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August 6, 2007

Honorable Nancy Wieben Stock
Presiding Judge of the Superior Court
Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to 2006-07 Orange County Grand Jury report, *"Disciplinary Procedures for Elected Officials"*

Dear Judge Stock:

The subject of the behavior of elected officials is of great personal interest to me, because my introduction to Public Service was working with our former Assessor in cleaning up the results of pre-existing corruption.

I believe that the voters and taxpayers of every jurisdiction have an absolute and encompassing right to expect and observe that their elected and appointed officials will always perform their duties and meet their obligations in a lawful, ethical, and professional manner.

Furthermore, all of the people who work with the official in carrying out the Mission of the Office are also expected and required to exhibit the same lawful, ethical, and professional behavior.

I believe very strongly in the value of the Grand Jury as a key independent element in the impartial checks and balances over the exercise of power by government officials at all levels. Nonfeasance, misfeasance, and malfeasance – all are breaches of integrity, although not all are criminal. Is there a "right" to be wrong in the course of decision making and change? If not, can anything new be achieved?

After laws and the rules to implement, considerable time is devoted in meetings and to develop in the literature of definitions and points of view about Policy, Directives, Guidelines, Ethics, Ethical Behavior, Professional Conduct, Standards, Morals, Malice, Beliefs, Uniformity, Fair, Common, Common Sense, Consensus, and the Higher Standards.

These items are a mix of qualitative, subjective and philosophical thinking depending on why, when, how and to what they are applied.

Then we still have the experiment that goes on every day in:

(1) *Managing* and *Leading,*
(2) *Representative Governance*, and
(3) *The Engagement in Making Sense*

We often hear, "Do the *right thing*" or "You do not get *it*" (my most-often feedback when it comes to property valuations and individual alternate points of view).

Now to The Question: *What should elected officials do to investigate allegations of their own misconduct?* This question must have been generated by some identifiable incident or event which came to the attention of the Grand Jury. If elected officials should investigate their own behavior, should they manage that same investigation? Would such management require a level of selfless objectivity not normally associated with mere mortals?

Who should investigate such allegations of misconduct?

We already know about whistleblower provisions and the Grand Jury's authority to make inquiries and investigate allegations and suppositions.

Elected Officials may do improper, and just wrong, things which lie below the threshold of malfeasance. Misfeasance can have harmful results, even when not criminal, per se. The same can occur with nonfeasance.

Are employees to be formally empowered to investigate the boss? Can they do it? What about abuse of that power as "payback" for disliked treatment of self or others? Who should run the place? Tie up the place in allegations? Some other group appointed by another political body? What about the voters?

Detecting, investigating, and prosecuting public corruption is in the District Attorney's charter. Tips and testimony are an essential part of reasons for initiating action.

Stupidity is not often a crime, fortunately. Non-criminal errors of managerial and professional judgment, misfeasance, usually are punished at the ballot box, with the help of vigilant reporters who get rewarded for uncovering problems with government and private officials, by publishing their factual or editorial views.

Breaches of the public trust embodied in the positions held by public officials are grist for the mills of news media, opponents, sore losers of the last election, disgruntled employees and other people who know wrong behavior when they become aware of it, and are willing to act. And, we have observed the bolts of lightning which magically illuminate bad behavior at the worst possible time for the accused.

After broad-based thought, research, and contemplation, I am convinced that only a formal law enforcement entity dedicated to finding and rooting out public corruption will do the job. It is too much to hope that elected officials, or anyone, will willingly, objectively, effectively, and usefully investigate their own errors in judgment or allegations of criminal activity. Chief executives, elected officials, people who manage complex situations must have "the right to be wrong" and/or to be "slow to act," and a guarantee of review for "wrongness."

The good part of our suspicious society is that many people and entities are constantly seeking to hammer anyone who becomes a target because of behavior, actual or alleged. Sometimes the attacks are wrong or merely inappropriate, but very often there is something worth a closer look in the public's interest. Mere detection has become very difficult. So, while policing by peers is inefficient, it may be best, absent conspiracy.

If we are going to insist that elected officials investigate themselves and manage that investigation into alleged misconduct, then, here is a methodology:

First, let us establish a hierarchy of misconduct, ranked from worst to least, top to bottom:

1. Illegal
2. Unethical
3. Unprofessional
4. Bad Judgment (harmful, not criminal)
5. Error of Fact
6. Omission
7. Stupidity

Second, let us observe that an allegation of misconduct against one of the independently elected officials in local government causes public concern about possible misconduct by others. Sometimes helpful in self correction.

Third, let us agree that alleged misconduct numbers 2 through 7 may be investigated by similar independently elected officials. Peer review is the best hope for an unbiased and objective investigation of non-criminal allegations, and even this is a very slippery slope.

Fourth, if misconduct number 1 is alleged, then the official against whom it is alleged has the responsibility to, personally, request the District Attorney to investigate. Peer pressure will increase the probability of the particular official requesting the investigation. The District Attorney is the best hope for an impartial and objective investigation of criminal allegations.

Everyone's interest is served by having a credible determination of the existence and value, if any, of such allegations, and the issue of public perception of credible leads us back to our Grand Jury system.

However, I will close with an observation by Abraham Lincoln when considering a nominee to the Supreme Court. He said, "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it." An indication of the importance of situation and condition management – the ability to act freely and independently to meet new and changing needs. Individual independence remains critical to our representative form of governance.

By attachment to this overview, please find my response to the Grand Jury Report's finding(s) and recommendation(s). Please call me at (714) 834-2734 if you have any questions.

Sincerely,

Webster J. Guillory
County Assessor

WJG:sf

Attachment: Assessor Response to 2006-07 Orange County Grand Jury Report, *"Disciplinary Procedures for Elected Officials,"* Finding(s) and Recommendation(s)

ct: Orange County Grand Jury (with a CD containing a PDF file of this response)
Thomas Mauk, CEO

The Orange County Assessor Department has received a copy of the 2006-07 Grand Jury Report, *"Disciplinary Procedures for Elected Officials."* In compliance with Penal Code 933 and 933.05, the Assessor Department provides, in addition to an overview, the following response to Finding F-1 and Recommendation R-1 in this report.

Finding F-1:

Other than Penal Code section 919c which grants the Grand Jury the authority to inquire into willful or corrupt misconduct by public officers, there are no authorized published procedures by the county or agencies to investigate non-EEO misconduct by an elected official that does not rise to the level of willful or corrupt.

Response from Assessor: The Assessor Department is not aware of a policy or procedure or the foundation for such a writing or ruling that would cover the possible multiplicity of review and allegations for conduct or misconduct that does not raise to the level of willful or corrupt.

Is there a "practice" for the Assessor Department? Yes: Seek consensus within the operation, the department's management and compliance structure; consider all of the above; evaluate change, bad judgment (harmful, not criminal), errors of fact, omissions, and stupidity. Listen–act–listen.

Recommendation R-1:

Each agency should generate and implement a set of procedures to facilitate an investigation of any non-EEO misconduct that does not rise to the level of a willful or corrupt claim against its own elected official in Orange County.

Response from Assessor: The Assessor would participate in a Mutual of other independently elected officers of the county to explore and roundtable discuss, on a situation by situation basis, claims that factually are not covered directly or indirectly by some existing laws or rules. However, the issue of what the public perceives as credible leads me not to seek to create something new, but to look to our existing Grand Jury system.

The Assessor Department appreciates the opportunity to review this important subject with the Grand Jury.

Webster J. Guillory, County Assessor