

**FILED**

**JUN - 5 2000**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF TRINITY  
BY: DONNA REGNANI, DEPUTY CLERK**

**TRINITY COUNTY GRAND JURY**

**1999-2000**

**JUDICIAL COMMITTEE  
FINAL REPORT**

**CITIZEN COMPLAINT  
INDIGENT MISDEMEANOR REPRESENTATION**

**This report was approved  
On May 25, 2000**

**1999-2000 TRINITY COUNTY GRAND JURY  
JUDICIAL COMMITTEE  
FINAL REPORT**

**CITIZEN COMPLAINT  
INDIGENT MISDEMEANOR REPRESENTATION**

**PURPOSE:**

The Grand Jury is charged with reviewing County Government.

**BACKGROUND:**

Trinity County is required to provide legal services for indigent criminal defendants (persons unable to employ legal counsel). In the past, local attorneys under contract with Trinity County have provided this service.

On April 6, 1999, a contract was executed by and between Trinity County and John A. Barker & Associates, (a Professional Law Corporation with its corporate office in Madera, California), to provide indigent misdemeanor public defender services.

A citizen's complaint was received by the Grand Jury alleging violations of several provisions of this contract.

**METHOD OF INVESTIGATION:**

Interviews were conducted with the complainant, local attorneys, local judges, the current contract attorney, the District Attorneys Office, the County Administrative Officer, the County Counsel, and the Chairman of the Trinity County Board of Supervisors.

Documents were reviewed, including past and present Indigent Misdemeanor And Conflict contracts and amendments, contract proposals, invoices, and county government memos and letters.

**FINDING #1**

Section 17 (amended) and section 7 of the current INDIGENT MISDEMEANOR AND CONFLICT CONTRACT both state, in part: "CONTRACTOR shall maintain a full-time office open from 9 a.m. to 5 p.m. Monday through Friday, except holidays, in Weaverville, California..."

The above stated provision is very important in Trinity County, where many people do not have telephones and must travel substantial distances to conduct business in Weaverville. The Contractor is, and has been, in violation of this provision.

### **RECOMMENDATION #1**

The County Administrative Officer and the County Counsel take immediate steps to enforce sections 17 (amended) and 7 of the INDIGENT MISDEMEANOR AND CONFLICT CONTRACT.

### **FINDING #2**

One of the major selling points of the current Contractor in bidding for the INDIGENT MISDEMEANOR AND CONFLICT CONTRACT was the criminal law experience of the attorney to be appointed to Trinity County. Two months after the awarding of the contract, this attorney left Trinity County.

The replacement attorney appointed by the Contractor does not meet the experience requirements as set forth in Section 2 of the AMENDMENT TO INDIGENT MISDEMEANOR AND CONFLICT CONTRACT, signed on April 20, 1999. Specifically, this refers to the statement in the Contractors' proposal that states: The Contractor "would provide one (1) full-time attorney with a minimum of three (3) years' professional experience, primarily in the area of criminal law".

(PLEASE NOTE: The Grand Jury is not making any evaluation or statement regarding the job performance of the current or past indigent misdemeanor attorneys.)

### **RECOMMENDATION #2**

The County Administrative Officer and the County Counsel take steps to enforce the experience requirements section of the INDIGENT MISDEMEANOR AND CONFLICT CONTRACT or renegotiate the contract.

### **FINDING #3**

Section (N) of the MEMORANDUM OF UNDERSTANDING dated July 1, 1998, by and between the Trinity County Superior Court Judges, the Trinity County Board of Supervisors, the Trinity County Clerk, the Trinity County Auditor, the Trinity County Administrative Officer, and the Trinity County Marshal, states, in part:

"Both judges shall participate in the evaluation of the professional qualifications of public defender applicants and in any interview process that is utilized by the County."

### **RECOMMENDATION #3:**

In the future, section (N) of the MEMORANDUM OF UNDERSTANDING should be followed.

### **FINDING #4:**

There were some disputes and some confusion during the bid proposal and selection process for the INDIGENT MISDEMEANOR AND CONFLICT CONTRACT.

#### **RECOMMENDATION#4**

Trinity County should have a written policy with standard procedures to follow for the solicitation by the county of bids for legal services. The solicitation of bids should include a well defined scope of work to be performed. It would be helpful in drafting this policy to request comments/suggestions from both judges and the rest of the local legal community.

#### **FINDING#5**

During the course of its investigation the Grand Jury found it difficult, at times, to obtain information pertaining to county contracts. This seemed to be due to the large number of contracts the county has at any given time, and the lack of a centralized filing system for these contracts.

#### **RECOMMENDATION #5**

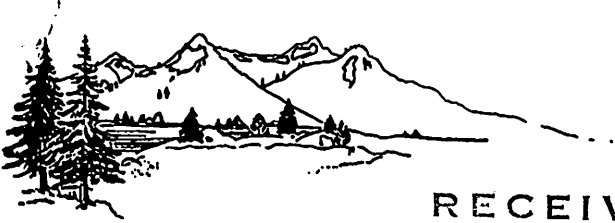
A centralized file should be created that lists all current county contracts, amendments to contracts, and the location at which the contracts are filed. This file should be organized in such a manner that requests to the county for copies of contracts can be met on a timely basis and copies of the contract, with all amendments attached, provided.

#### **CONCLUSION:**

Several allegations in the citizen's complaint were found to be factual and merit corrective action by the County. During the bid proposal selection process for the current INDIGENT MISDEMEANOR AND CONFLICT CONTRACT, one of the local judges and many other members of the local legal community expressed concerns to the Board of Supervisors about signing a contract with a legal corporation (which then hires a subcontracted attorney), versus an individual attorney. The Grand Jury recommends to the Board of Supervisors that in the bid selection process for future indigent representation contracts these concerns be addressed.

#### **30-DAY RESPONSE REQUESTED FROM:**

Trinity County Board of Supervisors, Trinity County Superior Court Judges, Trinity County Administrative Officer, Trinity County Counsel, Trinity County Auditor, Trinity County District Attorney.



# TRINITY COUNTY

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JUL 27 2000

SUPERIOR COURT  
JUDGE'S CHAMBERS

## OFFICE OF THE COUNTY ADMINISTRATOR

*Administration — Human Resources — Risk Management*

*Grant Management — Information & Technology*

*P. O. Box 1613 Weaverville, CA 96093-1613*

*County Administrator Phone: (530) 623-1382*

*Human Resources Phone (530) 623-1325 FAX (530) 623-4222*

*JEANNIE NIX-TEMPLE, County Administrative Officer*

July 26, 2000

The Honorable John K. Letton, Presiding Judge  
Superior Court

RE: Response to 1999-2000 Trinity County Grand Jury Judicial Committee Final  
Report--Citizen Complaint, Indigent Misdemeanor Representation

Dear Judge Letton:

The Grand Jury has requested that I respond as the County Administrative Officer to their findings and recommendations regarding the citizen complaint regarding the Indigent Misdemeanor Contract. My response is as follows:

### **Finding #1:**

I agree that the contract requires that the contracting firm must provide a full-time office staff in Weaverville. Prior to this report, I was not aware that Barker and Associates was not meeting this provision. After hearing this, County Counsel investigated, and the situation has now been corrected with a full-time secretary.

### **Recommendation #1:**

This situation has been corrected.

### **Finding #2:**

The attorney providing services under the misdemeanor contract possesses the required three years' professional experience, primarily in criminal law. I believe that the Grand Jury is incorrect in their belief that he does not.

### **Recommendation #2:**

The County Counsel and I checked the experience level before the attorney was hired.

### **Finding #3:**

I am aware that the current Memorandum Of Understanding between the Courts and the County indicates that both judges will be involved in the selection process for the

Indigent Defense Contracts. This agreement was signed after the selection of the current misdemeanor contractor.

**Recommendation #3:**

Since the MOU exists and is legally binding at this time, we will follow the terms of the document. Both the County Counsel and I were very involved in the process of developing the Memorandum of Understanding with the Courts.

**Finding #4:**

There were disputes in the selection process for the Misdemeanor Indigent Defense Contractor. A few of the local attorneys, and the deputy district attorneys felt that they should be a part of the process of selection. One of the judges was not included. However the selection panel did include the Presiding Judge of the Superior Court, two supervisors, the County Counsel, the County Auditor/Controller and myself. The Requests for Proposals were advertised more broadly, as recommended by the 97/98 Grand Jury. The decision to select the Barker firm was based on what we believe to be the lowest possible cost to the taxpayer accompanied by the best service to the clients.

**Recommendation #4:**

The issue of providing a well-defined scope of work on Requests for Proposals has been implemented. We have and will continue to seek input from the local judges. I would not think it appropriate to seek input from all the local legal community. It is the County's responsibility to define, advertise for, select, and pay for the provision of indigent legal defense for residents of the County who need it.

**Finding #5:**

I agree.

**Recommendation #5:**

We are in the process of developing a centralized filing system for all contracts. The County Auditor/Controller has taken the lead on this task. In the very near future, all contracts should be easily produced.

**Conclusion:**

We have already implemented many of the recommendations by the Grand Jury. I believe that the best decision for an indigent defense contractor was made in this situation. The estimated savings to the taxpayer for this year is significant and we have not received complaints from clients stating they are not being represented well. County Counsel, the Auditor and I have had meetings with the contractor to review any problems and we feel comfortable with all resolutions.

Counsel, the Auditor and I have had meetings with the contractor to review any problems and we feel comfortable with all resolutions.

Thank you for the opportunity to respond.

Sincerely,

  
Jeannie Nix-Temple  
County Administrative Officer

JNT/pt



# TRINITY COUNTY

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JUN - 5 2000

SUPERIOR COURT  
JUDGE'S CHAMBERS

OFFICE OF THE COUNTY COUNSEL  
Post Office Box 1428 Weaverville, California 96093  
Phone: (530) 623-1382 FAX (530) 623-4222

DAVID R. HAMMER  
County Counsel

June 5, 2000

The Honorable John K. Letton, Presiding Judge  
Superior Court

Re: Response to 1999-2000 Trinity County Grand Jury Judicial Committee Final Report--Citizen  
Complaint Indigent Misdemeanor Representation

Dear Judge Letton:

The Grand Jury has requested a response from me as County Counsel. Pursuant to Penal  
Code Section 933.05, I respond as follows:

## FINDING #1:

I agree that the contract requires Barker & Associates to maintain a full-time office open from nine to five and that the provision is important to provide services to indigent defendants whom the Public Defender is appointed to represent. I do not know the extent to which the contractor is, or has been, in violation of the provisions of the contract. On May 25, 1999, I wrote to the Barker firm, and the attorney then providing services under the Barker contract, reminding them of the requirements of the contract. This was in response to a statement by a local judge that the office was not being staffed during normal business hours. After receiving the Grand Jury's report, I called John Barker and was advised that prior to June 1, 2000, the firm had a secretary employed half time, who was supposed to be in the office during any period in which the attorney is in court. Based upon two of calls I made to the local office, I do not believe the office has been staffed during all normal working hours. I advised Mr. Barker of this fact and he stated that commencing that June 1, 2000, there will be a full-time secretary. He has now confirmed that in writing.

## RECOMMENDATION #1:

This recommendation has been implemented. As stated above, the Barker firm is now ensuring that there is a full-time secretary. I am informed that the attorney providing services under the Barker contract was interviewed by the Grand Jury Committee, but the issue of office hours was not discussed.

## FINDING #2:

I agree in part with the first paragraph of Finding #2. The criminal experience of the attorney interviewed with Barker and Associates was a factor in selecting the Barker firm; however, Donnie Maxwell, the Vice President and Operations Manager for the corporation stated



to the interview panel the commitment to provide another qualified attorney, if for any reason Mr. Neal did not remain in Trinity County.

I do not agree with the second paragraph of Finding #2 which states that the replacement attorney does not meet the experience requirement of a full-time attorney with a minimum of three years professional experience, primarily in the area of criminal law. The attorney providing the services under the contract was admitted to practice law on June 7, 1996. He commenced performing services under the contract on June 21, 1999, just 14 days more than three years after he was admitted to the Bar. His resume, which was provided by the Barker firm, states his experience in the practice of law, and his intern/clerkship with the San Diego County Office of Alternate Public Defender, prior to being admitted to practice law. I advised the Grand Jury Committee that the attorney providing the services does meet the requirements of the contract. It is unknown on what basis the Grand Jury made the finding that he does not meet the requirements.

**RECOMMENDATION #2:**

The recommendation will not be implemented. It is not warranted, because the requirements of the contract are already being met. Further, since the making of the contract, the attorney providing the services has had an additional year of experience, thereby totaling four years, while the contract requires only three years.

**FINDING #3:**

I agree that the Memorandum of Understanding dated July 1, 1998 between the Courts and the County provides that both judges shall participate in evaluation of the professional qualifications of the public defender applicants, but disagree with the implication that the agreement was in effect at the time that the interviews for the existing public defender took place. The Memorandum of Understanding, a copy of which was provided to the Grand Jury, shows that it was signed by the presiding judge of the Superior Court on May 11, 1999, and by the chairman of the Board of Supervisors on June 11, 1999. The interviews for the misdemeanor public defender contract were conducted on or about March 24, 1999 and the contract, a copy of which was provided to the Grand Jury, is dated April 6, 1999. The interviews and the making of the contract took place prior to the presiding judge and Board of Supervisors signing the Memorandum of Understanding which provides that both judges shall participate in the interview process. When I was interviewed by the Grand Jury Committee, I advised them of these facts, and the reasons why one of the judges was not included in the interview process for this particular contract for public defender services.

**RECOMMENDATION #3:**

The recommendation has been implemented because it is part of the Memorandum of Understanding, which is binding on the County.

**FINDING #4:**

I agree that there were some disputes during the bid proposal and selection process for the indigent misdemeanor and conflict contract, but I am not aware of any confusion. The County's goal is to ensure competent representation for indigent defendants and to ensure that the taxpayers receive the best value for the tax dollars spent on indigent defense. The 1997-98 Grand Jury recommended that the candidate search for Public Defenders be broadened to

include, at a minimum, all of Shasta and Humboldt Counties, for the purpose of increasing the number of viable responses, improving the County's negotiating position, and providing a wider selection of candidates. The 1999 Request for Proposal was distributed to the Humboldt County Bar Association, the Shasta-Trinity Bar Association, all attorneys practicing in Trinity County, the Siskiyou County Bar Association, the Tehama County Bar Association, the California Public Defenders' Association, and all attorneys who had submitted to the County a copy of the Request for Proposal. The disputes were primarily caused by the desire of some local attorneys and one of the judges for the County to renew the contract with the attorney who held the public defender contract, rather than award the contract to the Barker firm.

#### **RECOMMENDATION #4:**

The recommendation that the solicitation for bids should include a well-defined scope of work to be performed has been implemented. The Request for Proposal for Public Defender services provided under the felony contracts which expire October 31, 2000 has a well-defined scope of work to be performed. The Request for Proposal which was issued for the misdemeanor contract on February 10, 1999 consisted of one page. The Request for Proposal which was issued May 3, 2000 for the felony contract consists of nine pages, and is very detailed. The recommendation by the Grand Jury that the County should have a written policy with standard procedures to follow for solicitations by the County of bids for legal services will not be implemented because it is not warranted. The County issues many, many requests for proposals for services and contracts. Each is unique and based on the type of services to be provided. To the extent that the Grand Jury's recommendation implies that the Request for Proposal issued in 1999 could have been more specific, I agree. The Grand Jury's recommendation that it would be helpful in drafting the policy to request comments/suggestions from both judges and the rest of the legal community has been implemented in part, but part of the recommendation is not warranted. The Request for Proposal for the contract expiring in 2000 was submitted to the presiding judge for comments and suggestions. It was not submitted to the legal community because three of those attorneys currently have contracts with the County to provide legal services and all of them may be presenting bids. An attorney who is going to bid on the contract would have a conflict of interest in participating in drafting the request proposal for the bid.

#### **FINDING #5:**

I agree that the large number of contracts that the County has at any given time and the system that has been used for maintaining the contracts makes it difficult at times to obtain information pertaining to the contracts.

#### **RECOMMENDATION #5:**

A centralized filing of all current County contracts is being implemented, as the Grand Jury was advised. This system includes a computerized index to all contracts, and a calendaring system for tracking the dates for review, termination, and other relevant dates.

#### **CONCLUSION:**

It is not known on what evidence this Grand Jury Committee made its findings, some of which are in conflict with the documents I provided to the Committee. It is true that one of the local judges and many members of the local legal community expressed concerns to the Board of

Supervisors about signing a contract with a corporation, versus an individual attorney. The Requests for Proposal for the Public Defender Services under the Felony Contract which was issued May 3, 2000 solicits proposals from associations of attorneys, law firms, and individual attorneys. It is not in the best interest of the taxpayers and citizens of Trinity County to exclude corporations from the bidding process. Many lawyers are professional law corporations which have anywhere from one to more than 200 attorneys. For Fiscal Year 1998-99 the County paid a total of \$231, 870.73 for public defender and investigator services. For the first three quarters of Fiscal Year 1999-2000, after implementation of the new contract with Barker and Associates, the County paid a total of \$125,594. Based upon these figures, the County will pay approximately \$64,000 less during the current fiscal year than was paid during the last fiscal year. In spite of the decrease in the cost of providing services, the attorney currently providing the services has gone to trial more than the former provider.

It is respectfully requested a copy of this response be published with the final Grand Jury Report.

Thank you for the opportunity to provide this response.

Very truly yours,

A handwritten signature in cursive script that reads "David R. Hammer". The signature is written in dark ink and is positioned above the printed name.

David R. Hammer  
County Counsel

DRH/pt



# TRINITY COUNTY

BRIAN E. MUIR, COUNTY AUDITOR-CONTROLLER  
P.O. BOX 1230, WEAVERVILLE, CALIFORNIA 96093-1230  
PHONE (530) 623-1317 FAX (530) 623-1323

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MAY 31 2000  
SUPERIOR COURT  
JUDGE'S CHAMBERS

## MEMORANDUM

**DATE:** May 31, 2000  
**TO:** John K. Letton, Presiding Judge of the Superior Court  
**FROM:** Brian Muir, Auditor / Controller *B. Muir*  
**SUBJECT:** 1999-2000 Trinity County Grand Jury Report  
*Citizen Complaint - Indigent Misdemeanor Representation*

The following response is provided as requested in the above report:

### Recommendation #1

I agree.

### Recommendation #2

I agree.

### Recommendation #3

I agree. However, it should be noted that the amendment to the Memorandum of Understanding of July 1, 1998, providing that both judges participate in the evaluation and interview process, was made after the process for the Indigent Misdemeanor and Conflict Contract was complete, and, as a result, only one judge participated in the process.

### Recommendation #4

The County does have a procedure in place regarding the solicitation of bids, and I agree that solicitations should include a well defined description of the work to be performed. Input from the judges and local legal community members would be welcome. However, members of the local legal community do not necessarily represent the views of all County citizens, and local attorney's may have a vested interest in promoting the selection of one of their associates in a public defender contract selection process such as that for indigent misdemeanor defense

services. On the other hand, County officials charged with making the final selection through the bid process must make an unbiased decision to benefit all County citizens based on the quality of legal representation and the associated cost to the taxpayers.

Recommendation #5

I agree. The County has created a centralized file of current contracts, and copies of contracts can now be obtained in a timely manner.



# TRINITY COUNTY

## SUPERIOR COURT

P.O. Box 1258 (530) 623-1208  
Weaverville, California 96093-1258

June 26, 2000

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JUN 27 2000

SUPERIOR COURT  
JUDGE'S CHAMBERS

TO: Hon. John K. Letton  
Judge of the Superior Court  
101 Court Street  
Weaverville, CA 96093

FROM: Anthony Edwards  
Judge of the Superior Court

Re: Response to the 1999-2000 Trinity County Grand Jury Report  
Citizens Complaint – Indigent Misdemeanor Representation

Regarding the above report of the Grand Jury I agree with Finding #1 and Recommendation #1.

As to Finding #2, I agree that the replacement attorney did not meet the experience requirements required by the contract at the time he came to Trinity County. His curriculum vitae indicated he had only 6 months previous experience in the area of criminal law. I agree with Recommendation #2.

As to Finding #3 , section (N) was not added to the MOU until after the interview process for public defender was completed in 1999. I agree with recommendation #3.

I agree with Findings and Recommendations #4 and #5.

Sincerely

Anthony Edwards  
Judge of the Superior Court

# MEMORANDUM

**DAVID L. CROSS**, District Attorney  
P.O. Box 310, 101 Court Street  
Weaverville, CA 96093  
530-623-1304

**RECEIVED**  
JUN - 9 2000  
SUPERIOR COURT  
JUDGE'S CHAMBERS

**FROM:** DAVID L. CROSS  
District Attorney

**DATE:** June 9, 2000

**RE:** RESPONSE TO 1999-2000 GRAND JURY REPORT  
(Judicial Committee Report/Indigent Representation)

**TO:** SUPERIOR COURT JUDGE

RESPONSE TO FINDINGS #1 THROUGH # 4: Respondent agrees with these findings.

RESPONSE TO FINDINGS #5: Respondent does not have sufficient personal knowledge of the contract filing system to either agree or disagree.

RESPONSE TO RECOMMENDATIONS # 1 THROUGH # 5: Respondent cannot comment on implementation since the recommendation does not pertain to a matter under the control of the respondent.

  
\_\_\_\_\_  
DAVID L. CROSS District Attorney

DLC:ph

cc: BOARD OF SUPERVISORS



June 16, 2000

# TRINITY COUNTY

## SUPERIOR COURT

P.O. Box 1258 (530) 623-1208  
Weaverville, California 96093-1258

Ralph Modine, Chairman  
Trinity County Board of Supervisors  
P.O. Box 1258  
Weaverville, CA 96093

Pat Hamilton, Foreperson  
1999-2000 Trinity County Grand Jury  
P.O. Box 1117  
Weaverville, CA 96093

RE: Response to 1999-2000 Trinity County Grand Jury  
Final Report on the Indigent Misdemeanor Representation

I agree with Finding #1 and Recommendation #1.

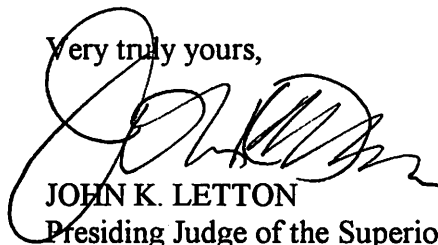
With respect to Finding #2 and Recommendation #2. I believe that the attorney presently assigned by the contractor barely met the experience requirement set forth in the contract when he started work here. Now, of course, he has additional experience. The experience requirement in the contract is important and should be enforced.

It appears that the Grand Jury may have been misled concerning Finding #3 and Recommendation #3, which imply that a provision of an MOU was not followed. The terms of the MOU between the Courts and the County were in negotiations from early 1998 until May of 1999. After the interview process that resulted in the contract with Barker & Associates I requested that the referenced portion of paragraph I(N) be added to the draft MOU, the County agreed, and paragraph I(N) was included in the final form of the MOU that was signed in May.

I generally agree with Finding #4 and Recommendation #4, however I do not see a need for written policies and procedures for solicitation of bids for public defender contracts. That seems like too much bureaucracy to me.

I agree with Finding #5 and Recommendation #5.

Very truly yours,



JOHN K. LETTON  
Presiding Judge of the Superior Court

cc: Anthony C. Edwards, Judge of the Superior Court





# TRINITY COUNTY

## BOARD OF SUPERVISORS

P.O. Drawer 1613 (530) 623-1217  
WEAVERVILLE, CALIFORNIA 96093

*Dero B. Forslund, Clerk*  
*Jeannie Nix-Temple, County Administrative Officer*

July 19, 2000

To: The Honorable John K. Letton, Presiding Judge  
Superior Court

From: Supervisor Robert A. Reiss

Subject: 1999-2000 Trinity County Grand Jury Report  
Citizen Complaint: Indigent Misdemeanor Representation

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SUPERIOR COURT  
JUDGES CHAMBERS

Dear Judge Letton,

The following response is provided as requested regarding the above report:

**Recommendation #1:**

I strongly agree with the recommendation. Trinity County is by nature a rural community, and access to any county government office by the public must be available.

**Recommendation #2:**

I agree with the recommendation.

**Recommendation #3:**

I agree with the recommendation.

**Recommendation #4:**

I agree with the recommendation. Using local input, and adhering to a written policy should resolve any future disputes or confusion.

**Recommendation #5:**

I agree with the recommendation. I find it unacceptable that the Grand Jury had problems obtaining information necessary to performing their duties. A centralized file system would be very helpful.

I would like to thank the Grand Jury for their work and the recommendations.

Sincerely,

Robert A. Reiss

DATE: November 9, 2000

APPROVED: Ralph Modine

CHAIRMAN-Board of Supervisors