California’s Civil Grand Juries and Prison Conditions 2007-17

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Abstract

In this paper we evaluate the potential for California’s so-called civil grand juries to detect substandard prison conditions and maltreatment of inmates and make recommendations for improvement. We describe relevant reports by grand juries between 2007-17 and evaluate the effectiveness of these in improving conditions in a representative sample of counties. We conclude that the civil grand jury is a potentially effective tool for oversight but its effectiveness is hampered by competing duties, variable investigative methodologies, and lack of clear objectives for performance of their statutory duties.

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# Introduction

America has a problem with its prisons. The nation has an unequalled appetite for imprisoning its citizens[[1]](#footnote-1) and, despite being the wealthiest country in the world, its prison conditions are little better than those of many Third World countries.[[2]](#footnote-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. 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. 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.[[3]](#footnote-3) 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.[[4]](#footnote-4) State representatives resented the supervision and interference of federal courts in what they saw as essentially a matter between them and their electorate. 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. Consequently, the Prison Litigation Reform Act, 42 U.S.C. § 1997e, was enacted, which requires inmates to firstly exhaust administrative remedies before resorting to a § 1983 action[[5]](#footnote-5). The result was a substantial reduction in the volume of successful § 1983 actions.[[6]](#footnote-6)

California is home to the largest death row in the nation, has a ‘three strikes’ law, and a substantial population of inmates serving indeterminate sentences. It is also one of the wealthiest States in the Union. Nevertheless, it has an unenviable record of poor prison conditions and inadequate inmate care. In 2011 Justice Kennedy (himself a Californian), 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.”[[7]](#footnote-7) He went on to explain,

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,” 18 U.S.C. § 3626(a)(3)(E)(i), specifically the severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care.[[8]](#footnote-8)

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,[[9]](#footnote-9) failing to provide minimally adequate health care and to protect prisoners from injury and violence from other prisoners in Fresno county[[10]](#footnote-10), and maintaining overcrowded and understaffed jails, subjecting inmates to dangerous, inhumane, and degrading conditions in Sacramento county.[[11]](#footnote-11)

With the decline in the use of § 1983 actions after 1997, 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 § 52.1. Unfortunately, the reach of § 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.

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, CA whose stated mission is to provide free legal services to offenders to improve their conditions of confinement.[[12]](#footnote-12) However, the resources of these organizations are limited and many adopt a strategic litigation approach using class actions to focus on particular statewide problems.

Thirdly, the California Department of Corrections and Rehabilitation has an Office of the Ombudsman. Since 2007, the Ombudsman has acted as an intermediary to address complaints and resolve issues raised by juvenile offenders in confidence. Adult offenders can complain of staff misconduct by raising an administrative appeal (Title 15, CCR § 3084.9(i)). These are reviewed by the Office of the Inspector General, which publishes semi-annual reports.[[13]](#footnote-13) 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.[[14]](#footnote-14) California Penal Code § 919(b) requires that “The Grand Jury shall inquire into the condition and management of the public prisons within the county.” Civil grand juries (CGJs) are appointed by the presiding superior court judge from citizen volunteers and serve for a year. CGJs have total access to public records, take evidence on oath and can issue subpoenas. They make findings of fact and recommendations. State institutions and public officials are obliged to respond to their findings if asked to do so by the CGJ. CGJs issue annual reports which are publicly available, as are responses to their findings and recommendations by institutions and officials. 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 paper we describe the activities of CGJs in their exercise of their public prisons overview function and evaluate their efficacy during the period 2007-17.

# 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.[[15]](#footnote-15) 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.

## *Selection, eligibility for service, powers and functions*

The State of California comprises 58 counties. Each county is required to have one or more grand juries to inquire of public offenses committed or triable within the county.[[16]](#footnote-16) One grand jury in each county has special responsibility to investigate or inquire into “matters of civil concern”[[17]](#footnote-17)—the so-called ‘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 23 citizens. For counties with a population of 20,000 or less the number is 11 jurors (subject to board of supervisors’ consent). In all other counties the number is 19 jurors.[[18]](#footnote-18) There is an eligibility requirement to serve as a juror—a person is eligible for service if a U.S. citizen aged 18 or older and a resident of the State and county (or city and county) for one year immediately before selection.[[19]](#footnote-19) 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”.[[20]](#footnote-20) A final requirement is that they must have “sufficient” knowledge of the English language.[[21]](#footnote-21)

The principal difference between grand jurors and petit jurors is that grand jurors volunteer their services, while petit jurors are randomly summoned for service. Although difficult to generalize, grand jurors tend to be older and retired citizens because of the time commitment required.[[22]](#footnote-22) 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.[[23]](#footnote-23)

Counties have a grand jury web page which contains advice to prospective jurors as to how to apply. The supervising judge selects a panel from prospective applicants to reflect geographical diversity and an appropriate range of skills and experience. The final jury is chosen by lot from the panel. Jurors serve for a term of one year.

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 reward…[[24]](#footnote-24)

Grand jurors receive their expenses and a modest stipend for their work. They work under the supervision of the presiding judge of the county’s superior court. Although they report their findings to the Court, they are not controlled or directed in their inquiries by the judge. When it 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.[[25]](#footnote-25) 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.”[[26]](#footnote-26) The court is also required to appoint a foreman.[[27]](#footnote-27)

The range of topics potentially open to grand jury investigation and inquiry is wide but, for the purposes of this paper, 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 § 919 which imposes three separate duties on a civil grand jury (CGJ). It has a discretion to inquire into every case of unindicted persons imprisoned in county jails on a criminal charge.[[28]](#footnote-28) It has a duty to inquire into the “condition and management of the public prisons within the county.”[[29]](#footnote-29) 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.”[[30]](#footnote-30) 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. 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.[[31]](#footnote-31) 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.[[32]](#footnote-32)

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.

However, perhaps the greatest significance of CGJs’ reports is that they cannot be ignored by public officials. California Penal Code § 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 90 days of the CGJ’s final report. Elected county officers or agency heads for which the grand jury has responsibility must comment within 60 days. 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.

## *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 whom, it is said, could get them to ‘indict a ham sandwich’ if so inclined.[[33]](#footnote-33) 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. It has been suggested by one Californian 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.”[[34]](#footnote-34)

The freedom of CGJs to select their own targets for investigation gives them broad powers to investigate wrongdoing within the penal system. Their discretionary power to inquire into the case of every unindicted person held in a county jail on criminal charges is tantalisingly 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 be interested in alleged denials of a speedy trial[[35]](#footnote-35) 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. However, in the case of the public prisons within their county, the CGJ is required in inquire into their ‘condition and management’. It should be noted that at present a small number of prisoners are detained outside the county and are thus beyond the reach of that grand jury’s inquiries.[[36]](#footnote-36) Similarly, a CGJ has no power to inspect federal prisons located within their county, only ones operated by the State of California or the county in which the jury is located.

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. 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. In practice there has emerged a kind of custom and practice in some counties whereby their inspection reports detail a consistent methodology and use a uniform format for presentation of findings. 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 2015-16 but another only 54 inspections in 2010-11.[[37]](#footnote-37) The task is potentially onerous in a county such as Los Angeles when at least two jurors must be present at each inspection and the jury itself comprises only 23 members. 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.[[38]](#footnote-38) Some reports replicated the model inspection report forms recommended in these manuals, however others gave little explicit details of the checks carried out.

# Effectiveness of Grand Jury Inspections

## *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*.[[39]](#footnote-39) It was clear that there would be substantial work in retrieving, reading, and analyzing reports for all counties over many years—such a task would be more suitable for a doctoral thesis since 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 58 counties for those years, it would be better to perform a longitudinal study on a representative sample of counties.

We chose to study 15 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 2016-17 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 2007-08 fiscal year through the 2016-17 fiscal year—some 150 reports in all.

Investigation of the effectiveness of civil grand juries required a metric against which to evaluate. For the purposes of this paper, 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*. 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 Californian cases relating to jail conditions.[[40]](#footnote-40) Results were examined to identify to which facility each case related. Those where the jail was in one of the 15 counties selected for review and where the case was active between fiscal years 2007-2017 were extracted for examination. Cases which 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 ones that a CGJ might reasonably have been expected to detect during an inspection. The result was a body of 25 cases whose causes of action arose in nine out of the 15 counties studied.[[41]](#footnote-41)

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. 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.

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. The Bill, later renamed the Public Safety Realignment Act of 2011, took effect on October 1, 2011. Prior to the passing of the Act, convicted felons served their sentences in state prisons. 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. Part of the State’s chosen mechanism for prison population reduction was to reclassify certain non-serious, non-violent felonies as N-3 felonies, so as not to require the convicted person to register as a sex offender. 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. 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 laying counties open to civil suits by inmates for violating the Eighth Amendment’s prohibition on ‘cruel and unusual punishments’.

A side effect of AB 109 was that county jails, which traditionally had held prisoners serving sentences no longer than 12 months, began to hold prisoners convicted of N-3 felonies and sentenced to terms longer than 12 months. Fears about the potential impact of AB 109 led to the subsequent adoption of Proposition 47 on November 4, 2014. The effect of this was to reclassify certain minor felonies as misdemeanors which carried potentially non-custodial sentences thus likely to lower the numbers incarcerated in local jails. The combined effects of AB 109 and Proposition 47 was to shift convicted offenders from state prisons to county jails and from county jails to non-custodial sentences leading to an overall reduction in the total number of persons serving custodial sentences.

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 do not list findings and/or 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 paper, 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 do not frequently access these sites to retrieve reports.

## *Jail Conditions in Alameda County*[[42]](#footnote-42)

Alameda County was one of five large population counties selected for evaluation. During the fiscal years 2007-17, the county’s CGJs made a total of 49 jail and detention facility inspections or visits according to their annual reports. 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.

Our examination of jail condition litigation reports for cases whose cause of action arose or was ongoing within the same period 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*,[[43]](#footnote-43) *Legal Services for Prisoners with Children v. Ahern*,[[44]](#footnote-44) *Babu v. County of Alameda*,[[45]](#footnote-45) and *Upshaw v. County of Alameda*.[[46]](#footnote-46) In all four cases, one or more plaintiffs was an inmate at the Santa Rita Jail and, in *Babu*, another plaintiff was an inmate at the Glenn E. Dyer Detention Facility.

The litigation covered a range of behaviors and conditions ranging from a fatal beating by guards, failure to accommodate disabled inmates, insanitary and degrading conditions of confinement, to sleep deprivation of inmates. All these cases involved substantial allegations that resulted in awards or claims for damages or injunctive relief. In *M.H.*, the plaintiff received $8,300,000 damages for a fatal beating.[[47]](#footnote-47) In *Legal Services for Prisoners with Children,* Alameda County agreed to pay $1,100,000 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.[[48]](#footnote-48) 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.[[49]](#footnote-49) In *Upshaw*, the plaintiffs seek damages and injunctive relief to prohibit the county from, inter alia, using over-head light, loud noise, public address system announcements, scheduled prisoner activities, and maintenance and cleaning work for at least a 7-hour period each night.[[50]](#footnote-50)

Two important purposes served by CGJs are their ‘watchdog’ and ‘lessons learned’ functions. Civil rights suits have expensive consequences for counties whether in awards of damages and attorneys’ fees or in staff retraining costs. 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. That is its so-called ‘watchdog’ function. 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. 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 3800 inmates and a campus area of 113 acres. The Alameda CGJ has 19 members 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, despite this being the largest public prison in the county, Alameda CGJs did not inspect the Santa Rita Jail every year during the study period. On the whole, when it did inspect the facility, the CGJ took a predominantly benign view of the jail and its staff. 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.[[51]](#footnote-51) Otherwise, it concluded that the jail was run satisfactorily and made no findings or recommendations that required a response.

It seems surprising that, once the jury was put on notice of the beating death of Martin Harrison at Santa Rita Jail on Aug. 16, 2010 and the filing by his family of the subsequent 42 U.S.C. § 1983 action on Jun. 10, 2011, no subsequent CGJs looked into the circumstances of his death and what lessons could be learned. 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.[[52]](#footnote-52)

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 concern.[[53]](#footnote-53) While the CGJ for fiscal year 2016-17 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. 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. By its own account, it “inspected the booking area, one housing unit, the Sandy Turner Education Center, and the Santa Rita Transition Center.”[[54]](#footnote-54) 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.

The institution that was inspected most frequently and which attracted the most criticism was a juvenile facility—Camp Wilmont Sweeney. Various CGJs expressed concerns about the camp but perhaps the strongest were those of the 2010-11 jury which declared itself “appalled at what we heard and saw during our November 2010 visit… .”[[55]](#footnote-55) 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.[[56]](#footnote-56) The jury noted that a 2008 report by criminal justice consultants Carter Goble Lee described the camp as being inappropriate for renovation and which “presents unusual liability to the community and the County.”[[57]](#footnote-57) In its Conclusion, the CGJ recognized that budget constraints made replacement problematic but questioned why nothing had been done to remedy a substandard situation.[[58]](#footnote-58) 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.[[59]](#footnote-59)

Subsequent CGJs further criticized the facility in reports for the years 2011-12[[60]](#footnote-60) and 2014-15.[[61]](#footnote-61) Despite these warnings, the county has been slow to replace the facility. As at the date of writing (November 2019), the Alameda County Probation Department’s website reports that a New Camp Sweeney Replacement Project seems to have got no further than that the Alameda County Board of Supervisors approved the $54.8M in service needs and related costs associated with the project on July 30, 2018.[[62]](#footnote-62) However, a presentation to the Probation Department’s Public Protection Subcommittee on February 14, 2019 projects construction finish and occupancy by June 2020—some 12 years on from the original Carter Goble Lee report.[[63]](#footnote-63)

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,[[64]](#footnote-64) a water pressure problem in one cell at the Hayward Courthouse Jail,[[65]](#footnote-65) and unclear marking of storage of first aid kits at the Hayward Police Department Jail.[[66]](#footnote-66) 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.

## *Jail Conditions in Butte County*

Butte County was one of five medium population counties selected for evaluation. During the fiscal years 2007-17, the county’s CGJs made a total of 20 jail and detention facility inspections or visits according to their annual reports. CGJs made 102 jail findings, gave 67 recommendations, and required 35 institutional responses.

There was no new civil rights litigation against Butte County during the study period. However, the county is subject to a continuing consent decree entered into between the County and inmates of Butte County Jail whereby the County is obliged to provide inmates with ‘meaningful access to the courts’. 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.[[67]](#footnote-67)

The CGJ reports frequently flag up the age of the Butte County Jail and the need for its replacement. In their 2007-08 Report, the jury found that the Women’s Section in the ‘old Jail’ did not provide a humane environment.[[68]](#footnote-68) The 2009-10 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.[[69]](#footnote-69) The 2010-11 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.[[70]](#footnote-70) The 2013-14 jury found that the jail was outdated and not suitable for housing long term prisoners[[71]](#footnote-71) and the 2014-15 jury found that Butte County was in need of a new jail facility.[[72]](#footnote-72)

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,[[73]](#footnote-73) and noting a planned video in English/Spanish explaining rules, available programs and what to expect in Butte County Jail and a planned Spanish version of the Jail Information Handbook.[[74]](#footnote-74) Other findings related to jail security and safety.[[75]](#footnote-75)

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 and seems to have been successful in avoiding further significant civil rights litigation since 1984.

## *Jail Conditions in Los Angeles County*

Los Angeles County is the most populous in California and was one of five large population counties selected for evaluation. During the fiscal years 2007-17, the county’s CGJs made a total of 976 jail and detention facility inspections or visits according to their annual reports. CGJs made 203 jail findings, gave 215 recommendations, and required 38 institutional responses.

Our examination of jail condition litigation reports for cases whose cause of action arose or was ongoing within the same period 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. 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. 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 2015-16.[[76]](#footnote-76)

The nine cases identified were *Thomas v. Baca*,[[77]](#footnote-77) *Johnson v. Los Angeles County Sheriff’s Department*,[[78]](#footnote-78) *Olivier v. Molina*,[[79]](#footnote-79) *Amador v. Baca*,[[80]](#footnote-80) *Holguin v. County of Los Angeles*,[[81]](#footnote-81) *Rodriguez v. County of Los Angeles*,[[82]](#footnote-82) *Douglas v. Cooley*,[[83]](#footnote-83) *Rosas v. Baca*,[[84]](#footnote-84) and *United States v. County of Los Angeles*.[[85]](#footnote-85) Seven of these nine cases implicated events or conditions at the Los Angeles County Men’s Central Jail. Since 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,[[86]](#footnote-86) lack of adjustments for inmates with disabilities,[[87]](#footnote-87) unprovoked beating while handcuffed,[[88]](#footnote-88) mass beatings of inmates[[89]](#footnote-89) and a policy of suppression of evidence in relation thereto,[[90]](#footnote-90) and inadequate mental health provision and care.[[91]](#footnote-91) Since 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 2007-17 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, which was alleged in *Thomas* (2007). Although the 2013-14 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.[[92]](#footnote-92) The reports for 2014-15[[93]](#footnote-93) and 2015-16[[94]](#footnote-94) similarly noted that the jail was overcrowded. Again, analysis of the reports revealed no investigations by CGJs during the period studied into the allegation in *Douglas* (2012) that there was a policy of suppression of evidence of jail staff beating inmates.

In *Johnson* (2008) it was alleged that Men’s Central Jail lacked adjustments to accommodate the needs of disabled inmates. There was no special investigation into this allegation during the period but in its Report for 2011-12, the grand jury note 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.[[95]](#footnote-95)

The allegations of individual and mass beatings made in *Holguin* (2010), *Rodriguez* (2010) and *Rosas* (2012) prompted specific investigation and comment in the CGJ’s 2013-14 Report. The jury noted that “Through newspaper and other media reports, the public is increasingly aware of alleged deputy assaults and other wrongdoings.”[[96]](#footnote-96) 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. (*Tyler Willis vs. County of Los Angeles*, CV 10-7390).[[97]](#footnote-97)

It went on to recommend that the Sheriff’s deputies and their commanding officers should be retrained on the proper use of force.[[98]](#footnote-98)

Finally, we can say that 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 *U.S. v. County of Los Angeles* (2015), a case brought under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. The issue is mentioned and discussed in a number of reports. The County had been put on notice of the problem as far back as 1996 when the Department of Justice wrote to it notifying it of its intention to investigate whether the Los Angeles County Jail provided inadequate mental health services to inmates.[[99]](#footnote-99)

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 at the Jail determined to be mentally ill.[[100]](#footnote-100) The agreement had been in effect for nine years before the period studied began and continues in force to the present day. In the Background section to the chapter *Detention Facilities in the County of Los Angeles* in its 2008-09 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.”[[101]](#footnote-101) Exhibit I is the Detention Facilities Inspection Report form used by the CGJ for all its inspections. The front page has a rating panel for ‘Mental Health’ as either compliant or non-compliant. The second page has a panel for mental health with a topic reminder that “Health 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?”[[102]](#footnote-102)

The 2009-10 CGJ held a special investigation into “Inmate Healthcare”, noting that “…mental health issues affect about 10% of the inmate population.” However, although revealing that the Twin Towers facility typically operated with about 20% physician understaffing, it made no specific findings about medical and mental health services at Men’s Central Jail.[[103]](#footnote-103) The 2012-13 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 sent their most unstable detainees to Twin Towers or Men’s Central Jail.[[104]](#footnote-104) 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.”[[105]](#footnote-105) However, it made no mention of mental health services at Men’s Central Jail in its recommendations[[106]](#footnote-106) or its inspection report.[[107]](#footnote-107)

The 2016-17 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.[[108]](#footnote-108) 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.[[109]](#footnote-109) It reported that Senior Management at the Sheriff’s Department considered it was not well equipped to act as a mental health agent.[[110]](#footnote-110)

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, the difficulties and costs of providing appropriate medical assistance, the inappropriateness of a prison environment for providing mental healthcare, and the poor fit between corrections skills and mental health nursing made the County’s task nearly unachievable.

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.

## *Jail Conditions in Orange County*

Orange County is one of five large population counties selected for evaluation. During the fiscal years 2007-17, the county’s CGJs made a total of 161 jail and detention facility inspections or visits according to their annual reports. CGJs made 131 jail findings, gave 115 recommendations, and required 38 institutional responses.

Our examination of jail condition litigation reports for cases whose cause of action arose or was ongoing within the same period 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 35 inspected in the years 2009-10 and 2010-11.[[111]](#footnote-111)

The two identified cases were *Doe v. County of Orange*[[112]](#footnote-112)and *Pierce v. County of Orange.*[[113]](#footnote-113) 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. 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.

The number of facilities reportedly visited or inspected in each fiscal year by CGJs varied from five in 2016-17 to 35 in the years 2009-10 and 2010-11. Despite fears of the impact of AB 109, CGJ reports throughout the study period make no findings of jail overcrowding. Similarly, the issues complained of in the *Doe* and *Pierce* suits were not the subject of CGJ findings during the period.

The greatest continuing preoccupation of Orange County’s CGJs was jail security. The reasons for this are clear to see from the special report, *The State of Orange County Jails*, prepared by the 2007-08 CGJ.[[114]](#footnote-114) The report explains how the preceding 18 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.[[115]](#footnote-115) 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 OCSD Policy.[[116]](#footnote-116)

The beating death had occurred partly through inattention by guards and partly because of blind spots in the jail not subject to video surveillance. The CGJ made extensive recommendations, including installation of video to cover blind spots.[[117]](#footnote-117) Successive CGJs commented adversely on video surveillance in 2012,[[118]](#footnote-118) 2013,[[119]](#footnote-119) 2014,[[120]](#footnote-120) and 2015.[[121]](#footnote-121)

One further area, inmate mental health, was the topic of an extensive special report by the 2015-16 CGJ.[[122]](#footnote-122) The jury made numerous findings and recommendations and required responses from officials and departments concerned.[[123]](#footnote-123) It is possible that the jury was mindful of class actions brought in adjoining Los Angeles County with potentially expensive consequences since 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 2007-08 CGJ’s special report.[[124]](#footnote-124) Their special study of the mental health of inmates also offered prophylactic advice that might, if taken, avoid future class actions in the County.

## *Jail Conditions in Plumas County*

Plumas County is one of five small population counties selected for evaluation. During the fiscal years 2007-17, [[125]](#footnote-125) the county’s CGJs made a total of seven recorded jail and detention facility inspections or visits according to their annual reports. CGJs made 43 jail findings, gave 31 recommendations, and required 4 institutional responses.

Our examination of jail condition litigation reports for cases whose cause of action arose or was ongoing within the same period 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.

The case, *Pederson v. County of Plumas*,[[126]](#footnote-126) 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 37, to provide appropriate medical services, and to provide access to a law library.[[127]](#footnote-127) In 2013 there was an agreed amendment to the consent decree specifying new capacity and staffing requirements.[[128]](#footnote-128) Compliance disputes continue to the date of writing.

The World Population Review states the population of Plumas County in 2019 as 18,740 according to U.S. Census data.[[129]](#footnote-129) 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. 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.[[130]](#footnote-130) While the per capita cost of the settlement to the citizens of Alameda County was $5.00, a corresponding award in Plumas County would cost approximately $443.00. Even if indemnity insurance is taken out to cover such events, the per capita costs of the indemnity premiums will be higher. The costs 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[[131]](#footnote-131) and the age and disrepair of the jail.[[132]](#footnote-132) As the 2012-13 report noted: “It is painfully obvious that Plumas County needs a new jail.”[[133]](#footnote-133) The county is not scheduled to have a new jail ready for occupation until late 2020 or early 2021.[[134]](#footnote-134) The County’s grand jury web pages do not carry details of the responses from the Sheriff’s Department or the Board of Supervisors so it is difficult to say what role the CGJs’ persistent complaints and advice may have played in the eventual replacement decision. However, since dilapidation and understaffing are significant factors in producing conditions likely to lead to civil litigation, the civil grand jury cannot be faulted for failing to draw attention to these conditions.

## *Jail Conditions in San Bernardino County*

San Bernardino County is one of five large population counties selected for evaluation. During the fiscal years 2007-17, the county’s CGJs made a total of 71 recorded jail and detention facility inspections or visits according to their annual reports. CGJs made 53 jail findings, gave 34 recommendations, and required no institutional responses.

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 11 inspected in the year 2008-09.

The four cases identified were *Craft v. County of San Bernardino*,[[135]](#footnote-135) *Plata v. Schwartzenegger*,[[136]](#footnote-136) *McKibben v. McMahon*,[[137]](#footnote-137) and *Topete v. San Bernardino County*.[[138]](#footnote-138) The cases related to several facilities but San Bernardino Jail’s West Valley Detention Center and the San Bernardino County Jail were each implicated in two cases.

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 (Central Detention Center), San Bernardino County Jail, and San Bernardino Jail (West Valley Detention Center).

*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. 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 100-180 incoming prisoners each day.[[139]](#footnote-139) 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 on-going serious risk of harm to patients.[[140]](#footnote-140)

In *McKibben*, inmates at the San Bernardino County Jail (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. 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.

In *Topete*, 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.[[141]](#footnote-141) The class allegations related to the San Bernardino County Jail.

The San Bernardino County CGJ originally adopted an unstructured, narrative report style for its inspections of public prisons up to and including fiscal year 2010-11. Thereafter, its reports follow a standard format. 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. 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.

Reports prior to the fiscal year 2011-12 are usually terse and have little narrative discussion. For example, the report for the year 2007-08 details inspections of 10 facilities, eight of these are dealt with in a matrix on a single page. In the case of one large facility, the Adelanto Detention Facility, the inspection report is 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 2010. All areas clean, well staffed and safe.”[[142]](#footnote-142) In essence the evaluation proper is the first and last sentences—a mere 21 words for a large facility. Two facilities, the Central Detention Center and the West Valley Detention Center, merit a more extensive treatment and each gets two pages.[[143]](#footnote-143) Although the reports are longer, a substantial portion is historical or factual and adds little. The only formal findings recorded are that both facilities were understaffed and more staff should be recruited.

Despite the allegations in *Craft* of unwarranted and demeaning strip searches at the West Valley Detention Center, the 2007-08 report gives no indication the jury sought to satisfy itself whether there had been any reoccurrences of that conduct. 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 2007-08. The eventual cost to the County was in excess of $31 million in damages and class attorneys’ fees.[[144]](#footnote-144) Reports in subsequent years also detail no special inquiries being made about possible repetitions of these searches.

The 2007-08 report notes that “The 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.”[[145]](#footnote-145) 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. 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, accompanying inmates to local hospitals for highly specialized treatment”,[[146]](#footnote-146) it made no special findings or recommendations regarding healthcare at the facility. Subsequent reports were similarly silent on this issue.

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

## *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 2007-17, the county’s CGJs made a total of 77 recorded jail and detention facility inspections or visits according to their annual reports. CGJs made 47 jail findings, gave 17 recommendations, and required 6 institutional responses.

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 13 inspected in the year 2012-13.

The case identified was *Brown v. Plata*.[[147]](#footnote-147) 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 Amendment. An incidental harm was the inability of California’s prison system to deliver appropriate medical care to inmates.

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. The 2007-08 CGJ stated that, when inspected in October 2007, it was holding 6,465 inmates[[148]](#footnote-148) 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.”[[149]](#footnote-149)

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 2007-08, 2008-09, 2011-12, 2012-13, and 2014-15, effectively two reports before *Brown*, one immediately after the decision, and a further two in the following years. There was a regular jail inspection report in the decision year 2010-11.

Reports for the years 2007-08 and 2008-09 both reported figures showing the prison was holding substantially more inmates than its design capacity—CMC was running at 166% capacity in 2007-08. Neither CGJ commented adversely on this and made no formal findings or required responses to address the issue. 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. The juries’ focus was chiefly upon the educational and vocational programs offered at the facility.

The report for 2010-11, the year in which the U.S. Supreme Court announced its decision in *Brown*,[[150]](#footnote-150) includes a report of an inspection of CMC. The date of the CGJ’s inspection of the facility is not stated 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.[[151]](#footnote-151)

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.”[[152]](#footnote-152) The CGJ ended on a more optimistic note: “Fortunately, groundbreaking has started on a new medical facility that will better accommodate inmate health needs.”[[153]](#footnote-153) It should be noted that the CGJ made no formal recommendations and required no responses to this report.

Although no mention is made of it in the report, the 2011-12 inspection report should have been made with the benefit of knowledge of the decision in *Brown* and the Court’s criticisms of the Californian prison system as a whole. It noted that as a result of AB 109, the population of CMC was falling[[154]](#footnote-154) and that demand for medical services was similarly declining.[[155]](#footnote-155) It made no formal recommendations and required no responses to its report.

The 2012-13 CGJ’s report notes a further fall in the inmate population at CMC.[[156]](#footnote-156) The prison remained overcrowded at 132% of design capacity, a figure just 5.5% below the maximum permitted under AB 109. There is some description of CMC’s medical and psychiatric facilities but no discussion of their adequacy.[[157]](#footnote-157) The jury seemed more concerned about the underuse of one secure psychiatric ward.[[158]](#footnote-158)

In March 2013, medical experts appointed pursuant to the federal court’s order[[159]](#footnote-159) 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.”[[160]](#footnote-160) Issues identified by the experts in their caveats were not picked up by previous CGJs. CMC was not inspected in the year 2013-14 and the next report was that of 2014-15.[[161]](#footnote-161) The 2014-15 CGJ did not investigate the state of the outstanding issue mentioned by the experts or comment on their report. The CGJ report identifies the major issue facing CMC as “the state of religious life” at the facility.[[162]](#footnote-162)

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

## *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. If the published final reports of the grand jury website are comprehensive, then no inspections were carried out in the years 2009-10, 2010-11, 2013-14, and 2016-17. By the standards of other large population counties, the number of reported inspections is surprisingly low: a single inspection in two years, two inspections in three years, and three inspections in one year. During the whole study period the county’s CGJs carried out a total of 11 reported inspections. This stands in stark contrast to the other four high population counties: Alameda County—49 reported inspections; Los Angeles County—976 reported inspections; Orange County—161 reported inspections; San Bernardino County—71 reported inspections.

During the study period, Santa Clara County was the subject of a class action filed in 2015 for its failure to safeguard inmates’ welfare.[[163]](#footnote-163) 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 ADA and Section 504 of the Rehabilitation Act for inmates with psychiatric and/or intellectual disabilities.[[164]](#footnote-164) 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 during the period after commencement of the suit. The plaintiffs were confined at various times during the study period in the Main Jail North, Second East Maximum, and the Main Jail South (Third West Maximum Unit). After commencement of the suit, Main Jail North was inspected during the study period.[[165]](#footnote-165) The jury considered certain issues the subject of complaint in the litigation at Main Jail North, specifically the use of force[[166]](#footnote-166) and medical treatment of mentally ill inmates.[[167]](#footnote-167) The CGJ concluded its report by making a number of findings and recommendations aimed at improving conditions and treatment.[[168]](#footnote-168)

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. CGJs complained of both conditions in their reports for fiscal years 2007-08, 2008-09, 2009-10, and 2011. The effect of *Brown v. Plata* is seen in the fact that their reports subsequent to 2010-11 no longer complain of overcrowding—but complaints of understaffing continue in reports for years 2011-12, 2013-14, and 2016-17. In their reports for 2013-14 and 2016-17, the CGJs report that facilities are outdated and in need of replacement. 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 their consistent complaints were not heeded and overcrowding was only addressed when the County was forced to do so by *Brown*.

Tulare County CGJs conducted inspections in seven out of the ten years studied. 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.

Yolo County CGJs complained of overcrowding in the years 2008-09 and 2010-11 but, post the decision *Brown*, there are no further complaints of overcrowded conditions. The 2008-09 CGJ noted that the Monroe Detention Center operated under a federal consent decree that capped inmate numbers. The facility was inadequate to cope with the combination of population growth in the county and the necessity to segregate prisoners by gang, political or ideological persuasion, and sexual orientation. Compliance with the consent decree had necessitated early release of 3,031 inmates in 2009, including 36 convicted of felonies.[[169]](#footnote-169)

Calaveras County CGJs held regular inspections throughout the period. The opening report for the study period included a call for the county to build new County Jail.[[170]](#footnote-170) The subsequent report in 2008-09 noted that a new jail was to be built so the jury was not commenting on the state of the County Jail.[[171]](#footnote-171) Reports for 2009-10 and 2010-11 repeat these comments but also note understaffing at the jail. The report for 2013-14 details an inspection of the new jail. 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 2012-13 but thereafter there are no reports of jail inspections. The report for the year 2008-09 found overcrowding and disrepair and recommended long-term planning for a new combined justice center.[[172]](#footnote-172) Reports for the succeeding three years 2009-12 detailed understaffing at the jail but not overcrowding. There are no reports of inspections in the last four years of the study period. 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. The CGJ for that and subsequent years are unlikely to have been unaware of the suit and that might usefully have directed their inquiries in later years.[[173]](#footnote-173)

# Discussion

It is beyond dispute that California has experienced an explosive growth in its prison population since 1980. Much of that expansion took place between 1980-91 when the prison population more than quadrupled. In their 1994 paper, Franklin Zimring and Gordon Hawking document how California’s prison population of around 10,000 prisoners in 1950 had burgeoned to nearly 90,000 by 1990.[[174]](#footnote-174) They note that the combined jail and prison population in California increased from 28,946 in 1980 to 70,845 by 1990.[[175]](#footnote-175) By its peak in 2008, that figure had more than doubled again to 172,856 prisoners.[[176]](#footnote-176) By 2010, immediately before the U.S. Supreme Court’s decision in *Brown v. Plata*,[[177]](#footnote-177)that figure had fallen to 165,062.[[178]](#footnote-178) The latest available figures show a prison population of 131,039 in 2017.[[179]](#footnote-179)

The reason for this huge growth and modest decline are beyond the scope of this paper. 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, 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 Californian Constitution, Article XIII so as to limit the maximum ad valorem taxes payable on real property. While Proposition 13 remains popular with voters, its effect has been to reduce the tax base of counties and make financing of new infrastructure projects more difficult.

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. 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. 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. Defending these actions is expensive and can become a heavy burden for counties with low populations. The consequences of huge class action damages awards can be severe and the costs are not negligible even for the most populous counties.

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 paper 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

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. They report to the superior court and their reports are made public. They can require responses from persons and bodies. Their deliberations are held in secret and it is a criminal offense for those interviewed by them to disclose to others the subject of the jury’s investigation. 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.

Rather than simply analyze and describe the findings and recommendations of grand juries, we chose to evaluate their effectiveness as a watch dog 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 Sheriffs and County Boards of Supervisors. Others seemed to be, at best, asleep at the helm—and, at worst, naïve cheerleaders for failing facilities.

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. Initially it is self-selecting because its members have all put themselves forward to serve as potential members for reasons of their own. Its numbers are small – a maximum of 23 jurors. The eventual panel from which it is chosen by lot is selected by a single judge, who brings his or her own conscious or unconscious prejudices to the task. The final jury is chosen by chance from the panel. These factors militate against an optimal selection of the persons best qualified to perform the tasks required of the jury.

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 wide ranging. Even the most cursory glance through the reports of the 58 counties’ grand juries reveals an extraordinary range of matters investigated by them. These range from such things as anti-malarial insect patrols, corrupt officials, poor value civic contracts, environmental concerns, building code enforcement, public school districts, city governance, and earthquake preparedness. 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. 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. 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 investigation of the previous year left off. 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. This reached something of a climax when one grand jury issued subpoenas against a senior public attorney’s staff and made a formal recommendation that he remind himself of the rights of the civil grand jury to inquire into his actions. 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. By far the commonest complaint was that prisons and jails were dilapidated, overcrowded, and understaffed. 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 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 is 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 of 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.[[180]](#footnote-180) 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 for every member of the grand jury to perform effectively.”[[181]](#footnote-181) 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.”[[182]](#footnote-182) Such a verdict by legal professionals with close knowledge of CGJs is not an entirely ringing endorsement of their fitness for the task.

# 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 to minimize 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 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.

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   *See* Birkbeck, University of London, *World Prison Brief*, https://www.prisonstudies.org/highest-to-lowest/prison\_population\_rate?field\_region\_taxonomy\_tid=All (last visited Nov. 9, 2019). [↑](#footnote-ref-1)
2. *See* Matt Ford, *The Everyday Brutality of America’s Prisons*, New Republic, Apr. 5, 2019. [↑](#footnote-ref-2)
3. *See* Civil Rights Attorney’s Fees Awards Act of 1976. [↑](#footnote-ref-3)
4. *See e.g.* David Shub*, Private Attorneys General, Prevailing Parties, and Public Benefit: Attorneys’ Fees Awards for Civil Rights Plaintiffs*, 42 Duke L.J. 707 (1992). [↑](#footnote-ref-4)
5. 42 U.S.C. § 1997e(a) provides “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.” [↑](#footnote-ref-5)
6. For an early overview of the impact of this legislation on § 1983 actions, *see* *e.g.* Barbra Belbot, *Report on the Prison Litigation Reform Act: What Have the Courts Decided So Far?,* 84 Prison J. 290 (2004). [↑](#footnote-ref-6)
7. 563 U.S. 493, 499 (2011). [↑](#footnote-ref-7)
8. *Id.* at 502. [↑](#footnote-ref-8)
9. Gray v. County of Riverside, No. ED-13-CV, 2016 WL 6822308 (C.D. Cal., Apr. 28, 2016). [↑](#footnote-ref-9)
10. Hall v. Mims, No. CV F 11–2047–LJO–BAM, 2012 WL 1799179 (E.D. Cal., May 16, 2012). [↑](#footnote-ref-10)
11. Mays v. County of Sacramento, No. 2:18-cv-02081-TLN-KJN (E.D. Cal., Aug. 13, 2019). [↑](#footnote-ref-11)
12. *See* the Prison Law Office’s website at https://prisonlaw.com for details. [↑](#footnote-ref-12)
13. *See* http://www.oig.ca.gov/pages/reports.php. [↑](#footnote-ref-13)
14. Currently, the only other State to invest its grand juries with civil investigatory powers is Nevada. 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.

    Nev. Rev. Stat. § 172.175. [↑](#footnote-ref-14)
15. The sparse literature comprises principally a student comment, Stephanie A. Doria, *Adding Bite to the Watchdog’s Bark: Reforming the California Civil Grand Jury System*, 28 Pac. L.J. 1115 (1997), an article by a senior State employee, John M. Feser, *The California Civil Grand Jury: From Watchdog to Watched Dogs*, 30 McGeorge L. Rev. 748 (1999), two articles by academics, Michael Vitiello & J. Clark Kelso, *Reform of California’s Grand Jury System*, 35 Loy. L.A. L. Rev. 513 (2002) and Noah Weinstein & William J. Shaw, Grand Jury Reports—A Safeguard of Democracy, 1962 Wash. U. L.Q., 191,191 (1962) and a report, Melissa Fowler-Bradley, Inst. for Ct. 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: Bruce T. Olson, Grand Juries, A study in Citizenship in California (2000). [↑](#footnote-ref-15)
16. Cal. Penal Code § 880. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. Cal. Penal Code § 880.2. [↑](#footnote-ref-18)
19. Cal. Penal Code § 893(a)(1). [↑](#footnote-ref-19)
20. Cal. Penal Code § 893(a)(2). [↑](#footnote-ref-20)
21. Cal. Penal Code § 893(a)(3). [↑](#footnote-ref-21)
22. By way of example, the Los Angeles County Civil Grand Jury reported civil grand jury age demographics in their county for the 10 years covered in this paper as comprising 221 out of 230 grand jurors being aged over 55 years. The median age for grand jurors during that period lay between 65-74. Only two grand jurors were under the age of 45. *See* Los Angeles County Civil Grand Jury, Final Report 2016-17, 283 (2017). [↑](#footnote-ref-22)
23. http://www.ocgrandjury.org/Committment.asp. [↑](#footnote-ref-23)
24. Noah Weinstein & William J. Shaw, Grand Jury Reports—A Safeguard of Democracy, 1962 Wash. U. L.Q., 191,191 (1962) [↑](#footnote-ref-24)
25. Cal. Penal Code §§ 914(a) and 914.1. [↑](#footnote-ref-25)
26. Cal. Penal Code § 914(b). [↑](#footnote-ref-26)
27. Cal. Penal Code § 912. [↑](#footnote-ref-27)
28. Cal. Penal Code § 919(a). [↑](#footnote-ref-28)
29. Cal. Penal Code § 919(b). [↑](#footnote-ref-29)
30. Cal. Penal Code § 919(c). [↑](#footnote-ref-30)
31. Cal. Penal Code § 921. [↑](#footnote-ref-31)
32. Cal. Penal Code § 929. [↑](#footnote-ref-32)
33. For judicial notice of the practice, *see e.g.* Goldberg, J.: “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.” People v. Dukes, 592 N.Y.S.2d 220, 223 (N.Y. Sup. Ct. 1992). [↑](#footnote-ref-33)
34. Melissa Fowler-Bradley, Inst. for Ct. Mgmt., Should Civil Investigations Be Performed by the Grand Jury in California 24 (2002). [↑](#footnote-ref-34)
35. U.S. Constitution, Amendment VI. “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial…” [↑](#footnote-ref-35)
36. Some counties may place prisoners in jails in other counties to avoid overcrowding their own jails. A few may be so small that they have no county jail of their own – for example, Alpine County (pop. 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.” https://www.alpinecountyca.gov/index.aspx?NID=204 (last visited Nov. 10, 2019). [↑](#footnote-ref-36)
37. *See* Los Angeles County Civil Grand Jury, 2015-16 Final Report 401 (2016) and Los Angeles County Civil Grand Jury, 2010-11 Final Report 333 (2011). The 2015-16 CGJ inspected every facility while, in its own words, the 2010-11 CGJ ‘selected’ certain facilities for inspection. [↑](#footnote-ref-37)
38. California Board of State and Community Corrections, Jail Inspection Handbook for Grand Jurors (2015) available at https://cgja.org/sites/default/files/bsccjailinspectionshandbook.doc or the California Grand Jurors’ Association, Grand Jury Resource Manual for California Courts: Model Guide for Civil Grand Jurors (2005) available at http://gsmall.us/GJ/ProceduresManual/ModelGrandJuryReferenceManual.pdf. [↑](#footnote-ref-38)
39. 563 U.S. 493, 499 (2011). [↑](#footnote-ref-39)
40. *See* https://www.clearinghouse.net/. [↑](#footnote-ref-40)
41. The counties were Alameda, Butte, Los Angeles, Orange, Plumas, San Bernardino, San Luis Obispo, Santa Clara, and Tuolumne counties. [↑](#footnote-ref-41)
42. 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. [↑](#footnote-ref-42)
43. Case No. 3:11-cv-02868 JST (N.D. Cal., Jun. 10, 2011). 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. [↑](#footnote-ref-43)
44. Case No. RG 12656266 (Alameda Sup. Ct., Nov. 15, 2012). [↑](#footnote-ref-44)
45. Case No. 5:18-cv-07677-NC (N.D. Cal., Dec. 21, 2018). [↑](#footnote-ref-45)
46. Case no. 3:18-cv-07814 (N.D. Cal., Dec. 31, 2018). [↑](#footnote-ref-46)
47. *See* Stipulation and (Proposed) Order of Settlement, Case No. C11-2868 JST (N.D. Cal., Feb.26, 2015). [↑](#footnote-ref-47)
48. *See* Settlement Agreement, Case No RG12656266 (Alameda Sup. Ct., Apr. 29, 2016). [↑](#footnote-ref-48)
49. *See* Civil Complaint for declaratory and Injunctive Relief, Case No. 5:18-cv-07677-NC (N.D. Cal., Dec. 21, 2018). [↑](#footnote-ref-49)
50. *See* Complaint for Violation of Civil and Constitutional Rights, Case no. 3:18-cv-07814 (N.D. Cal., Dec. 31, 2018). [↑](#footnote-ref-50)
51. Alameda County Grand Jury, 2009-2010 Alameda Grand Jury Final Report 55 (2010). [↑](#footnote-ref-51)
52. *See* National Police Accountability Project, *Largest Settlement in CA History for Wrongful Death Suit*, https://www.nlg-npap.org/news/largest-settlement-ca-history-wrongful-death-suit. [↑](#footnote-ref-52)
53. Alameda County Grand Jury, 2016-2017 Alameda Grand Jury Final Report 100-06 (2017). [↑](#footnote-ref-53)
54. *Id*. at 100. [↑](#footnote-ref-54)
55. Alameda County Grand Jury, 2010-2011 Alameda Grand Jury Final Report 41 (2011). [↑](#footnote-ref-55)
56. *Id.* [↑](#footnote-ref-56)
57. *Id*. at 42. [↑](#footnote-ref-57)
58. *Id*. at 48. [↑](#footnote-ref-58)
59. *Id.* at 50. [↑](#footnote-ref-59)
60. Alameda County Grand Jury, 2011-2012 Alameda Grand Jury Final Report 32-33 (2012) (noting improvements since the 2010-11 report but stating that the entire facility needed to be rebuilt). [↑](#footnote-ref-60)
61. Alameda County Grand Jury, 2014-2015 Alameda Grand Jury Final Report 111-14 (2015) (noting that the facility remained ‘old and dilapidated’ and was understaffed). [↑](#footnote-ref-61)
62. *See* https://www.acgov.org/probation/ji.htm. [↑](#footnote-ref-62)
63. *See* Camp Wilmont Sweeney Replacement Project, slide 16 - http://www.acgov.org/board/bos\_calendar/documents/DocsAgendaReg\_2\_14\_19/PUBLIC%20PROTECTION/Regular%20Calendar/Camp\_Sweeney\_replacement\_project\_2\_14\_19.pdf. [↑](#footnote-ref-63)
64. Alameda County Grand Jury, 2007-2008 Alameda Grand Jury Final Report 57-58 (2008). [↑](#footnote-ref-64)
65. Alameda County Grand Jury, 2012-2013 Alameda Grand Jury Final Report 80 (2013). [↑](#footnote-ref-65)
66. Alameda County Grand Jury, 2015-2016 Alameda Grand Jury Final Report 107-08 (2016). [↑](#footnote-ref-66)
67. Jones v. Brooks, Case No. 084429 (Butte Sup. Ct., Jun. 13, 1984). [↑](#footnote-ref-67)
68. Butte County Grand Jury, 2007-2008 Butte County Grand Jury Report 47 (2008). [↑](#footnote-ref-68)
69. Butte County Grand Jury, 2009-2010 Butte County Grand Jury Report 177 (2010). [↑](#footnote-ref-69)
70. Butte County Grand Jury, 2010-2011 Butte County Grand Jury Report 11 (2011). [↑](#footnote-ref-70)
71. Butte County Grand Jury, 2013-2014 Butte County Grand Jury Report 39 (2014). [↑](#footnote-ref-71)
72. Butte County Grand Jury, 2014-2015 Butte County Grand Jury Report 6 (2015). [↑](#footnote-ref-72)
73. Butte County Grand Jury, *supra* note 60, at 48. [↑](#footnote-ref-73)
74. Butte County Grand Jury, 2008-2009 Butte County Grand Jury Report 28 (2009). [↑](#footnote-ref-74)
75. Butte County Grand Jury, 2010-2011 Butte County Grand Jury Report 37 (2012) and Butte County Grand Jury, 2012-2013 Butte County Grand Jury Report 44-45 (2013). [↑](#footnote-ref-75)
76. Los Angeles County Civil Grand Jury, 2015-16 Final Report 402-21 (2016). The Report lists 152 public prisons but 14 were closed or not in service during that fiscal year. The figure includes both adult and juvenile facilities. [↑](#footnote-ref-76)
77. Case No. 2:04-cv-08448-DDP-SH (C.D. Cal., Oct. 12, 2007). [↑](#footnote-ref-77)
78. Case No. 2:08-cv-03515-DDP-JTL (C.D. Cal., May 29, 2008). [↑](#footnote-ref-78)
79. Case No. 2:08-cv-07169-JFW-AGR (C.D. Cal., Oct. 30, 2008). Olivier’s claims were later dismissed sub nom. *Olivier v. Baca*, 2013 WL 3791419 (C.D. Cal., 2013), aff’d 913 F.3d 852 (9th Cir., 2019), but juries prior to those decisions might have looked for evidence of the subject matter of the litigation. [↑](#footnote-ref-79)
80. Case No. 2:10-cv-1649 (C.D. Cal., Mar. 5, 2010). [↑](#footnote-ref-80)
81. Case No. 2:10-cv-08011-GW-PLA (C.D. Cal., Oct. 25, 2010). [↑](#footnote-ref-81)
82. Case No. 2:10-cv-06342-CBM-AJW (C.D. Cal., Aug. 20, 2010). [↑](#footnote-ref-82)
83. Case No. BS138170 (L.A. Sup. Ct., Jul. 10, 2012). [↑](#footnote-ref-83)
84. Case No. 2:12-cv-00428-DDP-SH (C.D. Cal., Jan. 18, 2012). [↑](#footnote-ref-84)
85. Case No. 2:15-cv-05903 (C.D. Cal., Aug. 5, 2015). [↑](#footnote-ref-85)
86. Thomas v. Baca, Case No. 2:04-cv-08448-DDP-SH (C.D. Cal., Oct. 12, 2007). [↑](#footnote-ref-86)
87. Johnson v. Los Angeles County, Case No. 2:08-cv-03515-DDP-JTL (C.D. Cal., May 29, 2008). [↑](#footnote-ref-87)
88. Holguin v. County of Los Angeles, Case No. 2:10-cv-08011-GW-PLA (C.D. Cal., Oct. 25, 2010). [↑](#footnote-ref-88)
89. Rodriguez v. County of Los Angeles, Case No. 2:10-cv-06342-CBM-AJW (C.D. Cal., Aug. 20, 2010) and Rosas v. Baca, Case No. 2:12-cv-00428-DDP-SH (C.D. Cal., Jan. 18, 2012). [↑](#footnote-ref-89)
90. Douglas v. Cooley, Case No. BS138170 (L.A. Sup. Ct., Jul. 10, 2012). [↑](#footnote-ref-90)
91. U.S. v. County of Los Angeles, Case No. 2:15-cv-05903 (C.D. Cal., Aug. 5, 2015). [↑](#footnote-ref-91)
92. Los Angeles County Civil Grand Jury, 2013-14 Final Report 340-41 (2014). [↑](#footnote-ref-92)
93. Los Angeles County Civil Grand Jury, 2014-15 Final Report 199 (2015). [↑](#footnote-ref-93)
94. Los Angeles County Civil Grand Jury, 2015-16 Final Report 401 (2016). [↑](#footnote-ref-94)
95. Los Angeles County Civil Grand Jury, 2011-12 Final Report 417 & 420 (2012). [↑](#footnote-ref-95)
96. Los Angeles County Civil Grand Jury, supra note 84, at 340. [↑](#footnote-ref-96)
97. *Id.* [↑](#footnote-ref-97)
98. *Id*. at 341. [↑](#footnote-ref-98)
99. Letter from Deval L. Patrick, Ass’t A-G to Joanne Sturges, Los Angeles County Executive (Jun. 6, 1996) (copy available at https://www.clearinghouse.net/chDocs/public/JC-CA-0005-9000.pdf). [↑](#footnote-ref-99)
100. *See* Memorandum of Agreement Between the United States and Los Angeles County, California, Regarding Mental Health Services at the Los Angeles County Jail (copy available at https://www.clearinghouse.net/chDocs/public/JC-CA-0005-0001.pdf). [↑](#footnote-ref-100)
101. Los Angeles County Civil Grand Jury, 2008-09 Final Report 406 (2009). [↑](#footnote-ref-101)
102. *Id.* at 423-24. [↑](#footnote-ref-102)
103. Los Angeles County Civil Grand Jury, 2009-10 Final Report 44-45 (2010). [↑](#footnote-ref-103)
104. Los Angeles County Civil Grand Jury, 2012-13 Final Report 186 (2013). [↑](#footnote-ref-104)
105. *Id.* at 186-87. [↑](#footnote-ref-105)
106. *Id.* at 191. [↑](#footnote-ref-106)
107. *Id*. at 201. [↑](#footnote-ref-107)
108. Los Angeles County Civil Grand Jury, 2016-17 Final Report 303 (2017). [↑](#footnote-ref-108)
109. *Id.* at 305. [↑](#footnote-ref-109)
110. *Id.* [↑](#footnote-ref-110)
111. *See e.g.* Orange County Civil Grand Jury, Detention Facilities in Orange County 2-3 (2010). [↑](#footnote-ref-111)
112. Case No. 06CC05833 (Orange Sup. Ct., May 5, 2006). [↑](#footnote-ref-112)
113. Case No. 8:01-cv-00981-ABC-MLG (C.D. Cal., Oct. 18, 2001). [↑](#footnote-ref-113)
114. Orange County Civil Grand Jury, The State of Orange County Jails (2008). [↑](#footnote-ref-114)
115. *Id.* at 1 and 5-6. [↑](#footnote-ref-115)
116. *Id.* at 7. [↑](#footnote-ref-116)
117. *Id.* at 23-24. [↑](#footnote-ref-117)
118. Orange County Civil Grand Jury, Detention Facilities Report – Part 1 – Adult 11-13 (2012). [↑](#footnote-ref-118)
119. Orange County Civil Grand Jury, Detention Facilities Report: Part 1 – Adult Jails 19-20 (2013). [↑](#footnote-ref-119)
120. Orange County Civil Grand Jury, Annual Report on Jails and Juvenile Detention Facilities 9-10 (2014). [↑](#footnote-ref-120)
121. Orange County Civil Grand Jury, Annual Inquiry on Jails and Juvenile Detention Facilities 19-20 (2015). [↑](#footnote-ref-121)
122. Orange County Civil Grand Jury, Our Brothers’ Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails (2016). [↑](#footnote-ref-122)
123. *Id.* at 40-47. [↑](#footnote-ref-123)
124. Orange County Civil Grand Jury, *supra* note 112. [↑](#footnote-ref-124)
125. Final reports for the fiscal years 2014-15 and 2015-16 were not retrievable from the County grand jury’s website and so figures for these years are excluded from the totals that follow. [↑](#footnote-ref-125)
126. Case No. 2:89-cv-01659-JFM (E.D. Cal., Dec. 4, 1989). [↑](#footnote-ref-126)
127. *See* Consent Decree, Pederson v. County of Plumas (E.D. Cal., Feb. 10, 1992). Copy available at https://www.clearinghouse.net/chDocs/public/JC-CA-0075-0001.pdf. [↑](#footnote-ref-127)
128. *See* Joint Stipulation to Amendment of Consent Decree, Pederson v. County of Plumas (E.D. Cal., 2013). Copy available at https://www.clearinghouse.net/chDocs/public/JC-CA-0075-0002.pdf. [↑](#footnote-ref-128)
129. *See* http://worldpopulationreview.com/us-counties/ca/plumas-county-population/. [↑](#footnote-ref-129)
130. *See* National Police Accountability Project, *supra* note 50. [↑](#footnote-ref-130)
131. *See* Plumas County Grand Jury Reports for fiscal years 2007-08, 2008-09, and 2011-12, available at https://www.plumascounty.us/Archive.aspx?AMID=37. [↑](#footnote-ref-131)
132. *Id.* The report for the year 2011-12 describes the jail as “dangerously dilapidated”. [↑](#footnote-ref-132)
133. Plumas County Civil Grand Jury, Grand Jury Report 2012-13, 27 (2013). [↑](#footnote-ref-133)
134. *See* *County signs with CGA for New Jail*, Plumas News, Aug. 4, 2017, https://www.plumasnews.com/county-signs-cga-new-jail/. [↑](#footnote-ref-134)
135. Case No. 5:05-cv-00359-SGL-OP (C.D. Cal., May 3, 2005). [↑](#footnote-ref-135)
136. Case No. C01-1351 TEH, 2005 WL 2932253, (N.D. Cal. Oct. 3, 2005). [↑](#footnote-ref-136)
137. Case No. 5:14-cv-02171-JGB-SP (C.D. Cal., Oct. 22, 2014). [↑](#footnote-ref-137)
138. Case No. 5:16-cv-00355-VAP-DTB (C.D. Cal., Feb. 29, 2016). [↑](#footnote-ref-138)
139. Findings of Fact and Conclusions of Law Re Appointment of Receiver at ¶53, Plata v. Schwartzenegger, Case No. C01-1351 TEH Class Action (N.D. Cal., 2005). [↑](#footnote-ref-139)
140. California Institute for Men Healthcare Evaluation, Case No. C01-1351-TEH (N.D. Cal., 2013). [↑](#footnote-ref-140)
141. *See* First Amended Class Action Complaint at ¶47, Turner v. San Bernardino, Case No. 5:16-cv-00355-VAP-DTB (C.D. Cal., Sep. 30, 2016). [↑](#footnote-ref-141)
142. San Bernardino County Grand Jury, Final Report 2007-08, 36 (2008). [↑](#footnote-ref-142)
143. *Id.* at 37-40. [↑](#footnote-ref-143)
144. *See* Stipulated Order Granting Preliminary Approval to Class Settlement at 2, Craft v. County of San Bernardino, No. 5:05-cv-00359-SGL-OP (C.D. Cal., Sep. 14, 2007). [↑](#footnote-ref-144)
145. San Bernardino County Grand Jury, *supra* note 140, at 39. [↑](#footnote-ref-145)
146. *Id.* [↑](#footnote-ref-146)
147. 563 U.S. 493 (2011). [↑](#footnote-ref-147)
148. San Luis Obispo County Grand Jury, California Men’s Colony from the Inside 2 (2008). [↑](#footnote-ref-148)
149. *Id.* at 7. [↑](#footnote-ref-149)
150. The U.S. Supreme Court announced its decision in *Brown v. Plata* on May 253, 2011—the 2010-11 CGJ’s fiscal year ended on Jun. 30, 2011. Oral argument had taken place on Nov. 30, 2010. [↑](#footnote-ref-150)
151. San Luis Obispo County Grand Jury, Inspection of County Jails, Prisons, and Allied Agencies 1 (2011). [↑](#footnote-ref-151)
152. *Id.* at 4. [↑](#footnote-ref-152)
153. Id. at 5. [↑](#footnote-ref-153)
154. San Luis Obispo County Grand Jury, California Men’s Colony (CMC) Inspection Report 2-3 (2012). [↑](#footnote-ref-154)
155. *Id.* at 6. [↑](#footnote-ref-155)
156. San Luis Obispo County Grand Jury, California Men’s Colony Inspection Report 3-4 (2013). [↑](#footnote-ref-156)
157. *Id.* [↑](#footnote-ref-157)
158. *Id.* at 4. [↑](#footnote-ref-158)
159. *See* Order Re: Receivership Transition Plan and Expert Evaluations, Plata v. Brown, Case 3:01-cv-01351-TEH (N.D. Cal., Sep. 5, 2012) (available from https://www.clearinghouse.net/detailDocument.php?id=45684). [↑](#footnote-ref-159)
160. California Men’s Colony Health Care Evaluation at 5, Plata v. Brown, Case 3:01-cv-01351-TEH (N.D. Cal., Mar. 18, 2013) (available from https://cchcs.ca.gov/wp-content/uploads/sites/60/2017/08/Plata-Expert-Report-CMC.pdf). [↑](#footnote-ref-160)
161. San Luis Obispo County Grand Jury, California Men’s Colony Inspection Report (2015). [↑](#footnote-ref-161)
162. Id. at 2. [↑](#footnote-ref-162)
163. Class Action Complaint for Injunctive and Declaratory Relief, Chavez v. County of Santa Clara, Case No. 1:15-cv-05277-RMI (N.D. Cal., Nov. 18, 2015). [↑](#footnote-ref-163)
164. Consent Decree, Chavez v. County of Santa Clara, Case No. 1:15-cv-05277-RMI (N.D. Cal., Mar. 22, 2019). [↑](#footnote-ref-164)
165. Santa Clara County Civil Grand Jury, Addressing Mental Illness in Santa Clara County Jails (2016). [↑](#footnote-ref-165)
166. *Id.* at 5, 11-12, and 14-15. [↑](#footnote-ref-166)
167. *Id.* at 5-6 and 15-18. [↑](#footnote-ref-167)
168. *Id.* at 19-22. [↑](#footnote-ref-168)
169. Yolo County Grand Jury, Final Report 27 (2010). [↑](#footnote-ref-169)
170. Calaveras County Grand Jury, 2007-08 Final Report 25 (2008). [↑](#footnote-ref-170)
171. Calaveras County Grand Jury, 2008-09 Final Report 33 (2009). [↑](#footnote-ref-171)
172. Mendocino County Grand Jury, Bulging at the seams: A Report on Mendocino County Jail 2-3 (2009). [↑](#footnote-ref-172)
173. *See* Julie Johnson, *Mendocino County jail death results in $5 million settlement*, The Press Democrat (Mar. 12, 2019). [↑](#footnote-ref-173)
174. Franklin E. Zimring & Gordon Hawking, *The Growth of Imprisonment in California*, 34 Brit. J. Criminol. 83, 84 (1994). [↑](#footnote-ref-174)
175. *Id.* at 85. [↑](#footnote-ref-175)
176. Source: RAND State Statistics Database, Prison Inmate Statistics (California) (Retrieved Nov. 8, 2019). [↑](#footnote-ref-176)
177. 563 U.S. 493 (2011). [↑](#footnote-ref-177)
178. RAND State Statistics Database, supra note 174. [↑](#footnote-ref-178)
179. *Id.* [↑](#footnote-ref-179)
180. *See* Melissa Fowler-Bradley, *supra* note 33. [↑](#footnote-ref-180)
181. *Id.* at 53. [↑](#footnote-ref-181)
182. *Id.* at 54. [↑](#footnote-ref-182)