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Alameda County
Grand Jury

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June 14, 2021

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Hon. Tara M. Desautels, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

Dear Judge Desautels:

It is with great pleasure that I forward the final report of the 2020-2021 Alameda County Civil Grand Jury to the Superior Court and the people of Alameda County.

This past year, the Grand Jury was placed in unique circumstances due to the COVID pandemic. Jury members learned to work remotely on their laptops and computers, and at times, even their cell phones, to attend meetings and interview witnesses. When faced with new meeting programs and unfamiliar procedures, the jurors met the challenges with diligence and enthusiasm. Through it all, they established working relationships that produced extraordinary work.

Grand Jury members interviewed over 100 witnesses, reviewed hundreds of documents, and performed countless hours of research in response to complaints submitted to the Grand Jury. Although not every investigation resulted in a report, several laid the groundwork for next year's Grand Jury investigations. We forward this work to the 2021-2022 Grand Jury for their consideration.

Although our investigations resulted in only a few reports, we found areas of serious concern. This report includes the following:

- The Grand Jury received numerous complaints regarding the behavior of the Peralta Community College Board of Trustees. The board has created a culture of poor governance and conduct that threatens the financial and administrative health of the district. The students and community deserve better.
- The Oakland Police Department (OPD) has been lax in providing the attention and support for victims of crime contemplated by current law and policy. While OPD is making positive strides to address this issue, much remains to be done.
- Every election year, Alameda County voters are faced with a plethora of measures on the ballot that can be confusing and difficult to understand. While describing a measure in 75 words or less on the ballot can be a challenge, providing unbiased and informative descriptions consistent with Elections Code are imperative. The Grand Jury reviewed past ballot labels for measures from four cities, the county and a school district and provides recommendations.

Hon. Tara M. Desautels
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June 14, 2021

In addition to the three investigations, three jail inspections are included in this report.

It has been an honor to serve as foreperson for the Grand Jury. My fellow jurors were dedicated and experienced and demonstrated genuine concern and care for their fellow Alameda County residents. I would also like to thank Assistant District Attorney Rob Warren and Senior Program Specialist Cassie Barner. Their professional guidance and support has made this report possible.

Respectfully,



Susan M. Frost, Foreperson
2020-2021 Alameda County Grand Jury

2020-2021 Alameda County Grand Jury Member Roster

Name	City
Charlene E. Bush-Donovan**	Livermore
Adriana Cárdenas	Oakland
Linda K. Cardott ⁺	Hayward
Paul D. Delva	Berkeley
Barbara Dessart	Alameda
Susan M. Frost**	Livermore
Marissa Gholston-Edwards	Oakland
Michael Henn	Piedmont
Michael D. Irwin**	Berkeley
Karen Jeffrey-Anthony	Oakland
Royce Johnson	Union City
William Lazarus	Oakland
SandraLee McCabe	Oakland
Randolph E. Pico	Livermore
Gabriel Rodrigues	Castro Valley
Carole Salerno	Pleasanton
Paul Sullivan	Pleasanton
William H. Ward	Hayward
Robert S. Zucker**	Berkeley

** Jurors held over for a 2nd term by Presiding Judge Tara Desautels

⁺ Resigned, October 2020

2020-2021 Alameda County Grand Jury Officers and Legal Staff



OFFICERS

Foreperson:	Susan M. Frost
Foreperson Pro Tem:	Randolph E. Pico
Secretary:	Paul D. Delva
Secretary Pro Tem:	Gabriel Rodrigues
Sergeant at Arms:	Marissa Gholston-Edwards
Sergeant at Arms Pro Tem:	Carole Salerno

LEGAL STAFF

Robert L. Warren, Assistant District Attorney
Cassie Barner, Senior Program Specialist

2020-2021 Alameda County Grand Jury Committee Assignments

GOVERNMENT

William H. Ward, Chair
Adriana Cárdenas
Linda K. Cardott*
Paul D. Delva
Michael Henn, *Secretary Pro Tem*
William Lazarus, *Secretary*
Randolph E. Pico
Paul Sullivan, *Chair Pro Tem*
Robert S. Zucker

LAW & JUSTICE

Robert S. Zucker, Chair
Paul D. Delva, *Secretary*
Marissa Gholston-Edwards
Karen Jeffrey-Anthony, *Secretary Pro Tem*
Royce Johnson
Randolph E. Pico
Gabriel Rodrigues
Carole Salerno, *Chair Pro Tem*
Paul Sullivan

HEALTH & SOCIAL SERVICES

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Linda K. Cardott*
Barbara Dessart, *Secretary*
Marissa Gholston-Edwards, *Secretary Pro Tem*
Michael Henn
Michael D. Irwin
Karen Jeffrey-Anthony
Sandralee McCabe
Carole Salerno, *Chair Pro Tem*

EDUCATION & ADMINISTRATION

Michael D. Irwin, Chair
Charlene E. Bush-Donovan
Adriana Cárdenas
Barbara Dessart, *Secretary Pro Tem*
Royce Johnson
William Lazarus
Sandralee McCabe, *Secretary*
Gabriel Rodrigues, *Chair Pro Tem*
William H. Ward

EDIT COMMITTEE

Charlene E. Bush-Donovan
Adriana Cárdenas
Susan M. Frost
Carole Salerno

*Resigned October 2020

2020-2021 Alameda County Grand Jury Members



Charlene
Bush-Donovan



Adriana
Cárdenas



Paul
Delva



Barbara
Dessart



Susan
Frost



Marissa
Gholston-Edwards



Michael
Henn



Michael
Irwin



Karen
Jeffrey-Anthony



Royce
Johnson



William
Lazarus



SandraLee
McCabe



Randolph
Pico



Gabriel
Rodrigues



Carole
Salerno



Paul
Sullivan



William
Ward



Robert
Zucker

**Presiding Judge
of the
Alameda County Superior Court**



Honorable Tara M. Desautels
November 19, 2019 – Present

PERALTA COMMUNITY COLLEGE DISTRICT BROKEN BOARD GOVERNANCE AND BAD BEHAVIOR

EXECUTIVE SUMMARY

The Peralta Community College District, with its four campuses and thousands of deserving students, has suffered from structural financial issues and administrative turmoil for years. The state has engaged the district extensively to help get it back on track. Yet poor governance and misconduct by members of the Peralta governing board continue to threaten the district's stability.

The grand jury received eight formal complaints related to board governance. This report examines how some members of the Peralta Board of Trustees (board) – excluding the two new board members elected in 2020 – contributed to the district's financial problems by fostering a dysfunctional and unhealthy system of governance.

After its investigation, the grand jury found that for years, the Peralta Board of Trustees regularly overstepped their authority, and contrary to governance best practices, openly intervened in traditional responsibilities of chancellors and other administrators. Trustees regularly stood in the way of chancellors' attempts to fill key administrative positions hurting morale, contributing to staff flight, and jeopardizing services to the students and community. Individual trustees too often disrespected staff and other colleagues on the board in public and private settings without rebuke. The regularity of the verbal abuse made Black administrators and some trustees feel as though the attacks were racially motivated. Additionally, some trustees gave staff and other interested parties open access to go around administrators, gutting their authority. Finally, the grand jury found that some trustees took liberty with the state's open and transparent governance laws by meeting or participating in meetings when district business was discussed while shutting out other trustees and the public, in violation of the California Ralph M. Brown Act (Brown Act).

Lack of leadership experience and continuity in critical positions, wasted resources, unfilled key positions, and poor staff morale resulted in an unhealthy atmosphere for a student population that so deserves a first-rate education. This diverse and thriving community is entitled to the benefit of a vibrant, well-functioning community college system. Ultimately, the students these trustees are supposed to serve lose out.

BACKGROUND

The Peralta Community College District (Peralta or district) consists of four colleges (Berkeley City College, College of Alameda, Laney College, and Merritt College) located in northern Alameda County and serves over 20,000 students each semester as of Fall 2020. The district budget for 2020-21 was just over \$140 million, which includes funding approximately 866 full-time employees and over 1,041 part-time faculty and staff.

Peralta is governed by an elected seven-member board of trustees, each representing a different geographical area within the district, in addition to two non-voting student trustees. The district is affiliated with the California Community Colleges (CCC) system that is led by a board of governors and the state chancellor who have limited fiscal and governance oversight of 73 districts with 116 colleges statewide.

The Peralta Board of Trustees is the public face and policy-making body of Peralta. It is accountable to the students, citizens of the district, and the CCC system. Peralta Board Policy (BP) 2200 best describes the board's role and responsibilities to:

- represent the public interest;
- establish policies that define the institutional mission and set prudent, ethical, and legal standards for college operations;
- assure fiscal health and stability;
- monitor institutional performance and educational quality;
- advocate and protect the district;
- delegate power and authority to the chancellor to effectively lead the district;
- hire the chancellor, and evaluate the chancellor at least annually;
- respect the authority of the chancellor by providing policy, direction, and guidance only to the chancellor who is responsible for the management of the district and its employees; and
- delegate the authority to the chancellor to issue regulations, and directives to the employees of the district.

Trustees do not have individual power or authority. Instead, these powers reside with the full board.



Peralta Community College District Office

State Intervention in Governance and Fiscal Decline

In January 2019, Peralta trustees along with the CCC State Chancellor's Office contracted with the state's Fiscal Crisis and Management Assistance Team (FCMAT) to provide management assistance to address chronic fiscal problems threatening the district. In its fiscal analysis report, FCMAT concluded that Peralta was at a high risk of insolvency, scoring far worse than any other district had ever scored using the FCMAT risk tool. The tool identifies any district scoring over 40% as high risk and Peralta scored 69%. FCMAT reported that the district had "suffered from years of ineffective and inconsistent guidance, nonadherence to policies and procedures, and difficulties in receiving consistent information and communication." Longstanding poor fiscal governance practices had plagued Peralta and threatened its survival. Among other things, FCMAT provided training, organizational and staff analysis, and corrective action plans to address significant audit findings. FCMAT also noted approximately 75 recommendations for structural improvement. FCMAT's work required immediate and sustained responses from Peralta leadership.

By June 2019, the district hired a consulting firm to perform an institutional assessment with recommendations to address problems identified by FCMAT and to help provide insights for developing a fiscal improvement plan required by the state's Accrediting Commission for Community and Junior Colleges (ACCJC). The consulting firm focused on addressing the district's structural deficit, organizational inefficiencies, enrollment issues and lastly, executive staff turnover.

In January 2020, the ACCJC placed all four colleges at Peralta on probation, reporting that previously identified deficiencies had not been resolved. ACCJC noted that the colleges suffered from continued structural deficits, a lack of adherence to board policies and administrative procedures, and unaddressed audit findings.

Shortly before the ACCJC action, the board hired an accomplished chancellor with years of community college leadership experience. Within seven months, under the leadership of the then-serving chancellor, committed staff, and an outside consulting firm, the district addressed 72 of FCMAT's 75 recommendations, reducing its fiscal risk analysis score significantly. While the news was very good, structural change requires ongoing efforts to ensure that staff use the best operational practices so that improvements are sustained.



College of Alameda

In some respects, the district seemed to be on the right track, but evidence of ongoing Peralta board governance issues began to resurface. The CCC Board of Governors was informed that long-term leadership stability remained a risk for the district. Peralta had made strides

The Peralta Board of Trustees regularly overstepped their authority and contrary to governance best practices, openly intervened in traditional responsibilities of chancellors and other administrators.

towards meeting its corrective action plan developed in response to FCMAT's report, but volatility remained, in part, due to governance challenges related to alleged board hostility towards staff, micromanagement of the chancellor, and conflicting agendas between trustees and administrators. The state was concerned that there was a lack of clarity in management and governance roles between the chancellor and the board of trustees, ultimately limiting the chancellor's ability to perform their duties. It was also unclear if the board was acting collectively in the interest of the district. Finally, FCMAT noted that board policies and administrative regulations were routinely ignored, not adopted, not updated, not implemented or communicated to staff, and that the board was micromanaging the chancellor.

The state chancellor's office could have taken more drastic steps by, in effect, taking over the governance and fiscal responsibility of the district, but noted that the Peralta chancellor's leadership continued to demonstrate the ability to address and resolve concerns raised by the oversight agencies.

However, by July 2020, nine months after arriving at the district, the chancellor who led the effort to address so many fiscal challenges identified by FCMAT and ACCJC abruptly resigned, citing individual trustees' constant interference and efforts to undermine the chancellor's authority.

The chancellor's resignation letter cited inappropriate actions and behaviors by individual trustees, including:

- [in]effective board governance;
- hostile conduct toward others and each other;
- violations of confidentiality with respect to closed session;
- violations of the Brown Act relating to closed session topics;
- interference in investigations of complaints against board members;
- collusion with the unions against the interest of the district and undermining the collective bargaining negotiations processes;
- interference with fair and effective hiring practices, putting the district in legal jeopardy for unfair and discriminatory hiring practices;
- fostering a culture of contempt by modeling disrespect and contempt for executive administration and empowering special interests to do the same;

- exhibiting hostility and contempt toward administration, particularly a pattern of practice against African American executive staff;
- undermining the role of the CEO/chancellor and the ability of the CEO to carry out responsibilities; and
- harassment of the CEO to the extent that it created emotional distress beyond that which is bearable or should be tolerated.

FCMAT updated the CCC Board of Governors in August 2020 stressing that there was a clear correlation between poor governance and fiscal insolvency. FCMAT noted that during its 2019 fiscal risk analysis, Peralta received negative responses to seven of eight leadership and stability questions. FCMAT's previous examination of Peralta in 2011 also resulted in findings of various areas of key concern. Years later in 2019, most of those concerns had still not been resolved. FCMAT concluded that board members have the ultimate responsibility for district solvency and that the CCC Board of Governors should consider increasing its oversight role of the district.

Accusations that the board has been undermining the authority of chancellors have been burdening Peralta for years.

INVESTIGATION

The grand jury received eight formal complaints about the Peralta Board of Trustees serving in early 2020, all alleging different manifestations of trustee misconduct or a broken board culture. The allegations claimed that individual trustees consistently micromanaged and interfered in the authority of the chancellor and other administrators, impeding their ability to perform duties prescribed in adopted rules, policies, and contractual agreements. Complaints also outlined claims that individual trustees regularly demeaned staff and other colleagues on the board, often during public meetings. Finally, some trustees were accused of violating board policies and procedures including the state's open meeting laws by holding secret meetings to discuss district business.

Complaints from both inside and outside the district asserted that board actions fostered a culture of contempt by modeling disrespect toward Peralta's executive administration and empowered special interests to do the same. In addition, board misconduct was said to have contributed to Peralta's financial instability and the high administrator turnover as outlined by the CCC Chancellor's Office, FCMAT, and the ACCJC.

During the investigation, the grand jury interviewed 19 witnesses, including current and former trustees, administrators, faculty, and statewide experts in governance best practices. The grand jury reviewed hundreds of documents including emails, staff reports, complaints, letters from the community, correspondence from the CCC, FCMAT and the ACCJC, videos of

board meetings, and other information. Supplementing these sources were board policies and procedures and training materials from the Association of Community College Trustees, Community College League of California, and the Advisory Committee on Education Services.

Because some board members issued various denials of these allegations in writing and at public meetings, claiming that they were merely baseless rumors or healthy disagreements over policy, the grand jury decided to focus its investigation of whether allegations in three key complaint areas (interference in the chancellor's hiring authority, lack of civility, and open government Brown Act violations) were accurately supported by evidence.

Roles of the Chancellor and the Board of Trustees

In May 2020, two months before the then-serving Peralta chancellor resigned, the state chancellor emailed the Peralta board leadership stating that, "The Board continues to engage in behaviors that jeopardize and undermine the role of the chief executive of the district. This is a concern because these behaviors will likely impede the district from fully resolving its fiscal and governance challenges."

Accusations that the board has been undermining the authority of chancellors have been burdening Peralta for years. Peralta policies, state ACCJC best practices, and in one circumstance, the then-chancellor's employment contract (all of which attempt to make clear the governing relationships between the elected board and the chancellor) had failed to reduce tensions between the board and three of the past four chancellors.



Berkeley City College

Most succinctly stated, the chancellor is responsible for running the day-to-day operations of the district. Peralta Board Policy 2430 states that the governing board "delegates to the Chancellor the executive responsibility for administering the policies adopted by the Board and executing all decisions of the Board requiring administrative action." Statewide best practices as stated in ACCJC Accreditation Standards note that the chancellor "plans, oversees, and evaluates an administrative structure, organized and staffed to reflect the institution's purposes, size, and complexity" and "provides effective leadership in planning, organizing, budgeting, selecting and developing personnel, and assessing institutional effectiveness."

In 2015, Peralta trustees approved BP 2715 Code of Ethics and Standards of Practice. The policy gives ethical guidance to trustees in seven key areas and states that the board functions as a whole and district matters are not governed by individual actions of board members. Board members are to focus attention on "policy determination, planning, and the maintenance of

the district's fiscal stability. Board members refrain from involving themselves in matters that are delegated to the Chancellor, except as needed to fulfill their proper overall evaluation responsibilities."

The Peralta board even restated the relationship between the board and chancellor in the chancellor's contract signed in 2019:

"The Board shall operate at the policy level and shall delegate to the Chancellor the authority of the internal management of the district. The Chancellor will provide the Board with appropriate information, in a timely manner, in order that the Board may promulgate policy. The Chancellor, as Chief Executive Officer, is responsible for executing policies and implementing identified goals through the day-to-day management of the district. The Board and its individual members agree not to interfere with or to usurp the responsibilities of the Chancellor."

Unfortunately, robust policies are only useful if they are followed.

While the grand jury learned that the most damaging interference by the board involved constant roadblocks put in front of multiple chancellors' recommendations to hire key administrators (discussed later), witnesses recounted that some on the board regularly acted as if they were sitting as chancellor for a variety of other issues.

Often interference came in the form of board leadership taking action that should have been the responsibility of the chancellor. For example, the grand jury heard testimony that in 2019 the board leadership hired a consultant to examine senior management without board discussion and approval. While the contract was under the board approval threshold, the engagement was neither the idea of the interim chancellor nor at the direction of the board. Another example involved the use of project labor agreements related to major construction projects which, in some instances, had been held up by board leadership for years. Staff and consultant-driven plans, often with extensive stakeholder engagement and previous board guidance, had languished, been thrown out, or re-engineered due to board leadership controlling the board agenda or because of repeated board interference or inaction. Examples included a COVID-19 back-to-work plan, a financial office reorganization plan, and even the adoption of the district's mission statement.

Another example of interference involved an allegation that one board member was revealing closed session discussions and inappropriately intervening in labor negotiations. The grand jury uncovered a 2019 email complaint by a senior staff member to the chancellor alleging that a labor representative for a class of employees stated they would not concede to the district's settlement offer because they had already entered into a side deal for a larger amount with one of the trustees. The labor representative allegedly went to the senior staff's office later to apologize but said they would go around the staff again if necessary. The email was sent shortly

after the incident and was very detailed. While the labor representative and trustee each admitted that it is common to speak with their counterparts, they both denied the accusations. Yet, after further investigation, the grand jury concluded that the conversation between negotiators occurred as alleged. Based on the grand jury's investigation, we did not find the denials credible. If a side deal was discussed between labor and an individual board member, it violated the sanctity of closed sessions and damaged the district's negotiating capability. Individual board members had no authority to negotiate on behalf of the district.

Peralta has suffered from a revolving door of leadership in key administrative positions for years and its reliance on temporary/interim appointments only helped fuel district-wide instability.

On another occasion, one key staff member penned a multiple page memo complaining to the then-chancellor about the board's repeated inability and unwillingness to adopt a tentative budget, rejecting recommendations by staff to move forward. The grand jury learned that senior administrators were worried that the board's inaction would negatively affect Peralta's standing with FCMAT and the state chancellor, even though the state had allowed later-budget submissions during the COVID-19 crisis.

Some members of the board disputed complaints of interference by defending their actions and asserting that encroachment into day-to-day activities as no more than an exercise of their fiduciary and oversight responsibility as elected officials. Yet the grand jury found that board interference certainly has taken a toll on district stability and executive staff continuity.

Board Interference in Hiring

In the aforementioned May 2020 email from the state chancellor to Peralta trustees, the state chancellor cited individual board members' efforts to control the chancellor's executive hiring decisions as the primary example of inappropriate interference in the Peralta chancellor's authority. Two months later, in July 2020, Peralta's chancellor resigned. In her resignation letter to trustees, she echoed the state chancellor's concerns, claiming that individual trustees interfered "with the fair and effective hiring practices, putting the district in legal jeopardy for unfair and discriminatory hiring practices." In effect, the then-chancellor complained that individual trustees regularly attempted to micromanage the chancellor's efforts to lead operations by both attacking properly vetted administrative candidates and not moving forward on requests to appoint critical administrators.

Experience and continuity in a chancellor's executive team of administrators is key to running a financially sound and high-functioning organization. Effective guidance and adherence to policies and procedures by administrators and staff are indispensable when trying to ensure that any major public educational system like Peralta can function. In fact, FCMAT's own financial risk analysis tool dedicates a whole section to leadership and stability, in part,

because public school finance is extremely complicated. Yet Peralta has suffered from high turnover of leadership in key administrative positions for years and its reliance on temporary/interim appointments only helped fuel district-wide instability. At one point, the chancellor, vice chancellor of finance, vice chancellor of human resources, executive director of marketing, and vice chancellor for general services all were staffed by interim personnel.

It is not difficult to conclude that five chancellors in the last 2½ years and six chief financial officers in the past 4½ years resulted in a broken financial system. Within the past two years, eight of 12 senior administrative positions at one of the district's four colleges went unfilled. Even more surprising, the four colleges had at least 18 presidents including interims in the last 12 years.

In 2019, after studying Peralta's organization, FCMAT concluded that a long-term leadership void led to poor fiscal practices contributing to Peralta's excessively high danger of insolvency. Complaints surfaced from the state's fiscal monitor, the state chancellor's office, state educational experts, FCMAT, current and former employees, former chancellors and even some Peralta trustees about some board members overstepping their authority and interfering in the chancellor's responsibilities. By many accounts, key administrators were fleeing Peralta or not drawn to apply to work there, in part, because of governance instability and board misconduct. Multiple witnesses told the grand jury that educational administrators throughout the state knew of Peralta's difficult reputation.

The state chancellor's office and the grand jury were given blanket denials of such board interference by some of the very board members standing in the way of the former chancellor's attempts to hire key staff. This led the grand jury to examine deeper.



Laney College

In many community college districts throughout the state, a chancellor has the authority over hiring of district employees, and more importantly, the core team of administrators. Some other districts require board approval of hires, but the board's role is limited. At Peralta, the roles of the board and chancellor are at times blurred. Many argue that the board policies are contradictory. Board Policy 2200 lays out the board's duties and responsibilities including hiring and evaluating the chancellor while respecting the authority of the chancellor who is responsible for the management of the district and its employees. In effect, the board has the responsibility to hire and

manage one employee (the chancellor) and the chancellor holds the human resources responsibilities for the rest of the district's 1,900 full and part-time staff.

Board policy also requires the chancellor to establish procedures for recruitment and selection of employees. These procedures, with some exceptions, require hiring committees made up of multiple stakeholders with defined roles. They also create a uniform examination of candidates consistent with state law that ensures fairness and avoids interference in the process.

After the formal recruitment and vetting process, the chancellor must bring proposed hires for management employees before the board for approval. Board Policy 7110 delegates authority to the chancellor to authorize employment, fix job responsibilities, oversee collective bargaining, and approve personnel actions. However, the policy states the board “will approve” the appointment of management employees.

The interpretation of BP 7110 and its apparent contradiction to the chancellor’s stated role led to huge conflict within the district, damaged employee morale and clouded leadership authority.

The interpretation of BP 7110 and its apparent contradiction to the chancellor’s stated role led to huge conflicts within the district, damaged employee morale and clouded leadership authority. The chancellor who served most of 2020 believed that an accurate interpretation of BP 7110 (when read in harmony with her responsibility to manage human resources) limited the role of the trustees in the approval process. This view was shared by multiple statewide educational experts who testified before the grand jury. The

then-chancellor believed that the board policy wording trustees “will approve” meant that the trustees had the responsibility to fund and ratify the position but not to vet and select the candidate for the position. Board interference in the vetting of candidates violates accepted protocol in interviewing, reference checking, and screening for a fair hiring practice and puts the board at liability for unfair hiring practices. The then-chancellor believed that picking her core team was agreed to by the board when the chancellor was hired and that this was a statewide accepted interpretation and practice.

Some trustees obviously disagreed with the chancellor’s interpretation. Responding to the state chancellor’s request for a plan to address alleged trustee interference in the chancellor’s hiring recommendations, the board president unequivocally stated that “board policy does not delegate final hiring of administrators to the chancellor. The board has nonetheless approved every single management hiring recommendation except two.” While signed by the president, the letter was drafted and shared with only two other trustees prior to submittal.

Two of the four trustees who were not invited to contribute to the drafting of the letter strongly disavowed it and the positions taken. They signed onto their own communication to the state chancellor advocating state intervention at Peralta, opining that Peralta Board Policy 7110 “will approve” language is different from other language in board policies that state the board “will consider approval.” The two argued that “will appoint” meant that the trustees must

examine the appointments from fiscal and governance standpoints by asking whether the hires are appropriately within the organizational structure of the institution and whether they are accounted for in the budget. Beyond that, the board is infringing on the chancellor's authority. In an earlier email to the board president, the third trustee described the board's interference in hiring as "absurd," explaining that the board was unqualified to enter into the management process.

Ultimately, trustee interference in fair hiring contributed to a glut of unfilled administrative positions over the years, jeopardizing services to students and overall operations of the district.

Testifying before the grand jury, one trustee supporting board approval of such hires claimed to only remember one candidate being turned down. Another trustee claimed that issues surrounding board involvement in hiring never existed before they were raised by this chancellor. Yet other witness testimony and district documents paint a very different picture of the board's actual role in stifling three different chancellors' proposed hires.

The grand jury heard testimony from multiple witnesses that it was not uncommon for trustees to discuss allegations gathered from their own incomplete vetting of candidates when considering the chancellor's recommendations. The jury also discovered emails where people not participating in the formal process were feeding trustees negative information about candidates. Because the board chose to discuss these matters in closed session prior to 2020, trustees were more open to discuss unsubstantiated claims and criticize applicants, damaging the fairness of the formal hiring process. For instance, during the tenure of a previous interim chancellor, a trustee complained about the quality of a candidate's website as justification for a no vote while another complained about the candidate's social media account and abstained from voting. The majority of the board let the interim chancellor know the candidate would be turned down for the position, so the interim chancellor settled on hiring the candidate temporarily. Consequently, while trustees did not vote down the candidate on paper, the result was still a rebuke of the chancellor and a not-so-welcome introduction to the district for the temporary employee.

On another occasion, the grand jury was told that board leadership pressured the interim chancellor to withdraw an offer to a candidate for an administrator position. The rumor floating around was that the candidate had offended labor leaders, and the excuse from board leadership for withdrawing the offer was that the position was not open. On another occasion, the grand jury was told that board leadership flatly refused to allow two leadership appointments to be placed on the board agenda.

The chancellor who started at Peralta in October 2019 moved executive appointments to the open session part of board meetings (like in many other districts) so that discussions would be more civil and trustees would be less likely to interfere with the impartiality of the formal hiring process. Unfortunately, the change in format did not stop the trustees from intervening

Trustee efforts to control the makeup of the chancellor's core team represented an unhealthy, broken board culture. It made it difficult to retain administrators and even more difficult to recruit new hires because they were at risk of being berated and embarrassed by trustees, and even turned down after being recommended by a hiring committee and/or the chancellor.

in hiring decisions. Not long after, trustees voted down the chancellor's recommendation for a key vice chancellor position after a full and extensive search process. Prior to the meeting, one trustee even approached the chancellor warning that votes were not there for the hire, even naming the trustees who would vote no, raising concerns that a majority of trustees had privately discussed their positions.

One trustee objected to moving administrative hires to open session. The trustee would not accept the change moving forward and went on to vote against nearly every administrative hire until the chancellor's resignation regardless of the effect on students or the financial health of the district. The trustee voted no, abstained, or voted to table at least 15 personnel

administrative actions/hires in a seven-month period. The grand jury was directed to view a board meeting in January 2020, two months into the chancellor's tenure. During the open session discussion of the chancellor's recommended hiring of a vetted independent contractor to provide legally mandated services, the same trustee claimed that there was an appearance of a conflict of interest because the chancellor had previously worked with the candidate at another district. When another trustee explained that there was no legal basis for that claim of conflict, the trustee said the position demanded absolute impartiality. The trustee then went on to question the candidate's qualifications claiming to have vetted the candidate by searching the internet. The trustee proposed the board reject the chancellor's recommendation and select another vendor. The whole discussion appeared to be an attack on the chancellor's credibility and judgement. While a majority of the trustees ultimately voted to support the chancellor's selection, filling essential positions to help operate the district was a daunting task and goodwill between the board and chancellor was evaporating.

On another occasion, when the chancellor sought to hire a key administrator, one trustee questioned the qualifications and accuracy of the candidate's resume in closed session. When the matter was later addressed in open session, two trustees voted against the appointment without comment.

The next month, trustees rejected yet another of the chancellor's appointments of a key administrator after a full and extensive search and hiring process. It should be noted that the

candidate had gone through the process on two occasions and had been recommended for hire both times.

In July 2020, the chancellor recommended extending the appointments of five key administrators. A majority of the trustees voted to table the appointments claiming either they did not go through the normal agenda review process or candidates' resumes had not been provided to the board. It should be noted that most of the candidates had been working in the same or similar positions within the district, some for years, on an interim basis. The chancellor resigned later that week.

Shortly after an interim chancellor was appointed by the board, the board majority moved the discussion of administrative appointments back into closed session returning trustee control over the chancellor's hires, allowing them to circumvent the formal and independent hiring process.

Trustee efforts to control the makeup of the chancellor's core team represented an unhealthy, broken board culture. It made it difficult to retain administrators and even more difficult to recruit new hires because they were at risk of being berated and embarrassed by trustees, and even turned down after being recommended by a hiring committee and/or the chancellor. Further, the board's reliance on outside interference and cursory internet searches to vet candidates, and the common practice of offering interim positions and temporary contracts, eroded morale and resulted in a poor model of governance. What message is sent to prospective candidates when the chancellor recommends a candidate be hired but trustees downgrade the hire to a temporary or interim contract? One witness commented that it was difficult to ask interviewees if they would be committed to the district when it was clear that the district was not committed to them. Ultimately, trustee interference in fair hiring contributed to a glut of unfilled administrative positions over the years, jeopardizing services to students and overall operations of the district.



Merritt College

Fortunately, in early March 2021, the ACCJC interviewed Peralta representatives and opined that the trustees were, in fact, interfering with the chancellor's authority and should also be discussing administrative appointments in open session. The grand jury heard testimony that at least one board member changed their position and would support amending board policy to comply with ACCJC best practices.

Board Civility

Several complaints to the grand jury alleged a pattern of board incivility toward each other, the chancellor, and administrative staff. This behavior, which was not alleged against the new board members seated in late 2020, was characterized by testimony as disrespectful, hostile, embarrassing, and defamatory. We documented numerous instances of board members publicly bickering, finger-pointing and exhibiting hostile behavior during meetings. One trustee felt that board members did not know how to have a civil discussion, and that raised voices, interruptions, and being cut off resulted in some trustees feeling intimidated. One witness testified that during meetings, board members attacked the people and not the issues, losing focus on education and the students. In a response to a 2020 Peralta survey about the board, one administrator replied, “The board does not trust the administrative team, as evidenced by the type of questions asked under the loose rubric of financial oversight. This board views the executive team with contempt.” Administrators lamented that the rude comments made by the board modeled the poorest behavior and made the current negative culture worse. Sadly, when one administrator was asked how they dealt with animosity from board members toward staff, they answered that they “keep their head down” as if trying to stay out of the line of fire.

Instances of uncivil behavior were characterized by testimony as particularly egregious in closed sessions, away from the public eye. Per the Brown Act, the board of trustees is allowed to meet in private with selected staff, but out of public view, in order to discuss sensitive matters often related to litigation, certain personnel matters, and labor negotiations. As these sessions are not recorded, the uncivil behavior of board members could be hidden and allow them to act with impunity. One witness described a closed-door exchange when a board member “screamed and yelled” at an administrator when the administrator, doing their job, cautioned the board member of inappropriate interactions with staff. In another instance, a board member accused an administrator of being untruthful, causing that administrator to leave the meeting in tears. Closed sessions of the board were described as an excruciating experience, where board members could act out without consequences because interactions were not open to the public.

Examples of board incivility were also documented in written form through the tone of messages and repeated “demanding” requests for information within a short timeframe. In one particularly disturbing written exchange, a board member sent an email with a draft letter to two other board members responding to State Chancellor Eloy Oakley’s possible appointment of a special trustee at Peralta. The subject line of the email to the colleague board members was “Here it is.... Response to Eloy’s BS.” In the body of the email the board member states, “I’ve spent the entire night in a marathon session drafting a comprehensive response to this shit.” The email continues with, “Let them dare to try to take us over for this weak shit,” and “Let’s kill them tomorrow. Let’s go after the confidentiality violations.” The vitriol used in

this email is embarrassing and highly inappropriate. This is certainly not the kind of behavior we expect in a community college board member who is elected to serve the people of the district, especially when trying to respond to claims of board misconduct. The email itself evidenced the very misconduct of which some board members were being accused.

Grand jurors watched the video of the December 15, 2020, Peralta governance retreat where a moderator who was a past community college chancellor led the board members through a discussion of a survey they completed over the summer. Focusing on the leadership section questions, some board members rated themselves an average of “1” or very low (the lowest score they could get on a scale of 1-5) for the statement “Board discussions and relationships reflect a climate of trust and respect.” For the statement “Board members exhibit integrity and professionalism in fulfilling their role,” the board members rated themselves an average of “2” or low. The average rating for all questions in the leadership section was a “3.” At least one trustee minimized their uncivilized conduct. The moderator cautioned the board members that this average is low and should be a “4+” if they are working in the way they should be. During this retreat, the moderator was candid in her assessment of the board members, saying, “Some of the behaviors that you have exhibited in your public meetings are embarrassing for the people watching. They’re shameful, not representative of people running an educational institution.... I wonder about individual’s ability to see their inappropriate behavior.... It’s gone on so long you’re not even able to recognize that you are behaving inappropriately.” In response, some board members reflected on their past behavior, admitting that “the norm was pretty horrible” and “dysfunction is part of the norm.”

It appeared that some board members tolerated and perpetuated the long-standing inappropriate behavior as a way to challenge the authority of and remove power from the chancellor. For example, in July 2019, a board member complained in an email to the board president about the board’s desired characteristics for the new chancellor that combined shared governance with collective bargaining. The email implied that this interpretation meant that faculty and other staff did not work for the chancellor and that all decisions in the district would be negotiated on a continuous basis. The board member added that the bottom line was that “... the operation has been divided into enemy camps of a narcissistic nature and The Peralta Colleges have been rendered into a Street Gang style of behavior.” Adding, “I consider this style of operating an organization to be a major factor in why Peralta is an obscene structure with an organizational behavior that leads to crisis management on a continuous basis.” Further adding, “The gang style operation is focused upon power and authority, while totally devoid of ACCOUNTABILITY.”

The desire for power and authority by some on the pre-2021 board is not only demonstrated in this overt attempt to modify the governance structure, but in the day-to-day relationship with the chancellor. Control of setting the board agenda is a prime example of the board exerting inappropriate control over the chancellor. In one instance the chancellor was thwarted by board leadership from placing an item on the agenda because “the board majority

wouldn't like it." In other instances, the chancellor was simply prevented from placing contractors, staff, and vendor agreements on the agenda. Witnesses testified that lower-level staff would bypass the chancellor and go directly to board members, and board members

While the uncivil behavior by board members was described as long-standing and had become the norm, leadership failed to manage the situation.

would welcome these interactions. Board members would also bypass the chancellor and go directly to staff members to request actions or information. Allowing board members to go around the chancellor directly to Peralta staff reflects a broken governance structure and undermines the chancellor's delegated authority to run the day-to-day operation of the district. One witness said, "There is a continuous lack of trust that is fostered

at the board level, which hampers people's trust in the delegated authority of the executive team. Given this, an inordinate amount of time is spent dealing with issues that should not be the central focus of a 'students first' mentality or helping us improve outcomes for students."

The board is not without guidance in how to appropriately conduct themselves. BP 7380, Ethics, Civility and Mutual Respect, states that "We (members) are expected to treat each other with civility and respect, recognizing that disagreement and informed debate are valued in an academic community." Further, "Behaviors that unduly interfere with the ability to learn or work in the college environment depart from the standard for ethics, civility and respect and are unacceptable." Additionally, BP 2715, Code of Ethics and Standards of Practice, include statements requiring board members to avoid conduct that is disruptive and treat everyone who interacts with the board with respect. Some board members failed to adhere to these existing board policies. From the 2020 administrative survey about the board, respondents echoed the retreat moderator, saying, "This board does not understand normal board behavior" and "board behavior has damaged both the integrity and reputation at Peralta."

The enforcement of board policies is the responsibility of the board leadership. Surprisingly, not one witness the grand jury interviewed testified that the board president or vice president had stepped up and stopped the hostile and uncivil exchanges. The task of stepping up was left to other board members and administrators. While the uncivil behavior by board members was described as long-standing and had become the norm, leadership failed to manage the situation. For example, one board member was so frustrated and tired of being attacked that they emailed a complaint to the board president threatening legal action. In this complaint, the board member described persistent "grievous and egregious conduct" during closed sessions. This behavior was witnessed by the board president, who according to the complainant, "allowed the behavior to continue without checking it." The board member was so uncomfortable with the situation that they threatened to hire outside counsel at district expense to remedy the problem. This lack of leadership contributed to a demoralized environment, where morale was described by one witness as "terrible." There was a lack of

trust among board members and staff, with another surveyed staff member writing, “Board behavior directly contributes to low morale among long term employees and frequent turnover of senior executives....”

Civility is a core ethical value that underpins the ability of someone to honestly share their own ideas, while treating others who disagree with respect. At the December 2020 board retreat, the board agreed and later adopted a “Statement of Cooperation” which is read at the beginning of each board meeting in an attempt to define board behavior to help re-establish best practices and civility. Regrettably, district policies (AP7380/BP2715) surrounding the very same issues related to civility have already been in place for years, yet some board members routinely ignored them.

Racial Insensitivity

The chancellor’s resignation letter of July 2020 included an accusation that some trustees openly acted with hostility and contempt for administration, particularly African American staff. Just after that, a more specific complaint was raised by two then-serving trustees to the state chancellor about a climate and pattern of racial hostility predominantly aimed at Black executive leaders. The claim alleged that the administrators were frequently addressed in public board meetings in a hostile, dismissive, and condescending manner.

These statements followed a formal employee complaint which included claims of racially motivated mistreatment of staff by trustees. The complaint led to an independent investigation which validated that some inappropriate statements were made but concluded that the statements were not racially motivated. Ultimately, legal action was filed by the complainant on multiple grounds and the district agreed to pay an unspecified amount to settle the case.

In response to these accusations, the grand jury included this topic when questioning witnesses. The grand jury heard testimony that both administrative staff and individual trustees felt intimidated and threatened by other board members. Several witnesses testified that some on the board were disrespectful to people of color. One witness testified that some board members fostered or tolerated a hostile climate for Black administrators and others. The grand jury received testimony that this behavior was demonstrated by the board in their frequent and persistent complaints about the competency of the largely Black leadership team. At the same time, there was a complaint that some members of the board were unwelcoming to white candidates. One administrator, a person of color, stated that they dreaded bringing forth qualified white candidates before trustees because of the invariable pushback they would receive. Some non-administration witnesses flatly denied allegations of racial insensitivity, noting that the board had hired four straight (now five) Black chancellors in a row and all but one then-serving trustees who were accused were people of color themselves.

It appeared that many inappropriately aggressive comments were directed towards Black administrators. During one board meeting, a member of the public recounted an incident

Ultimately, the evidence suggests that some trustees fail to recognize the negative impact of their words and tone, whether spoken or within emails, when communicating with Black administrators and staff. Peralta, a district that prides itself in diversity, is often divided into camps based on race.

when a board member reached out to a student trustee to discourage the student from supporting the most recent Peralta bond measure and during the conversation stated the chancellor was a poor manager of funds and had hired too many Black women. Through additional investigation, the grand jury received additional information that the board member allegedly stated that internal problems at the district were based on the chancellor hiring too many African Americans. When confronted with these allegations, the trustee denied using those words which were inconsistent with their values but claimed they may have said that Latinx and Asian/Pacific Islanders were significantly underrepresented at Peralta. On another occasion during a March 2020 board meeting, the

same trustee, when speaking about the chancellor's emergency authority at the start of the pandemic, stated that they wanted a "shorter leash" on the duration of the chancellor's power. When called out by the chancellor and another trustee about using the term "shorter leash," the trustee made no attempt to apologize. When asked by the grand jury about the statements, the trustee absolutely denied any and all racially hostile behavior or intent towards Black administrators.

One administrator told the grand jury, "I did not know whether the trustees treated me so badly because I was Black or because they thought I was stupid." The statement powerfully exhibited how such disrespectful treatment of staff has irreparably damaged morale at the administrative level and repeatedly discouraged a team approach to governance.

Board action or inaction also contributed to racial tensions. It was not uncommon for members of the public and some staff while discussing labor issues to berate administrators who were often African Americans during public meetings. While the board cannot be responsible for public comment, board leadership has an obligation to address inappropriately aggressive behavior directed at administrators. In many of these instances, board leadership did little to stop the inappropriate attacks.

Ultimately, the evidence suggests that some trustees fail to recognize the negative impact of their words and tone, whether spoken or within emails, when communicating with Black administrators and staff. Scientific American published an article in PsySociety written by Melanie Tannenbaum on October 14, 2013, which states the case for considering impact vs. intent. She wrote:

“The overall message in all of these conversations is that when someone does something hurtful or offensive to another person, the perpetrator's intent is not what's most important when gauging the appropriateness of an action -- in fact, many would say that it is inherently privileged to redirect the focus of a conversation to the perpetrator's (presumably harmless) intentions, rather than focusing on the feelings and experiences of the person who has been harmed. So, the point is that we really need to focus on impact, not intent. Was someone hurt by something? Was there a negative outcome? Did someone suffer? If so, that is what's important. Whether or not the perpetrator meant to cause harm is not.”

Peralta, a district that prides itself in diversity, is often divided into camps based on race. Board communications to staff greatly contribute to this and stand in the way of any hope for trustees and administrators being part of the same team. As stated by multiple witnesses, these hostile interactions contributed to many staff members leaving the district.

Brown Act Violations

The grand jury received multiple complaints that very late in the evening of July 18, 2020, just after the chancellor announced her resignation, four members of the Peralta board met secretly with academic and labor leaders in order to discuss strategies to fight the threatened state takeover of the troubled district. The grand jury heard testimony that three other trustees were intentionally excluded from this meeting. Private meetings to discuss district business between a majority of an elected board is a direct violation of the Brown Act, the state's open meeting laws which help protect the sanctity of participatory governance in California. The grand jury learned that after the late night meeting, one trustee participated in another meeting the next morning with a majority of the Peralta Academic Senate and other academic and labor leaders, again in violation of the Brown Act.

The Brown Act is one of the cornerstones of open and transparent government in California. Enacted in 1953, the act ensures that the public has both notice and access to meetings of local government agencies so that key discussions and deliberations between elected leaders do not take place behind closed doors without public input or scrutiny. The Brown Act specifically requires that agencies provide the public with formal notice of meetings and agendas containing the subjects to be discussed. Ultimately the meetings must be publicly accessible and provide the public with the opportunity to participate. Any gathering or communication through which a majority of the legislative body discusses, deliberates or takes action on an item of agency business outside of a noticed meeting violates the Brown Act.

The meeting among four Peralta trustees was said to have occurred two days after the district's chancellor had abruptly delivered her resignation to be effective approximately one month later. The resignation letter made a number of accusations of board misconduct and interference in the chancellor's responsibilities echoing many of the governance problems

raised earlier by the CCC State Chancellor. Earlier in the day on Saturday, July 18, the board held a publicly noticed special meeting when, in closed session, they formally placed the chancellor on paid administrative leave and voted to immediately terminate the district's general counsel who also served as the chancellor's chief of staff.

The grand jury heard that the late-night meeting was a strategy session to organize opposition to the threat by the CCC Board of Governors to appoint someone to take over the district abrogating the Peralta board's authority. The CCC Board of Governors had previously been warned by a state appointed fiscal monitor, FCMAT, and other sources that the Peralta board continued to engage in behaviors that undermined the Peralta chancellor. The CCC Board of Governors was worried that such conduct would impede efforts to correct Peralta's well-known fiscal challenges. The resignation of the chancellor was further evidence supporting this view and could only exacerbate the threat of a state takeover.

A healthy culture of governance certainly did not exist at Peralta in 2020 and the years preceding.

The grand jury heard testimony from multiple participants of the Saturday night Zoom meeting that it started at about 10:30 p.m., lasted until about midnight, and heard credible testimony that four then-serving trustees (which constitutes a majority of the board) were present for parts

of the meeting. The jury also confirmed that the discussion focused on how the chancellor's resignation letter would affect the upcoming CCC Board of Governors decision where Peralta's governance fate would be discussed. The grand jury also confirmed that trustees supporting state intervention were not welcome to the Saturday night meeting. One trustee acknowledged that they were invited and knew what was discussed but could not remember whether they were on the Zoom meeting but added they "might have been there." However, other testimony confirmed the trustee's presence. As a result, the grand jury did not find the trustee's confusion credible. Another trustee stated they were on the Zoom meeting for only a few seconds because it was poorly organized and chaotic, and they did not know who participated or what was discussed. A third trustee also acknowledged being on the Zoom call but only for a few minutes. They thought they had been invited by another board member to discuss Peralta's path forward but left the meeting because of its inefficiency. Finally, the only trustee who participated Saturday night and, as a result, later met with Peralta students, labor representatives and a majority of the District Academic Senate the next morning, could not recall the timeline regarding any of the meetings or who participated but denied a majority of the board was present at any meeting, acknowledging it would violate the Brown Act. The grand jury was extremely troubled by the testimony of some of the trustees about this matter, concluding that some trustees were evasive and not forthright with the grand jury. While the four trustees may not have been on the Saturday night Zoom meeting at the same time, if four participated at some point, it would still amount to a violation of open meeting laws.

The Brown Act not only applies to elected local boards but to any subcommittee or task force created by the elected body which has a definite, ongoing charge (either decision-making or advisory) (CA Government Code 54952). This includes the academic senate of a local community college district. At Peralta, the District Academic Senate represents the faculty senates at each college and faculty members. It makes recommendations to the college administration and governing board regarding academic and professional matters. It is made up of three members from each of the district's four colleges along with an elected president (13 in total). The job description of the District Academic Senate president specifically requires that the president observe the letter and spirit of all applicable laws, especially the open meeting laws.

The grand jury heard testimony and received screenshots of a Zoom meeting on Sunday, July 19, 2020 where a majority of the then serving District Academic Senate and one trustee discussed organizing efforts to prevent the State Chancellor's Office from intervening at Peralta. The testimony and transcripts of the Zoom chat window, consistent with the time/date and topics discussed, confirmed that the group was talking about district business in violation of the Brown Act. During the meeting, the attending trustee posted in the Zoom chat window a very comprehensive list of organizations who should be enlisted to stave off a state takeover. Ironically, one faculty participant (not on the district academic senate) asked in the Zoom chat, "Where are the other trustees?" While this meeting's violation of the Brown Act falls on the District Academic Senate and its president who participated, the Peralta trustee's participation was also inexcusable, especially since the trustee was a self-described Brown Act expert.

These examples of meetings in violation of the Brown Act appear to establish a deceptive pattern and practice at Peralta. Secret meetings violate public trust. Shutting out the public and board members who do not agree with edicts can create a poisonous atmosphere where students' needs give way to the need to win political battles.

The trustee was asked by the grand jury about this meeting and could not confirm any of the specific details but acknowledged that many meetings on similar subjects occurred. The trustee also denied knowing the structure of the District Academic Senate and who the 13 members were. The grand jury did not find this credible. First, the trustee has years of training and experience in applying and interpreting the Brown Act. In addition, months earlier, the trustee hosted a meeting at their home with District Academic Senators from the previous Academic Senate term to discuss strengthening the role of the Peralta Academic Senate (constituting district business). Eight people were invited, including seven then-sitting District Academic Senators including the president and a former president. In the email invitation, the trustee noted that the invitees were chosen because of the trustee's previous relationship with them. Whether a majority of the Academic Senate attended or not, the

trustee should certainly have known that these actions were inviting academic senators to violate the Brown Act.

Many violations of the Brown Act amount to hasty decisions or errors in judgment while others represent a deeper culture where policies, procedures, and best practices give way to unchecked political might. These examples of meetings in violation of the Brown Act appear to establish a deceptive pattern and practice at Peralta. Secret meetings violate public trust. Shutting out the public and board members who do not agree with edicts can create a poisonous atmosphere where students' needs give way to the need to win political battles. Excluded board members have no incentive to build collaborative relationships with those in power. Such collaboration is essential in most well-functioning governance relationships. Executive staff excluded from such meetings have testified that their authority had been undermined. The Saturday night meeting with a majority of the elected board in attendance is strong evidence of a broken board governance culture at Peralta. One trustee's participation and organization of the Sunday morning meeting was further disregard of good governance and the rule of law. A healthy culture of governance certainly did not exist at Peralta in 2020 nor in the preceding years.

CONCLUSION

Effective educational institutions that foster learning and achievement most often excel by delivering programs and services laser-focused on students. Per the ACCJC, ethical and effective leadership throughout an organization is an essential component that helps lead to such success. Over the better part of the last decade, Peralta's Board of Trustees have lost sight of this with board members' infighting and some treating executive leadership as the enemy while battling for control amongst themselves. While state educational authorities warned the institution was in threat of financial insolvency and its colleges were dangerously close to losing accreditation, the Peralta Board of Trustees failed to use a team approach to solve the problems it faced.

In 2019, the board brought in a new chancellor who began to address many of the state's financial concerns, yet individual trustees' insistence on controlling the traditional roles delegated to the chancellor contributed to her resignation in less than nine months. The chancellor's letter of resignation highlighted unhealthy board governance that had lasted for years. Controlling administrative hires, encouraging a culture of infighting, and disrespectful exchanges at meetings were common occurrences and confirmed by the grand jury. Black administrators felt as though the attacks were racially motivated. Claims of backroom dealing and secret meetings displayed abandonment of good governance and sound ethical standards. Renewed calls by state educational authorities to address governance required action. The grand jury acknowledges and commends the Peralta Board of Trustees for adopting a board Statement of Cooperation that was the culmination of a longer process of self-evaluation in 2020. It is also commendable that the board brought in FCMAT and consultants to develop

plans to address many of FCMAT's recommendations for change. The board also moved quickly to fill the chancellor's position after a series of resignations, yet there is significant concern by many that some key reforms may be abandoned. Problems related to long-term declining enrollment and fiscal instability demand leadership, vision, and collaboration between trustees and administrators. As one statewide educational expert warned, the Peralta board will continue to get in trouble, make small efforts to improve, then go back to their old ways. Within months of the adoption of the statement of cooperation, another chancellor, who was serving in an interim capacity, resigned and the grand jury found that some of the key ongoing board governance concerns have not been resolved.

Cohesion, civility, trust, and mutual respect are critical elements of an effective governing board. Tension, poor communication, lack of unified goals, and divisive individual behavior at Peralta have resulted in the board's inability to fulfill its mandate effectively. Interference in the traditional roles of the chancellor, secret meetings, and backroom dealing destroy staff morale and the board's relationship with the administrative team. Without reform or change in board behavior, Peralta's students, so in need of this essential institution, will continue to suffer.

FINDINGS

Hiring Interference

Finding 21-1:

Interference in the chancellors' recommended appointments of management employees by Peralta trustees between 2018 and 2020 irreparably damaged the chancellor/board governance relationship.

Finding 21-2:

Individual board member interference in the formal hiring process of management employees between 2018 and 2020 by performing informal vetting and challenging the formal recruitment/vetting process and chancellor recommendations, irreparably harmed the chancellor/board governance relationship.

Finding 21-3:

Holding closed session discussions to reevaluate the formal recruitment/vetting process and chancellor recommendations of management employees between 2018 and 2020 compromised the fair and independent hiring process.

Finding 21-4:

Peralta Board Policy 7110 which gives the Peralta Board of Trustees the power to approve the appointment of management employees was interpreted by the board between 2018 and 2020 in a manner that conflicts with Board Policy 2430 Delegation of Authority to the Chancellor and the portion of Board Policy 7110 that delegates the authority for human resources to the chancellor.

Incivility

Finding 21-5:

Individual board members' incivility and harsh treatment of other trustees and administrators between 2018 and 2020 damaged staff morale and compromised the authority of the chancellor and other administrators.

Finding 21-6:

The 2018-2020 Peralta Board of Trustees failed to recognize that disrespectful and demeaning comments directed at staff were interpreted as racially insensitive which consequently damaged district morale and board/administrator relationships.

Finding 21-7:

Board leadership between 2018-2020 consistently failed to intervene consistent with board policies in situations where board members and staff were treated in an uncivil and harsh manner by other board members and the public.

Brown Act

Finding 21-8:

During the late-night hours of July 18, 2020, a majority of the Peralta Board of Trustees secretly met with academic leaders to discuss district business, excluding the public and three trustees who would have disagreed with the purpose of the meeting. The gathering violated the sanctity of participatory governance in California as described in the Brown Act.

Finding 21-9:

On the morning of July 19, 2020, a majority of the Peralta Academic Senate met secretly to discuss district business with other academic leaders and one Peralta trustee without proper notice and public access. The gathering violated the sanctity of participatory governance in California as described in the Brown Act.

RECOMMENDATIONS

Recommendation 21-1:

The Peralta Board of Trustees must participate in an annual training that examines the relationship between the board and chancellor and governance best practices.

Recommendation 21-2:

The Peralta Board of Trustees must amend the portion of Board Policy 7110, which gives the board of trustees the power to approve appointment of management employees to ensure it does not conflict with Board Policy 2430, Delegation of Authority of Chancellor, and the portion of Board Policy 7110 that delegates the authority for human resources to the chancellor.

Recommendation 21-3:

The Peralta Board of Trustees must adopt a staff and executive staff hiring policy consistent with ACCJC best practices and recommendations.

Recommendation 21-4:

Peralta board leadership must commit to intervene, consistent with board policy, in situations where trustees or public speakers are verbally attacking staff or other trustees.

Recommendation 21-5:

The Peralta Board of Trustees must participate in training combatting racial insensitivity and implicit bias (Diversity, Equity, Inclusion and Belonging/DEIB).

Recommendation 21-6:

The Peralta Board of Trustees and Peralta Academic Senate must participate in additional training regarding the Brown Act, illegal meetings, and closed session ethics.

Recommendation 21-7:

The Peralta Board of Trustees must post proof or acknowledgement of all completed board training on the board web page.

Recommendation 21-8:

Individual members of the Peralta Board of Trustees must participate in an annual 360 evaluation, including a behavioral component. This evaluation must include staff input and the results must be discussed during a public meeting.

Recommendation 21-9:

The Peralta Board of Trustees must discuss the findings and recommendations of this report during a public meeting.

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the grand jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

RESPONSES REQUIRED

Peralta Community College District Board of Trustees	Findings 21-1 through 21-9 Recommendations 21-1 through 21-9
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RACIAL INEQUITIES IN POLICE RESPONSES TO VICTIMS' NEEDS

EXECUTIVE SUMMARY

Over the past 30 to 40 years, assessments of the criminal justice system have increasingly considered the victims of crime. Although the focus understandably remains on crimes committed, apprehending suspected perpetrators, and bringing criminal charges through the courts, public policy has emphasized the status of victims – understood not only as the persons injured by crime, but as vital participants in establishing justice following in the wake of their trauma.

In California, victims' rights are enshrined in the state constitution as Marsy's Law, approved by voters in 2008. Decades earlier, California created the nation's first victims compensation program, now administered by the California Victim Compensation Board (CalVCB). The board today is responsible for implementing a program designed not only to provide compensation to victims, but also for administering state law requiring liaisons with the police, outreach efforts to victims, and other related programs.

The grand jury examined several programs and policies dedicated to recognizing the role of victims in the administration of justice. Our specific focus, based on a complaint received from a concerned citizen, was on racial disparities in the ways support and assistance are provided to crime victims in Alameda County, and specifically in the City of Oakland. We investigated compliance with a state law requiring the police to designate a victim liaison officer, the racial dimensions of victim compensation award decisions, and the unsolved homicide rate in Oakland.

The grand jury found that the Oakland Police Department (OPD) has not generally provided the level of attention and support for victims contemplated by current law and policy. For example, OPD had failed to appoint a victim liaison officer, even though the role has been mandated by state law since 2019¹. Our investigation also found concerning racial inequities in the granting of awards of compensation to victims of crime, specifically involving the denials of awards based on a victim's "cooperativeness" with the police. When considered in the context of the extreme racial disparities in crime and crime victimization in Oakland, the general inattention to victims evidenced by our findings raises important questions of racial inequality in another aspect of the criminal justice system.

¹ The position was filled in April 2021.

BACKGROUND

The national focus on racial justice and policing that followed the murder of George Floyd in May 2020 struck a familiar chord with many residents of Alameda County. For years, the City of Oakland and its police department have been the subjects of a series of controversies involving accusations of police misconduct, including officer-involved shootings, racial profiling, and civil rights violations. Since 2003, the Oakland Police Department has operated under an independent monitor appointed by a federal judge, part of a negotiated settlement agreement mandating reforms that OPD has yet to fully implement. Efforts

to rebuild community trust have continued in the face of these challenges as city and police leaders cope with repeated confrontations and incidents, staff turnover, limited budgets, and political pressures. Notably, these controversies have been set against a backdrop of significant racial disparity in rates of crime and victimization evident across the city's neighborhoods. For example, of the 948 victims of Oakland homicides between 2008 and 2017, 38 were Asian, 53 were white, 147 were Latinx, and 691 were Black².

The grand jury sought to understand levels of racial disparity in serving the needs of crime victims and their families, particularly in the context of evident disparities in rates of crime and victimization in the City of Oakland.



Emergency Responders at an Oakland Crime Scene

Over this period, several studies and initiatives have examined and sought to improve OPD's practices and community relationships. Studies generated for OPD have aimed to improve how OPD provides information and services to victims of violent crimes and their families. In 2017, a partnership between the Urban Institute and the Urban Peace Institute was formed to review and assess OPD's response to shootings and homicides. Participants included family members of homicide victims, shooting survivors, officers and investigators who respond to shootings and homicide scenes. In part, the study found survivors and family members did not always perceive that they were treated fairly, or that OPD was transparent and impartial in its actions and decisions.

² Based on the most recent available data provided to the grand jury by OPD.

In January 2020, the University of California-Berkeley, School of Law published *Living with Impunity: Unsolved Murders in Oakland and the Human Rights Impact on Victims' Family Members* (UCB Report). The report chronicles how the families of 16 Oakland murder victims experienced police interactions as their unthinkable tragedies unfolded, and afterward. The UCB Report found OPD severely lacking in practices and policies critically needed to address crime victims and family members, and that these gaps create an additional level of racial injustice on communities of color already burdened by the highest rates of violence and victimization in the city. The report's authors recommend that OPD, together with city officials and victims' services providers, implement a series of collaborative actions centered on victims and their family members, and identify ways that police policies and methods can be changed to reduce, rather than exacerbate, challenges faced by crime victims, particularly in the areas of the city hardest hit by violent crime.

INVESTIGATION

The grand jury sought to understand levels of racial disparity in serving the needs of crime victims and their families, particularly in the context of evident disparities in rates of crime and victimization in the City of Oakland. In our investigation, we focused on the victim compensation component of the victim service programs in Oakland and Alameda County and the personnel responsible for delivering them. We wanted to learn how, when and from whom victims and their families receive information about services and benefits. In California, victim compensation and support programs are regulated by state law and implemented at the county level.

In Alameda County, victim services programs are administered by the District Attorney's Office Victim-Witness Assistance Program. This program includes a victim advocacy group which focuses on victims' needs and follow-up services, and a victim compensation claims group that focuses on processing claims for compensation to victims of violent crime based on state mandated guidelines. In this report, we refer to the victim compensation claims group as the "claims group." We focused our investigation on the racial disparities in compensation awards. We sought to understand the interdependency among agencies, the ways they share information, and how their practices impact crime victims. For example, we examined the interactions among crime victims, the claims group, and police departments when processing applications for compensation.



Lake Merritt, Oakland, CA

During our investigation we interviewed nine witnesses, including current and former officials of OPD, the City of Oakland, the Oakland Police Commission, the Alameda County Sheriff's Office and Coroner's Bureau, the District Attorney's Office Victim-Witness Assistance Program, and leading community organizations focused on victim services. We also examined relevant policies, records and public access websites of those and other county and municipal agencies, including several police departments, as well as statistical data obtained from the claims group on victim compensation awards relating to crimes in Alameda County since 2015. We reviewed the requirements and processes crime victims and family members must follow to request compensation, and the most common reasons for denying these requests. We consulted relevant provisions of the California Government Code and related regulations governing requirements for victim-police liaisons as well as victims' compensation. Finally, we reviewed research that may point the way to change, offering strategies to improve policing in ways specifically addressing victims' experiences, including the report of the Urban Institute/Urban Peace Institute and the UCB Report.

Issues Involving the Requirement for a Victim Liaison Officer



Oakland Street Sign

Recognizing the benefits that flow from an enhanced focus on victim support, California law requires every law enforcement agency in the state to help publicize and support victim compensation programs and services. State law also requires law enforcement agencies to designate a victims of crime liaison officer. This is a designated member of the police department, as distinct from staff of the District Attorney's Office who may be known as "victim liaisons." The liaison officer is required to implement various procedures designed to assist victims in applying for compensation and to obtain other support services. Regulations require police to notify all victims of crimes (or their dependents)

about victim assistance programs at the time of the crime or as soon as possible afterwards. The notice must be given in person or by email, or in conjunction with local victim-witness assistance centers. Regulations also require that new police officers must be informed by their superiors about victim services programs upon entering service, and that the program must be part of new officer training.

In addition to these state law requirements, OPD policies (General Orders O-07, effective November 10, 2000) include a directive defining the duties of a victims of violent crime liaison officer. These include a number of responsibilities consistent with the role required by state law. Much of the OPD directive mirrors that of the state-mandated position and appears intended to have a connection.

Although the designation of a victims of crime liaison officer has been mandatory under state law since January 1, 2019, OPD had not complied either with the state mandate or its own policy requirements until after the issue was raised by the grand jury in early 2021. At the time of their interviews, witnesses stated that OPD intended to fill the position and had received grant funding for it but were unsure when the role would be filled. Another witness said OPD previously maintained a liaison officer position that liaised with the District Attorney's Office, but that this position has not existed for the past ten years. Members of the District Attorney's Office who liaise with OPD in connection with the compensation applications they process from

victims were not aware of a designated liaison officer at OPD prior to the recent hiring. In many cases, they primarily relied on non-sworn personnel to gather information from detectives in connection with victim requests for compensation. Witnesses who were candid about organizational strengths and weaknesses were often surprised to learn about legal requirements for the victim liaison officer.

Although the designation of a victims of crime liaison officer has been mandatory under state law since January 1, 2019, OPD had not complied either with the state mandate or its own policy requirements until after the issue was raised by the grand jury in early 2021.



Oakland Police Department

In a racially diverse city where the majority of victims of violent crime are Black, the failure to address all victims' rights and needs becomes a matter of racial justice. OPD has shown the organizational capacity to provide these kinds of resources in response to felt policing needs. For example, in early 2021, following several crimes in Oakland's Chinatown district, OPD Chief LeRonne Armstrong and Mayor Libby Schaaf announced the assignment of a liaison officer to the Chinatown neighborhood. At the same time, Chief Armstrong announced a liaison officer for the Fruitvale district in response to an increase in robberies and

homicides in that area. These recent events illustrate OPD's ability to assess a problem, allocate designated resources, and quickly execute a program to address community issues. Given this ability, it is unclear why a state-mandated position devoted to the same purposes went unfilled for over two years.

OPD must move quickly to embrace the victims of crime liaison officer position. In addition to complying with a state law and its own policy requirement, a liaison officer enables OPD to

take advantage of training and materials that the California Victim Compensation Board provides to every law enforcement agency annually.

Racial Disparities in Victim Compensation Denials

The claims group reimburses eligible victims of violent crimes for specified crime-related expenses. Reimbursable expenses include income loss, funeral and burial expenses, mental health counseling services, and relocation, among others. The program is funded by restitution payments and fines paid by criminal offenders, which are continually appropriated to the program, as well as federal funds. In 2019, the claims group granted approximately \$3.1 million in victim compensation to Alameda County residents (and non-county residents in connection with crimes that occurred in the county). Compensation awards average around \$1,000, and roughly \$2,000 on average for homicide-related claims. The maximum award payable for any claim is \$70,000.

To apply for financial assistance, claimants must file an application for victims of crime compensation. To qualify, requirements include:

- the crime must result in physical injury or a threat of injury to the victim;
- the crime must be reported to law enforcement;
- the victim/family must cooperate with law enforcement;
- the victim must not have contributed to the events which lead up to the crime; and
- the filing deadline is generally seven years from the date of the crime/incident.

The claims group evaluates the applicant's information (application, police report, and other pertinent documents) and will often assist the crime victim or family in getting their bills paid by their insurance company, worker's compensation or Medi-Cal. The average processing time based on data reviewed by the grand jury is approximately 72 days; state law requires a processing time of no more than 90 days on average and no more than 180 days for any individual application. After reviewing the applicant's information, a decision is made by the claims group to deny or pay the claim. Applications can be denied for one or more reasons, including if the review determines that the victim failed to reasonably cooperate with law enforcement or the claims group, or that the victim was involved in events leading to the crime.

Why are Compensation Requests Denied?

The grand jury reviewed statistical breakdowns of Alameda County applications for victim compensation received for the five-year period from 2015 through 2019, including applications in connection with homicides (*See Appendix A for detailed data breakdown*). Over the five-year period, Black applicants (based on voluntary self-identification on the application form) filed a total of 5,241 applications (34.6% of all such applications), compared

to 1,677 applications filed by white claimants (11.1% of the total). The data reveal several concerning disparities in the denial rates between Black and white applicants:

- Overall, Black applicants received 42.2% of all denials, whereas white applicants received 10.3%. Considered as a percentage of applications submitted by each racial group, 26.8% of Black applicants were denied compared to 20.3% of white applicants. Over the five-year period, the overall denial rates for Black applicants were consistently higher than for white applicants.
- Focusing on specific reasons for denials, Black crime victims and family members applying for compensation were more than twice as likely as white applicants to have their applications denied for “lack of cooperation with law enforcement” (9.8% of Black applicants denied for this reason compared to 4.7% of white applicants). Black applicants made up approximately 51.8% of all those denied funding for this reason, compared to 7.9% for white applicants.
- Similar disparities were observed in applications that were denied for “lack of cooperation” with the claims group. Black applicants were again more than twice as likely as white applicants to be denied for this reason (4.1% of Black applicants compared to 1.9% of white applicants). Black applicants made up approximately 51.4% of those denied for this reason, compared to about 7.6% for whites.
- Disparities were also observed in denials based on “involvement in events leading to the crime.” Black applicants were almost twice as likely as white applicants to be denied for this reason (7.1% of Black applicants compared to 3.9% of white applicants). Black applicants constituted approximately 49.7% of all applicants who were denied for this reason, compared to about 8.9% for white applicants.

“Lack of cooperation with law enforcement” and “involvement” denials are based to a greater extent on subjective judgments of law enforcement compared to other reasons for denial. As a result, there is a greater risk that overt and implicit bias will affect these determinations to the applicant’s detriment.

Factors Involved in “Cooperation” and “Involvement” Determinations

“Cooperation” and “involvement” denials stood out to the grand jury compared to other decisions and actions that do not reflect similar levels of disparity among racial groups. For example, Black applicants received 34.6% of all victim compensation awarded over the five-year period, commensurate with the percentage of all applications submitted by Black applicants (white applicants received 13.5% of funds awarded during the five-year period). Similarly, application processing times were on average roughly the same for Black and white

applicants, and application denials for “lack of preponderance of evidence” or for “not covered crime” were likewise roughly similar for Black and white applicants.

The more significant disparities in compensation denials based on “lack of cooperation” and “involvement” indicate these specific reasons are the primary causes of the overall racially disparate outcomes in victim compensation award decisions. Hence, the grand jury sought to understand the basis for these determinations and concluded that several factors may play a role.

- First, the claims group relies on information provided by law enforcement to determine whether an applicant “reasonably cooperated” with law enforcement or was involved in events leading to the crime. In the application process there is generally little or no opportunity for the applicant or victim to provide information relevant to these determinations.
- Second, as a matter of practice, the claims group does not take responsibility to resolve (nor does the claims group appear responsible for resolving) disagreements or misunderstandings between applicants and law enforcement on questions of “cooperativeness.” This is even though, under state law, the claims group is responsible for objectively establishing the reason for denying an application. An applicant may not be aware of an “uncooperativeness” determination until a denial decision has been made. At that point, the victim’s only recourse is to appeal within 45 days of the denial. However, the appeal process will generally not revisit the basis for the original denial unless the victim can successfully introduce new evidence in support of his or her original “cooperativeness.” If applicants disagree with information provided by police that led to an uncooperativeness denial, the claims group personnel generally do not weigh in on the question. To the extent there is already a lack of trust between communities of color and the police, this approach is unlikely to resolve errors, misunderstandings or misplaced assumptions underlying police conclusions about cooperativeness or involvement.
- Third, “lack of cooperation with law enforcement” and “involvement” denials are based to a greater extent on subjective judgments of law enforcement compared to other reasons for denial. As a result, there is a greater risk that overt and implicit bias will affect these determinations to the applicant’s detriment. The grand jury consulted with a local expert knowledgeable about OPD’s practices as well as victims’ experiences. This

Greater emphasis by OPD and city officials on the programs mentioned in this report may lead not only to improved compliance with state mandates and progressive policing practices, but may also improve traditional measures of law enforcement performance.

witness stated that a police officer's conclusion that a victim or family member is uncooperative necessarily attributes a state of mind to the person, which is more likely to reflect overt or implicit biases on the part of the person drawing the conclusion. Individual racial bias (including overt prejudice as well as implicit bias) and systemic racial bias are more likely to be reflected in such subjective determinations, as compared to more objective reasons for denying victim compensation claims, such as filing an untimely application or claiming compensation for a crime that is not covered by the program. Further analysis is needed on the specific methods and language used by police to understand the effects of overt, implicit, and systemic bias on law enforcement determinations of cooperativeness and involvement.

- Finally, state law requires that several mitigating factors must be considered when reaching conclusions about the reasonableness of a victim or family member's cooperation. These factors include the victim or family member's age, physical condition, psychological state, cultural or linguistic barriers and any compelling safety concerns, such as the victim's fear of retaliation. Under the state statute, due consideration must be given to the degree of cooperation that the victim is capable of, in light of the presence of any of these factors. It is unlikely that information provided by law enforcement, which strongly influences cooperation determinations, adequately reflect these required considerations. To the contrary, one witness reported the experience of an OPD officer questioning a shooting victim soon after the crime. The victim was on a hospital gurney in the hospital emergency room. In physical distress from the shooting as well as intoxicated, the victim was unwilling to speak to the officer. The witness reported that such events can often lead to determinations of uncooperativeness, pointing to the need for more awareness training for law enforcement.

Victims Compensation Group Awareness of Disparity Issues

The grand jury learned that the claims group has been aware of the disparities discussed above for some time but has not yet determined the specific reasons for the disparities or any actions in response. The grand jury is not aware of any actions that have been taken or that are planned to address the concerns evident from the data.

Resource Notification Issues

Under a state law known as Marsy's Law, police are required to notify victims or their families of the existence of victim-witness assistance centers. In addition, according to OPD's Departmental General Order O-07, a resource card must be issued to all victims of violent crime. Based on the description in General Order O-07, we believe the resource card contains the information required by Marsy's Law. Based on witness testimony, the grand jury was not

able to confirm that OPD documents comply with the requirement to provide the Marsy's Law/resource card.

According to the CalVCB website, "many law enforcement officers are not aware of the Victim Compensation Program or their duty to inform victims of the compensation assistance available to them." The grand jury reviewed claims group application data that tend to support this belief. For example, only 16.9% of referrals come from sources associated with law enforcement, whereas 38.4% are from other or unspecified sources. The low percentage of referrals from law enforcement suggests police could play a more effective role in enhancing awareness of resources. As an example, CalVCB developed a three-minute video providing an overview of the program to enhance police understanding and awareness.

Unsolved Homicide Closure Rates

Based on witness testimony, there are between 2,000 and 2,500 unsolved homicide cases in OPD's files. The grand jury reviewed homicide data provided by OPD for the ten-year period from 2008 through 2017, the last year for which comparative data were available. During that period, there were a total of 948 homicides in Oakland, 441 (47%) which were solved (documented as closed) and 507 (53%) of which remained open at the end of the period. The grand jury sought to understand possible racial disparities in the closure rates of these cases. The table below shows the results of our review:

Race/ Ethnicity of Victim	Number of Homicides (2008-2017)		Cases Closed by End of 2017		Cases Open at End of 2017		Case Closure Rate
	N	% of Total	N	% of Total	N	% of Total	%
Asian	38	4.0%	28	6.3%	10	2.0%	73.7%
Black	691	72.9%	286	64.9%	405	79.9%	41.4%
Latinx	147	15.5%	72	16.3%	75	14.8%	49.0%
Native American	1	0.1%	1	0.2%	0	0.0%	100.0%
Pacific Islander	4	0.4%	3	0.7%	1	0.2%	75.0%
Other	14	1.5%	8	1.8%	6	1.2%	57.1%
White	53	5.6%	43	9.8%	10	2.0%	81.1%
Total	948		441		507		46.5%

Most apparent from the data we reviewed are the extreme racial disparities in crime victimization in Oakland already discussed in previous parts of this report. Almost 90% of homicide victims over the period were Black or Latinx (annual figures are consistent with this

figure, ranging from 79% to 93% with a median of 90%). Moreover, while the data show obvious racial disparities in case closure rates, focusing solely on case closures misses other important aspects evident in the data. For example, although the case closure rates for Black homicide victims is the lowest among the groups tracked by the data, because there are so many Black homicides, OPD solves many more Black than white homicides every year—almost seven times as many over the 10-year period. At the same time, when looking through each figure in the open case column, and thinking of the families behind each homicide statistic, the extreme racial disparity among families left without answers is clear.

Seen from the victim and victim-family perspective, the low closure rate for Black homicides—in the context of extreme disparity in victimization to begin with—reveals a dire need for additional victim support and services from OPD, and a greater focus on racial equity in the delivery of those services. It seems clear that virtually any effort to improve the level of support for victims in the Oakland communities hardest hit by violent crime will result in improved community relationships and the prospect of higher closure rates.

OPD’s User-Unfriendly Public Access Website

During our investigation, while researching information online at OPD’s website, the grand jury consulted websites of police departments throughout Alameda County to research their policies and procedures. Like most police departments, OPD posts its policies and procedures online. However, the website’s organization and search tools make it difficult to locate policies, practices, and procedures. Since 2000, state law (Penal Code § 13650) has required that police departments “conspicuously post on their internet web sites all current standards, policies, practices, operating procedures, and education and training materials.” Moreover, according to state law, making police policies and regulations easily accessible to the public “helps educate the public about law enforcement policies, practices, and procedures, increases communication and community trust, and enhances transparency, while saving costs and labor associated with responding to individual requests for this information.”

One witness explained that the posting of OPD policies and procedures is under the control of the City of Oakland as part of its overall city website, and that OPD itself has no capability of modifying or restructuring that website. The grand jury found this explanation unsatisfactory given that, internally, OPD has access to IT systems that enable staff to easily search department policy and procedures and related documents.

CONCLUSION

The legitimacy of any system of justice relies on broad public support. The “quality” or “effectiveness” of the justice system is traditionally understood in terms of crimes and punishments. The focus is on apprehending perpetrators and holding them accountable for the consequences of their wrongful acts. These are legitimate concerns of course, but the

traditional perspective tends to overlook the victims of crimes—understood not only as persons injured or damaged by criminal conduct, but also as key participants in the establishment and maintenance of justice in our communities.

As with the justice system generally, assessments of police policy and conduct—including assessments of overt or systemic racial bias and inequity in law enforcement—must remember the victims. Further research is needed into the reasons for the disparate rates of cooperativeness and involvement denials for victim compensation. Greater emphasis by OPD and city officials on the programs mentioned in this report may lead not only to improved compliance with state mandates and progressive policing practices, but may also improve traditional measures of law enforcement performance, such as arrest and closure rates. Attention to these issues as part of a broader effort to address racial equity in law enforcement would likely improve community support for the police and would be an important step in improving fairness and equality in the criminal justice system.

FINDINGS

Finding 21-10:

The Oakland Police Department failed to fill the victims of crime liaison officer in accordance with Cal. Gov. Code § 13962(c) and 2 CCR § 649.36 and by OPD’s own general orders, in a timely fashion, causing lost opportunity for the victims of violent crime to obtain needed support. The Oakland Police Department was aware of the directive and in April 2021 complied with the requirement.

Finding 21-11:

Failing to have a victims of crime liaison officer for years, the Oakland Police Department missed out on relevant and available training mandated by Cal. Gov. Code sec. [13962(d).]

Finding 21-12:

Racial disparities exist in the number of applications for crime victim compensation that are denied for lack of cooperation with law enforcement, lack of cooperation with the claims group, and involvement in events leading to crimes. Black applicants receive a disproportionate number of denials for these reasons compared to applicants in other racial/ethnic categories.

Finding 21-13:

The claims group relies on information from law enforcement as the basis of their determinations that an applicant or victim has failed to cooperate or was involved in events leading to crimes.

Finding 21-14:

Determinations about cooperativeness and involvement include subjective judgments on the part of police and other law enforcement personnel that could lead to a denial of victim compensation funds, and consequently are relatively more likely to be influenced by overt or implicit bias, among other factors.

Finding 21-15:

The Oakland Police Department's website is maintained in an opaque fashion with no provision for globally searching for any particular policy or procedure.

RECOMMENDATIONS

Recommendation 21-10:

The Oakland Police Department must fulfill the expectations of the victims of crime liaison officer role immediately, while providing the contact information to the Victim-Witness Assistance Division and related public sector partner organizations who focus on victim advocacy and victim compensation programs.

Recommendation 21-11:

The Oakland Police Department must enhance awareness and training of officers and other personnel in victim support, particularly in areas of the city with the highest rates of violent crime.

Recommendation 21-12:

The Oakland Police Department must work with the Victim-Witness Assistance Division to investigate the causes of racially disparate outcomes in compensation award decisions, specifically the policies, procedures, methods and language used by law enforcement to communicate with the claims group and victim compensation decisions.

Recommendation 21-13:

The Oakland Police Department must require all personnel involved in sharing information with the Victim-Witness Assistance Division to undergo periodic training, with the goal of increasing awareness of the California Victim Compensation Board programs, increasing awareness of the duty of law enforcement to inform victims of the compensation assistance available to them, and minimizing the incidence of racially disparate outcomes in victim compensation award decisions.

Recommendation 21-14:

The Oakland Police Department must ensure that the victim of crime liaison officer receives and disseminates available training materials provided in accordance with Cal. Gov. Code sec. 13962(d).

Recommendation 21-15:

The Oakland Police Department must review and ensure compliance with legal requirements, policies and methodologies used to document the issuance of the Marsy's Law/resource card.

Recommendation 21-16:

The Oakland Police Department and the City of Oakland, to the extent applicable, must post its policies and procedures on the City of Oakland's website in such a manner that it is globally searchable and user friendly.

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the grand jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

RESPONSES REQUIRED

Oakland Police Department

Findings 21-10 through 21-15

Recommendations 21-10 through 21-16

APPENDIX A

Applications Received for Victim Compensation and Reasons for Denying Applications

All applications received (All Alameda Co., 2015-2019)			Denied, any reason		
<i>Claims Received by Race/Ethnicity</i>	N	% of total N	N	% of total N	% of subgroup's applications
American Indian/Alaska Native	100	0.7%	22	0.7%	22.0%
Asian	799	5.3%	136	4.1%	17.0%
Black/African American	5,241	34.6%	1,405	42.2%	26.8%
Hispanic or Latino	5,242	34.6%	994	29.9%	19.0%
Multiple Races	175	1.2%	39	1.2%	22.3%
Native Hawaiian and Other PI	29	0.2%	5	0.2%	17.2%
Not Reported	1,654	10.9%	328	9.9%	19.8%
Some Other Race	223	1.5%	56	1.7%	25.1%
White Non-Latino/Caucasian	1,677	11.1%	341	10.3%	20.3%
TOTAL	15,140	100.0%	3,326	100.0%	22.0%

Denied, lack of cooperation with Claims Group				Denied, lack of cooperation with law enforcement			
<i>Claims Received by Race/Ethnicity</i>	N	% of total N	% of subgroup's applications	N	% of total N	% of subgroup's applications	
American Indian/Alaska Native	6	1.4%	6.0%	8	0.8%	8.0%	
Asian	19	4.5%	2.4%	44	4.4%	5.5%	
Black/African American	217	51.4%	4.1%	516	51.8%	9.8%	
Hispanic or Latino	112	26.5%	2.1%	269	27.0%	5.1%	
Multiple Races	6	1.4%	3.4%	12	1.2%	6.9%	
Native Hawaiian and Other PI		0.0%	0.0%	1	0.1%	3.4%	
Not Reported	23	5.5%	1.4%	54	5.4%	3.3%	
Some Other Race	7	1.7%	3.1%	13	1.3%	5.8%	
White Non-Latino/Caucasian	32	7.6%	1.9%	79	7.9%	4.7%	
TOTAL	422	100.0%	2.8%	996	100.0%	6.6%	

Denied, involvement in crime			
<i>Claims Received by Race/Ethnicity</i>	N	% of total N	% of subgroup's applications
American Indian/Alaska Native	5	0.7%	5.0%
Asian	32	4.3%	4.0%
Black/African American	370	49.7%	7.1%
Hispanic or Latino	190	25.5%	3.6%
Multiple Races	8	1.1%	4.6%
Native Hawaiian and Other PI	1	0.1%	3.4%
Not Reported	61	8.2%	3.7%
Some Other Race	12	1.6%	5.4%
White Non-Latino/Caucasian	66	8.9%	3.9%
TOTAL	745	100.0%	4.9%

<i>Claims Received by Race/Ethnicity</i>	Denied, not covered crime			Denied, late		
	N	% of total N	% of subgroup's applications	N	% of total N	% of subgroup's applications
American Indian/Alaska Native	6	0.5%	6.0%	1	1.2%	1.0%
Asian	55	4.6%	6.9%	5	5.9%	0.6%
Black/African American	445	37.4%	8.5%	28	32.9%	0.5%
Hispanic or Latino	377	31.7%	7.2%	35	41.2%	0.7%
Multiple Races	12	1.0%	6.9%	8	9.4%	4.6%
Native Hawaiian and Other PI	1	0.1%	3.4%	1	1.2%	3.4%
Not Reported	144	12.1%	8.7%	7	8.2%	0.4%
Some Other Race	21	1.8%	9.4%		0.0%	0.0%
White Non-Latino/Caucasian	129	10.8%	7.7%		0.0%	0.0%
TOTAL	1,190	100.0%	7.9%	85	100.0%	0.6%

<i>Claims Received by Race/Ethnicity</i>	Denied, lack of preponderance of evidence			Denied, Residency		
	N	% of total N	% of subgroup's applications	N	% of total N	% of subgroup's applications
American Indian/Alaska Native	14	0.8%	14.0%	14	66.7%	14.0%
Asian	75	4.1%	9.4%			0.0%
Black/African American	711	38.9%	13.6%			0.0%
Hispanic or Latino	582	31.8%	11.1%	5	23.8%	0.1%
Multiple Races	26	1.4%	14.9%	1	4.8%	0.6%
Native Hawaiian and Other PI	3	0.2%	10.3%			0.0%
Not Reported	181	9.9%	10.9%	1	4.8%	0.1%
Some Other Race	33	1.8%	14.8%			0.0%
White Non-Latino/Caucasian	203	11.1%	12.1%			0.0%
TOTAL	1,828	100.0%	12.1%	21	100.0%	0.1%

THE NEED FOR ACCURACY AND IMPARTIALITY OF BALLOT MEASURE QUESTIONS

EXECUTIVE SUMMARY

In every California election, voters are asked to approve numerous ballot measures proposed by state, county, and municipal governments as well as other government agencies. While their subject matter is wide-ranging, all ballot measures have at least one thing in common: they all start with a question – a question required by law to be brief, accurate and impartial.

In response to a citizen’s complaint that local ballot questions have failed to live up to these requirements, the grand jury investigated how government sponsored (as compared to citizen initiated) ballot questions are typically prepared in Alameda County. Our investigation focused exclusively on the accuracy, transparency and impartiality of ballot questions (formally known as “ballot labels” and also called “ballot titles”) and on the processes used to draft them – without regard to the policy questions underlying the measures.

The grand jury found several problems in the ways ballot questions are drafted. In general, we found ballot questions suffer from a “proponent’s bias” that is a natural outgrowth of the typical process through which questions are selected, drafted, and proposed. We organized this and other problems we identified into several categories, each exemplified by the language of one or more of the questions we reviewed. In general, we found that ballot questions too often fall short of what voters have a right to expect in terms of transparency and impartiality, even when satisfying minimum legal standards.

The grand jury believes voters deserve better ballot questions. We are proposing the Alameda County Board of Supervisors create an advisory panel, comprised of citizen volunteers, which would review ballot questions for truthfulness and impartiality. In the period leading up to each election, the advisory panel would review and rate questions submitted on a voluntary basis by the jurisdictions proposing them. We believe such a panel and process would improve transparency and completeness of ballot questions while working within the tight timelines required for ballot submissions.

BACKGROUND

We use the term “ballot question” to refer to the question posed to voters in connection with every ballot measure. The ballot question, formally called the “ballot label” in state law, must

not exceed 75 words.³ Although they are legally required to be accurate and impartial, ballot questions are often criticized for failing to live up to these requirements. For example, in a June 2020 joint editorial, the San Jose Mercury News and East Bay Times complained that ballot questions are too often misleading and manipulative: “too many local government leaders, their attorneys and taxpayer funded campaign consultants continue to write ballot measures and voter material to tout the benefits while glossing over, or even hiding, the true costs.”⁴ The editorial proposed several guidelines that municipal officials should follow when they draft ballot questions.

In response to a citizen’s complaint echoing these editorial opinions, the grand jury investigated how government-sponsored (as compared to citizen-initiated) ballot questions are typically drafted in Alameda County. Throughout our investigation, we focused only on the *language of the ballot questions*—the degree to which the questions accurately, transparently and impartially reflected the measures concerned—without regard to the merits of the measures. Consistent with this approach, although the grand jury selected six ballot measures for in-depth study, our purpose was not to investigate the jurisdictions or officials that drafted the questions for those measures. Rather, we sought to understand more generally the processes through which ballot questions are written and revised prior to their approval by city councils or equivalent bodies.

The grand jury believes voters deserve better ballot questions. We are proposing the Alameda County Board of Supervisors create an advisory panel, comprised of citizen volunteers, which would review ballot questions for truthfulness and impartiality.

The grand jury reviewed applicable legal requirements for truth and impartiality of ballot questions, and the processes by which questions are challenged in court. An understanding of both dimensions – the underlying legal requirements that questions must satisfy *and* the legal standards that courts apply when questions are challenged – is necessary to fully appreciate the context in which government officials prepare ballot questions.

The California Elections Code imposes the same requirements for accuracy and impartiality on all ballot questions put to voters, whether by the state government or by county or local governments or other jurisdictions such as school boards or transit districts. If the measure imposes a tax, or raises the rate of a tax, the ballot question must include the amount of money to be raised annually and the rate and duration of the tax to be levied.⁵ And whether or not a tax is involved, every ballot question must

³ Cal. Elec. Code § 9051(b).

⁴ Editorial: Stop deceiving Bay Area voters on local tax measure costs. San Jose Mercury News, June 26, 2020. East Bay Times, June 26, 2020, updated June 29, 2020.

⁵ Cal. Elec. Code § 13119(b).

be “a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.”⁶

In challenges to the accuracy and impartiality of ballot questions over the years, courts have interpreted these requirements to mean that “[election] materials must reasonably inform the Voters of the character and purpose of the proposed measure”⁷ and that the “main purpose of these requirements is to avoid misleading the public with inaccurate information.”⁸ The ballot question “cannot be misleading ... It must reasonably inform the voter of the character and real purpose of the proposed measure.”⁹ With regard to impartiality, a court has stated that “the wording on a ballot or the structure of the ballot cannot favor a particular partisan position.”¹⁰ The California Court of Appeal stated its understanding of “partial” to mean that “the council’s language signals to voters the council’s view of how they should vote, or casts a favorable light on one side of the [issue] while disparaging the opposing view.”¹¹

When considering the language of ballot questions relating to tax or bond measures, one must also keep in mind the voting requirements for approving tax measures proposed by local governments. The California Constitution categorizes all local taxes as either “general taxes” or “special taxes.”¹² A “general tax” is “any tax imposed for general governmental purposes” and a “special tax” is “any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.”¹³ When proposed by a local government entity, general taxes must be approved by a majority vote, whereas special taxes must be approved by a two-thirds vote.¹⁴ Measures proposing local government bonds must be approved by a two-thirds vote, while school bonds must be approved by a 55% vote.¹⁵

In the context of the above requirements, local governments have a substantial amount of flexibility when they draft ballot questions, in three respects. First, rules prohibiting public officials from advocating for or against a ballot measure do not apply until *after* the measure has been approved for the ballot by a city council or county board of supervisors.¹⁶ This is

⁶ Cal. Elec. Code § 13119(c).

⁷ Horneff v. City & County of San Francisco (2003) 110 Cal.App.4th 814, 820, [2 Cal.Rptr.3d 79].

⁸ Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 243 [149 Cal.Rptr. 239, 583 P.2d 1281].

⁹ Becerra v. Superior Court (Aug. 11, 2020, C092405) ___ Cal.App.3d ___ [pp. 8] (internal quotation marks and citations omitted).

¹⁰ Huntington Beach City Council v. Superior Court (2002) 94 Cal.App.4th 1417, 1433, 115 Cal.Rptr.2d 439; cf. Horneff v. City & County of San Francisco (2003) 110 Cal.App.4th 814, 822–823, [2 Cal.Rptr.3d 79].

¹¹ Martinez v. Superior Court (2006) 142 Cal.App.4th 1245, 1248, 48 Cal.Rptr.3d 660 (alterations in original).

¹² City of S.F. v. All Persons Interested in Matter of Proposition C (2020) 51 Cal.App.5th 703, 711 (citing Cal. Const. Art. XIII C, § 2, subd. (a)).

¹³ Cal. Const. Art. XIII C, § 1, subds. (a), (d).

¹⁴ City of S.F. v. All Persons Interested in Matter of Proposition C (2020) 51 Cal.App.5th 703, 711 (citing Cal. Const. Art. XIII C, § 2, subds. (b), (d)).

¹⁵ Cal. Const. Art. XIII A, § 1, subd. (b)(3) (Prop. 39, § 4, as approved by voters Nov. 7, 2000).

¹⁶ League of Women Voters v. Countywide Criminal Justice Coordination Committee (1988) 203 Cal.App.3d 529, 550.

because the process of developing and drafting a proposed measure is viewed as ordinary legislative activity, not partisan activity.¹⁷

Second, citizens wishing to challenge the accuracy or impartiality of a question face an uphill battle. Before being placed on the ballot for an upcoming municipal election, a ballot question is subject to a 10-day public examination period, during which any voter in the jurisdiction may petition a court for an order to delete or amend the language of the measure.¹⁸ But when a question is challenged, a court will review the language only for “substantial compliance” with the statutory mandates for truth and impartiality.¹⁹ Moreover, the officials who drafted the language are afforded “considerable latitude” in composing the ballot question, and courts *must* presume the language they drafted to be accurate.²⁰ A court order to amend the language of a question will be issued “only upon *clear and convincing proof* that the material in question is false, misleading, or inconsistent with [legal] requirements.”²¹ As one court reviewing a challenged question put it, a ballot question “need not be the ‘most accurate,’ ‘most comprehensive,’ or ‘fairest’ that a skilled wordsmith might imagine.”²²

Third and finally, local ballot questions are not subject to review by a government official or office independent from the proposing government entity. This is in contrast to measures proposed by state government, as to which the state attorney general is charged with preparing all ballot question in compliance with the same accuracy and impartiality standards.²³ Unlike local government officials who prepare ballot questions and other materials, the state attorney general is prohibited from preparing ballot materials on measures for which the attorney general is a proponent.²⁴

INVESTIGATION

Basis for Selecting Questions

The grand jury considered a number of ballot questions submitted to voters over the past several elections. We selected five ballot questions from measures included on ballots in the November 2020 general election and one from the November 2016 election. These included one county measure, four municipal measures and one school board measure.

¹⁷ League of Women Voters v. Countywide Criminal Justice Coordination Committee (1988) 203 Cal.App.3d 529, 550.

¹⁸ Cal. Elec. Code § 9295(b)(1); McDonough v. Superior Court of Santa Clara (2012) 204 Cal.App.4th 1169, 1173 (citing § 9295).

¹⁹ McDonough v. Superior Court of Santa Clara (2012) 204 Cal.App.4th 1169, 1174 (citing Martinez v. Superior Court (2006) 142 Cal.App.4th 1245, 1248 [48 Cal.Rptr.3d 660]).

²⁰ Yes on 25, Citizens For An On-Time Budget v. Superior Court (2010) 189 Cal.App.4th 1445, 1452, 118 Cal.Rptr.3d 290.

²¹ Cal. Elec. Code § 9295(b)(2); McDonough v. Superior Court of Santa Clara (2012) 204 Cal.App.4th 1169, 1173 (emphasis and alteration added).

²² Martinez v. Superior Court (2006) 142 Cal.App.4th 1245, 1248 (citations omitted).

²³ Cal. Elec. Code § 9051.

²⁴ Cal. Elec. Code § 9003.

We attempted to choose a mix of questions from different jurisdictions and on a range of subjects. The questions we selected stood out based on their language considered in relation to the substance of the measures described and the degree to which, based on our initial review, the questions' language failed to convey the substance of the measures involved.

In choosing the questions, the grand jury felt strongly that our selection should not be based in any way on grand jurors' opinions about the underlying measures. Jury discussion focused on the appropriateness of the wording of measures rather than their merits. Therefore, our report should not be interpreted as a commentary on the merits of any of the measures involved. As with the purpose and scope of our review, our conclusions are directed solely to the language of questions, and not the merits of the measures.



In the course of choosing the questions, we asked several jurisdictions to describe in writing how they prepare ballot questions generally. After we selected the questions, we then interviewed officials from the selected jurisdictions to inquire about the methods they use to draft ballot questions, both generally and with reference to the specific questions we reviewed.

Questions Selected for Review

The measures we selected were the following (except as noted for Dublin Unified School District Measure H, the measures appeared on the ballot for the November 3, 2020, general election):

1. Alameda County Measure W – The Alameda County Board of Supervisors proposed to adopt a 0.5% sales tax for general fund purposes (in addition to existing county sales taxes). The measure passed 50.09% to 49.91%. The ballot question read as follows:

“Shall a County of Alameda ordinance be adopted to establish a half percent sales tax for 10 years, to provide essential County services, including housing and services for those experiencing homelessness, mental health services, job training, social safety net and other general fund services, providing approximately \$150,000,000 annually, with annual audits and citizen oversight?”

2. Berkeley Measure JJ – The Berkeley city council proposed to amend the city's charter to change how annual compensation is determined for the mayor and councilmembers. Instead of setting compensation based on a fixed amount subject to cost-of-living increases, the measure proposed to set the mayor's compensation at an amount equal to the median three-person household income for Alameda County, and to set councilmember pay at 63% of the

mayor's amount. The measure was approved by a vote of 65% to 35%. The ballot question read as follows:

“Shall the measure amending the City Charter to provide that compensation for the office of Mayor be set at Alameda County's median three-person household income from the California Department of Housing and Community Development and that of Councilmembers maintained at 63% of the Mayor's compensation, with annual increases based on changes in Area Median Income, but which may be lowered for unexcused Council meeting absences or negotiated salary reductions for City employees, be adopted?”

3. Dublin Unified School District Measure H (November 8, 2016 general election) –The school district governing board proposed to issue \$283 million in bonds to fund its general operations. The measure passed by a vote of 60% to 40%. The ballot question read as follows:

“To protect quality education with funding that cannot be taken by the State, construct schools to prevent overcrowding; update aging classrooms/science labs; continue providing 21st century technology; ensure classrooms meet fire/safety codes, and improve energy/operational efficiency, utilizing savings for instruction shall Dublin Unified School District issue \$283 million in bonds at legal rates, with annual audits, citizens oversight, no money for administrators, and all funds staying in Dublin?”

4. Hayward Measure OO – The Hayward city council proposed to amend the city's charter to remove a requirement that residents who serve on council-appointed advisory commissions must be registered voters, and to eliminate gender-based terminology from the charter. The measure passed by a vote of 67% to 33%. The ballot question read as follows:

“To create more opportunities for residents to volunteer, and to honor Hayward's commitment to diversity, shall the Charter of the City of Hayward be amended to eliminate the requirement of being a qualified elector/registered voter to serve on City Council-appointed advisory commissions, and shall the Charter be amended to eliminate gender-based designations and titles and instead use neutral, gender-free designations and titles?”

5. Piedmont Measure TT – Piedmont's city council proposed to increase the city's real estate transfer tax. The measure failed to pass by a vote of 48% to 52%. The ballot question read as follows:

“Shall the City of Piedmont, to be in alignment with neighboring East Bay Cities, increase the real estate transfer tax from \$13.00 to \$17.50 per \$1,000 of transfer price, generating \$948,462 annually until ended by voters, to provide general tax revenue for

city services and to repair and maintain city facilities including police and fire stations, parks, and recreation facilities, and other city infrastructure, be adopted?”

6. San Leandro Measure VV – The San Leandro city council proposed to increase the city’s real estate transfer tax. The measure passed by a vote of 53% to 47%. The ballot question read as follows:

“To maintain City of San Leandro services, with revenue that cannot be taken by the State, including: repairing potholes/streets; supporting seniors, families and local small businesses through COVID-19 economic recovery; preserving 911 emergency response; maintaining youth violence prevention programs; and general city services; shall San Leandro increase the existing real property transfer tax rate, collected when property is sold, by \$5 per \$1,000 in valuation, generating an additional \$4,000,000 annually, until repealed by voters, all funds benefiting San Leandro?”

How Jurisdictions Prepare Ballot Questions

Witnesses from all jurisdictions in our review reported using roughly the same process to develop ballot questions. Ballot questions, like the measures themselves, are drafted in a process involving relevant functional departments of the jurisdiction, usually involving the close involvement of the chief executive (city manager in the case of municipalities) and entity attorney (who may be employed by the entity or an outside attorney). Some jurisdictions provide additional opportunities for public input through public meetings or other review bodies. In some cases the entity attorney plays a coordinating role; more often staff of the city manager’s or administrator’s office lead the process. All jurisdictions follow an iterative process of exchanging and commenting on draft language. Consultants are often but not always used, depending on the issues involved. Not surprisingly, all jurisdictions reported that ballot questions are prepared according to the above-mentioned requirements of the California Elections Code. Perhaps more surprising, none of the jurisdictions reported having policies or guidelines that are used to assure compliance with legal requirements, beyond having the entity attorney participate in the process and ultimately sign off on the language. Witnesses from several jurisdictions said they would welcome guidelines or independent reviews of ballot questions that take into consideration the time constraints and deadlines involved in getting a measure on the ballot.

In all cases the entity’s governing body or council has the ultimate authority and responsibility for approving a ballot measure, including the corresponding ballot question. Ballot measures and questions are formally considered and adopted at a public meeting of the council, after which the clerk is directed to forward the measure (including the question) to the county Registrar of Voters to be placed on the ballot.

Problems Identified

The grand jury found several problems in the ways ballot questions are drafted, exemplified in the language of the questions we reviewed. We organized the problems into the following categories:

1. Inherent “Proponent Bias” – As a general matter, across all of the questions reviewed, we found ballot questions suffer from an inherent “proponent bias” that is a natural outgrowth of the typical process by which questions are selected, drafted and proposed. This overarching process-driven problem contributes to all of the more specific content-driven problems identified in subsequent sections of this report.

Based on witness testimony, the typical question-writing process, generally the same in all the jurisdictions we reviewed, is likely to lead to non-transparent, less than fully accurate, and overly partisan questions simply because all participants involved share a desire that the measure be approved. Indeed, some participants, such as consultants and pollsters, are involved for the very purpose of assuring a positive outcome. Witnesses from all jurisdictions interviewed described a question-writing process in which success is measured by whether or not the measure is likely to pass. Questions developed in such a process are more likely to reflect language that is the most favorable possible—while minimally satisfying requirements for not being argumentative or partisan—rather than language which the drafting group concludes to be most accurate and impartial. Given that all jurisdictions we reviewed followed much the same process, it would be surprising if a jurisdiction did *not* attempt to phrase its ballot questions in such favorable terms.

City and county counsel, involved in the process to advise on compliance with legal requirements, are nevertheless duty bound to represent the government entities proposing the measures involved. Hence, they also act, by necessity, as advocates for the proponents of a measure.

The ballot questions we reviewed generally fell short of what voters have a right to expect.

Although a city council’s (or other governing body’s) ultimate approval of a ballot question is open to public comment and participation, even citizens who may object to the language are more likely to do so because they are partisans for or against adoption of the measures concerned, not because they are concerned particularly with the accuracy or impartiality of the question. For the same reason, ballot questions on measures that enjoy substantial popular support are likely never to be challenged, no matter how non-transparent or partisan the question may be.

Finally, a citizen who objects to the language of a question after it has been adopted must act in a limited time period and faces an uphill battle, given the deference courts afford to question proponents discussed above. Judges review a challenged question only for “substantial compliance” with statutory requirements, and are required to presume that the question, as drafted by the forgoing process, is accurate. Challengers must overcome this presumption with clear and convincing evidence that a given question is inaccurate or partisan. The grand jury does not intend to suggest there is anything wrong with these legal standards. We only assert that the prospect of judicial review is unlikely to remedy other aspects of the question-drafting process in which accuracy and impartiality are not prioritized above other competing and valid considerations.

When everyone involved in drafting, reviewing, and approving a question desires and is motivated to have the question answered affirmatively, it is only natural that the question will be written in the most favorable terms possible. In such a process, even when participants are sincere in their efforts to comply with legal requirements for accuracy and impartiality, there do not appear to be any advocates for transparent and neutral language. The result of this process is predictable: ballot questions are likely to meet, but not exceed, legal standards while falling short of what voters have a right to expect in terms of truthfulness and impartiality.

We turn now to specific types of problems that result from such inherent proponent bias.

2. Use of Favorable Language That is Irrelevant or Unnecessary to Describe the Measure.

Generally speaking, every question we reviewed contains language that is more likely to be read as supportive of the measure rather than an element of “a true and impartial synopsis.” Important to this kind of language is that it bears no relationship to the measure, or at least is unnecessary to describe the measure. For example, choosing to describe a permanent tax (i.e., one that does not expire by its own terms) as a tax that continues “until repealed by voters”

(San Leandro) or “until ended by voters” (Piedmont) may be logically correct, but it is not transparent. It is not transparent because it implies that the measure itself contains terms and conditions providing for its repeal, or at least that voters will have an opportunity to repeal the tax, even though no such provision or opportunity exists, or is required or planned, and any such activity would certainly not be initiated by the measure’s proponents. What possible reason can the measure’s proponents have for phrasing the time period of the tax in this way? A transparent and impartial description of the length of those taxes would state that they continue indefinitely, or that they do not expire, or that they are permanent.



Questions proposing tax and bond measures often incorrectly imply that funds raised by the measures will be dedicated to programs perceived to be more popular or important in the minds of voters. For example, in addition to raising the general vs. special tax problem discussed further below, the ballot question proposing Alameda County's Measure W says the funds will be used "to provide essential services" and then goes on to list four specific categories of services, including "housing and services for those experiencing homelessness, mental health services, job training [and] social safety net" services before ending with the catch-all term "and other general fund services." The clear implication is that the measure bears some relationship to the specifically mentioned "essential" services, or that such services will be eliminated or curtailed if the measure is not approved. In fact, there is no requirement for the tax proceeds to be used for any specific service, including those specifically mentioned in the question. Indeed, the word "homeless" does not appear anywhere in the operative text of the county ordinance proposed by the question (it does appear in one Whereas clause). Neither do the words "job," "training," "social," "safety," or "net", whether used separately or in the ways they appear in the question (including in the Whereas clauses). Even the word "services" appears only in the Whereas clauses, but not in the text of the ordinance which prescribes how the proceeds of the tax must be spent. In fact, the county could choose to *eliminate* all of the services specifically mentioned in the text of the question without violating the requirements of the ordinance. A ballot question that uses 16 of its 54 words to describe spending on "essential services" which are not even *mentioned*, let alone prescribed, in the requirements of the underlying ordinance, cannot fairly be called "a true and impartial synopsis" of the proposed ordinance.

Similarly, San Leandro's Measure VV suggests the proceeds from the proposed increase in its real estate transfer tax will be used "repairing potholes/streets; supporting seniors, families and local small businesses through COVID-19 economic recovery; preserving 911 emergency response; [and] maintaining youth violence prevention programs." No such spending is required by the proposed ordinance, and none of the words or phrases in the above-quoted text appear anywhere in the ordinance, even though they take up roughly one-third of the question. The tax funds certainly *might* be used for the mentioned spending, but they may also be used for none of it. In either case, the question does not accurately describe the measure.

Also similarly, the question proposing Piedmont's Measure TT recited a list of possible expenditures, including "to repair and maintain city facilities including police and fire stations, parks, and recreation facilities," yet none of these expenditures was required by the proposed ordinance. That such spending *might* occur does not make the question an accurate and impartial synopsis of a measure, which may not result in any additional spending on the mentioned repair and maintenance. Piedmont's measure also included the statement that a purpose of the measure was "to be in alignment with neighboring East Bay Cities." The grand jury did not see how this statement related to a description of the measure or to its purpose.

Ballot questions often contain language that may be relevant to a measure, but that is nevertheless argumentative because it describes a reason for favoring the measure rather than describing the measure itself.

By extension, in the context of such unnecessary or irrelevant language in ballot questions, additional terms describing apparently related “audits” or “citizen oversight” compound the problem by overstating, by implication, the scope of such oversight mechanisms. For example, the question proposing Alameda County’s Measure W ends with the words “with annual audits and citizen oversight.” The natural implication of these words is that audits and oversight will relate to the “essential services” mentioned nearby. The ordinance implementing Measure W does include a citizen oversight committee and an annual audit requirement. However, the scope of both the audit and the oversight of the citizen’s committee will be limited to the

ordinance’s requirements – i.e., ensuring the sales taxes collected are placed in the county’s general fund and used for purposes consistent with general fund expenditures. Since, as discussed above, the ordinance does not require spending on the specifically mentioned services, the annual audits and oversight will by definition have nothing to do with monitoring such uses, *even if* the county chooses to spend the general funds raised on those services. Thus, the question is inaccurate to the extent it suggests these oversight mechanisms will ensure the use of tax proceeds for the specifically mentioned services.

3. Use of Language That Properly Relates to a Measure But is Argumentative. Ballot questions often contain language that may be relevant to a measure, but that is nevertheless argumentative because it describes a reason for favoring the measure rather than describing the measure itself. Courts reviewing ballot questions have found such phrasing, even if it well describes a purpose of the measure, “properly belong[s] in the ballot arguments in favor of the measure, not in the ballot question, which must be cast in neutral, unbiased language.”²⁵ For example, Hayward Measure OO begins with the phrase, “To create more opportunities for residents to volunteer, and to honor Hayward’s commitment to diversity,” before proceeding to describe the parts of the city charter proposed to be amended. Hayward officials described why the amendments were needed, and indeed the stated purpose may well amount to a compelling reason to support the measure. However, none of the charter amendments proposed by the measure, by their terms, will create additional opportunities to volunteer or enhance diversity. They relate solely to removing the requirement to be a registered voter in order to serve on council-appointed commissions. The introductory language suggests that the proposed measure contains provisions that create volunteer opportunities or honor diversity. Even if creating volunteer opportunities and honoring diversity were compelling reasons to vote in favor of Measure OO, the advocacy inherent in the introductory language was misleading and not impartial.

²⁵ McDonough v. Superior Court of Santa Clara (2012) 204 Cal.App.4th 1169, 1176.

Similarly, Dublin USD’s introductory suggestion that funds from the bond measure proposed by Measure H would “protect quality education with funding that cannot be taken by the State” is argumentative and not descriptive of the proposed measure, since presumably all funds spent by a school district will be used for “quality education.” Both the San Leandro and Dublin USD questions mention that the proposed funds cannot be “taken by the state” even though it is not clear how school district or municipal revenues can ever be “taken” by the state government absent extreme circumstances such as insolvency. We found similar language such as “all funds benefiting San Leandro” and “all funds staying in Dublin” to be unnecessary and partisan. By definition, funds raised by a government entity will benefit and “stay” with that agency.

4. Omitting Obviously Relevant Information from Spending, Tax and Bond Questions. Ballot questions on measures with financial implications frequently omit information that should naturally be included in any description designed to be accurate and impartial. Many are examples of providing little or no useful information to the voter, while minimally satisfying the Elections Code requirement for tax measures.

For example, for measures that impose a tax or raise the rate of a tax, the Elections Code requires that the ballot question include the amount of money to be raised annually and the rate and duration of the tax to be levied. The question proposing Alameda County Measure W meets these requirements by stating the proposed ordinance will raise approximately \$150,000,000 annually and stating the rate and duration of the tax but stops there. Left unmentioned is, obviously, the rate of the *existing* county portion of the sales tax. California imposes a statewide sales tax of 7.25%, in addition to which local jurisdictions may impose additional sales taxes. Prior to Measure W, the Alameda County portion was 2.0%. As a result of Measure W, that portion increased to 2.5% — a 25% increase in the county portion.²⁶ Voters may not be aware of how total sales taxes are split among the state, counties, and cities. Hence, providing information to voters on the impact of the proposed increase on overall sales taxes throughout the county, perhaps stated in terms of a range, would enhance the question’s usefulness as an accurate and impartial synopsis. At the very least, in a question proposing to increase a tax, mentioning the existing rate of the *same tax* (i.e., the county sales tax) seems both natural and obvious. The county could have included such additional information in the question and still satisfied the 75-word limit, since the question as presented was only about 55 words long (including the roughly 16 irrelevant words suggesting spending that is not required by the measure, as discussed in section 2 above).

Similarly with San Leandro Measure VV, the question proposing to increase the city’s real estate transfer tax mentioned the amount of the increase—\$5 per \$1,000 of valuation, thus stating the “rate of the tax to be levied”—but, incredibly, failed to mention either the existing rate (\$6) or the proposed new rate (\$11). Voters were left unable to determine the amount of

²⁶ Some Alameda County cities impose additional sales taxes. As a result, the total sales tax in Alameda County (including state, county and municipal portions), without giving effect to Measure W, ranges from 9.25% to 9.75%.

tax that would be imposed in their own situations, whether or not the measure was approved. As with Alameda County, San Leandro could have saved some of the words used to imply spending that is not required by the measure, and used them instead to provide comparative information that should naturally be included in a description intended to be an accurate and impartial synopsis of the proposed tax.

On this point, perhaps Piedmont should be congratulated for the way it phrased its proposed real estate transfer tax increase, by asking voters whether Piedmont shall “increase the real estate transfer tax from \$13.00 to \$17.50 per \$1,000 of transfer price....” With approximately two words more than San Leandro, Piedmont’s question communicated the existing rate, the proposed new rate and the proposed change in the rate. Hence, with essentially zero additional text, the question provided a great deal more highly relevant information to the voter, even though it was information not strictly required by the California Elections Code.

The final example in this category is Berkeley’s Measure JJ. Although the measure by its terms proposed only to change the method for computing annual compensation for the mayor and councilmembers, the glaring and obvious result of these changes was relatively substantial pay increases for the elected officials who proposed the measure. Specifically, as a result of the measure, the mayor’s annual salary increased to \$107,300 from \$61,304, and each councilmember’s salary increased to \$67,599 from \$38,695—a 75% pay increase in each case. The ballot question fails to mention any of these figures, or even that the change in the method of calculating compensation would result in *any* immediate pay increase. Whatever one feels about the merits of the measure, the amounts and relative increases in *compensation to elected officials* that would result from a ballot measure proposed by *the same elected officials* are essential to an understanding of the question. Failing to mention any aspect of any of these amounts or changes rendered the question inaccurate, partisan or both.

5. General Taxes vs. Special Taxes. This report has already discussed unnecessary or irrelevant language in questions proposing tax increases. Specifically, in section 2 we show how the questions proposing Alameda County Measure W, San Leandro Measure VV and Piedmont Measure TT each described spending that was nowhere required by the respective measures that were proposed. We questioned the need and purpose of such language, and believe its presence tends to make the questions inaccurate or partial, for the reasons given in section 2. But such references to specific spending or uses of funds raise another, separate problem which relates to the type of tax involved and the level of voter support needed to approve it.

Each of Alameda County Measure W, San Leandro Measure VV and Piedmont Measure TT proposed a *general tax*. That is, each proposed a tax (on sales in the case of Measure W and on real estate transfers in the cases of Measures VV and TT) that would produce revenues for the general fund of the government entities concerned. Because each was a general tax, approval by a simple majority of voters was required, as compared to a two-thirds majority required to approve special taxes.

Reading the ballot questions proposing those three measures in isolation, it would not be clearly apparent, at least to a person unfamiliar with the intricacies of California election law, that the taxes at issue are intended for general purposes. In each case, the reader's focus is

Ballot questions on measures with financial implications frequently omit information that should naturally be included in any description designed to be accurate and impartial.

naturally brought to the list of specific uses recited by the question, and which takes up a substantial proportion of the question. It would be reasonable for such a reader to conclude from this presentation that the proposed tax is intended to raise funds for the specific services mentioned. Yet if that was the case, neither Alameda County Measure W nor San Leandro Measure VV would have been approved, since each would have required two-thirds approval but in fact received only the approval of a simple majority (50.09% and 53.2%, respectively). (Piedmont's Measure TT failed to receive simple majority approval but would suffer from the same problem had it done so.)

Given the significant difference in the level of voter approval required for special as compared to general taxes, question drafters should be especially mindful of the ways they characterize the intended uses of the taxes concerned, particularly when general taxes are proposed. It is difficult to understand the rationale for listing the specific spending uses recited in Alameda County Measure W, San Leandro Measure VV and Piedmont Measure TT, if the rationale is other than to influence voters to have a more favorable view of the measure by mentioning those specific possible uses to the exclusion of countless others. In addition to inaccurately describing the measure, such an approach also introduces an important ambiguity when interpreting the results of the elections involved. For if voters are influenced to support a measure because they understand the funds will be directed to the specifically mentioned uses (and how can we know for certain that they are not), that means such voters are approving what they understand to be a special tax, not a general tax. This raises issues about the true meaning of their votes, when cast in favor of what is, in the end, properly determined to be a general tax.

6. Additional Considerations. In the course of our investigation, the point was often raised that the 75-word limit on ballot questions imposed by the Elections Code places question drafters in a difficult position, since it is rarely a simple task to convey the key elements of a ballot measure in such a limited number of words. Another frequent comment was that voters are afforded many other opportunities to learn about ballot measures, including, for example, the impartial analysis required to be prepared, and the arguments in favor and against measures that are made available to voters through voter guides. The implication seemed to be that focusing on the ballot question, to the exclusion of these and other information sources, may lead to a misunderstanding of the actual information in the mind of the voter when he or she ultimately is ready to make a choice on the basis of the ballot question.

The grand jury has considered these factors and finds that neither of them should diminish the strength of our criticisms. First and foremost, the law plainly requires ballot questions to be accurate and impartial in and of themselves, and whether or not considered in light of other materials that a voter may have access to. It is no excuse for an inaccurate or partisan question to say that the voters in question are generally sophisticated or civically involved. Moreover, the fact remains that the only aspect of a ballot measure that every voter is certain to see and read is the ballot question. Even if voters take the time to read additional materials on some measures, it is clear that many voters do not review additional materials

for every question they are asked to answer on a ballot. This is especially true when there may be dozens of measures on a given ballot. In these instances, it is especially important that each question meet the standards of accuracy and impartiality required by state law. Municipal officials must be responsible for the accuracy and impartiality of their ballot questions.

By creating a ballot review advisory panel, Alameda County could become the state's leader for fairness and transparency in government.

As to the 75-word limit, we note that four of the six questions we reviewed did not reach that limit, and several included superfluous words bearing no relation to the measure unless they were included for impermissible partisan reasons. In short, a shortage of words does not seem to be the problem. Moreover, if the word limit itself generally posed an obstacle to accuracy and impartiality, we would expect to see inaccurate and partisan language distributed equally both in favor of and against measures. But that is not what we see.

CONCLUSION

For the reasons described above, the ballot questions we reviewed generally fell short of what voters have a right to expect. Although such outcomes are predictable based on the drafting processes used by government entities, and indeed have come to be expected by many voters used to reading ballot questions written in a style that has become commonplace, the grand jury believes such outcomes are not acceptable and should be resisted by all those with a role in observing the legal requirements for accuracy and impartiality. In our interviews, we found officials who are responsible for preparing questions to be sincere in their desire to meet the standards for accuracy and impartiality, even while their overarching goal in drafting the questions was to promote voter approval. All things considered, we understand how questions end up reading the way they do. As we have found, the root of the problem is inherent in the process by which questions are prepared, in combination with the standards applied in the event they are challenged. Given the dynamics of these processes, and the challenges faced by local governments who must appeal to voters to approve many of their plans and programs, it is difficult to imagine the problematic nature of ballot questions changing without some legislative or institutional initiative to spur improvement.

In recognition of these practical realities, the grand jury proposes that the Alameda County Board of Supervisors create an advisory commission composed of impartial and representative citizen volunteers committed to the ideals of accuracy and impartiality, who would review and rate ballot questions according to applicable legal standards as well as general principles of transparency and objectivity. Jurisdictions could submit questions for review on a voluntary basis, in parallel to the development of the questions. The commission would be empowered to develop a 0 to 10 rating or a simple “fair/unfair” or “pass/fail” rating, and would rate all questions in each election, after their adoption, regardless of whether a jurisdiction had submitted the question to the panel for review. In this way jurisdictions would have an incentive to have their questions reviewed prior to adoption, so as to obtain a favorable rating. The advisory panel would also assist jurisdictions in developing better questions, by serving as a neutral appraiser of questions for which there could be divergent views within a particular agency. By reviewing and rating questions based on uniform standards, the proposed panel would also promote greater uniformity in question language, facilitating voters’ understanding.

The grand jury believes such a panel and process would improve the overall quality of ballot questions and enhance the legitimacy of elections in which ballot measures are approved or rejected. Alameda County could become the state’s leader for fairness and transparency in government.

FINDING

Finding 21-16:

Local ballot questions, as currently written, were not always fully transparent, complete, and impartial, impeding voters from making informed decisions.

RECOMMENDATION

Recommendation 21-17:

The Alameda County Board of Supervisors should create an independent advisory committee or commission to conduct a review and issue non-binding ratings, based on uniform standards and guidelines, of ballot questions of measures proposed by all local jurisdictions within the county. The committee members must be committed to the ideals of accuracy and impartiality reflected in state law. The committee should be implemented in time for the 2024 elections. *For an example of how the committee might work, please see Appendix B.*

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the grand jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

RESPONSES REQUIRED

Alameda County Board of Supervisors

Finding 21-16

Recommendation 21-17

APPENDIX B

PRINCIPAL ELEMENTS OF PROPOSED INDEPENDENT ADVISORY COMMITTEE OF COMMISSION TO REVIEW AND RATE BALLOT QUESTIONS

This is only a suggested format based on the grand jury's investigation.

The goals of the commission would be to evaluate upcoming local ballot measures for fairness and accuracy, and to represent all of Alameda County by assuring that multiple constituencies are represented, and to be neutral and impartial. The grand jury supports the creation of a committee but would be open to alternatives such as an elected individual (ombudsman) who could provide the same function. As envisioned by the grand jury, the review process would be advisory and would be consistent with existing state election laws without requiring any amendments. An example of the committee makeup could include a mixture of taxpayers' associations, civic organizations, representatives of labor, local elected officials, etc.

As proposed, the committee would have seven members and would rate the proposed ballot measure in advance of its placement on the ballot for an upcoming election. The grand jury supports either an actual numerical system such as 0 to 10, or a simple pass/fail system. The term of the members would be four years, with staggered start times so that all would not be termed out at once. No one could serve more than two consecutive terms but could again volunteer after a four-year void in service. The committee could be selected similarly to how the Alameda County Civil Grand Jury is currently selected – an initial interview and then a drawing for each position on the committee. This body would operate with legal and staff support from the county counsel. The grand jury encourages the county, cities and other public agencies and districts to utilize and support this concept to show their commitment to unbiased and transparent wording for all ballot measures.

The committee, once established, will develop standards or guidelines as to what language should, and should not, be included in ballot questions under review, based on the central points raised in this grand jury report, including for both tax and non-tax measures, general and special taxes, and bond measures. The committee will accept draft ballot question language early in order to allow potential discussions with the jurisdiction in advance of deadlines to submit the final language to the county Registrar of Voters, at the option of the submitting jurisdiction. A jurisdiction may amend and resubmit ballot questions as many times as it wishes (if time allows). Whether or not submitted in advance, the question will be rated once the deadline for all measures to be on the ballot has passed.

RENE C. DAVIDSON COURTHOUSE TEMPORARY HOLDING FACILITY INSPECTION

On October 20, 2020, the grand jury inspected the Rene C. Davidson Courthouse Temporary Holding Facility in Oakland, accompanied by staff from the Alameda County Sheriff's Office which included a lieutenant, a sergeant and two deputies. Prior to inspecting the facility, the grand jury reviewed the Alameda County Health Department's 2019 inspection report titled, "Alameda County Adult Court and Temporary Holding Facility Inspection Report." This allowed the grand jury to determine whether any noted deficiencies or recommendations for improvement by the Health Department were addressed.



*Elevator, Rene C. Davidson
Courthouse Jail*

The facility temporarily houses detainees awaiting court appearances within the same building. Detainees are transported by van or bus in the morning from other jails in the county, and arrive through a secured, gated underground sally port. Detainees are checked in when they enter the courthouse building. A specially equipped elevator is used to move detainees from the sally port to courtrooms and cells. The specially equipped elevator has partitions that separate detainees from staff. In May 2021, repair has begun on this elevator and while it is out of service, detainees are transported to the jail by alternate elevators.

Due to the COVID-19 pandemic, the use of the courthouse jail has been minimal, the number of detainees per day has only been one or two, with a maximum of three or four. For example, although no detainees were present in the jail during our inspection, the grand jury was informed that two detainees from Santa Rita Jail had scheduled court appearances that day. However, during non-pandemic times, the range of detainees per day can be 70 to 90, with a maximum of 120. The full cadre of staff normally assigned to this facility is 20 deputy sheriffs or bailiffs, three supervising officers, and eight sheriff's technicians.

Due to the pandemic, safety and sanitation measures were reviewed. Before leaving other jails, detainees have temperature checks and are issued facemasks. They arrive with a certification of health and COVID-19 status, and a classification identifying mental status, tendency toward violence, and any requirements for separation from other detainees or other special treatment. Upon arrival, detainees are issued packets of hand sanitizer and antiseptic wipes and assigned to a cell. Cells are cleaned at least once a day by custodial staff. Toilet paper rolls were seen in nearly every cell and at all toilets in the pods. Staff safety protocols include temperature checks and the completion of a COVID-19 symptom questionnaire at the

beginning of a shift. Facemasks are worn by staff and detainees at all times. Disposable gloves, hand sanitizer and antiseptic wipes were observed in several staff areas throughout the courthouse jail.

We found fire extinguishers, first aid kits, automated external defibrillator, and Narcan to be available, maintained, and unexpired. Floors were well swept and surfaces clean and wiped down. All toilets were in working order, but some day-use area sinks had missing faucet handles. The staff reported these were on back order from the county General Services Agency, and that it is difficult to locate hardware that matched 82-year old fixtures. Mechanical controls, such as those used for unlocking and opening cell doors, were tested and found to be in order. Surveillance cameras were functioning and were monitored in an enclosed control room.



Security cameras being inspected by a member of the grand jury

Detainees spend no more than nine hours at the courthouse, never overnight. Each cell contains two twin bunk beds without mattresses, a toilet, and a sink. A common area outside of the cells provides park-bench style seating. Lunches as well as needed medications accompany the detainees to the courthouse. Detainees normally have free access to a day room from their cells. Phone calls and visitors are not allowed. Should the detainee and their attorney wish to meet in private, there are two interview rooms available for them. A special cell is available to accommodate a detainee using a wheelchair since the regular jail cell doors are not wide enough.

The jury also reviewed emergency evacuation procedures, inquiring mainly about fire safety. One secure fire-resistant stairwell is locked to public use and detainees are led down the stairs to the sally port accompanied by deputies, and outside the building if necessary.

All deputies have immediate access to new and updated policies and procedures through an electronic application that can be accessed by cell phone, tablet, or computers.

The grand jury found the Rene C. Davidson Courthouse Temporary Holding Facility to be orderly and efficient, and the staff impressed us as experienced and knowledgeable. During these extraordinary times, the grand jury observed that staff had adapted to and implemented several changes due to the pandemic, including several new safety and sanitary measures.

FINDINGS & RECOMMENDATIONS:	<i>None</i>
RESPONSES REQUIRED:	<i>None</i>

OAKLAND POLICE DEPARTMENT JUVENILE HOLDING FACILITY INSPECTION

On November 10, 2020, the grand jury inspected the Oakland Police Department (OPD) juvenile holding facility. The facility is located at 455 Seventh Street in Oakland. The OPD sergeant who supervises the facility assisted the grand jury members during the inspection.

Per OPD staff, during the COVID-19 pandemic lockdown, no juveniles are processed at the OPD facility. Rather, they are taken directly to Juvenile Hall in San Leandro. Prior to the statewide lockdown, juveniles that were brought to the facility were asked a series of questions to determine their level of exposure or symptoms of COVID-19 or other communicable diseases. The facility does not offer medical care or mental health services, and there is no equipment for drug or alcohol testing.

This facility is designated as a temporary holding facility. Prior to the COVID-19 pandemic, the facility processed between 30 and 60 juveniles per month. The facility is inspected throughout the year by several state agencies and is current on all required inspections. The agencies inspecting the facility are the California Board of State and Community Corrections, the Alameda County Juvenile Justice and Delinquency Prevention Commission, the Alameda County Health Department, and the Oakland Fire Department. The grand jury reviewed the policies, procedures and orders manual, which is updated weekly and is internally accessible online to OPD staff.



OPD Juvenile Division Holding Area

The facility has sufficient video monitoring of hallways and holding areas. Juveniles are kept separate by gender and gang affiliation. If detainees need language interpretation, the facility has access to Language Line — a private company that offers interpreters via telephone. Juveniles are allowed to make one phone call upon detention. Prior to entering the facility, the arresting officer will search the juvenile for any weapons or illegal contraband. A second search is conducted once the juvenile enters the facility. OPD personnel must check their weapons into gun lockers before entering any part of the holding facility.

Multiple safety and departmental procedure signs are displayed throughout the facility. Automatic external defibrillator machines, first aid kits, and emergency exit route signs are clearly posted. This equipment is up-to-date. The juvenile area has two holding cells with a bench, toilet and sink. One cell was missing a soap dispenser.



Juvenile Division Holding Cell

The facility provides the arresting officer a workstation to record the juvenile's personal information, photo, and fingerprints in the OPD database, which has the capability to check for prior law enforcement contact or criminal records. Juveniles who are witnesses to a crime may also be brought to the facility to be interviewed. Interviews are conducted in one of two small rooms with two chairs,



*Juvenile Division - Fingerprinting
and Booking Station*

a table, a camera, and a microphone for recording the interview. If a juvenile is kept at the facility for longer than six hours, food will be offered upon request. Officers must also complete a "Monthly Report on the Detention of Minors" form explaining the reason for any extended detentions.

The grand jury found the Oakland Police Department Juvenile Holding Facility to meet or exceed the expectations for this type of facility. The staff were very cooperative and professional, and appeared to take pride in their efforts to provide a clean and safe environment.

FINDINGS & RECOMMENDATIONS:	<i>None</i>
RESPONSES REQUIRED:	<i>None</i>

UNION CITY POLICE DEPARTMENT JAIL INSPECTION



On October 27, 2020, the grand jury inspected the Union City Police Department Jail. This facility temporarily holds adult detainees prior to transferring custody to the Alameda County Sheriff's Santa Rita jail in Dublin, CA. Juvenile detainees are transferred to the Alameda County Juvenile Justice Center (ACJJC) in San Leandro, CA.

While conducting the inspection with jail staff, the grand jury reviewed jail and COVID-19 policies and procedures for the facility. Upon intake, detainees are asked health, dietary, and standard COVID-19 protocol questions to ensure the health and safety of detainees and staff. Detainees requiring medical attention are transferred to Washington Hospital in Fremont. Staff are also trained in first aid and automated external defibrillator use.



Jail Vending Machine

Upon request, food is purchased for detainees at local fast-food restaurants or from vending machines at the police department at no cost to the detainee.

One specially trained Public Services Officer (PSO) is permanently assigned to the jail. When the PSO is off-duty, other officers provide coverage. When female detainees are held, a female officer is assigned.

The jail has one juvenile holding cell used to hold up to three detainees awaiting transfer to the ACJJC. There are three additional holding cells that can accommodate a maximum of nine adult detainees. Adult cells contain a toilet, a drinking faucet, a sink, and sufficient lighting, all in working order.

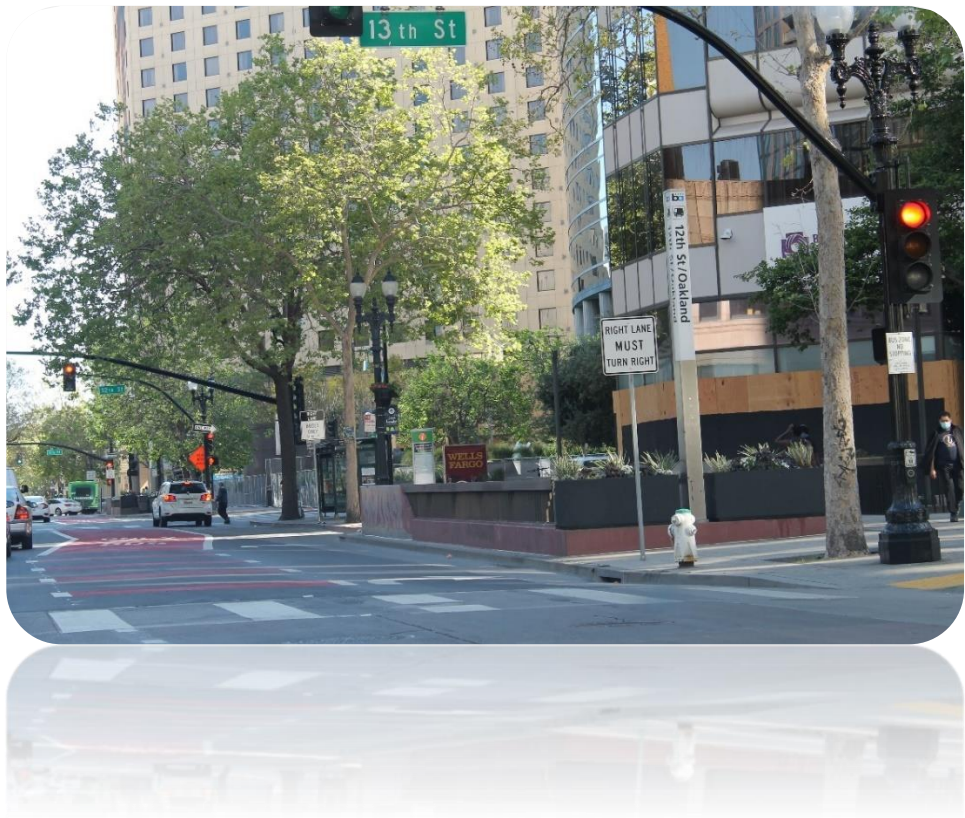
In a 2013 grand jury inspection report of this facility, it was noted that there was ammunition in uncovered trays in plain view in the sally port (the former prisoner-intake area). At our

recent inspection, we were informed that the sally port is no longer a part of the detainee intake area, and ammunition is now stored in a locked closet outside the jail.

The grand jury found no deficiencies while inspecting the Union City Police Department jail.

FINDINGS & RECOMMENDATIONS: *None*

RESPONSES REQUIRED: *None*



Downtown Oakland, CA / Photo Courtesy of Royce Johnson



Livermore Valley Vineyard, Alameda County, CA / Photo Courtesy of Charlene Bush-Donovan

ABOUT THE ALAMEDA COUNTY GRAND JURY

The Alameda County Grand Jury is mandated by Article 1, Section 23 of the California Constitution. It operates under Title 4 of the California Penal Code, Sections 3060-3074 of the California Government Code, and Section 17006 of the California Welfare and Institutions Code. All 58 counties in California are required to have grand juries.

In California, grand juries have several functions:

- 1) to act as the public watchdog by investigating and reporting on the affairs of local government;
- 2) to make an annual examination of the operations, accounts and records of officers, departments or functions of the county, including any special districts;
- 3) to inquire into the condition and management of jails and prisons within the county;
- 4) to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office; and
- 5) to weigh criminal charges and determine if indictments should be returned.

Additionally, the grand jury has the authority to investigate the following:

- 1) all public records within the county;
- 2) books and records of any incorporated city or joint powers authority located in the county;
- 3) certain housing authorities;
- 4) special purpose assessing or taxing agencies wholly or partly within the county;
- 5) nonprofit corporations established by or operated on behalf of a public entity;
- 6) all aspects of county and city government, including over 100 special districts; and
- 7) the books, records and financial expenditures of any government agency including cities, schools, boards, and commissions.

Many people have trouble distinguishing between the grand jury and a trial (or petit) jury. Trial juries are impaneled for the length of a single case. In California, most *civil* grand juries consist of 19 citizen volunteers who serve for one year and consider a number of issues. Most people are familiar with *criminal* grand juries, which only hear individual cases and whose mandate is to determine whether there is enough evidence to proceed with a trial.

This report was prepared by a *civil* grand jury whose role is to investigate all aspects of local government and municipalities to ensure government is being run efficiently, and that government monies are being handled appropriately. While these jurors are nominated by a Superior Court judge based on a review of applications, it is not necessary to know a judge in order to apply. From a pool of 25-30 accepted applications (an even number from each supervisorial district), 19 members are randomly selected to serve.

History of Grand Juries

One of the earliest concepts of a grand jury dates back to ancient Greece where the Athenians used an accusatory body. Others claim the Saxons initiated the grand jury system. By the year 1290, the accusing jury was given authority to inquire into the maintenance of bridges and highways, the defects of jails, and whether the sheriff had kept in jail anyone who should have been brought before the justices.

The Massachusetts Bay Colony impaneled the first American grand jury in 1635 to consider cases of murder, robbery, and wife beating. Colonial grand juries expressed their independence from the crown by refusing in 1765 to indict leaders of the Stamp Act or bring libel charges against the editors of the *Boston Gazette*. The union with other colonies to oppose British taxes was supported by a Philadelphia grand jury in 1770. By the end of the colonial period, the grand jury had become an indispensable adjunct of government.

Grand Jury Duties

The Alameda County Grand Jury is a constituent part of the Superior Court, created for the protection of society and the enforcement of law. It is not a separate political body or an individual entity of government, but is a part of the judicial system and, as such, each grand juror is an officer of the court. Much of the grand jury's effectiveness is derived from the fact that the viewpoint of its members is fresh and unencumbered by prior conceptions about government. With respect to the subjects it is authorized to investigate, the grand jury is free to follow its own inclinations in investigating local government affairs.

The grand jury may act only as a whole body. An individual grand juror has no more authority than any private citizen. Duties of the grand jury can generally be set forth, in part, as follows:

1. To inquire into all public offenses committed or triable within the county (Penal Code §917);
2. To inquire into the case of any person imprisoned and not indicted (Penal Code §919(a));
3. To inquire into the willful or corrupt misconduct in office of public officers of every description within the county (Penal Code §919(c));
4. To inquire into sales, transfers, and ownership of lands which might or should revert to the state by operation of law (Penal Code §920);

5. To examine, if it chooses, the books and records of a special purpose, assessing or taxing district located wholly or partly in the county and the methods or systems of performing the duties of such district or commission. (Penal Code §933.5);
6. To submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to the county government (Penal Code §933), with a copy transmitted to each member of the board of supervisors of the county (Penal Code §928); and,
7. To submit its findings on the operation of any public agency subject to its reviewing authority. The governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elective county officer or agency head for which the grand jury has responsibility (Penal Code §914.1) and shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. (Penal Code §933(c)).

Secrecy/Confidentiality

Members of the grand jury are sworn to secrecy and all grand jury proceedings are secret. This secrecy guards the public interest and protects the confidentiality of sources. The minutes and records of grand jury meetings cannot be subpoenaed or inspected by anyone.

Each grand juror must keep secret all evidence presented before the grand jury, anything said within the grand jury, or the manner in which any grand juror may have voted on a matter (Penal Code §924.1). *The grand juror's promise or oath of secrecy is binding for life.* It is a misdemeanor to violate the secrecy of the grand jury room. Successful performance of grand jury duties depends upon the secrecy of all proceedings. A grand juror must not divulge any information concerning the testimony of witnesses or comments made by other grand jurors. The confidentiality of interviewees and complainants is critical.

Legal Advisors

In the performance of its duties, the grand jury may ask the advice (including legal opinions) of the district attorney, the presiding judge of the superior court, or the county counsel. This can be done by telephone, in writing, or the person may be asked to attend a grand jury session. The district attorney may appear before the grand jury at all times for the purpose of giving information or advice.

Under Penal Code section 936, the California Attorney General may also be consulted when the grand jury's usual advisor is disqualified. The grand jury has no inherent investigatory powers beyond those granted by the legislature.

Annual Final Report

At the end of its year of service, a grand jury is required to submit a final report to the superior court. This report contains an account of its activities, together with findings and recommendations. The final report represents the investigations of the entire grand jury.

Citizen Complaints

As part of its civil function, the grand jury receives complaints from citizens alleging government inefficiencies, suspicion of misconduct or mistreatment by officials, or misuse of taxpayer money. Complaints are acknowledged and may be investigated for their validity. All complaints are confidential. If the situation warrants and corrective action falls within the jurisdiction of the grand jury, appropriate solutions are recommended.

The grand jury receives dozens of complaints each year. With many investigations and the time constraint of only one year, it is necessary for each grand jury to make difficult decisions as to what it wishes to investigate during its term. When the grand jury receives a complaint it must first decide whether or not an investigation is warranted. The grand jury is not required by law to accept or act on every complaint or request.

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints in writing. Complaints should include the name of the persons or agency 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. Complainants should include their names and addresses in the event the grand jury wishes to contact them for further information. A complaint form can be obtained from the grand jury's website at: <http://grandjury.acgov.org/complaints.page>. Complaints are accepted electronically via the website, by email (grandjury@acgov.org), or by US Mail.

Mail complaints to:
Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, CA 94612

An acknowledgment letter is routinely sent within one week of receipt of a complaint.

How to Become a Grand Juror

Citizens who are qualified and able to provide one year of service, and who desire to be nominated for grand jury duty, may complete a grand jury application found on the grand jury website. On the basis of supervisorial districts, approximately 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 be impaneled to serve for the year are selected by a random drawing. This is done in late June before the jury begins its yearly term on July 1. To complete an online application, please visit: www.acgov.org/grandjury.

Qualification of Jurors

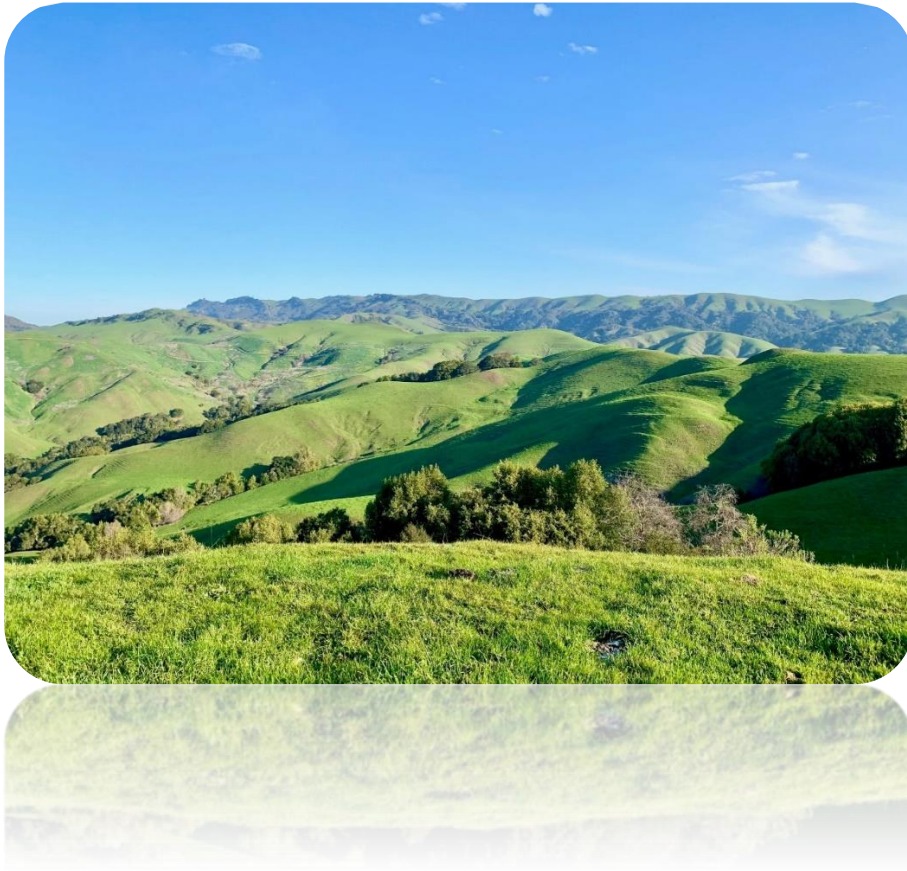
Prospective grand jurors must possess the following qualifications pursuant to Penal Code section 893: be a citizen of the United States; at least 18 years of age; a resident of Alameda County for at least one year immediately before being selected; possess ordinary intelligence, sound judgement and 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 in a group; an interest in community affairs; possession of investigative skills and the ability to write reports; and a general knowledge of the functions 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 the state; the person has 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 one-year term (July 1 through June 30). Grand jurors should be prepared, on average, to devote two days each week to grand jury meetings. Currently, the grand jury meets every Wednesday and Thursday from 9:00 a.m. to 1:00 p.m., with additional days if needed. Grand jurors are required to complete and file a Statement of Economic Interest as defined by the state's Fair Political Practices Commission, as well as a Conflict of Interest form. Grand jurors are paid \$15.00 per day for each day served, as well as a county mileage rate (currently 58 cents per mile) portal to portal, for personal vehicle usage.

Persons selected for grand jury duty are provided with an extensive, month-long orientation and training program in July. This training includes tours of county facilities and orientation by elected officials, county and department heads, and others. The orientation and training, as well as the weekly grand jury meetings, take place in Oakland. Selection for grand jury service is a great honor and one that offers an opportunity to be of value to the community.



Hills of Rural Castro Valley, Alameda County, CA

CITIZEN COMPLAINT GUIDELINES

The Alameda County Grand Jury welcomes communication from the public as it can provide valuable information regarding matters for investigation. Receipt of all complaints will be acknowledged. The information provided will be carefully reviewed to assist the grand jury in deciding what action, if any, to take. If the grand jury determines that a matter is within the legally permissible scope of its investigative powers and would warrant further inquiry, additional information may be requested. If the matter is determined not to be within the grand jury's authority to investigate (e.g., a matter involving federal or state agencies or institutions, courts or court decisions, or a private dispute), there will be no further contact by the grand jury.

By law, the grand jury is precluded from communicating the results of its investigation, except in one of its formal public reports. All communications are considered but may not result in any action or report by the grand jury.

The jurisdiction of the Alameda County Grand Jury includes the following:

- consideration of evidence of misconduct by officials within Alameda County;
- investigation and reports on operations, accounts, and records of the officers, departments or functions of the county and cities, including special districts and joint powers agencies; and
- inquiry into the condition and management of jails within the county.

A complaint form can be submitted on the grand jury's website at:

<http://grandjury.acgov.org/complaints.page>. Complaints are accepted via the website, by email, or US Mail.



Ballena Bay, Alameda, CA

HOW TO RESPOND TO FINDINGS & RECOMMENDATIONS IN THIS REPORT

Pursuant to the California Penal Code sections 933 and 933.05, the person or entity responding to each grand jury finding shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

The person or entity responding to each grand jury recommendation shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

SEND ALL RESPONSES TO:

Presiding Judge Tara M. Desautels
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

A COPY MUST ALSO BE SENT TO:

Cassie Barner
c/o Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612

All responses for the 2020-2021 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.



Boat Rowing on Lake Merritt, Oakland, CA