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Date of Meeting: January 16-17, 1959

Date of Memo: January 8, 1959

Memorandum No. 4-A

Subject: Study #58 - Codification of Grand Jury Law

I enclose copies of correspondence relating to this study. I suggest that the Commission consider the questions raised and the disposition made of them at the January meeting.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

County of San Mateo  
Keith C. Sorenson, District  
Attorney

November 20, 1958

California Law Revision Commission  
School of Law  
Stanford, California

Attention: Thomas E. Stanton, Jr., Chairman

Gentlemen:

Pursuant to your letter of October 9, 1958, I distributed the extra copies of the draft of the codification of grand jury laws, as requested. I have also reviewed the draft and consider it very well done.

Proposed Penal Code Section 901, found on page 10 of the draft, taken from C.C.P. Section 210, would seem to be entirely surplusage insofar as grand jurors are concerned. However, I understand the Commission is extremely careful about not disturbing the substantive law as it presently exists and, perhaps, you have been fearful of deleting this section entirely insofar as grand jurors are concerned. It appears to do nothing, though, but confuse, because the grand jurors who are not drawn to constitute the nineteen members appear to have no status at all thereafter in law and may not even be used apparently to fill vacancies which might be created by death, or otherwise.

I have no further suggestions, but compliment the Commission and wish it success in obtaining the desired codification.

Very truly yours,

S/ Keith C. Sorenson  
KEITH C. SORENSON,  
District Attorney

SUPERIOR COURT  
Mariposa, California

Thomas Coakley, Judge

December 15, 1958

California Law Revision Commission  
State Capitol  
Sacramento, California

Subject: Codification Grand Jury Statutes.

Gentlemen:

Through an oversight the District Attorney did not turn over to me until today your communication of October 9.

I have examined it rather hastily and offer these comments:

1. Almost anything would be an improvement over the present unhappy situation in which matters effecting the Grand Jury are found in at least two different codes and in various places therein.

2. The idea of placing all Grand Jury statutes in one code and in one part therein has much merit.

3. As you observe in your letter of October 9, there is much need for clarification of Grand Jury law and in my opinion some matters that should be added to existing law. Since that, however, is beyond your function, I will not offer suggestions.

4. I am somewhat confused over proposed Section 895 on page 7. Since in other portions of the Grand Jury law the Court is directed to draw a panel of not less than 25 nor more than 30 from whom 19 shall be chosen as Grand Jurors, what is the sense of having proposed Section 895 with reference to making an order the "estimated number of Grand Jurors # #". Such provision makes sense with estimating the number of trial jurors needed for the year, not Grand Jurors.

5. If and when you are authorized to prepare a revision of the law effecting Grand Jurors and if you then wish my views I shall be happy to submit a memorandum.

Very truly yours,  
S/ Thomas Coakley  
Thomas Coakley

Sacramento, California  
December 31, 1958

Prof. John R. McDonough  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford, California

Revision of the Grand Jury Law

Dear John:

We have checked the comments made to the Commission concerning the revision of the grand jury law made by Mr. Keith C. Sorenson on November 20, and by Judge Thomas Coakley on December 15.

Mr. Sorenson raises the question whether the proposed Section 901 of the Penal Code is surplusage and could be deleted. His theory seems to be that those persons whose names are returned can serve no purpose if they are not duly drawn as grand jurors. We preserved the section for grand juries because Halsey v. Superior Court (1907), 152 Cal. 71, 77 makes it clear that the section has application to grand juries. In addition, it seems possible that more than one grand jury could be impaneled in a year (see proposed Section 905 of the Penal Code), in which event the extra names would serve some useful purpose.

Judge Coakley's comment is down the same line. Of course we preserved the proposed Section 895 of the Penal Code because it is existing law. In addition, assuming a superior court judge thought that the possibility existed of impaneling more than one grand jury during the year, he might estimate twice as many persons as would be the case if he thought that only one grand jury was to be impaneled. In any event, we do not see how either of these sections could be omitted without making a substantive change in the law.

Yours truly,  
S/ Ralph  
Ralph N. Kleps  
Ex Officio Member

RNK:r

January 5, 1959

Honorable Thomas Coakley  
Judge of the Superior Court  
Mariposa, California

Dear Judge Coakley:

I enclose a copy of a communication we have received from Mr. Ralph N. Kleps relating in part to a suggestion which you were kind enough to make concerning the Law Revision Commission's proposed revision of the law relating to Grand Juries. As you know, Mr. Kleps' office has done the drafting work on this assignment for the Commission.

Your communication and that of Mr. Kleps will be brought to the attention of the Law Revision Commission at its meeting this month. I suppose that the Commission will not make any change in the provision which you called to our attention for the reasons given by Mr. Kleps.

We appreciate your interest in writing to us and will welcome any further comments you may have on this or any other of our studies.

Very truly yours,

John R. McDonough, Jr.  
Executive Secretary

(Same letter sent to Mr. Keith Sorenson)