds currently generated by the county be used for broadcasting these meetings.

CONCLUSION

The Alameda County Board of Supervisors and the Alameda County Board of Education have not sufficiently recognized the importance to the community of televising their meetings. While the means to do so have been available for a considerable number of years and other local governing bodies have widely used the access provided by CATV, meetings of these boards remain untelevised. The Grand Jury believes televising these meetings is a high priority and action toward this end should be accelerated. We recognize the county is currently facing financial difficulties, however, the Grand Jury believes there are low cost solutions to broadcasting these meetings.

RECOMMENDATIONS

Recommendation 04-05

The Alameda County Board of Supervisors have their meetings videotaped for dissemination through CATV.

Recommendation 04-06

In addition to pursuing a complete upgrade of their audio-video production capabilities, the Alameda County Board of Education pursue broadcasting its meetings in an affordable manner as soon as possible.

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RESPONSES REQUIRED

Alameda County Board of Supervisors
Alameda County Board of Education

Recommendation 04-05
Recommendation 04-06

ELECTRONIC VOTING

INTRODUCTION

News reports critical of the use of electronic voting prompted the Grand Jury to investigate its use in Alameda County. The Grand Jury monitored electronic voting in the most recent election, interviewed the Registrar of Voters, and reviewed reports on electronic voting in Alameda County.

For the past two years, electronic voting has been used in areas of Alameda County. Advantages of electronic voting include: a multi-language capability, built in electronic security, ease of operation, ADA accessibility, and the ability to accommodate increasingly complex ballots (e.g., multiple primaries and propositions). Disadvantages include equipment failure and a lack of training and expertise of poll workers.

Both the state and federal government certify voting equipment. In the last election, non-certified voting equipment was provided to Alameda County by Diebold company, the manufacturer of the touch screen voting machines.

FACTUAL SUMMARY

The touch screen voting system is made up of two parts: the touch screen voting machine and a separate encoder. The encoder programmed voter cards are then placed into the touch screen voting machine. The encoded voter card enables the voter access to the appropriate party and language ballots.

In the March 2004, election, the Diebold electronic voting system was used throughout Alameda County. Only 4 of 4000 touch screen voting machines failed to operate successfully. This did not impact the overall voting process. However, 186 precincts experienced encoder problems,

causing the electronic touch screen voting machines to be inoperable. Of the 186 problem precincts, problems in 106 of them were corrected within one hour. In most cases, paper ballots were available as back up.

Opponents to electronic voting have expressed concern about having no paper trail; however, the machines are designed to provide an electronic back-up tally of the vote in the event a recount is required.

Physical security is adequate while polls are open. However, after voting is completed, the machines are left at polling places to await transfer back to the main warehouse. In some cases, machines are not returned to the warehouse in a timely manner. There was no evidence of tampering or hacking during the March 2004 election. However, leaving machines unattended leaves them vulnerable to tampering in the event a recount is required.

During the March 2004 election, the Grand Jury observed that the electronic voting process was not fully automated. At the precinct level, the electronic voting machines enhance the ability to produce complex ballot options to satisfy voter requirements. This efficiently records and tallies all votes by the close of the precinct. The precinct voting data is captured and saved on the voting system. A copy is stored on an electronic memory card. The memory cards are uniquely coded by precinct and must be manually transported to the county's Registrar of Voters Office. The registrar's office receives the cards and manually identifies and logs them into a registry. The process continues when the Registrar of Voter's Office staff manually inserts the cards into electronic memory readers, which adds precinct-voting data to county totals. Programming safeguards designed into the electronic voting system prevent duplication of precinct data and alert the staff of missing data. This information is subsequently transmitted to the state during statewide elections.

If the registrar's office discovers missing memory cards, they must be manually retrieved from locked, secured polling places, which cause delays in reporting the final tallies.

Temporary workers received only minimal training and performed much of this manual work. Confusion was initially observed but ultimately resolved by on the job training.

In the March 2004, Alameda County election, the touch screen voting machines worked. There were problems with the encoders. The entire system is currently under review by the state of California. The continuing use of electronic voting and the use of the Diebold machines in Alameda County is an issue that will be resolved at the state level.

CONCLUSION

Important issues remain in the use of electronic voting machines: better training is needed for poll workers; only certified equipment should be used; and physical security of electronic voting machines needs to be maintained at the polling places.

PORT OF OAKLAND - OAK to NINTH PROJECT

INTRODUCTION

The Grand Jury received a complaint alleging impropriety in the award of the contract for development of the Oak-to-Ninth project. In 2003, the Port of Oakland announced plans for the “Oak-to-Ninth” project for the development of 60 acres of port owned property located at the waterfront between Oak Street and Ninth Avenue. The Oak-to-Ninth project involves the conversion of currently underutilized industrial property into a commercial and residential development. The development will include many acres of public access along the shoreline.

The Grand Jury investigated whether public bids for this contract were advertised properly; whether the scope and specifications of the bid were correct; and if the construction of the RFP was correct. Representatives of the Port of Oakland and the city of Oakland were also interviewed.

The bidding process was public with widespread advertising. A substantial effort was made by the port to obtain multiple bids. The Grand Jury found no indication that any impropriety existed.

CITY OF OAKLAND BUILDING SERVICES DIVISION PAYROLL PROCESSING

INTRODUCTION

The 2002-2003 Grand Jury examined allegations and made recommendations regarding excessive overtime in the plan checking unit of the city of Oakland's Community and Economic Development Agency, building services division. The current Grand Jury undertook a follow up investigation. It was determined that progress has been made to correct certain deficiencies noted last year.

FACTUAL SUMMARY

The Grand Jury reviewed time cards for all plan checkers for the period from January 4, 2003 through October 4, 2003. The Grand Jury also interviewed the unit's manager and management from the Human Resources (HR) department of the city of Oakland. The time card analysis revealed inconsistencies in the reporting of hours worked, creating the possibility of erroneous payments being made.

Reporting inconsistencies complicate and slow down the payroll data input function performed in the unit. Data entry persons must correct errors detected on the time cards before inputting the data. While the HR department performs tests to ascertain the reasonableness of the input submitted, these tests are generally arithmetic and quantitative in nature and not designed to detect coding and other procedural type errors. Thus, any undetected input errors can result in incorrect payroll output (payroll checks, registers, earnings records, etc.).

As an explanation of these errors, the Grand Jury found that standard operating procedures pertaining to payroll were not in place at the building services division and that no training had been received by the plan checkers.

CONCLUSION

1. Better communications between building services division and the HR operations payroll department are required.
2. Building services management does not check the original time card documents for accuracy and consistency.
3. Payroll procedure manuals are needed in each operating unit.
4. Training is lacking in the plan checking unit.

RECOMMENDATIONS

Recommendation 04-07:

The city of Oakland's Human Resources department ensures that operating procedure manuals are present and up-to-date in all city departments.

Recommendation 04-08:

The city of Oakland's Human Resources department informs all unit managers of the availability of training in completion of accurate time cards.

Recommendation 04-09:

Unit managers, division directors (including the plan check unit director) and plan checkers be trained in accurate completion of time cards.

Recommendation 04-10:

Unit managers review payroll data and request training of staff where inconsistencies are noted.

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RESPONSES REQUIRED

City Council, City of Oakland	Recommendations 04-07 through 04-10
City Manager, City of Oakland	Recommendations 04-07 through 04-10
Mayor, City of Oakland	Recommendations 04-07 through 04-10

