

California’s Civil Grand Juries and Prison Conditions 2007–2017

NKEM ADELEYE*
ANNE RICHARDSON OAKES**
JULIAN KILLINGLEY***

TABLE OF CONTENTS

I.	INTRODUCTION	610
II.	CIVIL GRAND JURIES AND SCRUTINY OF PENAL INSTITUTIONS	614
	<i>A. Selection, Eligibility for Service, Powers, and Functions</i>	615
	<i>B. Civil Grand Juries’ Supervision of Custodial Institutions</i>	618
III.	EFFECTIVENESS OF GRAND JURY INSPECTIONS	621
	<i>A. Methodology</i>	621
	<i>B. Jail Conditions in Alameda County</i>	626
	<i>C. Jail Conditions in Butte County</i>	631
	<i>D. Jail Conditions in Los Angeles County</i>	634
	<i>E. Jail Conditions in Orange County</i>	640
	<i>F. Jail Conditions in Plumas County</i>	643
	<i>G. Jail Conditions in San Bernardino County</i>	646
	<i>H. Jail Conditions in San Luis Obispo County</i>	651
	<i>I. Civil Grand Jury Reports on Jail Conditions in Remaining Counties</i>	656
IV.	DISCUSSION	662
V.	CONCLUSION	672

* © 2020 Nkem Adeleye. Ph.D. Lecturer, Birmingham City University; email: n.adeleye@staff.newman.ac.uk.

** © 2020 Anne Richardson Oakes. Ph.D. Director, Centre for American Legal Studies, Birmingham City University; email: anne.oakes@bcu.ac.uk.

*** © 2020 Julian Killingley. Professor of American Public Law (retd.), Birmingham City University; email: julian.killingley@gmail.com.

I. INTRODUCTION

America has a problem with its prisons. The nation has an unequalled appetite for imprisoning its citizens,¹ and despite being the wealthiest country in the world, its prison conditions are little better than those of many Third World countries.² Inmates, as a class, attract few sympathizers beyond their immediate friends and families. Politicians have long realized that imprisoning offenders for long periods is popular but spending tax dollars on the upkeep of inmates is less popular. In general, the policy of States has been to spend as little as possible on inmate security and welfare.³ This parsimonious policy choice has frequently brought States into conflict with State and federal courts in both criminal and civil proceedings.

Until recently, the principal tool available for inmates to seek remedies for their neglect or mistreatment was the civil litigation mechanism provided by a 42 U.S.C. § 1983 action.⁴ Few inmates have access to the resources necessary to finance civil litigation to improve their conditions. The attraction of the § 1983 action was that prevailing litigants were entitled to claim a discretionary award of reasonable attorney's fees from the court.⁵ The philosophy underlying the interplay between § 1983 actions and the Civil Rights Attorney's Fees Awards Act of 1976 has been likened to privatizing the function of a State's attorney general to deter civil rights violations.⁶ State representatives resented the supervision and interference of federal courts in what they saw as essentially a matter between them and

1. See *Highest to Lowest - Prison Population Rate*, WORLD PRISON BRIEF, https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All [<https://perma.cc/46G4-MHYN>] (listing the United States of America as having the highest prison population rate among over 200 countries).

2. See Matt Ford, *The Everyday Brutality of America's Prisons*, NEW REPUBLIC (Apr. 5, 2019), <https://newrepublic.com/article/153473/everyday-brutality-americas-prisons> [<https://perma.cc/3R9N-8R3W>].

3. See, e.g., James Gray Pope, *Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account*, N.Y.U. L. REV. 1465, 1547 (2019) (“[P]rivate prisons spend as little as possible on the care and rehabilitation of inmates in order to keep costs low and profits high.”); Courtney Harper Turkington, Comment, *Louisiana's Addiction to Mass Incarceration by the Numbers*, 63 LOY. L. REV. 557, 571, 583–84 (2017) (noting that although Louisiana's budget of \$24.39 per prisoner at local jail facilities is in line with that in other southern states, those facilities spend as little of that on the inmates themselves as possible).

4. 42 U.S.C. § 1983 (2018); see Richard H. Fallon, Jr., *Bidding Farewell to Constitutional Torts*, 107 CAL. L. REV. 933, 946 (2019).

5. See Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988(b) (2018).

6. See, e.g., David Shub, Note, *Private Attorneys General, Prevailing Parties, and Public Benefit: Attorney's Fees Awards for Civil Rights Plaintiffs*, 42 DUKE L.J. 706, 708–12 (1992).

their electorate.⁷ It was not long before the success of this tool saw States lobbying Congress to limit the ability of federal courts to supervise their actions.⁸ Consequently, Congress enacted the Prison Litigation Reform Act, 42 U.S.C. § 1997e, which requires inmates to firstly exhaust administrative remedies before resorting to a § 1983 action.⁹ The result was a substantial reduction in the volume of successful § 1983 actions.¹⁰

California is home to the largest death row in the nation,¹¹ has a “three strikes” law,¹² and a substantial population of inmates serving indeterminate sentences.¹³ It is also one of the wealthiest States in the Union.¹⁴ Nevertheless, it has an unenviable record of poor prison conditions and inadequate inmate care.¹⁵ In 2011 Justice Kennedy, himself a Californian,¹⁶ speaking for the U.S. Supreme Court, observed in *Brown v. Plata*, “This case arises from serious constitutional violations in California’s prison system. The violations have persisted for years. They remain uncorrected.”¹⁷ He went on to explain:

7. Cf. Sasha Samberg-Champion, Note, *How to Read Gonzaga: Laying the Seeds of a Coherent Section 1983 Jurisprudence*, 103 COLUM. L. REV. 1838, 1864 (2003) (noting that some have argued that § 1983 intrudes on state sovereignty).

8. See Meredith McCollum, Comment, *The Prison Litigation Reform Act: Should Prisoners Be Required to Exhaust Administrative Remedies When They Seek a Form of Relief Not Available Under Prison Procedures?*, 31 CUMB. L. REV. 369, 369 n.2 (2001).

9. 42 U.S.C. § 1997e(a) (2018) (“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”).

10. Barbara Belbot, *Report on the Prison Litigation Reform Act: What Have the Courts Decided So Far?*, 84 PRISON J. 290, 306 (2004). For an example of an early overview of the impact of this legislation on § 1983 actions, see *id.*

11. See *California*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/California> [<https://perma.cc/MQW3-X6XD>].

12. *California’s Three Strikes Sentencing Law*, CAL. CTS., <https://www.courts.ca.gov/20142.htm> [<https://perma.cc/86FP-FE49>].

13. See *Sentencing, Incarceration & Parole of Offenders*, CAL. DEP’T CORRECTIONS AND REHABILITATION, <https://www.cdcr.ca.gov/victim-services/sentencing/> [<https://perma.cc/34EV-6XUB>].

14. See Dan Blystone, *Top 10 Richest U.S. States*, INVESTOPEDIA (Sept. 29, 2019), <https://www.investopedia.com/articles/investing/101015/10-wealthiest-states-united-states.asp> [<https://perma.cc/AB52-RXBR>].

15. See *Brown v. Plata*, 563 U.S. 493, 501–02 (2011).

16. *Anthony M. Kennedy*, Oyez, https://www.oyez.org/justices/anthony_m_kennedy [<https://perma.cc/UDG2-E237>].

17. *Brown*, 563 U.S. at 499.

Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve. The overcrowding is the “primary cause of the violation of a Federal right,” specifically the severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care.¹⁸

There is a body of litigation dissecting the shortcomings of county jails and juvenile facilities in California, including inadequate access to physical and mental health care in Riverside County,¹⁹ failing to provide minimally adequate health care and to protect prisoners from injury and violence from other prisoners in Fresno County,²⁰ and maintaining overcrowded and understaffed jails, subjecting inmates to dangerous, inhumane, and degrading conditions in Sacramento County.²¹

With the decline in the use of § 1983 actions after 1997,²² there were other options open in California to provide a degree of accountability for penal institutions. Firstly, California had its own partial equivalent of the federal § 1983 action—an action under California Civil Code section 52.1.²³ Unfortunately, the reach of section 52.1 is confined to interference or attempted interference by “threats, intimidation, or coercion” with the plaintiff’s exercise or enjoyment of any State or federal constitutional or legal right and does not extend to living conditions.²⁴

Secondly, California is home to several campaigning organizations and university projects focused on prisoners’ rights. Prominent among these is the nonprofit public interest law firm, the Prison Law Office, based in Berkeley, California, whose stated mission is to provide free legal services to offenders to improve their conditions of confinement.²⁵ However, the resources of these organizations are limited and many adopt a strategic litigation approach using class actions to focus on particular statewide problems.²⁶

18. *Id.* at 502 (citation omitted) (quoting 18 U.S.C. § 3626(a)(3)(E)(i) (2006)).

19. *See, e.g.,* Gray v. County of Riverside, No. ED13CV-00444, 2016 WL 6822308, at *1 (C.D. Cal. Apr. 28, 2016).

20. *See, e.g.,* Hall v. County of Fresno, No. 1:11-cv-02047-LJO-BAM, 2015 WL 5916741, at *1 (E.D. Cal. Oct. 7, 2015).

21. *See, e.g.,* Class Action Complaint for Injunctive & Declaratory Relief at 1, Mays v. County of Sacramento, No. 2:18-cv-02081-TLN-KJN, 2019 WL 3804192 (E.D. Cal. July 31, 2018).

22. *See* Belbot, *supra* note 10, at 306.

23. CAL. CIV. CODE § 52.1 (West 2007).

24. *See id.* § 52.1(b).

25. *See About Us*, PRISON L. OFF., <https://prisonlaw.com/about-us/> [<https://perma.cc/7Q3U-KLXY>].

26. *See, e.g., Litigation*, PRISON L. OFF., <https://prisonlaw.com/major-cases/> [<https://perma.cc/C2QM-5HGL>].

Thirdly, the California Department of Corrections and Rehabilitation has an Office of the Ombudsman.²⁷ Since 2007, the Ombudsman has acted as an intermediary to address complaints and resolve issues raised by juvenile offenders in confidence.²⁸ Adult offenders can complain of staff misconduct by raising an administrative appeal.²⁹ These are reviewed by the Office of the Inspector General, which publishes semiannual reports.³⁰ We will consider the efficacy of these mechanisms for oversight and change in a future paper.

A final mechanism is that of a peculiarly Californian institution—scrutiny by a county's grand jury. California is exceptional in that it endows its grand juries with civil as well as criminal functions.³¹ California Penal

27. See *Office of the Ombudsman*, CAL. DEP'T CORRECTIONS & REHABILITATION, <https://www.cdcr.ca.gov/ombuds/> [<https://perma.cc/V4KE-PEHM>].

28. See OFFICE OF THE OMBUDSMAN, CAL. DEP'T OF CORR. & REHAB., SENATE BILL 518 REPORT, at 3 (2016), https://www.cdcr.ca.gov/ombuds/wp-content/uploads/sites/165/2019/06/SB_518_Report_2016.pdf [<https://perma.cc/D2L9-KYKC>]; *Ombudsman Services*, CAL. DEP'T CORRECTIONS & REHABILITATION, <https://www.cdcr.ca.gov/ombuds/ombuds/djj-contact-information/> [<https://perma.cc/UT8N-N96W>].

29. PRISON LAW OFFICE, INVESTIGATIONS OF STAFF MISCONDUCT 1 (2016), <https://prisonlaw.com/wp-content/uploads/2016/03/Investigations-March-2016.pdf> [<https://perma.cc/JHX9-3K63>].

30. See, e.g., OFFICE OF THE INSPECTOR GEN., MONITORING INTERNAL INVESTIGATIONS AND THE EMPLOYEE DISCIPLINARY PROCESS OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, SEMI-ANNUAL REPORT JULY–DECEMBER 2018 (2019), https://www.oig.ca.gov/wp-content/uploads/2019/06/OIG_Semi_Annual_Report_July-December_2018.pdf [<https://perma.cc/5XBT-BZ6W>].

31. Currently, the only other State to invest its grand juries with civil investigatory powers is Nevada. Stephanie A. Doria, Comment, *Adding Bite to the Watchdog's Bark: Reforming California's Civil Grand Jury System*, 28 PAC. L.J. 1115, 1125 (1999). The scope of a Nevada grand jury's civil investigatory authority is stated to be:

1. Each grand jury that is not impaneled for a specific limited purpose shall inquire into:
 - (a) The case of every person imprisoned in the jail of the county, on a criminal charge, against whom an indictment has not been found or an information or complaint filed.
 - (b) The condition and management of any public prison located within the county.
 - (c) The misconduct in office of public officers of every description within the county which may constitute a violation of a provision of chapter 197 of NRS.
2. A grand jury that is not impaneled for another specific limited purpose may inquire into any and all matters affecting the morals, health and general welfare of the inhabitants of the county, or of any administrative division thereof, or of any township, incorporated city, irrigation district or town therein.

Code section 919(b) requires that “[t]he Grand Jury shall inquire into the condition and management of the public prisons within the county.”³² Civil grand juries (CGJs) are appointed by the presiding superior court judge from citizen volunteers and serve for a year.³³ CGJs have total access to public records, take evidence on oath, and can issue subpoenas.³⁴ They make findings of fact and recommendations.³⁵ State institutions and public officials are obliged to respond to their findings if asked to do so by the CGJ.³⁶ CGJs issue annual reports, which are publicly available, as are responses to their findings and recommendations by institutions and officials.³⁷ These duties and powers make CGJs potentially well suited to identifying problems in penal institutions and proposing solutions. This aspect of California’s grand juries has been little studied and there is scarce literature on the subject. In this Article we describe the activities of CGJs in their exercise of their public prisons overview function and evaluate their efficacy during the period 2007–2017.

II. CIVIL GRAND JURIES AND SCRUTINY OF PENAL INSTITUTIONS

Considering its currently near unique situation among State institutions, it is perhaps surprising that California’s civil grand juries and their functions have attracted little attention in law journals.³⁸ Some description is required of the grand jury’s composition, remit, and functioning to assist in understanding the powers and limitations of the grand jury as a watchdog overlooking the operations of custodial institutions within a county.

NEV. REV. STAT. § 172.175 (2015).

32. CAL. PENAL CODE § 919(b) (West 2008).

33. *Id.* §§ 896(a), 901(a).

34. *Id.* §§ 925a, 939.2.

35. *Id.* § 933(a).

36. *Id.* § 933(c).

37. *Id.* § 933.

38. There is sparse literature on the issue, which is comprised principally of two student comments, *see* Doria, *supra* note 31; John M. Feser, Jr., Note, *The California Civil Grand Jury: from Watchdogs to Watched Dogs*, 30 MCGEORGE L. REV. 748 (1999); an academic article, *see* Michael Vitiello & J. Clark Kelso, *Reform of California’s Grand Jury System*, 35 LOY. L.A. L. REV. 513 (2002); and a report, *see* MELISSA FOWLER-BRADLEY, INST. FOR COURT MGMT., *SHOULD CIVIL INVESTIGATIONS BE PERFORMED BY THE GRAND JURY IN CALIFORNIA* (2002). There is also a definitive study on the utility of the grand jury’s civil functions. *See* BRUCE T. OLSON, *GRAND JURIES IN CALIFORNIA, A STUDY IN CITIZENSHIP* (2000).

A. Selection, Eligibility for Service, Powers, and Functions

The State of California comprises fifty-eight counties.³⁹ Each county is required to have one or more grand juries to inquire into public offenses committed or triable within the county.⁴⁰ One grand jury in each county has the special responsibility to investigate or inquire into “matters of civil concern”⁴¹—the “watchdog” function.

The size of each grand jury depends upon the population of the county in which it is situated. For counties with a population of 4,000,000 or more, the grand jury comprises twenty-three citizens.⁴² For counties with a population of 20,000 or less the number is eleven jurors, subject to the board of supervisors’ consent.⁴³ In all other counties the number is nineteen jurors.⁴⁴ There is an eligibility requirement to serve as a juror—a person is eligible for service if they are a U.S. citizen aged eighteen or older and a resident of the State and county (or city and county) for one year immediately before selection.⁴⁵ A prospective grand juror is also required to be “in possession of his natural faculties, of ordinary intelligence, of sound judgment, and of fair character.”⁴⁶ A final requirement is that they must have “sufficient” knowledge of the English language.⁴⁷

The principal difference between grand jurors and petit jurors is that grand jurors volunteer their services, while petit jurors are randomly summoned for service.⁴⁸ Although difficult to generalize, grand jurors tend to be older

39. *California Counties by Population*, CAL. DEMOGRAPHICS, https://www.california-demographics.com/counties_by_population [<https://perma.cc/M8CP-2RR4>].

40. CAL. PENAL CODE § 888 (West 2008).

41. *Id.*

42. *Id.* § 888.2(a).

43. *Id.* § 888.2(b).

44. *Id.* § 888.2(c).

45. *Id.* § 893(a)(1).

46. *Id.* § 893(a)(2).

47. *Id.* § 893(a)(3).

48. *Compare How Are Civil Grand Jurors Chosen?*, SUPERIOR CT. CAL. COUNTY L.A., <http://www.lacourt.org/division/jury/JR0078.aspx> [<https://perma.cc/D6E3-W45H>] (describing civil grand jury selection as occurring by judicial nomination and voluntary application by community members), *with* STATE BAR OF CAL., *WHAT SHOULD I KNOW ABOUT SERVING ON A JURY?* 2 (2010), http://www.calbar.ca.gov/portals/0/documents/publications/Jury_English.pdf [<https://perma.cc/M6NR-P8DZ>] (describing petit jury selection process as “random”).

and retired citizens because of the time commitment required.⁴⁹ For example, Orange County’s grand jury web page advises prospective applicants:

The complex, diverse responsibilities of grand jurors make it necessary to give a serious commitment to the time requirements. The Grand Jury term is one year, from July 1 through June 30. The usual work week is four to five days. Additionally, attendance at some evening and weekend meetings may be required.⁵⁰

Counties have a grand jury web page, which contains advice to prospective jurors as to how to apply.⁵¹ The supervising judge selects a panel from prospective applicants to reflect geographical diversity and appropriate skills and experience.⁵² The final jury is chosen by lot from the panel.⁵³

The California Courts Civil Grand Jury web page, quoting Noah Weinstein and William J. Shaw, describes its composition thus: [A] grand jury is a short-lived, representative, non-political body of citizens functioning without hope of personal aggrandizement. It comes from the citizens at large and soon disappears into its anonymity without individual recognition or personal reward⁵⁴

Grand jurors receive their expenses and a modest stipend for their work.⁵⁵ They work under the supervision of the presiding judge of the county’s superior court.⁵⁶ Although they report their findings to the court, they are

49. See, e.g., 2016–2017 L.A. CTY. CIVIL GRAND JURY, FINAL REPORT, 282–83 (2017), <http://grandjury.co.la.ca.us/pdf/LOSANGELESCOUNTY2016-2017CIVILGRANDJURYFINALREPORT.pdf> [<https://perma.cc/VF8L-YQ3W>] [hereinafter L.A., 2016–2017 REPORT]. By way of example, the Los Angeles County Civil Grand Jury reported civil grand jury age demographics in their county for the ten years covered in this Article as comprising 221 out of 230 grand jurors being aged over fifty-five years. The median age for grand jurors during that period lay between sixty-five and seventy-four. *Id.* Only two grand jurors were under the age of forty-five. *Id.* at 283.

50. *Commitment/Compensation*, GRAND JURY ORANGE CTY., <http://www.ocgrandjury.org/Commitment.asp> [<https://perma.cc/WXD6-LQHL>].

51. See, e.g., *Civil Grand Jury*, SUPERIOR CT. CAL., COUNTY SANTA CLARA, http://www.sccourt.org/court_divisions/civil/cgj/grand_jury.shtml [<https://perma.cc/Q9WB-JRY9>] [hereinafter *Civil Grand Jury*, SANTA CLARA]; *Grand Jury*, L.A. COUNTY GRAND JURY, <http://grandjury.co.la.ca.us/> [<https://perma.cc/N895-7J7T>]; *What is the Grand Jury?*, GRAND JURY ORANGE COUNTY, <http://www.ocgrandjury.org/> [<https://perma.cc/N3AR-ZGGH>].

52. See *Civil Grand Jury*, SUPERIOR CT. CAL., COUNTY SAN JOAQUIN (2020), <https://www.sjcourts.org/divisions/civil-grand-jury/#/> [<https://perma.cc/3BPC-3XCY>] (listing desirable skills and experience for potential grand jurors); *Civil Grand Jury*, SANTA CLARA, *supra* note 51, http://www.sccourt.org/court_divisions/civil/cgj/grand_jury.shtml#selection [<https://perma.cc/5LQD-KFDK>] (describing how potential grand jurors are selected from a variety of geographic locations within the jurisdiction).

53. See *Civil Grand Jury*, SANTA CLARA, *supra* note 51.

54. *Civil Grand Jury*, CAL. CTS., <https://www.courts.ca.gov/civilgrandjury.htm> [<https://perma.cc/K3L7-7ZFT>] (quoting Noah Weinstein & William J. Shaw, *Grand Jury Reports—A Safeguard of Democracy*, 1962 WASH. U. L. Q. 191, 191).

55. See *Commitment/Compensation*, *supra* note 50.

56. CAL. PENAL CODE § 914(a)–(b) (West 2008).

not controlled or directed in their inquiries by the judge.⁵⁷ When a civil grand jury is first impanelled and sworn, the court is required to charge it as to its duties and to give it such other information as thought proper.⁵⁸ To assist with the performance of their duties, civil grand juries additionally receive training “that addresses, at a minimum, report writing, interviews, and the scope of the grand jury’s responsibility and statutory authority.”⁵⁹ The court is also required to appoint a foreman.⁶⁰

The range of topics potentially open to grand jury investigation and inquiry is wide but, for the purposes of this Article, we are concerned only with its powers in connection with “public prisons” within the county. The basic investigatory remit pertaining to public prisons is stated in California Penal Code section 919, which imposes three separate duties on a CGJ.⁶¹ It has a discretion to inquire into every case of unindicted persons imprisoned in county jails on a criminal charge.⁶² It has a duty to inquire into the “condition and management of the public prisons within the county.”⁶³ Finally, it has a wider duty to “inquire into the willful or corrupt misconduct in office of public officers of every description within the county.”⁶⁴ Clearly this latter duty extends beyond prison officials but enables, in appropriate cases, the grand jury to investigate such misconduct by staff in prisons within the county.⁶⁵ To assist CGJs in this task, the grand jury is entitled to free access, on reasonable notice, to public prisons and to examine public records without charge.⁶⁶ Although the CGJ reports its findings to the supervising judge, it may—with the consent of the supervising judge—

make available to the public part or all of the evidentiary material, findings, and other information relied upon by, or presented to, a grand jury for its final report in any civil grand jury investigation provided that the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released.⁶⁷

57. *See Civil Grand Jury, supra* note 54.
 58. CAL. PENAL CODE §§ 914(a), 914.1 (West 2008).
 59. *Id.* § 914(b).
 60. *Id.* § 912.
 61. *Id.* § 919.
 62. *Id.* § 919(a).
 63. *Id.* § 919(b).
 64. *Id.* § 919(c).
 65. *See Civil Grand Jury, supra* note 54.
 66. CAL. PENAL CODE § 921 (West 2008).
 67. *Id.* § 929.

This is a significant power as supervising judges routinely authorize publication of the CGJs' final reports. In turn these reports are picked up by local news media and are brought to public attention.⁶⁸

However, perhaps the greatest significance of CGJs' reports is that they cannot be ignored by public officials. California Penal Code section 933(c) requires that any public agency the subject of a CGJ investigation, and whose activities have been the subject of a finding and recommendation by the CGJ, must comment on these to the presiding judge of the superior court within ninety days of the CGJ's final report.⁶⁹ Elected county officers or agency heads for which the grand jury has responsibility must comment within sixty days.⁷⁰ Although the only requirement is to comment, rather than to act, upon findings and recommendations, the comments are themselves frequently the subject of evaluations of their adequacy by CGJs in succeeding years.⁷¹

B. Civil Grand Juries' Supervision of Custodial Institutions

A common impression of the function of a grand jury is based on knowledge of criminal grand juries and their unenviable reputation as being a tool of manipulative prosecutors who, it is said, could get them to "indict a ham sandwich" if so inclined.⁷² While criminal grand juries normally examine only cases brought before them by the district attorney, CGJs set their own investigatory agendas and decide for themselves what to investigate.⁷³ It has been suggested by one California court official that the grand jury's "investigative powers are so broad that there seems very little they cannot choose to examine, as long as it is within their county boundary."⁷⁴

The freedom of CGJs to select their own targets for investigation gives them broad powers to investigate wrongdoing within the penal system.

68. See, e.g., Donna Littlejohn, *L.A.'s Shuttered Jails Delay Response Times, Take Police Off the Streets, Grand Jury Declares*, DAILY BREEZE (Sept. 7, 2019, 10:53 AM), <https://www.dailybreeze.com/2019/09/06/1-a-s-shuttered-jails-delay-response-times-take-police-off-the-streets-grand-jury-declares/> [<https://perma.cc/V7KV-UTRD>].

69. CAL. PENAL CODE § 933(c) (West 2008).

70. *Id.*

71. See SAN DIEGO CTY. GRAND JURY 2013/2014, SAY WHAT YOU'LL DO AND THEN DO WHAT YOU SAY 1-3 (2014), https://www.sandiegocounty.gov/content/dam/sdc/grand_jury/reports/2013-2014/SayWhatYoullDoThenDoWhatYouSay.pdf [<https://perma.cc/D799-JYPE>] (describing why an independent body apart from the grand jury is needed to evaluate government's responses to past jury recommendations).

72. *People v. Dukes*, 592 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1992) ("Indeed, in this case, the prosecutor served the grand jury the proverbial 'ham sandwich' and told them, in effect, to take it or leave it.").

73. See *Civil Grand Jury*, *supra* note 54.

74. FOWLER-BRADLEY, *supra* note 38, at 21.

Their discretionary power to inquire into the case of every unindicted person held in a county jail on criminal charges is tantalizingly ill-defined. The Code does not clearly identify any precise mischief that the power is designed to address but is broad enough to encompass a wide range of potential official misconduct or neglect in county jails affecting unindicted detainees. In practice, it is likely that CGJs may not only be interested in alleged denials of a speedy trial,⁷⁵ but also the conduct of jail officials and confinement conditions. The principal practical limitation on this function as a watchdog is that a CGJ is not obliged to investigate a complaint.⁷⁶ However, in the case of the public prisons within their county, the CGJ is required to inquire into their “condition and management.”⁷⁷ It should be noted that at present a small number of prisoners are detained outside the county in which they were indicted or sentenced and are thus beyond the reach of that grand jury’s inquiries.⁷⁸ Similarly, a CGJ has no power to inspect federal prisons located within their county, only prisons operated by the State of California or the county in which the jury is located.⁷⁹

Perhaps the greatest problem with CGJ inspections of penal institutions is that there is no uniformity of approach to the task from county to county or even, within a single county, from one year to the next.⁸⁰ Each CGJ is largely sovereign and can choose to put as much or as little effort into its inspections as it thinks fit consistent with its statutory responsibilities.⁸¹ In practice there has emerged a kind of custom in some counties whereby their inspection reports detail a consistent methodology and use a uniform

75. U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . .”).

76. See *Civil Grand Jury*, *supra* note 54.

77. CAL. PENAL CODE § 919(b) (West 2008).

78. Cf. *Sheriff*, ALPINE COUNTY, <https://www.alpinecountyca.gov/index.aspx?NID=204> [<https://perma.cc/DU7H-6BXV>]. Some counties may place prisoners in jails in other counties to avoid overcrowding their own jails. See *id.* A few may be so small that they have no county jail of their own—for example, Alpine County—which had a population of 1,120 in 2017—according to its Sheriff’s page, notes: “There are no jail facilities in Alpine County. Jail services are contracted to El Dorado County and Calaveras County.” *Id.*

79. See *Civil Grand Jury*, SANTA CLARA, *supra* note 51.

80. See, e.g., *Civil Grand Jury*, *supra* note 54 (describing the independence that each year’s CGJ possesses and pointing out variation in CGJs from county to county); see also, e.g., CAL. PENAL CODE §§ 924, 924.1, 924.4 (West 2008) (indicating that only the judge possesses authority to disclose grand jury information and jurors face criminal misdemeanors for disclosure).

81. See *Civil Grand Jury*, *supra* note 54.

format for presentation of findings.⁸² However, a wide variance of approach to the task within a single county can be seen, for example, in the number of inspections carried out in a particular fiscal year. In a populous county, such as Los Angeles County, one CGJ carried out 138 inspections in the year 2015–2016 but another only fifty-six inspections in 2010–2011.⁸³ The task is potentially onerous in a county such as Los Angeles where at least two jurors must be present at each inspection and the jury itself comprises only twenty-three members.⁸⁴ Inquiries into the public prisons in the county is only one of the many potential areas for CGJ investigation, and it is unsurprising that some juries may devote more time to the task than others.

All CGJs are required to receive training at the commencement of their duties and many make use of a guide prepared by the California Board of State and Community Corrections or the California Grand Jurors' Association.⁸⁵ Some reports replicated the model inspection report forms

82. For example, Alameda County's Civil Grand Juries produced similar reports from 2007–2012, both stylistically and methodologically. *See generally* ALAMEDA CTY. CIVIL GRAND JURY, 2011–2012 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT (2012) <http://grandjury.acgov.org/grandjury-assets/docs/2011-2012/final2011-2012.pdf> [<https://perma.cc/NG84-6RMU>] [hereinafter ALAMEDA, 2011–2012 REPORT]; ALAMEDA CTY. CIVIL GRAND JURY, 2010–2011 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT (2011), <http://grandjury.acgov.org/grandjury-assets/docs/2010-2011/final2010-2011.pdf> [<https://perma.cc/FR3S-VP5H>] [hereinafter ALAMEDA, 2010–2011 REPORT]; ALAMEDA CTY. CIVIL GRAND JURY, 2009–2010 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT (2010), <http://grandjury.acgov.org/grandjury-assets/docs/2009-2010/final2009-2010.pdf> [<https://perma.cc/37YB-92KZ>] [hereinafter ALAMEDA, 2009–2010 REPORT]; ALAMEDA CTY. CIVIL GRAND JURY, 2008–2009 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT (2009), <http://grandjury.acgov.org/grandjury-assets/docs/2008-2009/final2008-2009.pdf> [<https://perma.cc/EF87-BACC>] [hereinafter ALAMEDA, 2008–2009 REPORT]; ALAMEDA CTY. CIVIL GRAND JURY, 2007–2008 ALAMEDA COUNTY CIVIL GRAND JURY FINAL REPORT (2008), <http://grandjury.acgov.org/grandjury-assets/docs/2007-2008/final2007-2008.pdf> [<https://perma.cc/DBK9-WNUJ>] [hereinafter ALAMEDA, 2007–2008 REPORT].

83. *Compare* 2015–2016 L.A. CTY. CIVIL GRAND JURY, FINAL REPORT 401 (2016), <http://grandjury.co.la.ca.us/pdf/LOSANGELESCOUNTY2015-2016CIVILGRANDJURYFINALREPORT.pdf> [<https://perma.cc/L32Q-SGAT>] [hereinafter L.A., 2015–2016 REPORT] (inspecting every facility), *with* CIVIL GRAND JURY, CTY. OF L.A., FINAL REPORT 2010–2011, at 333 (2011), <http://grandjury.co.la.ca.us/Final%20Grand%20Jury%20Report/FINAL%20REPORT%202010-2011%20LOS%20ANGELES%20COUNTY%20CIVIL%20GRAND%20JURY.pdf> [<https://perma.cc/J675-K4TM>] [hereinafter L.A., 2010–2011 REPORT] (“selecting” certain facilities for inspection).

84. *See* L.A., 2015–2016 REPORT, *supra* note 83, at 401.

85. CAL. BD. OF STATE & CMTY. CORR., JAIL INSPECTION HANDBOOK FOR GRAND JURORS (2015), <https://cgja.org/sites/default/files/bsccjailinspectionshandbook.doc> [<https://perma.cc/V4AS-F5C2>]; CAL. GRAND JURORS' ASS'N, GRAND JURY RESOURCE MANUAL FOR CALIFORNIA COURTS: MODEL GUIDE FOR CIVIL GRAND JURORS (2005), <http://gsmall.us/GJ/ProceduresManual/ModelGrandJuryReferenceManual.pdf> [<https://perma.cc/G6AE-HK55>].

recommended in these manuals; however, others gave little explicit details of the checks carried out.⁸⁶

III. EFFECTIVENESS OF GRAND JURY INSPECTIONS

A. Methodology

Our aim in this study was to gauge the effectiveness of civil grand jury inspections of the public prisons within their counties as one means of detecting the uncorrected constitutional violations in the prison system referred to by Justice Kennedy in his opinion in *Brown v. Plata*.⁸⁷ It was clear that there would be substantial work in retrieving, reading, and analysing reports for all counties over many years—such a task would be more suitable for a doctoral thesis because retrieving and reading reports for all counties over a decade would involve perusing 580 final reports. It seemed to us that rather than picking one or two years at random and analysing the grand jury final reports for all fifty-eight counties for those years, it would be better to perform a longitudinal study on a representative sample of counties.

We chose to study fifteen counties: five with large populations—Alameda, Los Angeles, Orange, San Bernardino, and Santa Clara counties—five with medium-sized populations—Butte, Merced, San Luis Obispo, Tulare, and Yolo counties—and five with small populations—Calaveras, Glenn, Mendocino, Plumas, and Tuolumne counties. We decided that a decade would be a convenient study period as it was long enough to see what impact, if any, grand jury reports might have, but short enough that the legal regime and relevant standards would be substantially similar throughout.

Our end point would be the 2016–2017 fiscal year as being the last year where we could ensure published reports were available for all counties and also the subsequent year's grand jury's review of the adequacy of any required responses to findings and recommendations made. Accordingly, the period studied spanned final reports for the 2007–2008 fiscal year through the 2016–2017 fiscal year—some 150 reports in all.

86. Compare ALAMEDA CTY. GRAND JURY, 2016–2017 ALAMEDA COUNTY GRAND JURY FINAL REPORT 100–14 (2017), <http://grandjury.acgov.org/grandjury-assets/docs/2015-2016/2016-2017-GJ-FinalReport.pdf> [<https://perma.cc/EH68-TFY2>] [hereinafter ALAMEDA, 2016–2017 REPORT], with ALAMEDA, 2009–2010 REPORT, *supra* note 82, at 55–56.

87. *Brown v. Plata*, 563 U.S. 493, 499 (2011).

Investigation of the effectiveness of civil grand juries required a metric against which to evaluate. For the purposes of this Article, we have used civil rights litigation during the study period as these suits implicate the very kind of constitutional violations that Justice Kennedy had in mind in *Brown*.⁸⁸ Again, for purposes of practical convenience, we have extracted cases from a database of civil rights litigation rather than trawling exhaustively through PACER for reports.

We used the University of Michigan Law School's Civil Rights Litigation Clearinghouse website to identify California cases relating to jail conditions.⁸⁹ Results were examined to identify to which facility each case related. Those where the jail was in one of the fifteen counties selected for review and where the case was active between fiscal years 2007–2017 were extracted for examination. Cases that were either ongoing or resolved in favor of the plaintiff within that period were analyzed to identify the principal areas of complaint. We rejected a few cases where the facts complained of were not those that a CGJ might reasonably have been expected to detect during an inspection. The result was a body of twenty-five cases whose causes of action arose in nine out of the fifteen counties studied.⁹⁰

The litigated complaints were then compared with CGJ findings immediately prior—two years—to the occurrence of the cause of action to see whether the CGJs for those years had made any relevant findings and recommendations. The purpose of this was to evaluate the watchdog functions of the CGJ.⁹¹ In cases of acute events, such as beating deaths, we also looked at the CGJ report for the first full fiscal year following the events to evaluate the “lessons learned” functions of the CGJ.⁹²

A point of interest is that two major penal changes occurred during the chosen study period. One response by the State of California to the U.S. Supreme Court's ruling in *Brown* was the passing of Assembly Bill 109 in April 2011.⁹³ The Bill, later renamed the Public Safety Realignment Act of 2011, took effect on October 1, 2011.⁹⁴ Prior to the passing of the Act,

88. *See id.*

89. *See Civil Rights Litigation Clearinghouse*, U. MICH. L. SCH., <https://www.clearinghouse.net> [<https://perma.cc/944A-BRA2>].

90. The counties were Alameda, Butte, Los Angeles, Orange, Plumas, San Bernardino, San Luis Obispo, Santa Clara, and Tuolumne counties.

91. *See supra* notes 38–42 and *infra* notes 134–38 and accompanying text.

92. *See infra* notes 134–39 and accompanying text.

93. Assemb. B. 109, 2011–2012 Leg., Reg. Sess. (Cal. 2011); *see* Shivanjali A. Sewak, Comment, “Everyone Gets Their First DV Free”: Proposition 57’s Neglect of Domestic Violence, 123 PENN. ST. L. REV. 277, 286–87 (2018).

94. *See* Emilie A. Whitehurst, Note, *Shaping California’s Prisons: How the Alternative Custody Program, Designed to Remedy the State’s Eighth Amendment Violations in the*

convicted felons served their sentences in state prisons.⁹⁵ The Act aimed to implement the U.S. Supreme Court's mandate requiring it to reduce the prison population to 137% of design capacity by the end of 2013.⁹⁶ Part of the State's chosen mechanism for prison population reduction was to reclassify certain nonserious, nonviolent felonies as N-3 felonies.⁹⁷ From October 1, 2011, offenders convicted of N-3 felonies and parole violators would henceforth serve their sentences in local jails rather than state prisons.⁹⁸ Counties created Community Corrections Partnerships to manage the implementation of this reform, and there were fears that previously satisfactory county jails might become overcrowded and thus lay counties open to civil suits by inmates for violating the Eighth Amendment's prohibition on "cruel and unusual punishments."⁹⁹

A side effect of AB 109 was that county jails, which traditionally had held prisoners serving sentences no longer than twelve months, began to hold prisoners convicted of N-3 felonies and sentenced to terms longer than twelve months.¹⁰⁰ Assembly Bill 109 was passed in response to the Supreme Court's mandate to reduce the population in state prisons.¹⁰¹ However, counties had no time to prepare for the substantial numbers of inmates they became obliged to accommodate in their jails.¹⁰² In their annual reports for the fiscal year subsequent to the passing of AB 109, county civil grand juries reported upon its impact on county budgets and facilities. The concerns voiced included, inter alia: the additional expense of implementing AB 109 to the county,¹⁰³ the size of the influx of cascaded

Prison System, Encroaches on Equal Protection, 21 WM. & MARY BILL RTS. J. 303, 317 & n.111 (2012).

95. See Danielle R. Jones, *When the Fallout of a Criminal Conviction Goes Too Far: Challenging Collateral Consequences*, 11 STAN. J. C.R. & C.L. 237, 265–66 (2015).

96. See *Brown v. Plata*, 563 U.S. 493, 541 (2011); Sewak, *supra* note 93, at 286–87.

97. See Albert Camacho & Mark Harvis, *Realignment of California's Criminal Justice Policies*, L.A. LAW., Apr. 2012, at 15, 15.

98. See *id.*

99. See U.S. CONST. amend. VIII; see also Hon. Philip H. Pennypacker & Alyssa Thompson, *Realignment: A View from the Trenches*, 53 SANTA CLARA L. REV. 991, 1002, 1025, 1036 (2013); Whitehurst, *supra* note 94, at 318 n.119.

100. See Whitehurst, *supra* note 94, at 316–18.

101. See *Brown*, 563 U.S. at 541; Sewak, *supra* note 93, at 286–87.

102. See Whitehurst, *supra* note 94, at 318 n.119.

103. See GRAND JURY 2013–2014, CTY. OF BUTTE, FINAL REPORT 36 (2014), <http://www.buttecounty.net/Portals/1/GrandJury/13-14/2013-14-Grand-Jury-Report.pdf> [<https://perma.cc/3BV7-HSYM>] [hereinafter BUTTE, 2013–2014 REPORT] (noting that the cost to the county of maintaining an inmate was \$92 a day but the State was only giving it \$20 a day per inmate).

inmates,¹⁰⁴ possible overcrowding,¹⁰⁵ adequacy of existing institutional security,¹⁰⁶ and the challenging nature of some of the new inmates.¹⁰⁷ The rationale for the subsequent adoption of Proposition 47 is not entirely clear. The proposal asked voters whether penalties for certain offenders convicted of nonserious, nonviolent crimes should be reduced from felonies to misdemeanors.¹⁰⁸ The League of Women Voters of California Education Fund’s Smart Voter website presented an impartial summary of the issues facing voters.¹⁰⁹ It noted that proponents of the Proposition claimed it could save hundreds of millions of dollars every year and could fund schools, crime victims, mental health, and drug treatment.¹¹⁰ Opponents claimed, *inter alia*, that adoption of the Proposition could release ten thousand felons from state prisons.¹¹¹ On November 4, 2014, Proposition 47 was adopted by a majority of 59.6% voting for and 40.4% voting against it.¹¹² The effect of this was to reclassify certain minor felonies as misdemeanors that carried potentially noncustodial sentences.¹¹³ This new sentencing discretion was likely to lead to a reduction in the numbers incarcerated in local jails.¹¹⁴

104. See 2013–2014 GLENN CTY. GRAND JURY, FINAL REPORT 10 (2014), https://www.countyofglenn.net/sites/default/files/Grand_Jury/2013-2014GrandJuryReport.pdf [<https://perma.cc/V69L-R92R>] (noting that when one facility was inspected, some twenty-six of its 105 inmates were held under AB 109 regulations and that this increase in the inmate population of nearly one-third compounded an existing staffing situation).

105. See 2013–2014 GRAND JURY, MENDOCINO CTY., THE IMPACT OF THE PUBLIC SAFETY REALIGNMENT ACT ON MENDOCINO COUNTY 4 (2014), <https://www.mendocino-county.org/home/showdocument?id=3808> [<https://perma.cc/N9PV-T854>] (finding that realignment may cause overcrowding at the current county jail).

106. See MERCED CTY. CIVIL GRAND JURY, FINAL REPORT 2013–2014, at 3 (2014), http://web2.co.merced.ca.us/pdfs/grandjury/reports/Grand_Jury_Report_2013-2014.pdf [<https://perma.cc/8NYC-HH9X>] [hereinafter MERCED, 2013–2014 REPORT] (noting that since implementation of AB 109, a facility originally built as a minimum security facility now housed medium to high risk inmates).

107. GRAND JURY 2013–2014, CTY. OF ORANGE, ANNUAL INQUIRY ON JAILS AND JUVENILE DETENTION FACILITIES 8 (2014), http://www.ocgrandjury.org/pdfs/2013_2014_GJreport/JailsReport.pdf [<https://perma.cc/GRK3-TPGX>] [hereinafter ORANGE, 2013–2014 JAIL REPORT] (noting, *inter alia*, that the incoming AB 109 cohort contained “more assaultive inmates, more Americans with Disabilities Act (ADA) inmates, more mental issue inmates, more 2 and 3 strike offenders, [and] more drug incidents”).

108. See Proposition 47, SMART VOTER (July 23, 2015, 2:59 PM), <https://smartvoter.org/2014/11/04/ca/state/prop/47/> [<https://perma.cc/2KPK-SANW>].

109. See *id.*

110. *Id.*

111. *Id.*

112. CAL. SEC’Y OF STATE, STATEMENT OF VOTE: NOVEMBER 4, 2014, GENERAL ELECTION 93 (2014), <https://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [<https://perma.cc/DLT4-W6GC>].

113. See Christian L. Woods, Essay, *Proposition 47: The Unintended Consequence*, 38 U. LA VERNE L. REV. 83, 87, 89–91 (2016).

114. See *id.*

The combined effect of AB 109 and Proposition 47 was to shift convicted offenders from state prisons to county jails and from county jails to noncustodial sentences leading to an overall reduction in the total number of persons serving custodial sentences.¹¹⁵

In the discussions that follow about county jail inspections, we give figures for numbers of findings and recommendations made for each county. Some grand juries list neither findings nor recommendations but rather give narrative reports of their inspections. In these cases, we have followed the practice of the majority of counties and made educated guesses at the likely numbers of findings and recommendations they would have made if they had specified them in a list where items *sui generis* are brought together under a single heading rather than individually itemized headings.

Finally, our research is based heavily upon the published reports of county grand juries. For practical purposes these are best accessed using each county's grand jury's website. In this Article, for purposes of citation brevity, we have used Bluebook citations appropriate to the original reports filed with the county's superior court and county archivists. However, readers who wish to examine these reports may search for them more conveniently on the appropriate county grand jury website from which PDF copies can be retrieved.

In the course of retrieving reports, we discovered problems with some counties including one site that was not contactable, one report link that had an incorrect report attached, some sites where reports proved difficult to retrieve because the court or county had mounted the files on servers with slow response times and many attempts to retrieve documents timed out before they could be completed, and two sites where several files were corrupted and could not be read. In the latter case, we contacted site administrators who willingly supplied copies of reports by email but, at the date of writing, some had yet to replace corrupted files on their websites. We comment later in our Discussion in Section V on the existence of this situation—the fact that our research first drew attention to this suggests that the public does not frequently access these sites to retrieve reports.

115. See Susan Turner, *Moving California Corrections from an Offense- to Risk-Based System*, 8 U.C. IRVINE L. REV. 97, 113–15 (2018).

B. Jail Conditions in Alameda County¹¹⁶

Alameda County was one of five large population counties selected for evaluation. During the fiscal years 2007–2017, the county’s CGJs made a total of fifty-one jail and detention facility inspections or visits according to their annual reports.¹¹⁷ It is fair to say that these CGJs generally found little to complain about because, during the same period, they made only seven findings, nine recommendations and three required response requests.¹¹⁸

Our examination of jail condition litigation reports revealed four cases where we judged that a CGJ might reasonably have been expected to detect or make findings about at least one of the circumstances giving rise to the litigation. The four cases were *M.H. v. County of Alameda*,¹¹⁹ *Legal Services for Prisoners with Children v. Ahern*,¹²⁰ *Babu v. County of Alameda*,¹²¹ and *Upshaw v. County of Alameda*.¹²² In all four cases, one

116. The authors acknowledge with gratitude the exceptional assistance given by Cassie Barner of the Alameda County District Attorney’s Office in retrieving grand jury reports when the county grand jury’s website was not working.

117. See ALAMEDA, 2016–2017 REPORT, *supra* note 86, at 100–14 (detailing the inspections of three detention facilities); ALAMEDA CTY. GRAND JURY, 2015–2016 ALAMEDA COUNTY GRAND JURY FINAL REPORT 3 (2016), <http://grandjury.acgov.org/grandjury-assets/docs/2015-2016/2015-2016-GJ-FinalReport.pdf> [<https://perma.cc/BC8Q-ERZ7>] [hereinafter ALAMEDA, 2015–2016 REPORT] (four); ALAMEDA CTY. GRAND JURY, 2014–2015 ALAMEDA COUNTY GRAND JURY FINAL REPORT 3 (2015), <http://grandjury.acgov.org/grandjury-assets/docs/2014-2015/final2014-2015.pdf> [<https://perma.cc/2DCE-KTEA>] [hereinafter ALAMEDA, 2014–2015 REPORT] (five); ALAMEDA CTY. GRAND JURY, 2013–2014 ALAMEDA COUNTY GRAND JURY FINAL REPORT 3 (2014), <http://grandjury.acgov.org/grandjury-assets/docs/2013-2014/final2013-2014.pdf> [<https://perma.cc/C9J6-SULJ>] [hereinafter ALAMEDA, 2013–2014 REPORT] (five); ALAMEDA CTY. GRAND JURY, 2012–2013 ALAMEDA COUNTY GRAND JURY FINAL REPORT 79 (2013), <http://grandjury.acgov.org/grandjury-assets/docs/2012-2013/final2012-2013.pdf> [<https://perma.cc/Y4Z7-GSK2>] [hereinafter ALAMEDA, 2012–2013 REPORT] (four); ALAMEDA, 2011–2012 REPORT, *supra* note 82, at 31 (three); ALAMEDA, 2010–2011 REPORT, *supra* note 82, at 59 (six); ALAMEDA, 2009–2010 REPORT, *supra* note 82, at 55 (nine); ALAMEDA, 2008–2009 REPORT, *supra* note 82, at 47 (six); ALAMEDA, 2007–2008 REPORT, *supra* note 82, at 56 (six).

118. See ALAMEDA, 2011–2012 REPORT, *supra* note 82, at 32–33 (finding one detention facility in need of replacement); ALAMEDA, 2008–2009 REPORT, *supra* note 82, at 48 (one finding of understaffing at a jail facility); ALAMEDA, 2007–2008 REPORT, *supra* note 82, at 56–58 (2008) (finding one facility “filthy” after two inspections).

119. *M.H. v. County of Alameda*, No. 3:11-cv-02868-JST, 2015 WL 894758 (N.D. Cal. Feb. 27, 2015). This date and those in the following three footnotes are those of initial filing of the complaint. All complaints were retrieved using PACER and copies are available on the Civil Rights Litigation Clearinghouse website.

120. *Legal Servs. for Prisoners with Children v. Ahern*, No. RG12656266 (Alameda Sup. Ct. filed Nov. 15, 2012), <https://www.clearinghouse.net/detail.php?id=12563> [<https://perma.cc/V5QS-HFE2>].

121. *Babu v. County of Alameda*, No. 5:18-cv-07677-NC (N.D. Cal. filed Dec. 21, 2018), <https://www.clearinghouse.net/detail.php?id=16357> [<https://perma.cc/S7AK-T6QU>].

122. *Upshaw v. Alameda County*, 377 F. Supp. 3d 1027 (2019).

or more plaintiffs was an inmate at the Santa Rita Jail,¹²³ and in *Babu*, another plaintiff was an inmate at the Glenn E. Dyer Detention Facility.¹²⁴

The litigation covered a range of behaviors and conditions ranging from a fatal beating by guards,¹²⁵ failure to accommodate disabled inmates,¹²⁶ insanitary and degrading conditions of confinement,¹²⁷ to sleep deprivation of inmates.¹²⁸ All these cases involved substantial allegations that resulted in awards or claims for damages or injunctive relief.¹²⁹ In *M.H.*, the plaintiff received \$8.3 million in damages for a fatal beating.¹³⁰ In *Legal Services for Prisoners with Children*, Alameda County agreed to pay \$1.1 million in attorneys' fees and make major changes to the jail to dramatically improve access for people with disabilities, including significant physical modifications to provide wheelchair-accessible cells, showers, restrooms, dining facilities, recreation areas, visiting areas, entrances, and healthcare facilities.¹³¹ In the ongoing case of *Babu*, the plaintiffs seek injunctive relief stopping the use of "safety cells" and giving prisoners with psychiatric disabilities access to adequate mental health care.¹³² In *Upshaw*, the plaintiffs seek damages and injunctive relief to prohibit the county from, inter alia, using overhead light, loud noise, public address system announcements,

123. See *Upshaw*, 377 F. Supp. 3d at 1030; Civil Complaint for Declaratory & Injunctive Relief at 3, *Babu*, No. 18-cv-07677-NC, ECF No. 1 [hereinafter Complaint, *Babu*]; Complaint for Damages at 3, *M.H.*, 2015 WL 894758 (No. 11-cv-02868-JST) [hereinafter Complaint, *M.H.*] (seeking damages on behalf of a minor relating to the alleged wrongful death of the minor's parent who was a prisoner at the Santa Rita jail at the time of death); Complaint for Injunctive & Declaratory Relief at 1–2, *Legal Servs. for Prisoners with Children*, RG12656266 [hereinafter Complaint, *Legal Servs.*].

124. Complaint, *Babu*, *supra* note 123, at 3.

125. Complaint, *M.H.*, *supra* note 123, at 3.

126. Complaint, *Babu*, *supra* note 123, at 2–3.

127. Complaint, *Legal Servs.*, *supra* note 123, at 1.

128. *Upshaw*, 377 F. Supp. 3d at 1030.

129. See *id.* at 1034; Complaint, *Babu*, *supra* note 123, at 1; Stipulation and Order of Settlement at 2, *M.H. v. County of Alameda*, No. 3:11-cv-02868-JST, 2015 WL 894758 (N.D. Cal. Feb. 27, 2015) [hereinafter Settlement, *M.H.*]; Settlement Agreement, *Legal Servs. for Prisoners with Children v. Ahern*, No. RG12656266 (Alameda Sup. Ct. Mar. 24, 2016) [hereinafter Settlement, *Legal Servs.*].

130. See Settlement, *M.H.*, *supra* note 129, at 2.

131. See Settlement, *Legal Servs.*, *supra* note 129, at 6–14, 24.

132. See Complaint, *Babu*, *supra* note 123, at 3.

scheduled prisoner activities, and maintenance and cleaning work for at least a seven-hour period each night.¹³³

Two important purposes served by CGJs are their watchdog and lessons learned functions.¹³⁴ Civil rights suits have expensive consequences for counties whether in awards of damages and attorneys' fees or in staff retraining costs.¹³⁵ A well-functioning CGJ would detect early signs of likely problems in the penal system and sound an alarm to alert the county and the sheriff's department.¹³⁶ That is its watchdog function.¹³⁷ One might also hope that when something goes badly wrong, a well-functioning CGJ might analyse the events and make recommendations to lessen the chance of future repetition.¹³⁸ This is its lessons learned function.

The civil rights cases above point to serious problems in the county's Santa Rita Jail—a facility with a stated capacity of 3,812 inmates,¹³⁹ and a campus area of 113 acres.¹⁴⁰ The Alameda CGJ has nineteen members¹⁴¹ and inspecting such a large and sprawling facility is potentially a daunting task even if the full jury divided the task between its members. However,

133. See Complaint for Violation of Civil and Constitutional Rights at 24, *Upshaw*, 377 F. Supp. 3d 1027 (filed Dec. 31, 2018) (No. 3:18-cv-07814-JCS) [hereinafter Complaint, *Upshaw*].

134. See *Civil Grand Jury*, SANTA CLARA, *supra* note 51 (describing the “watchdog” function). In this Article we refer throughout to CGJs as also having a “lessons learned” function—a phrase that does not usually appear in CGJ published documentation. There is little point in having a watchdog “bark” unless someone is listening. Sandra Rowe and Sharon Sikes have observed in a project management context: “[W]e learn from project failures as well as project successes. By not learning from project failures we are doomed to repeat similar situations. By not maximizing on project successes, we miss opportunities to implement good processes and practices to successfully complete existing and future work.” Sandra F. Rowe & Sharon Sikes, *Lessons Learned: Taking It to the Next Level*, PROJECT MGMT. INST. (2006), <https://pmi.org/learning/library/lessons-learned-next-level-communicating-7991> [<https://perma.cc/F5FW-YW8H>]. CGJ reports are replete with findings and recommendations that praise the good and criticize the bad. Properly, these encomiums and admonitions together constitute the “lessons learned.” However, in this Article we use the phrase to refer to warnings given—or that should have been given—that could have been heeded. For an example of its use by a CGJ in one report, see GRAND JURY 2015–2016, CTY. OF ORANGE, SHERIFF’S TEMPORARY DETENTION/HOLDING CELL AREAS, PATROL AREAS AND SPECIAL SERVICES 17 (2016), http://www.ocgrandjury.org/pdfs/2015_2016_GJreport/2016-05-13_Website_Report.pdf [<https://perma.cc/Y5GA-DE75>] [hereinafter ORANGE, 2015–2016 DETENTION REPORT].

135. See *supra* notes 129–33 and accompanying text.

136. See Doria, *supra* note 31, at 1116, 1127–32.

137. See *id.* at 1116.

138. See *id.* at 1130–32.

139. ALAMEDA, 2016–2017 REPORT, *supra* note 86, at 100.

140. *Santa Rita Jail*, ALAMEDA COUNTY SHERIFF’S OFF., https://www.alamedacountysheriff.org/dc_srj.php [<https://perma.cc/X42S-GGSN>].

141. *About Us*, ALAMEDA COUNTY GRAND JURY, <http://grandjury.acgov.org/index.page> [<https://perma.cc/XE3M-NGD5>]; see also CAL. PENAL CODE § 888.2(c) (West 2008).

despite this being the largest public prison in the county,¹⁴² Alameda CGJs did not inspect the Santa Rita Jail every year during the study period.¹⁴³ On the whole, when it did inspect the facility, the CGJ took a predominantly benign view of the jail and its staff.¹⁴⁴ On one occasion it reviewed a recommendation by the Alameda County Public Health Department that the jail should hire a fulltime dietician—but concluded that the present part-time appointment was cost-effective and made no recommendation.¹⁴⁵ Otherwise, it concluded that the jail was run satisfactorily and made no findings or recommendations that required a response.¹⁴⁶

It seems surprising that, once the jury was put on notice of the beating death of Martin Harrison at Santa Rita Jail on August 16, 2010, and the filing by his family of the subsequent 42 U.S.C. § 1983 action on June 10, 2011,¹⁴⁷ no subsequent CGJs looked into the circumstances of his death and what lessons could be learned.¹⁴⁸ The consequences for the county were severe both financially and reputationally—the \$8.3 million settlement was reputedly the largest wrongful death settlement in a civil rights case in state history.¹⁴⁹

Considering the number of civil rights cases brought against the county or sheriff regarding behavior and conditions at Santa Rita Jail during the period, it is not an exaggeration to say that the CGJs were perhaps incurious about conditions in the largest jail in their county. In the last year studied where the CGJ inspected the jail, its report details no major areas of

142. See *Santa Rita Jail*, *supra* note 140.

143. For the years where Alameda CGJs did not inspect Santa Rita Jail, see ALAMEDA, 2015–2016 REPORT, *supra* note 117, at 3; ALAMEDA, 2014–2015 REPORT, *supra* note 117, at 109; ALAMEDA, 2013–2014 REPORT, *supra* note 117, at 111; ALAMEDA, 2012–2013 REPORT, *supra* note 117, at 79; ALAMEDA, 2011–2012 REPORT, *supra* note 82, at 31; ALAMEDA, 2010–2011 REPORT, *supra* note 82, at 59; ALAMEDA, 2007–2008 REPORT, *supra* note 82, at 56. Additionally, the CGJ only toured the Santa Rita Jail in 2009–2010. ALAMEDA, 2009–2010 REPORT, *supra* note 82, at 55.

144. See, e.g., ALAMEDA, 2008–2009 REPORT, *supra* note 82, at 47.

145. ALAMEDA, 2009–2010 REPORT, *supra* note 82, at 55–56.

146. *Id.*

147. See generally Complaint, *M.H.*, *supra* note 123.

148. See *supra* note 143 and accompanying text (listing 2011–2016 with no inspections of Santa Rita Jail). The 2016–2017 CGJ was the first grand jury since the Martin Harrison incident that inspected Santa Rita Jail and included the inspection in its Final Report. See ALAMEDA, 2016–2017 REPORT, *supra* note 86, at 100–06.

149. See Carimah Townes, *Largest Wrongful Death Settlement in California History for Inmate Who Didn't Get Proper Treatment*, THINKPROGRESS (Feb. 11, 2015, 2:00 PM), <https://thinkprogress.org/largest-wrongful-death-settlement-in-california-history-for-inmate-who-didnt-get-proper-treatment-c66e720d5d92/> [<https://perma.cc/H8KK-YVPE>].

concern.¹⁵⁰ While the CGJ for fiscal year 2016–2017 would not have been aware of the litigation in the 2018 cases of *Babu* and *Upshaw*, the circumstances that gave rise to those cases should have been evident during the period studied.¹⁵¹ The jury should have been aware of the circumstances that gave rise to *M.H.* and *Legal Services for Prisoners with Children* as both cases had been settled by then.¹⁵² By its own account, it “inspected the booking area, one housing unit, the Sandy Turner Education Center, and the Santa Rita Transition Center.”¹⁵³ At the least one might have expected the jury to want to examine wheelchair accessibility in the areas referred to in the settlement of the *Legal Services for Prisoners with Children* case and report its findings.¹⁵⁴

Camp Wilmont Sweeney was the subject of extensive and trenchant criticism by some juries. Various CGJs expressed concerns about the camp but perhaps the strongest were those of the 2010–2011 jury which declared itself “appalled at what we heard and saw during our November 2010 visit.”¹⁵⁵ The jury described finding, inter alia, overgrown weeds throughout the facility, a library that appeared more like a ransacked storage room and smelling of mold and mildew, ceilings that were sagging with evidence of leakage, and even a dead mouse outside one door.¹⁵⁶ The jury noted that a 2008 report by criminal justice consultants Carter Goble Lee described the camp as being inappropriate for renovation and that it “present[ed] unusual liability to the community and the County.”¹⁵⁷ In its Conclusion, the CGJ recognized that budget constraints made replacement problematic but questioned why nothing had been done to remedy a substandard situation.¹⁵⁸ Its recommendations 11-6 and 11-7 advised that the probation department should immediately bring the camp into compliance with State Health and Safety codes and accelerate the process for replacing the camp.¹⁵⁹

150. See ALAMEDA, 2016–2017 REPORT, *supra* note 86, at 100–06.

151. See Complaint, *Babu*, *supra* note 123, at 1. See generally Complaint, *Upshaw*, *supra* note 133.

152. See generally Settlement, *M.H.*, *supra* note 129; Settlement, *Legal Servs.*, *supra* note 129.

153. ALAMEDA, 2016–2017 REPORT, *supra* note 86, at 100.

154. See Settlement, *Legal Servs.*, *supra* note 129, at 6–14.

155. ALAMEDA, 2010–2011 REPORT, *supra* note 82, at 41.

156. *Id.*

157. *Id.* at 42.

158. *Id.* at 48.

159. *Id.* at 50.

Subsequent CGJs further criticized the facility in reports for the years 2011–2012¹⁶⁰ and 2014–2015.¹⁶¹ Despite these warnings, the county has been slow to replace the facility. As at the date of writing in November 2019, the Alameda County Probation Department's website reports that a New Camp Sweeney Replacement Project seems to have gotten no further than that the Alameda County Board of Supervisors approved \$54.8 million in service needs and related costs associated with the project on July 30, 2018.¹⁶² However, a presentation to the probation department's Public Protection Subcommittee on February 14, 2019, projects construction will finish and occupancy will begin by June 2020,¹⁶³ some twelve years on from the original Carter Goble Lee report.¹⁶⁴

Inspections of other facilities generally found little fault other than relatively minor matters such as dirty unused cells at the Glenn E. Dyer Detention Facility,¹⁶⁵ a water pressure problem in one cell at the Hayward Courthouse Jail,¹⁶⁶ and unclear marking of storage of first aid kits at the Hayward Police Department Jail.¹⁶⁷ Alameda County CGJs present a somewhat variable picture of reliability in detecting and reporting problems within their public prisons. Their vigilance in monitoring Camp Wilmont Sweeney is exemplary but they were less successful in detecting problems that led to other civil rights litigation.

C. Jail Conditions in Butte County

Butte County was one of five medium population counties selected for evaluation. During the fiscal years 2007–2017, the county's CGJs made a total of twenty jail and detention facility inspections or visits according

160. ALAMEDA, 2011–2012 REPORT, *supra* note 82, at 32–33 (noting improvements since the 2010–2011 Report but stating that the entire facility needed to be rebuilt).

161. ALAMEDA, 2014–2015 REPORT, *supra* note 117, at 111–14 (noting that the facility remained “old and dilapidated” and was understaffed).

162. *See* ALAMEDA CTY. PROB. DEP'T., STRATEGIC PLAN: VISION 2023, at 8 & n.5 (2018), https://probation.acgov.org/probation-assets/files/Strategic_Plan_Vision.pdf [<https://perma.cc/2EPR-NHPR>].

163. PUB. PROT. SUBCOMM., ALAMEDA CTY. PROB. DEP'T., CAMP WILMONT SWEENEY REPLACEMENT PROJECT 16 (2019), http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_2_14_19/public%20protection/Regular%20Calendar/Camp_Sweeney_replacement_project_2_14_19.pdf [<https://perma.cc/8LSN-SBBG>].

164. *See* ALAMEDA, 2010–2011 REPORT, *supra* note 82, at 42.

165. ALAMEDA, 2007–2008 REPORT, *supra* note 82, at 57–58.

166. ALAMEDA, 2012–2013 REPORT, *supra* note 117, at 80.

167. ALAMEDA, 2015–2016 REPORT, *supra* note 117, at 107–08.

to their annual reports.¹⁶⁸ CGJs made 102 jail findings, gave 67 recommendations, and required 41 institutional responses.¹⁶⁹

168. See 2016–2017 BUTTE CTY. GRAND JURY, 2016–2017 BUTTE COUNTY GRAND JURY REPORT 25 (2017), <https://www.buttecourt.ca.gov/GrandJury/reports/2016-2017%20Grand%20Jury%20Report.pdf> [<https://perma.cc/2H9A-DUTB>] [hereinafter BUTTE, 2016–2017 REPORT] (two); BUTTE CTY. GRAND JURY 2015–2016, FINAL REPORT 9 (2016), <https://www.buttecourt.ca.gov/GrandJury/reports/2015-2016%20Grand%20Jury%20Report.pdf> [<https://perma.cc/N9H3-JM4D>] [hereinafter BUTTE, 2015–2016 REPORT] (two); BUTTE CTY. GRAND JURY 2014–2015, FINAL REPORT 3, 9 (2015), <https://www.buttecourt.ca.gov/GrandJury/reports/2014-2015%20Grand%20Jury%20Report.pdf> [<https://perma.cc/JL5E-F5AZ>] [hereinafter BUTTE, 2014–2015 REPORT] (two); BUTTE, 2013–2014 REPORT, *supra* note 103, at 33, 41 (two); BUTTE CTY. GRAND JURY 2012–2013, FINAL REPORT 39, 47 (2013), https://www.buttecounty.net/Portals/1/GrandJury/2012_2013_Butte_County_Grand_Jury_Report.pdf [<https://perma.cc/M95S-YBJ3>] [hereinafter BUTTE, 2012–2013 REPORT] (two); BUTTE CTY. GRAND JURY, 2011–2012 BUTTE COUNTY GRAND JURY REPORT 37 (2012), https://www.buttecounty.net/Portals/1/GrandJury/11-12/BCGJ_Final_Report_FY11-12.pdf [<https://perma.cc/E9VP-STMZ>] [hereinafter BUTTE, 2011–2012 REPORT] (two); BUTTE CTY. GRAND JURY 2010–2011, FINAL REPORT 11, 19 (2011), https://www.buttecounty.net/Portals/1/GrandJury/10-11/BCGJ_Final_Report_FY10-11.pdf [<https://perma.cc/YSB5-FLQK>] [hereinafter BUTTE, 2010–2011 REPORT] (two); BUTTE CTY. GRAND JURY 2009–2010, FINAL REPORT, at iii (2010), https://www.buttecounty.net/Portals/1/GrandJury/09-10/09-10Table_of_Contents_and_Introduction.pdf [<https://perma.cc/XDM2-JQYF>] (two); BUTTE CTY. GRAND JURY 2008–2009, FINAL REPORT 25, 31 (2009), https://www.buttecounty.net/Portals/1/GrandJury/08-09/Grand_Jury_Report_FY08-09-Pages_1-55.pdf [<https://perma.cc/S9VG-ACK7>] [hereinafter BUTTE, 2008–2009 REPORT] (two); BUTTE CTY. GRAND JURY 2007–2008, FINAL REPORT 15 (2008), https://www.buttecounty.net/Portals/1/GrandJury/07-08/0708GJ_Report_Part_1_Introduction_Table_of_Contents.pdf [<https://perma.cc/HC8G-RWZK>] (two).

169. BUTTE, 2016–2017 REPORT, *supra* note 168, at 138–39 (zero); BUTTE, 2015–2016 REPORT, *supra* note 168, at 9 (zero); BUTTE, 2014–2015 REPORT, *supra* note 168, at 6–7, 12 (fourteen findings, four recommendations, four required responses); BUTTE, 2013–2014 REPORT, *supra* note 103, at 39–40, 48 (fourteen findings, four recommendations, four required responses); BUTTE, 2012–2013 REPORT, *supra* note 168, at 44–45, 53–54 (nineteen findings, nineteen recommendations, four required responses); BUTTE, 2011–2012 REPORT, *supra* note 168, at 43–44 (twelve findings, seven recommendations, three required responses); BUTTE, 2010–2011 REPORT, *supra* note 168, at 17–18, 23–24 (eighteen findings, ten recommendations, six required responses); BUTTE CTY. GRAND JURY 2009–2010, FINAL REPORT: BUTTE COUNTY JAIL 177–78 (2010), https://www.buttecounty.net/Portals/1/GrandJury/09-10/09-10Butte_County_Jail.pdf [<https://perma.cc/8BQU-DAET>] [hereinafter BUTTE, 2009–2010 JAIL REPORT] (seven findings, six recommendations, two required responses); BUTTE CTY. GRAND JURY 2009–2010, FINAL REPORT: BUTTE COUNTY JUVENILE HALL 183–84 (2010), https://www.buttecounty.net/Portals/1/GrandJury/09-10/09-10Butte_County_Juvenile_Hall.pdf [<https://perma.cc/Q8TJ-EALL>] [hereinafter BUTTE, 2009–2010 JUVENILE HALL REPORT] (four findings, four recommendations, six required responses); BUTTE, 2008–2009 REPORT, *supra* note 168, at 28–29, 33–34 (seven findings, six recommendations, five required responses); BUTTE CTY. GRAND JURY 2007–2008, FINAL REPORT: BUTTE COUNTY JAIL 47–49 (2008), https://www.buttecounty.net/Portals/1/GrandJury/07-08/0708GJ_Report_Part_7_Butte_County_Jail.pdf [<https://perma.cc/MKC7-CK54>] [hereinafter BUTTE, 2007–2008 JAIL REPORT] (five findings, five recommendations, six required responses); BUTTE CTY. GRAND JURY 2007–2008, FINAL REPORT: BUTTE COUNTY JUVENILE HALL 52 (2008), <https://www.buttecounty.net/Portals/1/GrandJury/07-08/0708GJ>

There was no new civil rights litigation against Butte County during the study period. However, the county is subject to a continuing consent decree between the county and inmates of Butte County Jail whereby the county is obliged to provide inmates with “meaningful access to the courts.”¹⁷⁰ The consent decree requires that the jail maintain a law library that is staffed by Legal Research Assistants (LRAs), who are California State University, Chico students participating in the university’s paralegal program.¹⁷¹

The CGJ reports frequently flag up the age of the Butte County Jail and the need for its replacement. In their 2007–2008 report, the jury found that the Women’s Section in the “old Jail” did not provide a humane environment.¹⁷² The 2009–2010 grand jury recommended that priority should be given to funding the rebuilding of the women’s facility, which was stated to be overcrowded and outdated.¹⁷³ The 2010–2011 jury also was not satisfied with the condition of the women’s facility and noted that the sheriff’s department cited “lack of funding” as the primary reason.¹⁷⁴ The 2013–2014 jury found that the jail was outdated and not suitable for housing long-term prisoners¹⁷⁵ and the 2014–2015 jury found that Butte County was in need of a new jail facility.¹⁷⁶

The juries addressed a number of less pressing concerns, mainly of a prophylactic nature including understaffing in the central control room and lack of clarity in the Jail Information Handbook,¹⁷⁷ and the production of a video in English and Spanish explaining rules, available programs, and what to expect in Butte County Jail as well as a planned Spanish version of the Jail Information Handbook.¹⁷⁸ Other findings related to jail security and safety.¹⁷⁹

Report%20Part 8 Juvenile Hall.pdf [<https://perma.cc/75GJ-WDL6>] (two findings, two recommendations, one required response).

170. See BUTTE CTY. BD. OF SUPERVISORS, AGREEMENT BETWEEN THE COUNTY OF BUTTE AND CHICO RESEARCH FOUNDATION (2012), <https://www.clearinghouse.net/chDocs/public/JC-CA-0088-0001.pdf> [<https://perma.cc/65A2-6G2Y>].

171. *Id.* at 5.

172. BUTTE, 2007–2008 JAIL REPORT, *supra* note 169, at 47.

173. BUTTE, 2009–2010 JAIL REPORT, *supra* note 169, at 177.

174. BUTTE, 2010–2011 REPORT, *supra* note 168, at 11.

175. BUTTE, 2013–2014 REPORT, *supra* note 103, at 39.

176. BUTTE, 2014–2015 REPORT, *supra* note 168, at 6.

177. BUTTE, 2007–2008 JAIL REPORT, *supra* note 169, at 48.

178. BUTTE, 2008–2009 REPORT, *supra* note 168, at 28.

179. BUTTE, 2012–2013 REPORT, *supra* note 168, at 45; BUTTE, 2011–2012 REPORT, *supra* note 168, at 17; BUTTE, 2010–2011 REPORT, *supra* note 168, at 43.

Generally, the Butte County CGJ appears to have performed its public prison oversight role conscientiously. It has used its bully pulpit position to urge the county's board of supervisors to build a new facility and has drawn attention to actions that might ward off future problems. As the jurors remind readers in their reports, the Butte County Jail is the largest correctional facility north of Sacramento,¹⁸⁰ and, from our research, seems to have been successful in avoiding further significant civil rights litigation since 1984.

D. Jail Conditions in Los Angeles County

Los Angeles County is the most populous county in California and was one of five large population counties selected for evaluation.¹⁸¹ During the fiscal years 2007–2017, the county's CGJs made a total of 1,069 jail and detention facility inspections or visits according to their annual reports.¹⁸² CGJs made 170 public prison findings, gave 222 recommendations, and required 45 institutional responses.¹⁸³

180. See, e.g., BUTTE, 2014–2015 REPORT, *supra* note 168, at 4.

181. See *California Counties by Population*, *supra* note 39.

182. See L.A., 2016–2017 REPORT, *supra* note 49, at 301 (122); L.A., 2015–2016 REPORT, *supra* note 83, at 401 (138); L.A. CTY. 2014–2015 CIVIL GRAND JURY, FINAL REPORT 183 (2015), http://grandjury.co.la.ca.us/pdf/2014-2015_Final.pdf [<https://perma.cc/8PGW-EN3X>] [hereinafter L.A., 2014–2015 REPORT] (121); 2013–2014 L.A. CTY. CIVIL GRAND JURY, FINAL REPORT 337, 390–96 (2014), http://grandjury.co.la.ca.us/pdf/2013-2014_Final.pdf [<https://perma.cc/5SDS-L2R5>] [hereinafter L.A., 2013–2014 REPORT] (ninety-six); 2012–2013 CIVIL GRAND JURY, CTY. OF L.A., FINAL REPORT 185 (2013), <http://grandjury.co.la.ca.us/gjury12-13/Final%20Report%20%2012-13.pdf> [<https://perma.cc/HEB8-JQHF>] [hereinafter L.A., 2012–2013 REPORT] (ninety-four); 2011–2012 L.A. CTY. CIVIL GRAND JURY, FINAL REPORT 413–48 (2012), <http://grandjury.co.la.ca.us/Final%20Grand%20Jury%20Report/FINAL%20REPORT%202011-2012%20LOS%20ANGELES%20COUNTY%20CIVIL%20GRAND%20JURY.pdf> [<https://perma.cc/AX52-X6JG>] [hereinafter L.A., 2011–2012 REPORT] (ninety-six); L.A., 2010–2011 REPORT, *supra* note 83, at 333 (fifty-six); 2009–2010 L.A. CTY. CIVIL GRAND JURY, FINAL REPORT 149–58 (2010), <http://grandjury.co.la.ca.us/pdf/2009-2010%20CIVIL%20GRAND%20JURY.pdf> [<https://perma.cc/Y98J-LX5K>] [hereinafter L.A., 2009–2010 REPORT]; 2008–2009 CIVIL GRAND JURY, CTY. OF L.A., FINAL REPORT 405 (2009), <http://grandjury.co.la.ca.us/gjury08-09/MasterDocument2009-06-07.pdf> [<https://perma.cc/GFK2-CYG4>] [hereinafter L.A., 2008–2009 REPORT] (115); L.A. CTY. CIVIL GRAND JURY 2007–2008, FINAL REPORT 319–26 (2008), <http://grandjury.co.la.ca.us/gjury07-08/2007-08FinalReport.pdf> [<https://perma.cc/RX2B-S6GH>] [hereinafter L.A., 2007–2008 REPORT] (127).

183. See L.A., 2016–2017 REPORT, *supra* note 49, at 345–49 (twenty-eight findings, twenty-eight recommendations, eleven required responses); L.A., 2015–2016 REPORT, *supra* note 83, at 425–35 (twenty-eight findings, twenty-eight recommendations, eleven required responses); L.A., 2014–2015 REPORT, *supra* note 183, at 208–11 (four findings, nine recommendations, four required responses); L.A., 2013–2014 REPORT, *supra* note 182, at 339–43, 377–88, 395 (twenty-five findings, twenty-five recommendations, three required responses); L.A., 2012–2013 REPORT, *supra* note 182, at 186–89, 190–92, 219–20 (zero findings, twenty-two recommendations, six required responses); L.A., 2011–2012

Our examination of jail condition litigation reports revealed nine cases where we judged that a CGJ might reasonably have been expected to detect or make findings about at least one of the circumstances giving rise to the litigation.¹⁸⁴ This was the largest number of cases for any county that we studied, but the result is unsurprising because Los Angeles County has many public prisons within its boundaries.¹⁸⁵ The number of public prisons within the county varied during the period studied as some were closed and others opened—but the highest recorded figure was the 138 inspected in the year 2015–2016.¹⁸⁶

The nine cases identified were *Thomas v. County of Los Angeles*,¹⁸⁷ *Johnson v. Los Angeles County Sheriff's Department*,¹⁸⁸ *Olivier v. Baca*,¹⁸⁹ *Amador v. Baca*,¹⁹⁰ *Holguin v. County of Los Angeles*,¹⁹¹ *Rodriguez v. County of Los Angeles*,¹⁹² *Douglas v. Cooley*,¹⁹³ *Rosas v. Baca*,¹⁹⁴ and *United States v. County of Los Angeles*.¹⁹⁵ Seven of these nine cases implicated events

REPORT, *supra* note 182, at 414–23 (five findings, twenty-one recommendations, six required responses); L.A., 2010–2011 REPORT, *supra* note 83, at 333–35 (four findings, three recommendations, three required responses); L.A., 2009–2010 REPORT, *supra* note 182, at 159–60 (zero findings, thirteen recommendations, zero required responses); L.A., 2008–2009 REPORT, *supra* note 182, at 419–22 (eleven findings, eleven recommendations, zero required responses); L.A., 2007–2008 REPORT, *supra* note 182, at 316–18, 327–28 (twenty-two findings, nineteen recommendations, zero required responses).

184. See *infra* notes 187–95 and accompanying text.

185. See L.A., 2015–2016 REPORT, *supra* note 83, at 401–36.

186. See *id.* at 401–21. The Report lists 152 public prisons but fourteen were closed or not in service during that fiscal year. *Id.* The figure includes both adult and juvenile facilities. See *id.*

187. *Thomas v. County of Los Angeles*, 703 Fed. Appx. 508 (9th Cir. 2017).

188. *Johnson v. L.A. Cty. Sheriff's Dep't*, No. 2:08-cv-03515-DDP-SH, 2011 WL 1812746 (C.D. Cal. May 12, 2011).

189. *Olivier v. Baca*, 913 F.3d 852 (9th Cir. 2019). Though the case was eventually dismissed, *id.* at 857, CGJs prior to those decisions might have looked for evidence of the subject matter of the litigation.

190. *Amador v. Baca*, 299 F.R.D. 618 (C.D. Cal. 2014).

191. *Holguin v. County of Los Angeles*, No. 2:10-cv-08011-GW-PLA, 2011 WL 7128640 (C.D. Cal. Oct. 12, 2011).

192. *Rodriguez v. County of Los Angeles*, 891 F.3d 776 (9th Cir. 2018).

193. *Douglas v. Cooley*, No. BS138170 (L.A. Super. Ct. Feb. 26, 2013), <http://www.lacourt.org/casesummary/ui/casesummary.aspx?casetype=civil> [<https://perma.cc/N8LY-SZ69>].

194. *Rosas v. Baca*, No. 2:12-cv-00428-DDP-MRW, 2012 WL 2061694 (C.D. Cal. June 7, 2012).

195. *United States v. County of Los Angeles*, No. 2:15-cv-05903-FMO-JEM, 2016 WL 2885855 (C.D. Cal. May 17, 2016).

or conditions at the Los Angeles County Men’s Central Jail.¹⁹⁶ Because actions were filed in these nine cases during the period studied, it might be expected that civil grand juries might have taken notice of these ongoing or recently commenced proceedings as a focus for their inquiries at that facility. The actions made a wide variety of allegations including inmates being forced to sleep on the jail’s floor,¹⁹⁷ lack of adjustments for inmates with disabilities,¹⁹⁸ unprovoked beating while handcuffed,¹⁹⁹ mass beatings of inmates,²⁰⁰ a policy of suppression of evidence in relation to such mass beatings,²⁰¹ and inadequate mental health provision and care.²⁰² Because so many allegations related to a single facility, we focused our analysis on the CGJs’ inquiries into that facility throughout the ten-year period studied.

Analysis of CGJ reports for the period 2007–2017 revealed no findings by juries relating to inmates at Central Men’s Jail being required to sleep on jail floors because of lack of bed space,²⁰³ which was alleged in *Thomas*.²⁰⁴ Although the 2013–2014 report noted that cells were cramped, it made no specific recommendations other than that the county board of supervisors approve the sheriff’s funding request for replacement of the jail.²⁰⁵ The reports for 2014–2015²⁰⁶ and 2015–2016²⁰⁷ similarly noted that the jail was overcrowded.²⁰⁸ Again, analysis of the reports revealed no

196. *Olivier v. Baca*, 913 F.3d 852, 855–56 (9th Cir. 2019); *Rodriguez*, 891 F.3d at 784; *Thomas v. County of Los Angeles*, 703 Fed. Appx. 508, 510 (9th Cir. 2017); *Rosas*, 2012 WL 2061694, at *2 n.1; Complaint for Damages at 3, *Holguin*, 2011 WL 7128640 (C.D. Cal. filed Oct. 25, 2010) (No. 2:10-cv-08011-GW-PLA) [hereinafter Complaint, *Holguin*]; Complaint for Declaratory and Injunctive Relief at 11, *Johnson v. L.A. Cty. Sheriff’s Dep’t*, No. 2:08-cv-03515-DDP-SH, 2011 WL 1812746 (C.D. Cal. filed May 29, 2008) [hereinafter Complaint, *Johnson*]; Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief at 20–22, *Douglas*, No. BS138170 [hereinafter Complaint, *Douglas*].

197. *Thomas*, 703 Fed. Appx. at 510.

198. Complaint, *Johnson*, *supra* note 196, at 9.

199. Complaint, *Holguin*, *supra* note 196, at 4.

200. *Rodriguez*, 891 F.3d at 785–87; *see also Rosas*, 2012 WL 2061694, at *3.

201. Complaint, *Douglas*, *supra* note 196, at 20.

202. *United States v. County of Los Angeles*, No. 2:15-cv-05903-FMO-JEM, 2016 WL 2885855, at *1 (C.D. Cal. May 17, 2016).

203. *See generally* L.A., 2016–2017 REPORT, *supra* note 49; L.A., 2015–2016 REPORT, *supra* note 83; L.A., 2014–2015 REPORT, *supra* note 182; L.A., 2013–2014 REPORT, *supra* note 182; L.A., 2012–2013 REPORT, *supra* note 182; L.A., 2011–2012 REPORT, *supra* note 182; L.A., 2010–2011 REPORT, *supra* note 83; L.A., 2009–2010 REPORT, *supra* note 182; L.A., 2008–2009 REPORT, *supra* note 182; L.A., 2007–2008 REPORT, *supra* note 182.

204. *See Thomas v. County of Los Angeles*, 703 Fed. Appx. 508, 510 (9th Cir. 2017).

205. L.A., 2013–2014 REPORT, *supra* note 182, at 340–41.

206. L.A., 2015–2016 REPORT, *supra* note 83, at 199.

207. L.A., 2014–2015 REPORT, *supra* note 182, at 401.

208. L.A., 2015–2016 REPORT, *supra* note 83, at 199; L.A., 2014–2015 REPORT, *supra* note 182, at 401.

investigations by CGJs during the period studied²⁰⁹ into the allegation in *Douglas* that there was a policy of suppression of evidence of jail staff beating inmates.²¹⁰

In *Johnson* it was alleged that Men's Central Jail lacked adjustments to accommodate the needs of disabled inmates.²¹¹ There was no special investigation into this allegation during the period, but in its report for 2011–2012, the grand jury noted that the jail needed more bars in its shower areas and recommended that it improve and increase the number of grab bars in the shower area.²¹²

The allegations of individual and mass beatings made in *Holguin*,²¹³ *Rodriguez*,²¹⁴ and *Rosas*²¹⁵ prompted specific investigation and comment in the CGJ's 2013–2014 report.²¹⁶ The jury noted that “[t]hrough newspaper and other media reports, the public is increasingly aware of alleged deputy assaults and other wrongdoings.”²¹⁷ It observed during its tour of the jail that cells were cramped and that such conditions could lead to disruptive behavior:

The design flaws of this aged building prohibit full observation of the cells and inmates by deputies. The existing facility falls far below the standards of modern jail design. Excessive force by deputies is a problem at Men's Central. The use of force was confirmed by the *Willis* federal jury verdict.²¹⁸

It went on to recommend that the sheriff's deputies and their commanding officers should be retrained on the proper use of force.²¹⁹

Finally, we can say that Los Angeles CGJs showed more general awareness in their reports of prisoners' mental health problems. These were the subject of the Department of Justice's action in *United States v.*

209. See generally L.A., 2016–2017 REPORT, *supra* note 49; L.A., 2015–2016 REPORT, *supra* note 83; L.A., 2014–2015 REPORT, *supra* note 182; L.A., 2013–2014 REPORT, *supra* note 182; L.A., 2012–2013 REPORT, *supra* note 49; L.A., 2011–2012 REPORT, *supra* note 182.

210. See Complaint, *Douglas*, *supra* note 196, at 20.

211. Complaint, *Johnson*, *supra* note 196, at 9.

212. L.A., 2011–2012 REPORT, *supra* note 182, at 417, 420.

213. Complaint, *Holguin*, *supra* note 196, at 4.

214. *Rodriguez v. County of Los Angeles*, 891 F.3d 776, 785–87 (9th Cir. 2018).

215. *Rosas v. Baca*, No. 2:12-cv-00428-DDP-MRW, 2012 WL 2061694, at *3 (C.D. Cal. June 7, 2012).

216. L.A., 2013–2014 REPORT, *supra* note 182, at 340.

217. *Id.*

218. *Id.* (citing *Willis v. Vasquez*, 648 Fed. Appx. 720 (9th Cir. 2016)).

219. *Id.* at 341.

County of Los Angeles (2015), a case brought under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997.²²⁰ The issue is mentioned and discussed in a number of reports.²²¹ The county had been put on notice of the problem as far back as 1996 when the Department of Justice wrote to the county notifying it of the Department’s intention to investigate whether the Los Angeles County Jail provided inadequate mental health services to inmates.²²²

In an agreement between the U.S. Department of Justice and Los Angeles County, the county agreed that it would screen and evaluate inmates for mental illness at the Inmate Reception Center and, inter alia, provide adequate mental health treatment to all inmates that the jail determined to be mentally ill.²²³ The agreement had been in effect for five years before the period studied began and continues in force to the present day.²²⁴ In the Background section to the chapter *Detention Facilities in the County of Los Angeles* in its 2008–2009 Report, the CGJ describes its inspection methods and states: “The inspection form (Exhibit I) paid special attention to the medical and mental health services provided in the facilities.”²²⁵ Exhibit I is the Detention Facilities Inspection Report form used by the CGJ for all its inspections.²²⁶ The front page has a rating panel for “Mental Health” as either compliant or noncompliant.²²⁷ The second page has a panel for mental health with a topic reminder that “[h]ealth evaluations must be completed within 96 hours of intake. Where and how do you obtain this information at intake? How do you identify individuals who are mentally disordered?”²²⁸

220. *United States v. County of Los Angeles*, No. 2:15-cv-05903-FMO-JEM, 2016 WL 2885855, at *1 (C.D. Cal. May 17, 2016).

221. See generally L.A., 2016–2017 REPORT, *supra* note 49, 301–50; L.A., 2015–2016 REPORT, *supra* note 83, at 401–36; L.A., 2012–2013 REPORT, *supra* note 182, at 185–229.

222. Letter from Deval L. Patrick, Assistant Attorney Gen., U.S. Dep’t of Justice, to Joanne Sturges, L.A. Cty. Exec. (June 6, 1996), https://www.clearinghouse.net/ch Docs/not_public/JC-CA-0002-0001.pdf [<https://perma.cc/FNV6-5ATK>].

223. See *Memorandum of Agreement Regarding Mental Health Services at the Los Angeles County Jail*, U.S. DEP’T JUST., <https://www.justice.gov/crt/between-united-states-and-los-angeles-county-california> [<https://perma.cc/UQ3T-6FCN>].

224. See *Justice Department Concludes that Los Angeles County Jails System Has Made Progress, but Serious Deficiencies Continue*, U.S. DEP’T JUST. (June 6, 2014), <https://www.justice.gov/opa/pr/justice-department-concludes-los-angeles-county-jails-system-has-made-progress-serious> [<https://perma.cc/SS43-PWR3>].

225. L.A., 2008–2009 REPORT, *supra* note 182, at 406.

226. *Id.* at 423–24.

227. *Id.* at 423.

228. *Id.* at 424.

The 2009–2010 CGJ held a special investigation into “Inmate Healthcare,” noting that “mental health issues affect about 10⁰% of the inmate population.”²²⁹ However, although revealing that the Twin Towers facility typically operated with about 20% physician understaffing,²³⁰ it made no specific findings about medical and mental health services at Men’s Central Jail.²³¹ The 2012–2013 CGJ took a closer interest in mental health services in the Men’s Central Jail, noting that “[t]he Sheriff’s Department operates the largest de facto mental health facility in the country” and that “most Type I facilities . . . sen[t] the[ir] most unstable detainees to Twin Towers or Men’s Central Jail.”²³² In particular, it noted: “Training of Sheriff’s Department personnel as well as other local law enforcement personnel in issues of mental health is critical, and based on the Grand Jury’s observations, insufficient.”²³³ However, it made no mention of mental health services at Men’s Central Jail in its recommendations²³⁴ or its inspection report.²³⁵

The 2016–2017 CGJ made several general observations about mentally ill inmates in their report. It considered that jailers were “attentive to the health and mental condition of [the] detainees.”²³⁶ It further noted there had been a huge growth of inmates with mental health issues, which it attributed “to the closure of state hospitals or lack of community mental health facilities.”²³⁷ It reported that senior management at the sheriff’s department considered the department “not well equipped to act as a mental health agent.”²³⁸

Successive CGJs were mindful of the agreement with the Department of Justice and have regularly reviewed and commented on mental health provision in Men’s Central Jail. It is clear, however, that jurors may have concluded that the rising tide of mental illness among detainees,²³⁹ the difficulties and costs of providing appropriate medical assistance,²⁴⁰ the

229. L.A., 2009–2010 REPORT, *supra* note 182, at 43–44.

230. *Id.* at 45.

231. *See generally id.* at 43–47.

232. L.A., 2012–2013 REPORT, *supra* note 182, at 186.

233. *Id.* at 186–87.

234. *See generally id.* at 190–91.

235. *Id.* at 201.

236. L.A., 2016–2017 REPORT, *supra* note 49, at 303.

237. *Id.* at 305.

238. *Id.*

239. *Id.*

240. L.A., 2012–2013 REPORT, *supra* note 182, at 187.

inappropriateness of a prison environment for providing mental healthcare,²⁴¹ and the poor fit between corrections skills and mental health nursing made the county's task nearly unachievable.²⁴²

Los Angeles County's CGJs can claim some success as acting as the canary in the mine to monitor mental health care in its public prisons but rather less in other areas that have been the subject of civil rights litigation.

E. Jail Conditions in Orange County

Orange County is one of five large population counties selected for evaluation. During the fiscal years 2007–2017, the county's CGJs made a total of 144 jail and detention facility inspections or visits according to their annual reports.²⁴³ CGJs made 135 jail findings, gave 121 recommendations, and required 55 institutional responses.²⁴⁴

241. L.A., 2016–2017 REPORT, *supra* note 49, at 305.

242. *See id.*

243. *See* ORANGE CTY. GRAND JURY 2016–2017, THE GREAT ESCAPE – NEVER AGAIN? 4–11 (2017), http://www.ocgrandjury.org/pdfs/2016_2017_GJreport/2017-04-24_The_Great_Escape.pdf [<https://perma.cc/KG26-58B3>] [hereinafter ORANGE, 2016–2017 ESCAPE REPORT] (five); ORANGE, 2015–2016 DETENTION REPORT, *supra* note 134, at 9 (six); GRAND JURY 2015–2016, CTY. OF ORANGE, OUR BROTHER'S KEEPER: A LOOK AT THE CARE AND TREATMENT OF MENTALLY ILL INMATES IN ORANGE COUNTY JAILS 8 (2016), http://www.ocgrandjury.org/pdfs/2015_2016_GJreport/2016-06-09_Website_Report.pdf [<https://perma.cc/P57B-R7KZ>] [hereinafter ORANGE, 2015–2016 MENTALLY ILL INMATE REPORT] (three); GRAND JURY 2014–2015, CTY. OF ORANGE, ANNUAL INQUIRY ON JAILS AND JUVENILE DETENTION FACILITIES 16–18 (2015), http://www.ocgrandjury.org/pdfs/2014_2015_GJreport/Jails_Website_Report.pdf [<https://perma.cc/2DUM-CH7E>] [hereinafter ORANGE, 2014–2015 JAIL REPORT] (nine); GRAND JURY 2013–2014, CTY. OF ORANGE, ANNUAL INQUIRY ON JAILS AND JUVENILE DETENTION FACILITIES 2 (2014), http://www.ocgrandjury.org/pdfs/2013_2014_GJreport/JailsReport.pdf [<https://perma.cc/37G4-KYMV>] [hereinafter ORANGE, 2013–2014 JAIL REPORT] (seven); 2012–2013 ORANGE CTY. GRAND JURY, FINAL REPORT 177–78, 207–08 (2013), http://www.ocgrandjury.org/pdfs/2012_2013_reports/Grand%20Jury%20Final%20Report2012-2013.pdf [<https://perma.cc/6S3W-F5BP>] [hereinafter ORANGE, 2012–2013 REPORT] (nine); 2011–2012 ORANGE CTY. GRAND JURY, FINAL REPORT 138–39 (2012), <http://www.ocgrandjury.org/pdfs/2011-2012GJFinalReport.pdf> [<https://perma.cc/W23K-WL5M>] [hereinafter ORANGE, 2011–2012 REPORT] (sixteen); 2010–2011 ORANGE CTY. GRAND JURY, FINAL REPORT 3–6 (2011), <http://www.ocgrandjury.org/pdfs/2010-2011-Final-Report/2010-2011-Final-Report.pdf> [<https://perma.cc/5BKX-MQLJ>] [hereinafter ORANGE, 2010–2011 REPORT] (thirty-five); 2009–2010 ORANGE CTY. GRAND JURY, DETENTION FACILITIES IN ORANGE COUNTY 2 (2010), <http://www.ocgrandjury.org/pdfs/detention-facilities/detention-facilities-report.pdf> [<https://perma.cc/HC53-9J4R>] [hereinafter ORANGE, 2009–2010 DETENTION REPORT] (thirty-five); 2008–2009 ORANGE CTY. GRAND JURY, CONDITION OF ORANGE COUNTY JAILS 1 (2009), <http://www.ocgrandjury.org/pdfs/countyjails/jails2009.pdf> [<https://perma.cc/3C7B-2ETV>] [hereinafter ORANGE, 2008–2009 JAIL REPORT] (nine); 2007–2008 ORANGE CTY. GRAND JURY, THE STATE OF ORANGE COUNTY JAILS 2, 14 (2008), <http://www.ocgrandjury.org/pdfs/countyjails/jails.pdf> [<https://perma.cc/7C6Y-2922>] [hereinafter ORANGE, 2007–2008 JAIL REPORT] (ten).

244. *See* ORANGE, 2016–2017 ESCAPE REPORT, *supra* note 243, at 11–15 (seven findings, five recommendations, two required responses); ORANGE, 2015–2016 DETENTION REPORT,

Our examination of jail condition litigation reports revealed two cases where we judged that a CGJ might reasonably have been expected to detect or make findings about at least one of the circumstances giving rise to the litigation. The number of public prisons within the county varied throughout the period studied—but the highest recorded figures were the thirty-five inspected in the years 2009–2010 and 2010–2011.²⁴⁵

The two identified cases were *Doe v. County of Orange*,²⁴⁶ and *Pierce v. County of Orange*.²⁴⁷ The *Doe* case involved allegations of disrespectful treatment and denial of necessary medication at the Orange County Jail by an inmate suffering from gender identity disorder.²⁴⁸ The *Pierce* case involved allegations regarding meals, overcrowded holding cells, outdoor exercise, dayroom access, religious services, and access for people with disabilities at the Orange County Jail.²⁴⁹

The number of facilities reportedly visited or inspected in each fiscal year by CGJs varied from five in 2016–2017 to thirty-five in the years 2009–2010 and 2010–2011.²⁵⁰ Despite fears of the impact of AB 109, CGJ

supra note 134, at 9 (eleven findings, eleven recommendations, five required responses); ORANGE, 2015–2016 MENTALLY ILL INMATE REPORT, *supra* note 243, at 40–47 (twenty-two findings, seventeen recommendations, five required responses); ORANGE, 2014–2015 JAIL REPORT, *supra* note 243, at 19–22 (nine findings, seven recommendations, two required responses); ORANGE, 2013–2014 JAIL REPORT, *supra* note 243, at 2, 9–11, 22–26 (thirteen findings, eleven recommendations, eight required responses); ORANGE, 2012–2013 REPORT, *supra* note 243, at 196–98, 222–25 (fourteen findings, fourteen recommendations, seven required responses); ORANGE, 2011–2012 REPORT, *supra* note 243, at 147–51, 163–65 (fifteen findings, seventeen recommendations, six required responses); ORANGE, 2010–2011 REPORT, *supra* note 243, at 7–9 (six findings, four recommendations, three required responses); ORANGE, 2009–2010 DETENTION REPORT, *supra* note 243, at 4–5 (four findings, three recommendations, six required responses); ORANGE, 2008–2009 JAIL REPORT, *supra* note 243, at 12–15 (twenty findings, fifteen recommendations, nine required responses); ORANGE, 2007–2008 JAIL REPORT, *supra* note 243, at 21–24 (fourteen findings, seventeen recommendations, two required responses).

245. See ORANGE, 2010–2011 REPORT, *supra* note 243, at 3–6; ORANGE, 2009–2010 DETENTION REPORT, *supra* note 243, at 2.

246. *Doe v. County of Orange*, No. 06CC05833 (Orange Super. Ct. May 21, 2008), <https://www.clearinghouse.net/detail.php?id=10212> [<https://perma.cc/A2H4-ZPLS>].

247. *Pierce v. County of Orange*, 526 F.3d 1190 (9th Cir. 2008).

248. Complaint for Damages at 3–4, *Doe*, No. 06CC05833 (filed May 5, 2006) [hereinafter Complaint, *Doe*].

249. *Pierce*, 526 F.3d at 1195.

250. See ORANGE, 2016–2017 ESCAPE REPORT, *supra* note 243, at 4; ORANGE, 2010–2011 REPORT, *supra* note 243, at 3–6; ORANGE, 2009–2010 DETENTION REPORT, *supra* note 243, at 2.

reports throughout the study period make no findings of jail overcrowding.²⁵¹ Similarly, the issues complained of in the *Doe* and *Pierce* suits were not the subject of CGJ findings during the period.²⁵²

The greatest continuing preoccupation of Orange County's CGJs was jail security.²⁵³ The reasons for this are clear to see from the special report, *The State of Orange County Jails*, prepared by the 2007–2008 CGJ.²⁵⁴ The report explains how the preceding eighteen months had been tumultuous for the county in that its sheriff-coroner had been indicted by a federal grand jury on seven counts of public corruption and had retired, while an inmate had been beaten to death by other inmates at the Theo Lacy Facility.²⁵⁵ It noted that a specially impaneled grand jury in 2007 had revealed

that sheriff deputies at Theo Lacy routinely failed to perform their duty to guard the “security of the jail and the safety of its inmates.” Thirty minute floor checks were seldom conducted. Deputies were seen watching “television, full-length movies, playing video games, browsing the Internet, chatting online and sleeping with the lights out.” The harmful effect of this negligent behavior on the part of certain jail deputies is exacerbated by the practice of handing control over to inmates in blatant contravention of Penal Code section 4019.5 and OCS Policy.²⁵⁶

The beating death had occurred partly through inattention by guards and partly because of blind spots in the jail not subject to video surveillance.²⁵⁷ The CGJ made extensive recommendations, including installation of video

251. See generally ORANGE, 2016–2017 ESCAPE REPORT, *supra* note 243; ORANGE, 2015–2016 DETENTION REPORT, *supra* note 134; ORANGE, 2015–2016 MENTALLY ILL INMATE REPORT, *supra* note 243; ORANGE, 2014–2015 JAIL REPORT, *supra* note 243; ORANGE, 2013–2014 JAIL REPORT, *supra* note 243; ORANGE, 2012–2013 REPORT, *supra* note 243; ORANGE, 2011–2012 REPORT, *supra* note 243; ORANGE, 2010–2011 REPORT, *supra* note 243; ORANGE, 2009–2010 DETENTION REPORT, *supra* note 243; ORANGE, 2008–2009 JAIL REPORT, *supra* note 243; ORANGE, 2007–2008 JAIL REPORT, *supra* note 243.

252. See generally ORANGE, 2016–2017 ESCAPE REPORT, *supra* note 243; ORANGE, 2015–2016 DETENTION REPORT, *supra* note 134; ORANGE, 2015–2016 MENTALLY ILL INMATE REPORT, *supra* note 243; ORANGE, 2014–2015 JAIL REPORT, *supra* note 243; ORANGE, 2013–2014 JAIL REPORT, *supra* note 243; ORANGE, 2012–2013 REPORT, *supra* note 243; ORANGE, 2011–2012 REPORT, *supra* note 243; ORANGE, 2010–2011 REPORT, *supra* note 243; ORANGE, 2009–2010 DETENTION REPORT, *supra* note 243; ORANGE, 2008–2009 JAIL REPORT, *supra* note 243; ORANGE, 2007–2008 JAIL REPORT, *supra* note 243.

253. See, e.g., ORANGE, 2015–2016 DETENTION REPORT, *supra* note 134, at 25; ORANGE, 2012–2013 REPORT, *supra* note 243, at 196; ORANGE, 2011–2012 REPORT, *supra* note 243, at 149; ORANGE, 2008–2009 JAIL REPORT, *supra* note 243, at 12.

254. ORANGE, 2007–2008 JAIL REPORT, *supra* note 243.

255. *Id.* at 1, 5–6.

256. *Id.* at 7.

257. *Id.* at 6–7.

to cover blind spots.²⁵⁸ Successive CGJs commented adversely on video surveillance in 2012,²⁵⁹ 2013,²⁶⁰ 2014,²⁶¹ and 2015.²⁶²

One further area, inmate mental health, was the topic of an extensive special report by the 2015–2016 CGJ.²⁶³ The jury made numerous findings and recommendations and required responses from officials and departments concerned.²⁶⁴ It is possible that the jury was mindful of class actions brought in adjoining Los Angeles County with potentially expensive consequences because it found much work to be done in Orange County.

We concluded that overall the Orange County CGJs were performing their functions conscientiously. Their insistent focus on improved video surveillance suggested that lessons had been learned from the 2007–2008 CGJ's special report.²⁶⁵ Their special study of the mental health of inmates also offered prophylactic advice that might, if taken, avoid future class actions in the county.

F. Jail Conditions in Plumas County

Plumas County is one of five small population counties selected for evaluation. During the fiscal years 2007–2017, the county's CGJs made a total of ten recorded jail and detention facility inspections or visits according to their annual reports.²⁶⁶ CGJs made fifty-one jail findings,

258. *Id.* at 21–24.

259. ORANGE, 2011–2012 REPORT, *supra* note 243, at 148–49.

260. ORANGE, 2012–2013 REPORT, *supra* note 243, at 195–97.

261. ORANGE, 2013–2014 JAIL REPORT, *supra* note 243, at 9–10.

262. ORANGE, 2014–2015 JAIL REPORT, *supra* note 243, at 19–20.

263. *See* ORANGE, 2015–2016 MENTALLY ILL INMATE REPORT, *supra* note 243.

264. *Id.* at 40–47.

265. ORANGE, 2007–2008 JAIL REPORT, *supra* note 243, at 1–2, 5–7.

266. *See* PLUMAS CTY. GRAND JURY, 2016–2017 FINAL REPORT 2 (2017), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/3170> [<https://perma.cc/3MX8-3BSQ>] [hereinafter PLUMAS, 2016–2017 REPORT] (one); PLUMAS CTY. GRAND JURY, 2015–2016 FINAL REPORT, at iii (2016), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/2832> [<https://perma.cc/9XLF-UUMB>] [hereinafter PLUMAS, 2015–2016 REPORT] (one); 2014/2015 PLUMAS CTY. GRAND JURY, 2014–2015 PLUMAS COUNTY FINAL GRAND JURY REPORT 47 (2015), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/2548> [<https://perma.cc/U4BA-MXZX>] [hereinafter PLUMAS, 2014–2015 REPORT] (one); 2013/2014 PLUMAS CTY. CIVIL GRAND JURY, 2013/2014 PLUMAS COUNTY GRAND JURY FINAL REPORT 4 (2014), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/2123> [<https://perma.cc/UH5J-Q6B8>] [hereinafter PLUMAS, 2013–2014 REPORT] (one); 2012/2013 PLUMAS CTY. CIVIL GRAND JURY, 2012/2013 PLUMAS COUNTY GRAND JURY FINAL REPORT 24 (2013), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/1790> [<https://perma.cc/DS6Q-BVZ7>] [hereinafter PLUMAS, 2012–2013 REPORT] (one); PLUMAS CTY. GRAND JURY, PLUMAS COUNTY JAIL REPORT 2011/2012,

gave forty-five recommendations, and required eleven institutional responses.²⁶⁷

Our examination of jail condition litigation reports revealed a single case where we judged that a CGJ might reasonably have been expected to detect or make findings about at least one of the circumstances giving rise to the litigation. There is but a single public prison within the county and this was inspected most years.²⁶⁸

The case, *Pederson v. County of Plumas*,²⁶⁹ is a class action commenced as far back as 1989. The county entered into a consent decree in 1992 whereby it was required, inter alia, to maintain all housing units at the jail at or below their rated capacities, with an overall capacity of thirty-seven, to provide appropriate medical services, and to provide access to a law library.²⁷⁰ In 2013 there was an agreed amendment to the consent decree

at 1 (2012), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/1441> [<https://perma.cc/778Q-8FLL>] [hereinafter PLUMAS, 2011–2012 REPORT] (one); 2010–2011 PLUMAS CTY. GRAND JURY, 2010–2011 PLUMAS COUNTY GRAND JURY REPORT 3 (2011), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/1452> [<https://perma.cc/9QQQ-P62W>] [hereinafter PLUMAS, 2010–2011 REPORT] (one); 2009–2010 PLUMAS CTY. GRAND JURY, 2009–2010 PLUMAS COUNTY GRAND JURY REPORT 54 (2010), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/238> [<https://perma.cc/J95T-ZHL9>] [hereinafter PLUMAS, 2009–2010 REPORT] (one); 2008–2009 PLUMAS CTY. GRAND JURY, 2008–2009 PLUMAS COUNTY GRAND JURY REPORT 7 (2009), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/67> [<https://perma.cc/BT52-UHV3>] [hereinafter PLUMAS, 2008–2009 REPORT] (one); PLUMAS CTY. GRAND JURY 2007–2008, FINAL REPORT 2 (2008), <https://plumascounty.us/ArchiveCenter/ViewFile/Item/68> [<https://perma.cc/T2GH-9K3B>] [hereinafter PLUMAS, 2007–2008 REPORT] (one).

267. See PLUMAS, 2016–2017 REPORT, *supra* note 266, at 2 (no findings, recommendations, or required responses); PLUMAS, 2015–2016 REPORT, *supra* note 266, at iii (no findings, recommendations, or required responses); PLUMAS, 2014–2015 REPORT, *supra* note 266, at 52–53 (four findings, six recommendations, two required responses); PLUMAS, 2013–2014 REPORT, *supra* note 266, at 22–23 (six findings, six recommendations, two required responses); PLUMAS, 2012–2013 REPORT, *supra* note 266, at 26–27 (six findings, six recommendations, two required responses); PLUMAS, 2011–2012 REPORT, *supra* note 266, at 2–6 (seventeen findings, eleven recommendations, two required responses); PLUMAS, 2010–2011 REPORT, *supra* note 266, at 7–8 (one finding, four recommendations, no required responses); PLUMAS, 2009–2010 REPORT, *supra* note 266, at 54–56 (thirteen findings, six recommendations, one required response); PLUMAS, 2008–2009 REPORT, *supra* note 266, at 14–16 (two findings, four recommendations, two required responses); PLUMAS, 2007–2008 REPORT, *supra* note 266, at 28–30 (two findings, two recommendations, no required responses).

268. *Jail*, PLUMAS COUNTY CAL. (2020), <https://www.plumascounty.us/2170/Jail> [<https://perma.cc/MX3M-BAUT>] (listing Plumas County Correctional Facility as the only jail).

269. *Pederson v. County of Plumas*, No. 2:89-cv-01659-KJN (E.D. Cal. filed Dec. 4, 1989), <https://www.clearinghouse.net/detail.php?id=12199> [<https://perma.cc/76V4-YDBB>].

270. See Consent Decree at 5–8, *Pederson*, No. 2:89-cv-01659-KJN (Feb. 10, 1992).

specifying new capacity and staffing requirements.²⁷¹ Compliance disputes continue to the date of writing.²⁷²

The World Population Review states the population of Plumas County in 2017 as 18,740 according to U.S. Census data.²⁷³ The county necessarily has a modest tax base and the costs of maintaining and staffing its county jail represents a higher per capita expense to taxpayers than in more populous counties.²⁷⁴ However, just as the costs of running the jail are higher, so too would be the burden of paying legal costs and damages if, for example, a wrongful death suit resulted in an award of damages like the \$8.3 million settlement in Alameda County.²⁷⁵ While the per capita cost of the settlement to the citizens of Alameda County was \$5, a corresponding award in Plumas County would cost approximately \$443.²⁷⁶ Even if indemnity insurance

271. See Joint Stipulation to Amendment of Consent Decree at 1–2, *Pederson*, No. 2:89-cv-01659-KJN (Apr. 1, 2013).

272. *Pederson v. County of Plumas*, CLEARINGHOUSE, <https://www.clearinghouse.net/detail.php?id=12199> [<https://perma.cc/E6KY-DATY>] (“The joint status report was submitted on February 15, 2019. At the February 22, 2019 status conference, the court ordered that ‘By noon on 4/26/2019, the County is to provide a detailed report to the Court and plaintiff’s counsel, regarding its compliance with outstanding issues in this litigation as well as steps toward IMQ or NCCHC accreditation.’”).

273. *Plumas County, California Population 2020*, WORLD POPULATION REV. (Aug. 28, 2019), <http://worldpopulationreview.com/us-counties/ca/plumas-county-population/> [<https://perma.cc/NNG7-BV23>].

274. Compare Victoria Metcalf, *Sheriff Addresses Increased Jail Population*, PLUMAS NEWS (Dec. 8, 2017), <https://www.plumasnews.com/sheriff-addresses-increased-jail-population/> [<https://perma.cc/BNH9-ZF36>] (noting that the Plumas County jail budget for 2017–2018 was “just under \$3 million”), with BD. OF SUPERVISORS, LOS ANGELES COUNTY, 2016-17 FINAL BUDGET 290 (2016), http://file.lacounty.gov/SDSInter/lac/1037219_FinalBudgetBook.pdf [<https://perma.cc/GUU6-M4CT>] (adopting a budget for 2016–2017 for the entire Los Angeles County Sheriff’s Department of \$207 million with a net cost to the county of \$99 million). The per capita jail expense in Plumas County is, thus, roughly \$160. See Metcalf, *supra*; *supra* note 273 and accompanying text. The population of Los Angeles County is about 10 million people. See *QuickFacts: Los Angeles County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/losangeles-county-california,CA/PST045219> [<https://perma.cc/SX99-C5AR>]. Accordingly, the entire Los Angeles County sheriff’s budget costs slightly more than \$20 per resident. See BD. OF SUPERVISORS, LOS ANGELES COUNTY, *supra*, at 290; *Quickfacts, supra*.

275. See Townes, *supra* note 149.

276. See *Alameda County, California Population 2020*, WORLD POPULATION REV. (Aug. 28, 2019), <https://worldpopulationreview.com/us-counties/ca/alameda-county-population/> [<https://perma.cc/NNG7-BV23>] (noting the population in Alameda County is roughly 1,635,000); *Plumas County, California Population 2020*, *supra* note 273 (noting the Plumas County population is 18,740). \$8.3 million divided by Alameda County’s 2015 population of roughly 1,635,000 is about \$5, while that amount divided by Plumas County’s 2017 population of roughly 18,740 is almost \$443.

is taken out to cover such events, the per capita costs of the indemnity premiums may be higher. The cost of defending class action lawsuits, such as *Pederson*, is also a greater burden on low population counties.

The Plumas County CGJs have been mindful of these factors. Their reports have regularly complained of understaffing,²⁷⁷ and the age and disrepair of the jail.²⁷⁸ As the 2012–2013 report noted: “It is painfully obvious that Plumas County needs a new jail.”²⁷⁹ The county is not scheduled to have a new jail ready for occupation until late 2020 or early 2021.²⁸⁰ The county’s grand jury web pages do not carry details of the responses from the sheriff’s department or the board of supervisors,²⁸¹ so it is difficult to say what role the CGJs’ persistent complaints and advice may have played in the eventual replacement decision. However, because dilapidation and understaffing are significant factors in producing conditions likely to lead to civil litigation,²⁸² the civil grand jury cannot be faulted for failing to draw attention to these conditions.

G. Jail Conditions in San Bernardino County

San Bernardino County is one of five large population counties selected for evaluation. During the fiscal years 2007–2017, the county’s CGJs made a total of fifty-three recorded jail and detention facility inspections or visits according to their annual reports.²⁸³ CGJs made thirty-three jail findings,

277. See, e.g., PLUMAS, 2011–2012 REPORT, *supra* note 266, at 3; PLUMAS, 2008–2009 REPORT, *supra* note 266, at 15; PLUMAS, 2007–2008 REPORT, *supra* note 266, at 28.

278. See, e.g., PLUMAS, 2011–2012 REPORT, *supra* note 266, at 2, 4 (cataloguing the age of the jail and its general disrepair). The poor condition of the jail featured regularly in the jury’s reports. See, e.g., PLUMAS, 2007–2008 REPORT, *supra* note 266, at 30 (“The jail facility of Plumas County is old, outmoded, and unsafe for both inmates and jail staff.”); PLUMAS, 2008–2009 REPORT, *supra* note 266, at 14 (“The building has outdated plumbing, wiring, and utilities requiring constant and costly maintenance.”); PLUMAS, 2012–2013 REPORT, *supra* note 266, at 26 (stating that “many inadequacies were found to exist in this antiquated facility” and listing six specific findings of inadequacy).

279. PLUMAS, 2012–2013 REPORT, *supra* note 266, at 27.

280. See Steve Wathen, *County Signs with CGA for New Jail*, PLUMAS NEWS (Aug. 4, 2017), <https://www.plumasnews.com/county-signs-cga-new-jail/> [<https://perma.cc/B2NQ-3RQH>].

281. See *Grand Jury*, PLUMAS COUNTY CAL., <https://www.plumascounty.us/216/Grand-Jury> [<https://perma.cc/UE77-PAYK>].

282. See Consent Decree, *supra* note 270, at 5, 8.

283. See SAN BERNARDINO CTY. CIVIL GRAND JURY 2016–2017, FINAL REPORT 45 (2017), <https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/2016-2017CivilGrandJuryReport.pdf> [<https://perma.cc/EYZ5-AL8X>] [hereinafter SAN BERNARDINO, 2016–2017 REPORT] (five); SAN BERNARDINO CTY. GRAND JURY 2014–2015, FINAL REPORT 29 (2015), <https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/2014-15-Final-Report.pdf> [<https://perma.cc/4F2Q-JT6S>] [hereinafter SAN BERNARDINO, 2014–2015 REPORT] (six); SAN BERNARDINO CTY. GRAND JURY, FINAL REPORT 2013–2014, at 11 (2014), <https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/2013->

gave thirty-three recommendations, and required no institutional responses.²⁸⁴

Our examination of jail condition litigation reports for cases whose cause of action arose or was ongoing within the same period revealed four cases whose cause of action arose or was ongoing within the same period where we judged that a CGJ might reasonably have been expected to detect or make findings about at least one of the circumstances giving rise to the litigation. The number of public prisons within the county varied throughout the period studied—but the highest recorded figures were the eleven inspected in the year 2008–2009.²⁸⁵

14-Final-Report.pdf [https://perma.cc/RS23-B5MW] [hereinafter SAN BERNARDINO, 2013–2014 REPORT] (five); SAN BERNARDINO CTY. GRAND JURY, 2012–2013 FINAL REPORT 68 (2013), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/Grand_Jury_Final_Report_002.pdf [https://perma.cc/MK2F-KDXS] [hereinafter SAN BERNARDINO, 2012–2013 REPORT] (six); 2011–2012 SAN BERNARDINO CTY. GRAND JURY, FINAL REPORT 31 (2012), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/grand_jury_final_report_001.pdf [https://perma.cc/KG2U-Q2ZD] [hereinafter SAN BERNARDINO, 2011–2012 REPORT] (four); 2010–2011 SAN BERNARDINO CTY. GRAND JURY, FINAL REPORT 44 (2011), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/grand_jury_final_report.pdf [https://perma.cc/NQ3L-LNH2] [hereinafter SAN BERNARDINO, 2010–2011 REPORT] (four); GRAND JURY, CTY. OF SAN BERNARDINO, 2009–2010 SAN BERNARDINO COUNTY GRAND JURY FINAL REPORT 25 (2010), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2019/10/2009-10-Grand-Jury-Final-Report.pdf [https://perma.cc/E3QF-FKQK] [hereinafter SAN BERNARDINO, 2009–2010 REPORT] (ten); SAN BERNARDINO CTY. GRAND JURY 2008–2009, FINAL REPORT, at ii (2009), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/20090701_gj_final_report.pdf [https://perma.cc/FKY6-S4ZH] [hereinafter SAN BERNARDINO, 2008–2009 REPORT] (ten); GRAND JURY, SAN BERNARDINO CTY., GRAND JURY FINAL REPORT 2007–2008, at ii (2008), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/20080630_grand_jury_final_report.pdf [https://perma.cc/WE66-Z6DH] [hereinafter SAN BERNARDINO, 2007–2008 REPORT] (three). *See generally* SAN BERNARDINO CTY. GRAND JURY, FINAL REPORT 2015–2016 (2016), https://wp.sbcounty.gov/grandjury/wp-content/uploads/sites/15/2017/10/2015-16-Final-Report.pdf [https://perma.cc/A9ZT-KVTE] [hereinafter SAN BERNARDINO, 2015–2016 REPORT] (no jail inspections recorded).

284. *See* SAN BERNARDINO, 2008–2009 REPORT, *supra* note 283, at 41–51 (thirty-three findings, thirty recommendations, and no required responses); SAN BERNARDINO, 2007–2008 REPORT, *supra* note 283, at 37–40 (no findings, three recommendations, and no required responses). The grand juries in all other years made no findings, no recommendations, and no required responses. *See generally* SAN BERNARDINO, 2016–2017 REPORT, *supra* note 283; SAN BERNARDINO, 2015–2016 REPORT, *supra* note 283; SAN BERNARDINO, 2014–2015 REPORT, *supra* note 283; SAN BERNARDINO, 2013–2014 REPORT, *supra* note 283; SAN BERNARDINO, 2012–2013 REPORT, *supra* note 283; SAN BERNARDINO, 2011–2012 REPORT, *supra* note 283; SAN BERNARDINO, 2010–2011 REPORT, *supra* note 283; SAN BERNARDINO, 2009–2010 REPORT, *supra* note 283.

285. SAN BERNARDINO, 2008–2009 REPORT, *supra* note 283, at ii.

The four cases identified were *Craft v. County of San Bernardino*,²⁸⁶ *Plata v. Schwarzenegger*,²⁸⁷ *McKibben v. McMahon*,²⁸⁸ and *Turner v. San Bernardino County*.²⁸⁹ Several facilities within the San Bernardino County Jail system were implicated in two cases.²⁹⁰

Allegations in *Craft* related to unwarranted strip searches often conducted in the view of jailors and detainees of the opposite sex at San Bernardino Jail's Central Detention Center, San Bernardino County Jail, and San Bernardino Jail's West Valley Detention Center.²⁹¹

Plata was a class action claim alleging that inadequacies in the provision of medical healthcare services in the State's prisons violated prisoners' Eighth Amendment rights.²⁹² The court subsequently made a finding that the California Institution for Men (CIM) failed to provide adequate healthcare where, inter alia, a single nurse screened from 100 to 180 incoming prisoners each day.²⁹³ A later court-ordered evaluation in 2013 by medical experts found CIM was not providing adequate medical care to patients, and that there were systemic issues that presented an ongoing serious risk of harm to patients.²⁹⁴

In *McKibben*, inmates at the San Bernardino County Jail's West Valley Detention Center alleged that those who identified as gay, lesbian, or transgender were transferred and isolated from the general population, where they were denied equal access to opportunities to reduce their sentences, services, and programs and facilities.²⁹⁵ The inmates also alleged that they were often treated in an abusive and neglectful manner, being subject to derogatory name-calling and severe disciplinary measures.²⁹⁶

286. *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113 (C.D. Cal. 2008).

287. *Plata v. Schwarzenegger*, 603 F.3d 1088 (9th Cir. 2010), *aff'd sub nom.* *Brown v. Plata*, 563 U.S. 493 (2011).

288. *McKibben v. McMahon*, No. 5:14-cv-02171, 2019 WL 1109683 (C.D. Cal. Feb. 28, 2019).

289. *Turner v. County of San Bernardino*, No. 5:16-cv-00355-VAP, 2018 WL 6617638 (C.D. Cal. Dec. 14, 2018).

290. *See Craft*, 624 F. Supp. 2d at 1115–16; Class Action Complaint for Damages and Injunctive Relief at 1, *McKibben*, 2018 WL 1109683 (Oct. 22, 2014) (No. 5:14-cv-02171) [hereinafter Complaint, *McKibben*].

291. *See Craft*, 624 F. Supp. 2d at 1115.

292. *Plata*, 603 F.3d at 1090–91.

293. Findings of Fact and Conclusions of Law Re Appointment of Receiver ¶ 53, *Plata v. Schwarzenegger*, 2005 WL 2932253 (C.D. Cal. filed Oct. 3, 2005) (No. 3:01-cv-01351-TEH) [hereinafter Findings].

294. *See* JOE GOLDENSON, MADIE LAMARRE & MIKE PUISIS, CALIFORNIA INSTITUTION FOR MEN (CIM) HEALTH CARE EVALUATION 5 (2013), <https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/Plata-Expert-Report-CIM.pdf> [<https://perma.cc/37MM-5LX3>].

295. Complaint, *McKibben*, *supra* note 290, at 1.

296. *Id.* at 1, 4.

In *Turner*, the class action alleged that the county had policies and practices of using unnecessary force to control behavior or maintain order, denying inmates minimally adequate health care, and failing to adequately supervise and classify individuals to ensure that they do not face an unreasonable risk of injury and violence from other incarcerated individuals.²⁹⁷ The class allegations related to facilities within the San Bernardino County Jail system.²⁹⁸

The San Bernardino County CGJ originally adopted an unstructured, narrative report style for its inspections of public prisons up to and including fiscal year 2010–2011.²⁹⁹ Thereafter, its reports follow a standard format.³⁰⁰ It modified and used the document entitled “Inspection Form” included in the Jail Inspection Handbook for Grand Jurors provided by the California Board of State and Community Corrections.³⁰¹ Reviewed as a whole, the grand juries inspected public prisons as required but their reports were not particularly informative. In the case of most inspections, the juries pronounced themselves satisfied with what they saw and heard.³⁰²

Reports prior to the fiscal year 2011–2012 are usually terse and have little narrative discussion.³⁰³ For example, the report for the year 2007–2008 details inspections of ten facilities, eight of which are dealt with in a matrix on a single page.³⁰⁴ In the case of one large facility, the Adelanto Detention Facility, the inspection report states simply: “This is a well run, Type II facility with 706 beds and is self-sufficient. Staff includes a full-time nurse. There are plans to expand. Budgeted to include 2,074 beds by

297. See *Turner v. County of San Bernardino*, No. 5:16-cv-00355-VAP, 2018 WL 6617638 at *1 (C.D. Cal. Dec. 14, 2018).

298. See *id.*

299. See generally SAN BERNARDINO, 2010–2011 REPORT, *supra* note 283, at 45–47; SAN BERNARDINO, 2009–2010 REPORT, *supra* note 283, at 24–32; SAN BERNARDINO, 2008–2009 REPORT, *supra* note 283, at 40–51; SAN BERNARDINO, 2007–2008 REPORT, *supra* note 283, at 37–40.

300. Compare SAN BERNARDINO, 2010–2011 REPORT, *supra* note 283, at 45–47 (describing the jails in narrative form), with SAN BERNARDINO, 2011–2012 REPORT, *supra* note 283, at 34–35 (analyzing the jails with forms and prerecorded questions).

301. See CAL. BD. OF STATE & CMTY. CORR., *supra* note 85, at 9.

302. See, e.g., SAN BERNARDINO, 2013–2014 REPORT, *supra* note 283, at 12 (“Conclusion: There were no discrepancies found at any of the five County Detention Centers the Grand inspected. All personnel during each site visited were knowledgeable and professional.”).

303. See sources cited *supra* note 300 and accompanying text.

304. SAN BERNARDINO, 2007–2008 REPORT, *supra* note 283, at 36.

2010. All areas clean, well staffed and safe.”³⁰⁵ In essence the evaluation proper is the first and last sentences—a mere twenty-one words for a large facility.³⁰⁶ Two facilities, the Central Detention Center and the West Valley Detention Center, merit a more extensive treatment and each gets two pages.³⁰⁷ Although the reports are longer, they fail to make substantial recommendations.³⁰⁸ The only formal findings recorded are that both facilities were understaffed and more staff should be recruited.³⁰⁹

Despite the allegations in *Craft* of unwarranted and demeaning strip searches at the West Valley Detention Center,³¹⁰ the 2007–2008 report gives no indication the jury sought to satisfy itself whether there had been any reoccurrences of that conduct.³¹¹ This is so even though *Craft* was settled in September 2007 with district court approval in April 2008—both events occurring within the fiscal year 2007–2008.³¹² The eventual cost to the county was in excess of \$31 million in damages and class attorneys’ fees.³¹³ Reports in subsequent years do not disclose any special inquiries being made about possible repetitions of these searches.³¹⁴

The 2007–2008 report notes that “[t]he most pressing problem this facility faces is inmate medical problems. The number of medical problems plaguing inmates has increased dramatically in the past few years.”³¹⁵ The inadequacies of San Bernardino’s inmate healthcare system had been the subject of the court’s attention in *Plata*, albeit at the California Institute for Men.³¹⁶ Despite the CGJ reporting of its inspection at West Valley Detention Center that “[t]hree to five deputies can be off the premises at any given time,

305. *Id.*

306. *See id.*

307. *Id.* at 37–40.

308. *See id.* For example, the “findings” at the CDC in the 2007–2008 Final Report are largely statistical without much analysis, followed by either one or two recommendations. *See id.*

309. *Id.* at 38, 40.

310. *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1115 (C.D. Cal. 2008).

311. *See generally* SAN BERNARDINO, 2007–2008 REPORT, *supra* note 283, at 36–40 (no mention of strip searches or related issues).

312. *Craft*, 624 F. Supp. 2d at 1116 (detailing class funds as \$25,648,204, attorneys’ fees as \$6,375,000, and counsel costs as \$70,564.64); *see* Stipulated Order Granting Preliminary Approval to Class Settlement at 1, *Craft*, 624 F. Supp. 2d 1113 (No. 5:05-cv-00359-SGL-OP).

313. *See Craft*, 624 F. Supp. 2d at 1116.

314. *See e.g.*, SAN BERNARDINO, 2013–2014 REPORT, *supra* note 283, at 12; SAN BERNARDINO, 2009–2010 REPORT, *supra* note 283, at 24–32. *But see* SAN BERNARDINO, 2008–2009 REPORT, *supra* note 283, at 43 (recommending that Big Bear Station, a twenty-two bed facility, hire additional female staff to cope with searches of female subjects). Still, later in that same report, the civil grand jury makes no similar recommendation or finding for West Valley Detention Center. *Id.* at 50–51.

315. SAN BERNARDINO, 2007–2008 REPORT, *supra* note 283, at 39.

316. Findings, *supra* note 293, at *13–*14.

accompanying inmates to local hospitals for highly specialized treatment,”³¹⁷ it made no special findings or recommendations regarding healthcare at the facility.³¹⁸ Subsequent reports were similarly silent on this issue.³¹⁹

Our review of CGJ inspections of public prisons in the period studied suggests that pending or recently settled civil rights litigation involving the county seemed to play little part in shaping grand juries’ inquiries.

H. Jail Conditions in San Luis Obispo County

San Luis Obispo County is one of five medium population counties selected for evaluation. During the fiscal years 2007–2017, the county’s CGJs made a total of eighty-five recorded jail and detention facility inspections or visits according to their annual reports.³²⁰ CGJs made forty-eight jail

317. SAN BERNARDINO, 2007–2008 REPORT, *supra* note 283, at 39.

318. *See id.* at 40.

319. *See generally* SAN BERNARDINO, 2016–2017 REPORT, *supra* note 283; SAN BERNARDINO, 2015–2016 REPORT, *supra* note 283; SAN BERNARDINO, 2014–2015 REPORT, *supra* note 283; SAN BERNARDINO, 2013–2014 REPORT, *supra* note 283; SAN BERNARDINO, 2012–2013 REPORT, *supra* note 283; SAN BERNARDINO, 2011–2012 REPORT, *supra* note 283; SAN BERNARDINO, 2010–2011 REPORT, *supra* note 283; SAN BERNARDINO, 2009–2010 REPORT, *supra* note 283; SAN BERNARDINO, 2008–2009 REPORT, *supra* note 283.

320. *See* 2016–2017 SAN LUIS OBISPO CTY. GRAND JURY, FINAL REPORT 32, 89 (2017) (eleven) [hereinafter SAN LUIS OBISPO, 2016–2017 REPORT]; 2014–2015 SAN LUIS OBISPO CTY. GRAND JURY, FINAL REPORT 71–72, 97 (2015) (nine) [hereinafter SAN LUIS OBISPO, 2014–2015 REPORT]; 2013–2014 SAN LUIS OBISPO CTY. GRAND JURY, COUNTY JAIL, JUVENILE HALL AND HOLDING CELLS: INSPECTION AND INFORMATION REPORT 1 (2014) (twelve) [hereinafter SAN LUIS OBISPO, 2013–2014 REPORT]; 2012–2013 SAN LUIS OBISPO CTY. GRAND JURY, CALIFORNIA MEN’S COLONY INSPECTION REPORT 1–2 (2013) (three) [hereinafter SAN LUIS OBISPO, 2012–2013 CMC REPORT]; 2012–2013 SAN LUIS OBISPO CTY. GRAND JURY, COUNTY JAIL, JUVENILE HALL AND HOLDING CELLS: INSPECTION AND INFORMATION REPORT 1–2 (2013) (twelve) [hereinafter SAN LUIS OBISPO, 2012–2013 JAIL REPORT]; 2011–2012 SAN LUIS OBISPO CTY. GRAND JURY, CALIFORNIA MEN’S COLONY INSPECTION REPORT 1–2, 7 (2012) (two) [hereinafter SAN LUIS OBISPO, 2011–2012 CMC REPORT]; 2011–2012 SAN LUIS OBISPO CTY. GRAND JURY, COUNTY JAIL, JUVENILE HALL AND HOLDING CELLS: INSPECTION AND INFORMATION REPORT 1 (2012) (ten) [hereinafter SAN LUIS OBISPO, 2011–2012 JAIL REPORT]; 2010–2011 SAN LUIS OBISPO CTY. GRAND JURY, INSPECTION OF COUNTY PRISONS, JAILS AND ALLIED AGENCIES 1 (2011) (thirteen) [hereinafter SAN LUIS OBISPO, 2010–2011 REPORT]; 2008–2009 SAN LUIS OBISPO CTY. GRAND JURY, CALIFORNIA MEN’S COLONY INSPECTION REPORT 2 (2009) (two) [hereinafter SAN LUIS OBISPO, 2008–2009 REPORT]; 2007–2008 SAN LUIS OBISPO CTY. GRAND JURY, CALIFORNIA MEN’S COLONY FROM THE INSIDE 1 (2008) (two) [hereinafter SAN LUIS OBISPO, 2007–2008 CMC REPORT]; 2007–2008 SAN LUIS OBISPO CTY. GRAND JURY, SAN LUIS OBISPO COUNTY JAIL 1 (2008) (one) [hereinafter SAN LUIS OBISPO, 2007–2008 JAIL REPORT]; 2007–2008 SAN LUIS OBISPO CTY. GRAND JURY, SHORT TERM HOLDING CELLS 1 (2008) (eight) [hereinafter SAN LUIS OBISPO, 2007–2008 HOLDING CELL

findings, gave twenty-one recommendations, and required nine institutional responses.³²¹

Our examination of jail condition litigation reports for cases whose cause of action arose or was ongoing within the same period revealed one case whose cause of action arose or was ongoing within the same period where we judged that a CGJ might reasonably have been expected to detect or make findings about at least one of the circumstances giving rise to the litigation. The number of public prisons within the county varied throughout the period studied—but the highest recorded figures were the twelve inspected in 2012–2013.³²²

The case identified was *Brown v. Plata*.³²³ In that case the U.S. Supreme Court recognized that the chronic overcrowding of California’s prisons constituted “cruel and unusual punishment” contrary to the Eight

REPORT]. See generally 2015–2016 SAN LUIS OBISPO CTY. GRAND JURY, FINAL REPORT (2016) (zero listed) [hereinafter SAN LUIS OBISPO, 2015–2016 REPORT]. There were no jail reports for the fiscal year 2009–2010 listed on the San Luis Obispo County’s grand jury website. See *Forms & Documents > Grand Jury Reports*, Grand Jury San Luis Obispo County, <https://www.slocounty.ca.gov/Departments/Grand-Jury/Forms-Documents/Grand-Jury-Reports.aspx> [<https://perma.cc/CAC3-TFTG>]. This website provides access to the grand jury reports for all years studied, which are housed in a Google Drive folder. See *id.*

321. See SAN LUIS OBISPO, 2016–2017 REPORT, *supra* note 320, at 41–42, 56–59, 94–95 (sixteen findings, five recommendations, four required responses); SAN LUIS OBISPO, 2014–2015 REPORT, *supra* note 320, at 77, 102–03 (ten findings, seven recommendations, one required response); SAN LUIS OBISPO, 2013–2014 REPORT, *supra* note 320, at 14–15 (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2012–2013 CMC REPORT, *supra* note 320, at 1–10 (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2012–2013 JAIL REPORT, *supra* note 320, at 19–22 (twelve findings, six recommendations, two required responses); SAN LUIS OBISPO, 2011–2012 CMC REPORT, *supra* note 320, at 7–8 (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2011–2012 JAIL REPORT, *supra* note 320, at 10–11 (nine findings, three recommendations, two required responses); SAN LUIS OBISPO, 2010–2011 REPORT, *supra* note 320, at 10–11 (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 5 (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320, at 7 (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2007–2008 JAIL REPORT, *supra* note 320, at 1–2 (2008) (no findings, recommendations, or required responses); SAN LUIS OBISPO, 2007–2008 HOLDING CELL REPORT, *supra* note 320, at 4 (one finding, no recommendations, no required responses). See generally SAN LUIS OBISPO, 2015–2016 REPORT, *supra* note 320 (zero listed). There were no jail reports for the fiscal year 2009–2010 listed on the San Luis Obispo County’s grand jury website. See *Forms & Documents > Grand Jury Reports*, *supra* note 320.

322. SAN LUIS OBISPO, 2012–2013 CMC REPORT, *supra* note 320, at 1–2 (twelve inspections); SAN LUIS OBISPO, 2012–2013 JAIL REPORT, *supra* note 320, at 1–2 (three inspections).

323. *Brown v. Plata*, 563 U.S. 493 (2011).

Amendment.³²⁴ An incidental harm was the inability of California's prison system to deliver appropriate medical care to inmates.³²⁵

San Luis Obispo County is home to California Men's Colony (CMC), the third largest prison in California with a designed capacity of 3,884 inmates.³²⁶ The 2007–2008 CGJ stated that, when inspected in October 2007, it was holding 6,465 inmates,³²⁷ and remarked: "With the overcrowding and the antiquated facility, the Grand Jury concludes CMC functions well in part because of inmate cooperation and well trained staff."³²⁸

We looked to see whether San Luis Obispo County CGJs picked up on overcrowding and inadequate healthcare at CMC as a significant problem. We also looked to see whether these issues merited greater attention after the decision in *Brown*. During the study period, the CGJs produced special reports on CMC in 2007–2008,³²⁹ 2008–2009,³³⁰ 2011–2012,³³¹ 2012–2013,³³² and 2014–2015,³³³ effectively two reports before *Brown*, one immediately after the decision, and a further two in the following years.³³⁴ There was a regular jail inspection report in the decision year 2010–2011.³³⁵

Reports for the years 2007–2008 and 2008–2009 both reported figures showing the prison was holding substantially more inmates than its design capacity—CMC was running at 166% capacity in 2007–2008.³³⁶ Neither CGJ commented adversely on this, made any formal findings, nor required responses to address the issue.³³⁷ Similarly, the reports briefly mentioned physical and mental health support at the facility but without comment as to its adequacy for the needs of a prison running at 166% of capacity.³³⁸

324. See *id.* at 499–502.

325. *Id.* at 500, 522.

326. SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 2.

327. SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320, at 2.

328. *Id.* at 7.

329. See SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320.

330. See SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320.

331. See SAN LUIS OBISPO, 2011–2012 CMC REPORT, *supra* note 320.

332. See SAN LUIS OBISPO, 2012–2013 CMC REPORT, *supra* note 320.

333. See SAN LUIS OBISPO, 2014–2015 REPORT, *supra* note 320, at 97–103.

334. The Supreme Court decided *Brown* in 2011. *Brown v. Plata*, 563 U.S. 493 (2011).

335. See SAN LUIS OBISPO, 2010–2011 REPORT, *supra* note 320.

336. SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320, at 2; see also SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 2.

337. See SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 5; SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320, at 7.

338. See SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 5; SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320, at 7.

The juries' focus was chiefly upon the educational and vocational programs offered at the facility.³³⁹

The report for 2010–2011, the year in which the U.S. Supreme Court announced its decision in *Brown*,³⁴⁰ includes a report of an inspection of CMC.³⁴¹ The date of the CGJ's inspection of the facility is not stated,³⁴² so we cannot say whether the CGJ had in mind issues regarding overcrowding and healthcare raised in oral argument or the Court's opinion and which might have prompted attention to these issues. However, unlike the previous reports mentioned, this report states in its summary:

The County Women's Jail and the CMC Medical/Health Facility caused concern. The jail is overcrowded and its facilities are unable to accommodate total bedding requirements. The CMC Medical/Health facility is antiquated and difficult for staff to manage. Fortunately, both facilities have received funding for upgrades and improvements over the next three years.³⁴³

There was more detailed discussion of the Medical/Health Department in the body of the report in which it noted: "The CMC Medical/Health facility is antiquated and difficult for staff to manage."³⁴⁴ The CGJ ended on a more optimistic note: "Fortunately, groundbreaking has started on a new medical facility that will better accommodate inmate health needs."³⁴⁵ It should be noted that the CGJ made no formal recommendations and required no responses to this report.³⁴⁶

Although no mention is made of it in the report,³⁴⁷ the 2011–2012 inspection report should have been made with the benefit of knowledge of the decision in *Brown* and the Court's criticisms of the California prison system as a whole. It noted that as a result of AB 109, the population of CMC was falling,³⁴⁸ and that demand for medical services was similarly

339. See SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 3–5; SAN LUIS OBISPO, 2007–2008 CMC REPORT, *supra* note 320, at 2–7.

340. *Brown v. Plata*, 563 U.S. 493 (2011). The U.S. Supreme Court announced its decision in *Brown v. Plata* on May 23, 2011. *Id.* The 2010–2011 CGJ's fiscal year ended on June 30, 2011. See *About the Grand Jury*, GRAND JURY SAN LUIS OBISPO COUNTY, <https://www.slocounty.ca.gov/Departments/Grand-Jury/About-the-Grand-Jury.aspx> [<https://perma.cc/5DC2-JSXX>] ("The County of San Luis Obispo impanels a civil grand jury every year. Its term coincides with the county's fiscal year, July 1st–June 30th."). Oral argument had taken place on November 30, 2010. *Brown*, 563 U.S. at 493.

341. See SAN LUIS OBISPO, 2010–2011 REPORT, *supra* note 320, at 2–6.

342. See *id.*

343. *Id.* at 1.

344. *Id.* at 4.

345. *Id.* at 5.

346. See generally *id.* at 2–6.

347. See generally SAN LUIS OBISPO, 2011–2012 CMC REPORT, *supra* note 320.

348. *Id.* at 2–3.

declining.³⁴⁹ It made no formal recommendations and required no responses to its report.³⁵⁰

The 2012–2013 CGJ's report notes a further fall in the inmate population at CMC.³⁵¹ The prison remained overcrowded at approximately 132% of design capacity,³⁵² a figure just 5.5% below the maximum permitted under *Brown v. Plata*.³⁵³ There is some description of CMC's medical and psychiatric facilities but no discussion of their adequacy.³⁵⁴ The jury seemed more concerned about the underuse of one secure psychiatric ward.³⁵⁵

In March 2013, medical experts appointed pursuant to the federal court's order³⁵⁶ filed their report concluding that CMC "will be providing adequate medical care once the significant problems in pharmacy services, medication administration, and the health care physical plant are corrected."³⁵⁷ Issues identified by the experts in their caveats were not picked up by previous CGJs. CMC was not inspected in the year 2013–2014 and the next report was that of 2014–2015.³⁵⁸ The 2014–2015 CGJ did not investigate the state of the outstanding issue mentioned by the experts or comment on their report.³⁵⁹ The CGJ report identifies the major issue facing CMC as "the state of religious life" at the facility.³⁶⁰

Our review of CGJ inspections of CMC in the period studied suggests that the *Brown* civil rights litigation involving conditions at, inter alia, CMC seemed to play little part in shaping grand juries' inquiries. Overcrowding

349. *Id.* at 5–6.

350. *See id.* at 7–8.

351. SAN LUIS OBISPO, 2012–2013 CMC REPORT, *supra* note 320, at 3–4.

352. *See id.* at 3–4 (noting the population at CMC as 1,996 inmates on the west side and 3,146 on the east side for a total of 5,142 inmates at the facility); SAN LUIS OBISPO, 2008–2009 REPORT, *supra* note 320, at 2 (indicating the total design capacity of CMC is 3,884 inmates).

353. *Brown v. Plata*, 563 U.S. 493, 509–10 (2011) (mandating California to reduce its prison population under 137.5% of its designed capacity).

354. SAN LUIS OBISPO, 2012–2013 CMC REPORT, *supra* note 320, at 4–5.

355. *Id.* at 4.

356. *See* Order Re: Receivership Transition Plan and Expert Evaluations at 8–10, *Plata v. Brown*, No. 3:01-cv-01351-TEH (N.D. Cal. filed Sept. 5, 2012), <https://www.clearinghouse.net/chDocs/public/PC-CA-0018-0098.pdf> [<https://perma.cc/5VJC-9NN7>].

357. JOE GOLDENSON, MADIE LAMARRE & MIKE PUISIS, CALIFORNIA MEN'S COLONY HEALTH CARE EVALUATION 5 (2013), <https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/Plata-Expert-Report-CMC.pdf> [<https://perma.cc/WSX2-RXPY>].

358. *See Forms & Documents > Grand Jury Reports*, *supra* note 320; *see also* SAN LUIS OBISPO, 2014–2015 REPORT, *supra* note 320, at 97–103.

359. *See generally* SAN LUIS OBISPO, 2014–2015 REPORT, *supra* note 320, at 97–103.

360. *Id.* at 98.

was mentioned in passing in a number of early inspections but CGJs did not seem overly concerned and made no specific recommendations for reduction.³⁶¹

I. Civil Grand Jury Reports on Jail Conditions in Remaining Counties

In this final part, we look at the remaining six counties that were not evaluated against civil rights litigation allegations made during the study period and appearing on the Clearinghouse website. These comprised one large population county—Santa Clara County, three medium sized population counties—Merced, Tulare, and Yolo counties, and two small population counties—Calaveras and Mendocino counties.

Santa Clara County is difficult to comment upon because the extent of public prison inspections carried out by its CGJs is unclear. While it is possible that its CGJs were regularly inspecting public prisons in accordance with their statutory duty, if they did so then they chose not to publicize details of these inspections in their final reports.³⁶² If the published final

361. See *supra* notes 326–55 and accompanying text.

362. See *Civil Grand Jury Reports Archive*, SUPERIOR COURT CAL. COUNTY SANTA CLARA, http://www.scsccourt.org/court_divisions/civil/cgj/grand_jury_archive.shtml#17 [<https://perma.cc/AZ7G-CD53>] (showing no reports for 2009–2010, 2010–2011, 2013–2014, and 2016–2017). See generally 2015–2016 SANTA CLARA CTY. CIVIL GRAND JURY, ADDRESSING MENTAL ILLNESS IN SANTA CLARA COUNTY JAILS 1–25 (2016), http://www.scsccourt.org/court_divisions/civil/cgj/2016/MentalIllnessJail.pdf [<https://perma.cc/66EC-27DL>] [hereinafter SANTA CLARA, 2015–2016 REPORT]; 2014–2015 SANTA CLARA CTY. CIVIL GRAND JURY, THE PUBLIC IS UNDERSERVED: EDUCATIONAL AND VOCATIONAL NEEDS FOR WOMEN INMATES AT ELMWOOD 1–22 (2015), http://www.scsccourt.org/court_divisions/civil/cgj/2015/Educational%20%20Vocational%20Needs%20for%20Women%20Inmates%20at%20Elmwood%20FINAL.pdf [<https://perma.cc/H5AJ-85DN>] [hereinafter SANTA CLARA, 2014–2015 REPORT]; 2012–2013 SANTA CLARA CTY. CIVIL GRAND JURY, DOES ELMWOOD CORRECTIONAL COMPLEX EXERCISE REASONABLE INMATE RELEASE PROCEDURES? 1–4 (2013), http://www.scsccourt.org/court_divisions/civil/cgj/2013/elmwood.pdf [<https://perma.cc/VWP2-BB55>] [hereinafter SANTA CLARA, 2012–2013 ELMWOOD REPORT]; 2012–2013 SANTA CLARA CTY. CIVIL GRAND JURY, JUVENILE HALL—ON THE RIGHT TRACK 1 (2013), http://www.scsccourt.org/court_divisions/civil/cgj/2013/jhall.pdf [<https://perma.cc/DZA3-R2WB>] [hereinafter SANTA CLARA, 2012–2013 JUVENILE HALL REPORT]; 2011–2012 SANTA CLARA CTY. CIVIL GRAND JURY, AB 109/AB 117 REALIGNMENT: IS SANTA CLARA COUNTY READY FOR PRISON REFORM? 1–16 (2012), https://www.scsccourt.org/court_divisions/civil/cgj/2012/CriminalRealignment.pdf [<https://perma.cc/5yK3-4ZGC>]; 2008–2009 SANTA CLARA CTY. CIVIL GRAND JURY, DEPARTMENT OF CORRECTION/FACILITIES AND FLEET, A BROKEN RELATIONSHIP IN NEED OF REPAIR 1–11 (2009), http://www.scsccourt.org/court_divisions/civil/cgj/2009/DeptOfCorrectionFacilitiesAndFleet.pdf [<https://perma.cc/5HQG-JEAF>] [hereinafter SANTA CLARA, 2008–2009 REPORT]; 2007–2008 SANTA CLARA CTY. CIVIL GRAND JURY, ELMWOOD CORRECTIONAL COMPLEX: A CONTINUING THREAT TO COMMUNITY SAFETY 1–5 (2008), http://www.scsccourt.org/court_divisions/civil/cgj/2008/ElmwoodCommunitySafety.pdf [<https://perma.cc/4BHN-VJ5V>] [hereinafter SANTA CLARA, 2007–2008 REPORT].

reports of the grand jury website are comprehensive, then no inspections were carried out in the years 2009–2010, 2010–2011, 2013–2014, and 2016–2017.³⁶³ By the standards of other large population counties, the number of reported inspections is surprisingly low: a single inspection in one year,³⁶⁴ two inspections in two years,³⁶⁵ and three inspections in three years.³⁶⁶ During the whole study period, the county's CGJs carried out a total of fourteen reported inspections.³⁶⁷ This stands in stark contrast to the other four high population counties: Alameda County—51 reported inspections;³⁶⁸ Los Angeles County—1,069 reported inspections;³⁶⁹ Orange County—144 reported inspections;³⁷⁰ San Bernardino County—53 reported inspections.³⁷¹

During the study period, Santa Clara County was the subject of a class action filed in 2015 for its failure to safeguard inmates' welfare.³⁷² Subsequent to the study period, it entered into a consent decree to implement a remedial plan to meet the minimum level of health care necessary to fulfil its obligations under the Eighth and Fourteenth Amendments, to ensure that unlawful force is not utilized in the jails, to avoid the unlawful use of segregated or restrictive housing in the jails, and to ensure compliance with the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act for inmates with psychiatric and/or intellectual disabilities.³⁷³ Although not explicitly mentioned in reports, it appears that the CGJs had been made aware of this continuing litigation and that this helped shape their inspections

363. See *Civil Grand Jury Reports Archive*, *supra* note 362.

364. See SANTA CLARA, 2007–2008 REPORT, *supra* note 362, at 1.

365. See SANTA CLARA, 2011–2012 REPORT, *supra* note 362, at 3; SANTA CLARA, 2008–2009 REPORT, *supra* note 362, at 1.

366. See SANTA CLARA, 2015–2016 REPORT, *supra* note 362, at 3; SANTA CLARA, 2014–2015 REPORT, *supra* note 362, at 7; SANTA CLARA, 2012–2013 ELMWOOD REPORT, *supra* note 362, at 2; SANTA CLARA, 2012–2013 JUVENILE HALL REPORT, *supra* note 362, at 1.

367. See *supra* notes 364–66 and accompanying text.

368. See *supra* note 117 and accompanying text.

369. See *supra* note 182 and accompanying text.

370. See *supra* note 243 and accompanying text.

371. See *supra* note 283 and accompanying text.

372. See Class Action Complaint for Injunctive and Declaratory Relief at 1, Chavez v. County of Santa Clara, No. 1:15-cv-05277-NJV (N.D. Cal. filed Nov. 18, 2015), <https://www.clearinghouse.net/chDocs/public/JC-CA-0123-0001.pdf> [<https://perma.cc/88WN-FZZM>] [hereinafter Complaint, *Chavez*].

373. Consent Decree at 1, 3, *Chavez*, No. 1:15-cv-05277-RMI, (Mar. 22, 2019), <https://www.clearinghouse.net/chDocs/public/JC-CA-0123-0006.pdf> [<https://perma.cc/5A9H-QXZ6>].

during the period after commencement of the suit.³⁷⁴ The plaintiffs were confined at various times during the study period in the Main Jail North, Second East Maximum, and the Main Jail South's Third West Maximum Unit.³⁷⁵ After commencement of the suit, Main Jail North was inspected during the study period.³⁷⁶ The jury considered certain issues the subject of complaint in the litigation at Main Jail North, specifically the use of force,³⁷⁷ and medical treatment of mentally ill inmates.³⁷⁸ The CGJ concluded its report by making a number of findings and recommendations aimed at improving conditions and treatment.³⁷⁹

We conclude that although their reports do not evidence regular inspections of all facilities, there is evidence that the CGJ acted upon allegations in civil litigation and took early steps to recommend remedial action before the county entered a consent decree.

Merced, Tulare, and Yolo counties all had a pattern of regular inspections of public prisons in their respective counties. Merced County CGJs showed exceptional consistency in their findings of overcrowded conditions and understaffing in the public prisons, complaining of both conditions in their reports for fiscal years 2007–2008, 2008–2009, 2009–2010, and 2010–2011.³⁸⁰ The effect of *Brown v. Plata* is seen in the fact that their reports subsequent to 2010–2011 no longer complain of overcrowding—but complaints of understaffing continue in reports for years 2011–2012, 2013–2014, and

374. See 2017–2018 CIVIL GRAND JURY OF SANTA CLARA COUNTY, REPORT ON DETENTION FACILITIES IN THE ERA OF REFORM 11–14 (2018), http://www.scsccourt.org/court_divisions/civil/cgj/2018/Detention_Facilities05212018.pdf [<https://perma.cc/2WHG-ESK5>] (“Treatment for the mentally ill and transitional services were identified as critical areas in the current jail reform efforts.”); SANTA CLARA, 2015–2016 REPORT, *supra* note 362, at 18–19 (“The unfortunate truth about the County jails is that they have become jail/prison hybrids and warehouses for the mentally ill They have had difficulty expanding services to meet the needs of the increasing mentally ill population in the jails.”).

375. Complaint, *Chavez*, *supra* note 372, at 3–4.

376. See SANTA CLARA, 2015–2016 REPORT, *supra* note 362, at 4.

377. *Id.* at 5, 11–12, 14–15.

378. *Id.* at 5–6, 15–19.

379. *Id.* at 19–22.

380. See MERCED CTY., CIVIL GRAND JURY, FINAL REPORT 2010–2011, at 26 (2011), https://mercedcourt.org/files/2010_2011_civil_gj_final_report.pdf [<https://perma.cc/26VY-AYNV>]; MERCED CTY. GRAND JURY, 2009–2010 FINAL REPORT 2, 4 (2010), https://www.co.merced.ca.us/DocumentCenter/View/3503/grand_jury_final_report_2009_2010_sml?bidId= [<https://perma.cc/8BVG-GUJ4>]; 2008–09 MERCED CTY. GRAND JURY, GRAND JURY FINAL REPORT 10, 38 (2009), https://www.co.merced.ca.us/DocumentCenter/View/2424/gj_report_08-09?bidId= [<https://perma.cc/999S-SVX9>]; MERCED CTY. GRAND JURY, GRAND JURY FINAL REPORT 2007–2008, at 16, 18–19 (2008), <http://web2.co.merced.ca.us/pdfs/grandjury/reports/Grand%20Jury%20Report%202007-2008.pdf> [<https://perma.cc/HCY6-7RF8>].

2016–2017.³⁸¹ In their reports for 2013–2014 and 2016–2017, the CGJs report that facilities are outdated and in need of replacement.³⁸² In short, the Merced County CGJs were ahead of the game and aware of the dangers of overcrowded and understaffed prisons. However, it is notable that the county did not appear to heed their complaints,³⁸³ and the recommendations on overcrowding stopped after the Supreme Court forced the State to address the overcrowding issue.³⁸⁴

Tulare County CGJs conducted inspections in seven out of the ten years studied.³⁸⁵ It is accurate to say that they found nothing of substance to complain of in the conditions they observed. There are no reports of overcrowding or understaffing or calls for new facilities.³⁸⁶

381. See MERCED CTY. CIVIL GRAND JURY, FINAL REPORT 2016–2017, at 12 (2017), <https://mercedcourt.org/files/FinalReport2016-2017.pdf> [<https://perma.cc/R75C-NGLD>] [hereinafter MERCED, 2016–2017 REPORT]; MERCED, 2013–2014 REPORT, *supra* note 106, at 3; MERCED CTY. CIVIL GRAND JURY, FINAL REPORT 2011–2012, at 34 (2012), <https://mercedcourt.org/files/2012gjfinalreport.pdf> [<https://perma.cc/35ME-XPVT>] [hereinafter MERCED, 2011–2012 REPORT].

382. MERCED, 2016–2017 REPORT, *supra* note 381, at 11; MERCED, 2013–2014 REPORT, *supra* note 106, at 2.

383. This is apparent because the complaints were included in four consecutive CGJ reports, from 2007 through 2011. See *supra* note 380 and accompanying text.

384. MERCED, 2011–2012 REPORT, *supra* note 381, at 34–38.

385. See TULARE CTY. GRAND JURY, TULARE COUNTY GRAND JURY REPORT 2015–2016, at 30 (2016), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/2015-2016-final-report-and-responses/2015-2016-final-report/> [<https://perma.cc/N6BL-48VP>] [hereinafter TULARE, 2015–2016 REPORT]; TULARE CTY. GRAND JURY, TULARE COUNTY GRAND JURY REPORT 2012–2013, at 43, 47 (2013), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/2012-2013-final-report/> [<https://perma.cc/VG4S-UK9G>] [hereinafter TULARE, 2012–2013 REPORT]; TULARE CTY. GRAND JURY, TULARE COUNTY GRAND JURY REPORT 2011–2012, at 19 (2012), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/2011-2012-final-report/> [<https://perma.cc/FN4T-CL67>] [hereinafter TULARE, 2011–2012 REPORT]; TULARE CTY. GRAND JURY, TULARE COUNTY GRAND JURY REPORT 2010–2011, at 61 (2011), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/2010-2011-final-report/> [<https://perma.cc/45CG-P39J>] [hereinafter TULARE, 2010–2011 REPORT]; TULARE CTY. GRAND JURY, FINAL REPORT 2009–2010, at 54, 59 (2010), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/2009-2010-final-report/> [<https://perma.cc/JWJ8-TUWA>] [hereinafter TULARE, 2009–2010 REPORT]; TULARE CTY. GRAND JURY, 2008–2009 FINAL REPORT 41 (2009), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/2008-2009-final-report/> [<https://perma.cc/AR6J-AU9A>] [hereinafter TULARE, 2008–2009 REPORT]; TULARE CTY. GRAND JURY, TULARE COUNTY GRAND JURY REPORT 2007–2008, at 70 (2008), <https://tularecounty.ca.gov/grandjury/index.cfm/reports/20072008-final-report/> [<https://perma.cc/S95L-RN92>] [hereinafter TULARE, 2007–2008 REPORT].

386. See *generally* TULARE, 2015–2016 REPORT, *supra* note 385, at 30–32; TULARE, 2012–2013 REPORT, *supra* note 385, at 43–49; TULARE, 2011–2012 REPORT, *supra* note 385, at 19–21; TULARE, 2010–2011 REPORT, *supra* note 385, at 60–62; TULARE, 2009–

Yolo County CGJs complained of overcrowding in the years 2008–2009 and 2010–2011,³⁸⁷ but, after the decision in *Brown*, there are no further complaints of overcrowded conditions.³⁸⁸ The 2008–2009 CGJ noted that the Monroe Detention Center operated under a federal consent decree that capped inmate numbers.³⁸⁹ The facility was inadequate to cope with the combination of population growth in the county and the practical necessity to segregate prisoners by gang, political or ideological persuasion, and sexual orientation.³⁹⁰ Compliance with the consent decree had necessitated early release of 3,031 inmates in 2009, including thirty-six convicted of felonies.³⁹¹

Calaveras County CGJs held regular inspections throughout the period.³⁹² The opening report for the study period included a call for the county to build a new county jail.³⁹³ The subsequent report in 2008–2009 noted that

2010 REPORT, *supra* note 385, at 54–55, 59–62; TULARE, 2008–2009 REPORT, *supra* note 385, at 41–46; TULARE, 2007–2008 REPORT, *supra* note 385, at 70–71.

387. 2010–2011 YOLO CTY. GRAND JURY, FINAL REPORT 47–48 (2011), <https://www.yolocounty.org/home/showdocument?id=16779> [<https://perma.cc/N767-5QF8>]; 2008–2009 YOLO CTY. GRAND JURY, FINAL REPORT 11–13 (2009), <https://www.yolocounty.org/home/showdocument?id=9860> [<https://perma.cc/8NF3-YL6C>] [hereinafter YOLO, 2008–2009 REPORT].

388. *See, e.g.*, 2015–16 YOLO CTY. GRAND JURY, YOLO COUNTY SHERIFF’S OFFICE DETENTION FACILITY REVIEW 1–5 (2016), <https://www.yolocounty.org/home/showdocument?id=35550> [<https://perma.cc/55RD-L4LA>]; 2012–2013 YOLO CTY. GRAND JURY, FINAL REPORT 27–32 (2013), <https://www.yolocounty.org/home/showdocument?id=22984> [<https://perma.cc/WLA9-RP5H>].

389. YOLO, 2008–2009 REPORT, *supra* note 387, at 11–12.

390. *Id.* at 12. *See generally* Sharon Dolovich, *Strategic Segregation in the Modern Prison*, 48 AM. CRIM. L. REV. 1 (2011) (discussing merits of L.A. County Jail’s segregated K6G unit that houses gay men and trans women separate from the general populations); John J. Gibbons & Nicholas De B. Katzenbach, *Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons*, 22 WASH. U. J.L. & POL’Y 385 (2006) (arguing against the trend in the late 1990s of increasingly segregated prison populations because segregation leads to higher rates of recidivism and prison violence).

391. 2009/2010 YOLO CTY. GRAND JURY, FINAL REPORT 27 (2010), <https://www.yolocounty.org/home/showdocument?id=13542> [<https://perma.cc/EFU2-NNU4>]; *see also* YOLO, 2008–2009 REPORT, *supra* note 387, at 11–12 (providing background on the consent decree).

392. *See* CALAVERAS CTY. GRAND JURY 2016–2017 FINAL REPORT 39, 53 (2017); CALAVERAS CTY. GRAND JURY, 2015–2016 FINAL REPORT 21, 31 (2016); CALAVERAS CTY. GRAND JURY, 2014–2015 FINAL REPORT 11, 14 (2015); CALAVERAS CTY. 2013–2014 GRAND JURY, FINAL REPORT 4 (2014) [hereinafter CALAVERAS, 2013–2014 REPORT]; CALAVERAS CTY. 2011–2012 GRAND JURY, FINAL REPORT 29 (2012) [hereinafter CALAVERAS, 2011–2012 REPORT]; CALAVERAS CTY. 2010–2011 GRAND JURY, FINAL REPORT 23 (2011) [hereinafter CALAVERAS, 2010–2011 REPORT]; 2009–2010 GRAND JURY, CALAVERAS CTY., FINAL REPORT 17 (2010) [hereinafter CALAVERAS, 2009–2010 REPORT]; 2008–2009 GRAND JURY, CALAVERAS CTY., FINAL REPORT 33 (2009) [hereinafter CALAVERAS, 2008–2009 REPORT]; CALAVERAS CTY. GRAND JURY, 2007–2008 FINAL REPORT 21, 23 (2008) [hereinafter CALAVERAS, 2007–2008 REPORT]. All of these reports are maintained in a database on the Calaveras County Grand Jury website. *See Grand Jury Reports*, CALAVERAS COUNTY, <https://grandjury.calaverasgov.us/Reports#gsc.tab=0> [<https://perma.cc/KV85-G4Z2>].

393. CALAVERAS, 2007–2008 REPORT, *supra* note 392, at 25.

a new jail was to be built so the jury was not commenting on the state of the county jail.³⁹⁴ Reports for 2010–2011 and 2011–2012 repeat these comments but also note understaffing at the jail.³⁹⁵ The report for 2013–2014 details an inspection of the new jail.³⁹⁶ Later reports have nothing of substance to note. We cannot gauge the influence of the CGJ's report, but there is clear evidence that Calaveras County's CGJ was aware of the dangers of poor conditions and understaffing.

Mendocino CGJ reports detail inspections for all years up to fiscal year 2012–2013,³⁹⁷ but thereafter there are no reports of jail inspections.³⁹⁸ The

394. CALAVERAS, 2009–2010 REPORT, *supra* note 392, at 33.

395. CALAVERAS, 2011–2012 REPORT, *supra* note 392, at 29–30; CALAVERAS, 2010–2011 REPORT, *supra* note 392, at 23–24.

396. CALAVERAS, 2013–2014 REPORT, *supra* note 392, at 4, 57–59.

397. *See* 2012–2013 MENDOCINO CTY. GRAND JURY, CUT BACKS IN MENTAL HEALTH SERVICES IMPACTING LAW ENFORCEMENT 2 (2013), <https://www.mendocinocounty.org/home/showdocument?id=3692> [<https://perma.cc/G9MW-3SUN>]; 2012–2013 MENDOCINO CTY. GRAND JURY, INMATE NUTRITION 1–2 (2013), <https://www.mendocinocounty.org/home/showdocument?id=3642> [<https://perma.cc/XNA4-5AX5>]; 2011–2012 MENDOCINO CTY. GRAND JURY, PROVIDING EFFECTIVE LAW ENFORCEMENT IN MENDOCINO COUNTY 1 (2012), <https://www.mendocinocounty.org/home/showdocument?id=3572> [<https://perma.cc/3WNX-REZP>] [hereinafter MENDOCINO, 2011–2012 REPORT]; 2010–2011 MENDOCINO CTY. GRAND JURY, FINAL REPORT 47–62 (2011), <https://www.mendocinocounty.org/home/showdocument?id=3334> [<https://perma.cc/JD5X-4HAP>] [hereinafter MENDOCINO, 2010–2011 REPORT]; 2010 MENDOCINO CTY. GRAND JURY, ARREST A PLUMBER - FIX THE JAIL! A REPORT ON THE MENDOCINO COUNTY JAIL AND COURTHOUSE HOLDING CELLS 1 (2010), <https://www.mendocinocounty.org/home/showdocument?id=3818> [<https://perma.cc/V5U4-BGBV>] [hereinafter MENDOCINO, 2009–2010 REPORT]; 2010 MENDOCINO CTY. GRAND JURY, OPEN A SCHOOL DOOR, CLOSE A JAIL CELL, A REPORT ON MENDOCINO COUNTY JUVENILE HALL 1 (2010), <https://www.mendocinocounty.org/home/showdocument?id=3840> [<https://perma.cc/BSX4-MP3U>]; 2010 MENDOCINO CTY. GRAND JURY, DOING COMMUNITY SERVICE! A REPORT ON CHAMBERLAIN CREEK AND PARLIN FORK CONSERVATION CAMPS 2 (2010), <https://www.mendocinocounty.org/home/showdocument?id=3822> [<https://perma.cc/NJ8B-9E7Y>]; 2008/2009 MENDOCINO GRAND JURY, FINAL REPORT 41 (2009), <https://www.mendocinocounty.org/home/showdocument?id=4128> [<https://perma.cc/4DTB-JSCL>] [hereinafter MENDOCINO, 2008–2009 REPORT]; 2007/2008 MENDOCINO GRAND JURY, FINAL REPORT 57, 62 (2008), <https://www.mendocinocounty.org/home/showdocument?id=4240> [<https://perma.cc/W8LC-2XHJ>].

398. *See generally* 2016–2017 Reports, COUNTY MENDOCINO CAL., <https://www.mendocinocounty.org/government/grand-jury/2016-2017-reports> [<https://perma.cc/FD7X-WG6X>]; 2015–2016 Reports, COUNTY MENDOCINO CAL., <https://www.mendocinocounty.org/government/grand-jury/2015-2016-reports> [<https://perma.cc/YPG9-5R6U>]; 2014–2015 Reports, COUNTY MENDOCINO CAL., <https://www.mendocinocounty.org/government/grand-jury/2014-2015-reports> [<https://perma.cc/JU8F-QN8N>]; 2013–2014, COUNTY MENDOCINO CAL., <https://www.mendocinocounty.org/government/grand-jury/past-reports/2013-2014-reports> [<https://perma.cc/J3MB-FHJ2>].

report for the year 2008–2009 found overcrowding and disrepair and recommended long-term planning for a new combined justice center.³⁹⁹ Reports for the succeeding three years, 2009–2012, detailed understaffing at the jail but not overcrowding.⁴⁰⁰ There are no reports of inspections in the last four years of the study period.⁴⁰¹ The lack of later reports makes it difficult to reach a firm conclusion as to whether a new jail was built. We note that in 2019 the county settled a wrongful death suit for \$5 million relating to a 2014 death in the county jail.⁴⁰² Although the CGJs in that and subsequent years likely knew of this lawsuit, they neglected to conduct any documented visits or review of jail policies and procedures following the prisoner’s death.⁴⁰³

IV. DISCUSSION

It is beyond dispute that California has experienced an explosive growth in its prison population since 1980.⁴⁰⁴ Much of that expansion took place between 1980 and 1991 when the prison population more than quadrupled.⁴⁰⁵ In their 1994 paper, Franklin Zimring and Gordon Hawkins document how California’s prison population of around 10,000 prisoners in 1950 had burgeoned to nearly 90,000 by 1990.⁴⁰⁶ They note that the combined jail and prison population in California increased from 28,946 in 1980 to 70,845 by 1990.⁴⁰⁷ By its peak in 2008, that figure had more than doubled again to 172,856 prisoners.⁴⁰⁸ By 2010, immediately before the U.S. Supreme Court’s decision in *Brown v. Plata*,⁴⁰⁹ that figure had fallen to 165,062.⁴¹⁰ The latest available figures show a prison population of 131,039 in 2017.⁴¹¹

399. MENDOCINO, 2008–2009 REPORT, *supra* note 397, at 41–42.

400. See MENDOCINO, 2011–2012 REPORT, *supra* note 397, at 2; MENDOCINO, 2010–2011 REPORT, *supra* note 397, at 57; MENDOCINO, 2009–2010 REPORT, *supra* note 397, at 2–3.

401. See generally sources cited *supra* note 398.

402. See Julie Johnson, *Mendocino County Jail Death Results in \$5 Million Settlement*, PRESS DEMOCRAT (Mar. 12, 2019), <https://www.pressdemocrat.com/news/9381662-181/mendocino-county-jail-death-results?sba=AAS> [<https://perma.cc/8TT7-7VEN>].

403. See *id.*; see also *supra* note 401 and accompanying text.

404. Franklin E. Zimring & Gordon Hawkins, *The Growth of Imprisonment in California*, 34 BRIT. J. CRIMINOLOGY (SPECIAL ISSUE) 83 (1994).

405. *Id.*

406. See *id.* at 84.

407. *Id.* at 85.

408. HEATHER C. WEST & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, PRISON INMATES AT MIDYEAR 2008 – STATISTICAL TABLES 6 (2009).

409. *Brown v. Plata*, 563 U.S. 493 (2011).

410. PAUL GUERINO, PAIGE M. HARRISON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010, at 14 (2012).

411. See JENNIFER BRONSON & E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2017, at 4 (2019).

The reason for this huge growth and modest decline are beyond the scope of this Article. However, the effects of explosive growth are all too obvious. Building prisons, hiring and training staff, attending to prisoners' medical needs, feeding and clothing them, and supervising parolees are all things that require funding. While getting tough on crime and imposing longer sentences is popular with the electorate,⁴¹² paying for the consequences of such a policy is not. As far back as 1978, Californians expressed their dislike of taxation by passing the People's Initiative to Limit Property Taxation, popularly known as Proposition 13, which amended the California Constitution, Article XIII so as to limit the maximum ad valorem taxes payable on real property.⁴¹³ While Proposition 13 remains popular with voters,⁴¹⁴

412. The period studied in this Article spans one where "tough on crime" policies were initially popular as reflected in the current "three strikes" law—California Penal Code section 667—passed in 1994 and the failed proposition ballot to abolish capital punishment in California—Proposition 62. See CAL. PENAL CODE § 667 (West 2010); *California Proposition 62—Repeal Death Penalty—Results: Rejected*, N.Y. TIMES (Aug. 1, 2017, 11:24 AM), <https://nytimes.com/elections/2016/results/California-ballot-measure-62-repeal-death-penalty> [<https://perma.cc/EH5S-ZFK9>]; *California's Three Strikes Sentencing Law*, *supra* note 12. One of the effects of this was endemic prison overcrowding leading to local jail populations caps and eventually the U.S. Supreme Court's decision in *Brown*. See *Brown*, 563 U.S. at 502–09. California was not alone among states in moving from punitive but fiscally expensive penal policies to softer but more affordable options. See German Lopez, *Mass Incarceration in America, Explained in 22 Maps and Charts*, VOX (Oct. 22, 2016, 1:50 PM), <https://www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts> [<https://perma.cc/LFL9-8M9H>]. Reforms like AB 109 and Proposition 47 played a role in reducing prison populations and costs but attracted powerful criticism from district attorneys. See, e.g., Michele Hanisee, *The Lies Behind the Selling of Prop 47 & 57*, ASS'N DEPUTY DISTRICT ATT'YS, <https://laadda.com/lies-behind-selling-prop-47-57/> [<https://perma.cc/4JPF-HRAF>]. Cara Bayles provides a useful overview of how public sentiment has shifted over time on "tough on crime." See Cara Bayles, *Calif. Move from 'Tough on Crime' Marks New Era of Reform*, LAW360 (Dec. 16, 2018, 8:02 PM), <https://law360.com/articles/1109195/calif-move-from-tough-on-crime-marks-new-era-of-reform> [<https://perma.cc/ATY6-9LFZ>]. Professor Mary Fan suggests that these shifts have provided political cover for reform and offer the potential for a transition from short-term emergency response to longer-term penal reform. Mary D. Fan, *Beyond Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 581, 647 (2012).

413. See CAL. CONST. art. XIII A, § 1; see also MAC TAYLOR, LEGISLATIVE ANALYST'S OFFICE, COMMON CLAIMS ABOUT PROPOSITION 13, at 1–2 (2016).

414. See John Myers, *Proposition 13 Treats All California Property Taxes the Same. Voters Could Change That in 2020*, L.A. TIMES (Aug. 15, 2019, 5:00 AM), <https://www.latimes.com/california/story/2019-08-14/california-proposition-13-business-taxes-split-roll> [<https://perma.cc/ZV7P-RW5X>]. ("Though Proposition 13 generally remains popular—65% of likely voters in a PPIC survey last year said the law has been mostly a good thing for the state—polls have also suggested voters are willing to rethink the tax rules for businesses.").

its effect has been to reduce the tax base of counties and make financing of new infrastructure projects more difficult.⁴¹⁵

Counties were faced with a rising jail population but a reduced tax base to finance the construction of new jails. Overcrowded jails led to disorder and illness, both physical and mental.⁴¹⁶ The U.S. Supreme Court's decision in *Brown* resulted in the passing of AB 109, which again threatened to increase jail populations as certain felonies were reclassified and sentences were served in jails rather than prisons.⁴¹⁷ A by-product of this has been an increase in state court tort claims by individual prisoners and 42 U.S.C. § 1983 class actions.⁴¹⁸ Defending these actions is expensive and can become a heavy burden for counties with low populations.⁴¹⁹ The consequences of punitive damages in individual prisoner tort actions or huge class action damages or decrees can be severe, and the costs are not negligible even for the most populous counties.⁴²⁰

415. See TAYLOR, *supra* note 413, at 22–23, 40.

416. For a more expansive look at how overcrowding, inter alia, can lead to physical illnesses in prisons, see WORLD HEALTH ORG., PRISONS AND HEALTH (Stefan Enggist et al. eds., 2014), https://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf?ua=1 [<https://perma.cc/8PFE-KK6P>].

417. Joan Petersilia, *California Prison Downsizing and Its Impact on Local Criminal Justice Systems*, 8 HARV. L. & POL'Y REV. 327, 327, 332 (2014).

418. See Christopher Petrella & Alex Friedmann, *Consequences of California's Realignment Initiative*, PRISON LEGAL NEWS (June 12, 2014), <https://www.prisonlegalnews.org/news/2014/jun/12/consequences-californias-realignment-initiative/> [<https://perma.cc/5PEB-QR45>].

419. See *supra* notes 274–77 and accompanying text.

420. Consequences of class action awards and decrees may be economic, social, or reputational. Professor Margo Schlanger discusses some of these in the context of *Brown* in a wide-ranging article. See generally Margo Schlanger, *Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics*, 48 HARV. C.R.-C.L. L. REV. 165 (2013). She observes that the Court could have ordered the release of tens of thousands of sentenced prisoners—a potentially serious social consequence—or required California to expend billions of dollars in new prison construction—a serious economic consequence. *Id.* at 165. Actual costs and expenses of such actions are incalculable. See Jonathan Simon, *'Mass Incarceration Now, Tomorrow, Forever': Gov. Jerry Brown and the Politics of Court Bashing*, U.C. BERKELEY: BERKELEY BLOG (Apr. 16, 2013), <https://blogs.berkeley.edu/2013/04/16/mass-incarceration-now-tomorrow-forever-gov-jerry-brown-and-the-politicis-of-court-bashing/> [<https://perma.cc/S5JX-JH4J>] (“In the long run, an effective alternative to mass incarceration is not going to mean big short term cost savings for the State (or perhaps any at all).”). *Brown* resulted in an overall reduction of California's prison population—a saving to the State—but an increase in costs in upgrading security, training officers, and enlarging and updating facilities in failure—a cost to counties. See *id.*; Tamara Tabo, *The Consequences of Brown v. Plata Are Nothing to Dismiss: The California Prison Case Continues*, ABOVE THE LAW (Oct. 17, 2013, 11:41 AM), <https://abovethelaw.com/2013/10/the-consequences-of-brown-v-plata-are-nothing-to-dismiss-the-california-prison-case-continues/> [<https://perma.cc/A6JE-AD2K>]. If district attorneys are to be believed, there were other costs too—increased property crime and drug use—a societal cost. See Hanisee, *supra* note 412. Reputational damage from assaults or neglect by staff in jails is difficult to quantify but widespread

The result has been an almost universal effort by counties to extract the maximum possible from staff and facilities at the lowest cost. The effects of this are reflected in overcrowded and understaffed prisons, dilapidated buildings, cuts in educational and vocational programs, and health care of inmates. Prisoners have few advocates and attract little public sympathy. However, in a humane society governed by the rule of law, prisoners should not lose all their rights and dignity when they lose their liberty. In this Article we have tried to evaluate the effectiveness of one possible way in which minimal prison standards might be maintained—the statutory duty of California's grand juries to inquire into the public prisons and seek answers.⁴²¹

On the face of it, grand juries are well equipped for the task. They have a free roving commission, the right to inspect documents and premises, to issue subpoenas, to instruct experts, and hire advisors.⁴²² They report to the superior court and their reports are made public.⁴²³ They can require responses from persons and bodies.⁴²⁴ Their deliberations are held in secret and it is a criminal offense for jurors to disclose the subject of their investigation.⁴²⁵ The legal status of a CGJ and its ability to compel secrecy on the part of witnesses whom it questions is unclear. There is authority to the effect that a grand jury is a judicial body and part of the local county superior court.⁴²⁶ That being the case, the question arises as to whether it can impose conditions of confidentiality on those whom it questions. Absent express statutory authority to that effect, we suggest that duty might only arise in circumstances where the CGJ makes known to a witness before examination starts that the CGJ considers the entirety of what is to follow to be subject to conditions of confidence and that the witness is not at liberty to disclose evidence or

media coverage and substantial damages awards are a certain result. *See* discussion *supra* Section III.B (describing the consequences of the beating death of Martin Harrison resulting in an \$8.3 million settlement).

421. *See* CAL. PENAL CODE § 919(b) (West 2008).

422. *Id.* §§ 921, 926(a)–(b); *see also* *People v. Sperl*, 54 Cal. App. 3d 640, 653–54 (1976) (“Furthermore, where public records are the object of a subpoena, a person having custody of same cannot refuse to produce them . . .”).

423. CAL. PENAL CODE § 933(a) (West 2008).

424. *Id.* § 933(c).

425. *Id.* §§ 924.1, 924.2.

426. *See* *People v. Superior Court of Santa Barbara Cty.*, 531 P.2d 761, 766 (Cal. 1975) (“As [Penal Code § 888] indicates, and as the California precedents have long recognized, the grand jury is a ‘judicial body,’ ‘an instrumentality of the courts of this state’” (first quoting *Ex parte Sternes*, 23 P. 38, 39 (Cal. 1889); then quoting *Ex parte Shuler*, 292 P. 481, 493 (Cal. 1930))).

facts disclosed without leave of the CGJ. A witness could expressly decline to accept the condition of confidentiality and it would then be up to the CGJ to decide whether to proceed with questioning. We suggest that a witness who does not explicitly consent to testify under conditions of confidence may be free to disclose evidence to others without penalty. However, we further suggest that a witness who agrees to testify under conditions of confidence may be cited for contempt of court if they disclose their testimony or the nature of the CGJ's inquiries.⁴²⁷ These speculations are not merely academic. Such circumstances did arise in one county where a CGJ attempted to impose on a potential witness conditions of confidentiality under threat of a citation for contempt.⁴²⁸ All these are potentially formidable tools for investigating wrongdoing and neglect. All county grand juries have a website on which their reports are made public and their findings are regularly disseminated through press and other media reports.⁴²⁹

Rather than simply analyze and describe the findings and recommendations of grand juries, we chose to evaluate their effectiveness as a watchdog by looking to see whether grand juries foresaw and warned against circumstances that ultimately gave rise to civil rights litigation within their counties. We also used this focus to see whether, once an action had been brought successfully, subsequent grand juries showed that the county had learned lessons from its past conduct.

Our findings in the preceding section show a mixed picture. Some grand juries were assiduous in going about their task and were stern critics of

427. See *Bloom v. Illinois*, 391 U.S. 194, 201 (1968) (“Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical—protection of the institutions of our government and enforcement of their mandates.”).

428. See *CITY OF RIVERSIDE GRAND JURY, 2012–2013 GRAND JURY REPORT: CITY OF RIVERSIDE, OFFICE OF THE CITY ATTORNEY 1–2* (2013), https://countyofriverside.us/Portals/0/GrandJury/Report_Riverside_Office_of_the_City_Attorney_Report.pdf [<https://perma.cc/HK4S-M3RR>] [hereinafter *RIVERSIDE, 2012–2013 REPORT*]. Here, the CGJ subpoenaed the Riverside city attorney and asked him to sign a confidentiality agreement. *Id.* at 1. The city attorney declined to sign and the CGJ proceeded to question him under oath. *Id.* At the end of his testimony, the CGJ admonished him in the following words: “You are ordered not to discuss or disclose the questions asked of you and your answers, or any information learned from the grand jury. A violation of these instructions on your part may be the basis for a charge against you of contempt of court.” *Id.* at 2. The city attorney subsequently filed a motion with the superior court to discharge subpoenas issued by the CGJ against city commissioners in the course of which the nature of the CGJ’s investigation was disclosed. *Id.* at 2–3. The CGJ did not cite the city attorney for contempt, so the question of whether he could have been successfully held in contempt remains unresolved. In its report, the CGJ recommended that “[t]he City of Riverside, Office of the City Attorney, shall refresh their memory on the responsibilities of the Grand Jury and shall honor the secrecy of the Grand Jury.” *Id.* at 4.

429. See, e.g., *Grand Jury*, *COUNTY RIVERSIDE CAL.*, <https://countyofriverside.us/Home/GrandJury.aspx#gsc.tab=0> [<https://perma.cc/NS3P-AHMN>].

sheriffs and county boards of supervisors.⁴³⁰ Others seemed to be, at best, asleep at the helm—and, at worst, naïve cheerleaders for failing facilities.⁴³¹

We offer the following observations as explanation for some of these behaviors. First and foremost, a civil grand jury is a collection of predominantly amateur investigators.⁴³² Initially it is self-selecting because its members are usually volunteers who have responded to the county's invitation to apply for service.⁴³³ Members may have a range of reasons for doing so.⁴³⁴ Its numbers are small—a maximum of twenty-three jurors.⁴³⁵ The process by which jurors are selected is not uniform.⁴³⁶ Most counties have a grand jury web page, which usually explains how members of the public can apply to become civil grand jurors and describes how selection is made.⁴³⁷

430. See, e.g., *supra* notes 171–80 and accompanying text (detailing the Butte County Grand Jury's diligent review of county jail facilities).

431. See, e.g., *supra* notes 302–19 and accompanying text (describing the San Bernardino County Grand Jury's general acceptance of county jail facility conditions despite multiple lawsuits complaining of the conditions).

432. See generally CAL. GRAND JURORS' ASS'N, THE CALIFORNIA GRAND JURY SYSTEM 23–27 (3d ed. 2014), https://cgja.org/sites/default/files/the_california_grand_jury_system_edition3_0.pdf [<https://perma.cc/CP74-R2RP>]. The “amateur” nature of the jury is an aspect of its requirement to be representative of its county and the wide autonomy it enjoys in choosing the matters it will investigate. See *id.* at 25. The qualifications are minimal: a juror must be “[a] citizen of the United States 18 years or older; a resident of the county for one year immediately prior to being selected; in possession of their natural faculties; of ordinary intelligence, sound judgment, and fair character; and possessed of sufficient knowledge of the English language.” *Id.* Members receive a basic training to assist them in performing their duties. *Id.* at 27. Members of a CGJ are also “amateurs” in the sense that they are not salaried but receive only their expenses and a fixed daily stipend. See, e.g., *Commitment/Compensation*, *supra* note 50.

433. See CAL. GRAND JURORS' ASS'N, *supra* note 432, at 25–26. But see *id.* at 26 (noting that some counties “have such significant difficulty that they resort to random selection from the trial jury pool”).

434. See, e.g., John Phillips & Janet Clark, *Opinion: Why You Should Join the County Civil Grand Jury*, MERCURY NEWS (Feb. 20, 2018, 6:45 AM), <https://www.mercurynews.com/2018/02/20/opinion-why-you-should-join-the-county-civil-grand-jury/> [<https://perma.cc/X7HR-ATBA>]; see also Aidan Freeman, *Supervisor Brown: 2017–2018 Civil Grand Jury Report is ‘Nonsense’*, RECORD-BEE (Oct. 2, 2018, 5:10 PM), <https://www.record-bee.com/2018/10/02/supervisor-brown-2017-2018-civil-grand-jury-report-is-nonsense/> [<https://perma.cc/TG72-XUTM>] (“[A] grand juror who worked on the most recent report, told the board that ‘When I entered the grand jury last year, I was very sensitive to the fact that it might be a place for people to complain, bring up their own problems, and do witch hunts. It turned out not to be true.’”).

435. CAL. PENAL CODE § 888.2(a) (West 2008).

436. See CAL. GRAND JURORS' ASS'N, *supra* note 432, at 25.

437. See, e.g., *Grand Jury Participation*, ORANGE COUNTY, <https://media.ocgov.com/residents/gov/grandjury.asp> [<https://perma.cc/3639-MVLC>]. An inspection showed that

Whatever the manner of shortlisting, a panel of prospective jurors is drawn up from which the eventual required number are drawn at random. Certain factors militate against an optimal selection of the persons best qualified to perform the tasks required of the jury—a volunteer pool of applicants, shortlisting by judges or court officials with their own views as to who is best fitted to the task, and final selection by chance.⁴³⁸

We assume that the supervising superior court judge attempts to assemble a panel from those willing to serve with a range of knowledge, skills, and experience appropriate to the tasks in hand. Even then, the eventual grand jury chosen by lot does not necessarily include the brightest and the best from the panel. The jury's duties and powers are wideranging. Even the most cursory glance through the reports of the fifty-eight counties' grand juries reveals an extraordinary range of matters investigated by them. These range from such things as antimalarial insect patrols,⁴³⁹ corrupt officials,⁴⁴⁰

all fifteen of the counties selected for study in this Article maintained a grand jury website. *See, e.g., id.* The ten largest and medium population counties' websites either provided an online application for interested citizens to apply to join the grand jury or a phone number to call to have a form sent to the inquirer. *See, e.g., id.* Of the five lowest population counties, only Mendocino and Plumas counties provided online application forms or a contact number to obtain one. *See Grand Jury*, COUNTY MENDOCINO CAL., <https://www.mendocinocounty.org/government/grand-jury> [<https://perma.cc/CZX9-CYMT>]; *Grand Jury*, PLUMAS COUNTY CAL., <https://www.plumascounty.us/216/Grand-Jury> [<https://perma.cc/7JMB-9BSP>]. Calaveras and Glenn counties provided no online information about joining the CGJ nor did they provide information about the selection process. *See Grand Jury*, CALAVERAS COUNTY, <https://grandjury.calaverasgov.us/#gsc.tab=0> [<https://perma.cc/WX7J-YWD4>]; *Grand Jury*, COUNTY GLENN CAL., <https://www.countyofglenn.net/dept/grand-jury/welcome> [<https://perma.cc/6U8P-UT33>]. However, a press report suggests that Glenn County sought citizen volunteers to serve on its grand jury. *See County Seeks Citizens to Serve on Grand Jury*, GLENN COUNTY TRANSCRIPT (Apr. 9, 2019), https://appeal-democrat.com/glenn_county_transcript/county-seeks-citizens-to-serve-on-grand-jury/article_e227deca-5b1f-11e9-b3ce-27c04ac425f9.html [<https://perma.cc/R5BQ-K3Y7>].

438. An optimal selection might only be achieved if the tasks a CGJ was to perform were known with certainty in advance. Although the CGJ reports to the presiding judge of the county's superior court, the judge cannot control the scope of each year's inquiries because determining these lies within each CGJ's discretion.

439. *See, e.g.,* CTY. OF ORANGE CAL. GRAND JURY 2016–2017, IS ORANGE COUNTY READY FOR ZIKA? IT TAKES A VILLAGE TO HANDLE MOSQUITO-BORNE VIRUSES (2017), http://www.ocgrandjury.org/pdfs/2016_2017_GJreport/2017-04-18_Website_Report.pdf [<https://perma.cc/SNK9-8UDG>]; MONTEREY CTY. CIVIL GRAND JURY, 2013–2014 FINAL REPORT 53–59 (2014), <https://media.graphcms.com/a3Ke80hgTRKTUPDG7mQH> [<https://perma.cc/7TMA-K8ZS>] (containing a sub-report titled Mosquito Abatement in Monterey County).

440. *See, e.g., District Attorney Should Be Fired, Civil Grand Jury Says*, CAPRADIO (May 12, 2017), <https://www.capradio.org/articles/2017/05/12/district-attorney-should-be-fired-civil-grand-jury-says/> [<https://perma.cc/Z29U-7SUY>].

poor value civic contracts,⁴⁴¹ environmental concerns,⁴⁴² building code enforcement,⁴⁴³ public school districts,⁴⁴⁴ city governance,⁴⁴⁵ to earthquake preparedness.⁴⁴⁶ Inquiries into the public prisons in the county may be a duty but is only one of many competing interests that grand jurors may wish to pursue in greater or lesser depth.

Another problem is that jurors usually serve for a single year and must complete all their inquiries within their year.⁴⁴⁷ They cannot bind their successors but often do leave advice, which is usually followed, that the following year's jurors examine requested responses and comment on their adequacy.⁴⁴⁸ A grand jury can only act on evidence put before it—a consequence of this is that a jury cannot take up where an unfinished

441. See, e.g., ALAMEDA, 2015–2016 REPORT, *supra* note 117, at 31–42 (investigating high garbage and composting collection rates resulting from award of city's new Zero Waste franchise contracts); SAN BERNARDINO, 2014–2015 REPORT, *supra* note 283, at 5–9 (investigating causes of an approximately \$750,000 cost overrun on a sewer laying contract).

442. See, e.g., MONTEREY CTY. CIVIL GRAND JURY, 2015–2016 FINAL REPORT 163–210 (2016), <https://media.graphcms.com/jjWqiGT7yP8oPCAsDgEg> [<https://perma.cc/VEP3-N32M>].

443. See, e.g., CITY & CTY. OF S.F. CIVIL GRAND JURY 2012–2013, BUILDING A BETTER FUTURE AT THE DEPARTMENT OF BUILDING INSPECTION 15–23 (2013), https://civilgrandjury.sfgov.org/2012_2013/BuildingABetterFuture.pdf [<https://perma.cc/QB8S-JJ3H>].

444. See, e.g., 2017–2018 ALAMEDA CTY. GRAND JURY, FINAL REPORT 25–39 (2018), <http://grandjury.acgov.org/grandjury-assets/docs/2017-2018/GJ-FinalReport-2017-2018.pdf> [<https://perma.cc/4GSD-PGS9>]; 2009–2010 SANTA CLARA CTY. CIVIL GRAND JURY, ACHIEVING SCHOOL DISTRICT EFFICIENCY THROUGH CONSOLIDATION (2010), http://www.sescourt.org/court_divisions/civil/cgj/2010/SchoolDistrictConsolidation.pdf [<https://perma.cc/S383-3KU9>].

445. See, e.g., 2018–2019 CIVIL GRAND JURY, RIVERSIDE CTY., CITY OF BANNING COUNCIL AND CITY MANAGER RELATIONSHIP (2019), https://countyofriverside.us/Portals/0/GrandJury/GrandJury2018-2019/Banning_Report.pdf?ver=2019-06-20-111929-933 [<https://perma.cc/T37J-6BQM>].

446. See, e.g., 2010–2011 MARIN CTY. CIVIL GRAND JURY, DISASTER PREPAREDNESS IN MARIN: ARE YOU READY? (2011), <https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2010/disaster-preparedness-in-marin.pdf> [<https://perma.cc/K25Q-PMJP>]; CITY AND CTY. OF S.F. 2012–2013 CIVIL GRAND JURY, ACT NOW BEFORE IT IS TOO LATE: AGGRESSIVELY EXPAND AND ENHANCE OUR HIGH-PRESSURE EMERGENCY FIREFIGHTING WATER SYSTEM SFCGJ 2018–2019: EXPAND AND ENHANCE OUR EMERGENCY FIREFIGHTING WATER SYSTEM (2019), https://civilgrandjury.sfgov.org/2018_2019/AWSS_Final_Report_with_Appendices_6_13_2019.pdf [<https://perma.cc/5NMJ-SCDY>].

447. See CAL. PENAL CODE § 901(a) (West 2008).

448. See *id.* § 924.4.

investigation of the previous year left off.⁴⁴⁹ This necessarily makes examinations in great depth difficult and running inquiries impossible.

Their greatest weakness is that they can only warn and advise—rather like the constitutional position of a modern British monarch. In our perusal of reports, we came across a few testy spats where public or elected officials clearly resented what they saw as the interference of the grand jury in affairs that, in their view, were being run satisfactorily.⁴⁵⁰ This reached something of a climax when one Riverside County grand jury issued subpoenas against a city attorney and city commissioners.⁴⁵¹ Prior to taking the city attorney's evidence under subpoena, the CGJ attempted to get the city attorney and his attorney to sign confidentiality agreements.⁴⁵² Both refused to sign statements acknowledging a secrecy order.⁴⁵³ After testifying, both were admonished to preserve secrecy under threat of citation for contempt of court.⁴⁵⁴ The city attorney subsequently applied to the court to discharge CGJ subpoenas against the city commissioners.⁴⁵⁵ The CGJ responded by making a formal recommendation in its report that, inter alia, the "Office of the City Attorney[] shall refresh their memory on the responsibilities of the Grand Jury and shall honor the secrecy of the Grand Jury."⁴⁵⁶ The reluctance of public officials and elected representatives to acknowledge any fault in their actions is legendary and their occasional insolence and condescension is predictable when faced with criticism by what they perceive as interfering amateurs.

As we have shown above, some grand juries paid close attention to the public prisons among their many other duties and interests.⁴⁵⁷ By far the most common complaint was that prisons and jails were dilapidated,⁴⁵⁸

449. See *id.* §§ 924, 924.1(a), 924.4.

450. See, e.g., Janice Bitters, *Santa Clara Not Complying with Records Law, Civil Grand Jury Report*, SAN JOSE SPOTLIGHT (June 19, 2019), <https://sanjosespotlight.com/santa-clara-not-complying-with-records-law-civil-grand-jury-report-says/> [<https://perma.cc/D7FU-G95A>].

451. See RIVERSIDE, 2012–2013 REPORT, *supra* note 428, at 1.

452. *Id.*

453. *Id.*

454. *Id.* at 2.

455. *Id.*

456. *Id.* at 4. For the response of the city attorney, see Gregory P. Priamos, *City of Riverside's Response to the 2012–2013 Grand Jury Report: City of Riverside, Office of the City Attorney* (July 10, 2013), <https://countyofriverside.us/Portals/0/GrandJury/Responses2012-2013/Response%20from%20City%20of%20Riverside%20Office%20of%20the%20City%20Attorney%20-%20City%20of%20Riverside%20Office%20of%20the%20City%20Attorney%20Rpt.pdf> [<https://perma.cc/YF8U-P9Y4>].

457. See, e.g., *supra* notes 292–94, 323–61 and accompanying text.

458. See *supra* notes 161, 173–76, 278, 382, 399 and accompanying text.

overcrowded,⁴⁵⁹ and understaffed.⁴⁶⁰ Such criticisms were unlikely to draw the ire of wardens and sheriffs as they did not control the intake or have the capital budgets to make good the deficiencies identified. Indeed, they may have viewed the jurors' observations as helpful in their own campaigns for new or better facilities. Many deficiencies may not have been obvious to jurors in the relatively short visits they paid individual institutions but were "helpfully" pointed out to them by wardens, jailers, and sheriffs. To that extent, the grand juries play a useful role in mediating between those running jails and the boards of supervisors. If they are sufficiently consistent in their criticisms from one year to the next, they have a useful "bully pulpit" function. They have one final advantage in that they bring an outsider's eye to affairs and may have insights that are not obvious to those most closely involved from day to day.

The most striking observation we made is the lack of clearly stated awareness of ongoing or recently concluded class or tortious claims brought against sheriff's departments and counties. Apart from a handful of references in the 150 final reports we read, we found little explicit evidence that grand juries were aware of these claims involving the very institutions they were inspecting. In some cases, we could infer awareness but, for the greater part, juries seemed to act in ignorance of significant claims associated with the running or management of the facilities inspected. This is unfortunate as attention to these could have shaped their inquiries usefully. The terms of the superior court's charge to a grand jury are not made public and so we have no means of telling whether superior court judges are drawing incoming civil grand juries' attention to past or pending civil rights suits regarding prison conditions brought against counties or sheriffs. If they are doing so, then evidence suggests that many CGJs seem to ignore these in shaping their inquiries. If superior court judges are not drawing CGJs' attention to these suits, then it would seem prudent that they should do so.

We would also draw attention to the Institute for Court Management's informative 2002 report on the fitness of grand juries to conduct civil investigations.⁴⁶¹ The report notes: "The skills grand jurors bring to their position must be considered in addressing training needs. Investigations requiring interviewing techniques, fact-finding and analysis skills are critical

459. See *supra* notes 105, 173, 328–53, 380, 387, 395–401 and accompanying text.

460. See *supra* notes 21, 177, 230, 277, 309, 380–86 and accompanying text.

461. See FOWLER-BRADLEY, *supra* note 38, at iv–vi.

for every member of the grand jury to perform effectively.”⁴⁶² However, the report goes on to say that a poll of California county counsel as to the sufficiency of jurors’ skills revealed: “Of those county counsels responding, 56% felt grand jurors possessed the interviewing and report writing skills necessary to carry out their duties, while 35% indicated they did not. The remaining 9% had no opinion or said the skills vary.”⁴⁶³ Such a verdict by legal professionals with close knowledge of CGJs is not an entirely ringing endorsement of their fitness for the task.

V. CONCLUSION

We are impressed with the work done by many civil grand juries in ensuring that the public prisons in their counties are run in a humane way and minimizing the prospects of civil rights claims being brought against their counties. However, we conclude that whatever their strengths, their remit and duties are ill-defined and do not afford a reliable means in every county of detecting likely failings in the prison system. The range of available skills, experience, and knowledge in a low population county is rarely likely to lead to the kind of searching inquiry needed to identify all the problems that might lead to civil rights litigation. Such litigation presents a major threat to low population counties, which can ill afford to defend, and perhaps settle, such claims.

We also feel that there is a methodological problem in how grand juries go about the task of inspecting the public prisons. Some have explicitly adopted the advice and model checklists of statewide organizations. Others have adopted their own methods and approached the task in a seemingly casual and unsystematic way. These differing approaches do not lend public confidence to consistently accurate findings. A very real problem is that while such checklists state items to be checked, they do not specify standards to be applied that would be familiar to corrections professionals. Whether an item is “satisfactory” is often left to the subjective judgement of the subset of jurors conducting an inspection.

There is significant variation in the ways CGJs fulfill their statutory responsibilities and the frequency of their inspections. Some CGJs showed insight into the potential threat to prisoner welfare and their county’s finances posed by staff training and conduct, physical conditions, and programs offered to inmates. Others showed little awareness of these factors.

We conclude that grand jury investigations are a useful complement and democratic addition to a statewide inspection regime but not an answer in themselves to the problems facing the prison system. In a future paper we

462. *Id.* at 46–47.

463. *Id.* at 47.

will seek to evaluate the effectiveness of 42 U.S.C. § 1983 actions, internal grievance procedures, and the Office of the Ombudsman to detect and correct shortcomings.

