

2001-2002 SANTA CLARA COUNTY CIVIL GRAND JURY

**INQUIRY INTO THE SPEED AND APPLICATION OF DUE PROCESS AT THE
SANTA CLARA COUNTY DISTRICT ATTORNEY'S OFFICE**

INTRODUCTION

The Santa Clara County Civil Grand Jury (Grand Jury) looked into the speed and application of processes used at the Santa Clara County District Attorney's Office (district attorney). The Grand Jury received a complaint alleging that the complainant spent two years incarcerated in the Elmwood Jail for a minor crime of fraud. This complaint was used as an example in pursuing the assurance of speed and application of due process. Penal Code 925 gives the Grand Jury the authority to investigate county agencies.

BACKGROUND

The Grand Jury met with an assistant district attorney at the district attorney's office in September 2001 to review the timeline and administration of justice for the complainant. The complaint stated the case began with incarceration in September 1999. The complainant was an inmate at the Elmwood Jail facility. Actually, the case began in January 1999 when the complainant was arrested for a minor theft of company funds.

After this early arrest the complainant was released on bail and found a new job. While on this latest job during June, July and August 1999 the complainant embezzled \$55,000 from the employer. During this same time period the district attorney discovered that the complainant had two prior arrests for embezzlement and that the original crime, rather than a minor theft, was for more than \$650,000. The complainant was incarcerated in September 1999 and bail was increased to \$1,000,000, based upon the

new crime and the severity of the original crime.

The complainant subsequently waived rights to a jury trial and was convicted in March 2001. The district attorney's office recommended a sentence of eight years for this major fraud. The assistant district attorney and the public defender unsuccessfully tried to plea bargain with the complainant. The judge was unable to pronounce sentence because of delays initiated by the complainant and defense counsel. With the exception of one sixty-day period, a judge had reviewed this case every thirty days from the time of the original arrest until conviction and sentencing. The complainant was sentenced and transferred to a state prison in November 2001.

OBSERVATIONS

The district attorney's office provided evidence the complainant and defense counsel requested the trial and sentencing delays that resulted in a long stay in Elmwood Jail. The district attorney's office provided evidence these delaying tactics by the defense added at least six months to the process.

CONCLUSIONS

The Grand Jury found the procedures are in place in the district attorney's office to assure all cases before the courts are regularly reviewed before a Superior Court Judge. The evidence of major fraud committed by the complainant is overwhelming. The Grand Jury found no

evidence the complainant's right to a fair trial and due process was violated.

The complainant's right to due process was not denied in this case.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury this 17th day of January, 2002.

Bruce E. Capron
Foreperson

Norman N. Abrahams, DDS
Foreperson Pro Tem

Joyce S. Byrne
Secretary