California's Brown Act: Clearing the Smoke-Filled Room

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ABSTRACT

The Ralph M. Brown Act has for nearly seventy years assured Californians' right to require that certain meetings of legislative bodies be held openly. This Article considers the extent to which that law has become internalized in government and normalized in Californians' expectations of government conduct. We discuss possible mechanisms by which compliance with the Act's requirements is secured, including criminal sanctions, civil litigation, grand jury investigations and self-policing. We examine in detail the identities of those bringing civil claims or invoking grand jury investigations, the subject areas implicated, the nature of the alleged violations of the Act and the eventual outcomes. After evaluating the extent to which each contributes to state compliance, we conclude that government's own internal public law advisors have likely contributed most to ensuring transparency in decision making.

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I. INTRODUCTION

When Republican king-makers met in Chicago's Blackstone Hotel on the evening of June 11, 1920, they could little have suspected their deliberations that night would be memorable. After four failed ballots earlier that day, they proceeded to select Senator Warren G, Harding as the Republican candidate for the 1920 presidential election. Harding went on to win the election but has since consistently been ranked as one of America's five worst presidents.[1] That same selection process soon became memorialized by the news report filed the following morning by Associated Press reporter Kirke Simpson. His report began, "Harding of Ohio was chosen by a group of men in a smoke-filled room early today as Republican candidate for President."[2] The phrase "men in a smoke-filled room" has since become synonymous with a room or place where secret decisions are made by a small group of powerful people[3]

Justice Brandeis memorably observed that sunlight is "the best of disinfectants;"[4] open meetings laws, or sunshine laws, now mandate that the public have access to most meetings of federal and state government agencies and regulatory bodies together with their decisions and records. State open meetings legislation can be traced back at least as far as 1898[5] and by 1976 when the U.S. Congress enacted the Government in the Sunshine Act,[6] every state in the union had similar requirements in place.[7] The Congressional Act requires that "every portion of every meeting of a [federal] agency shall be open to public observation"[8] and defines a meeting liberally to include any gathering of enough members of an agency required to take action[9] The legislative intent is clearly stated: "The basic premise of the sunshine legislation is that, in the words of Federalist No. 49, 'the people are the only legitimate foundation of power, and it is from them that the constitutional charter ... is derived.' Government is and should be the servant

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[1] Numerous surveys of political scientists and historians have consistently ranked Harding among America's five worst presidents. *See e.g.* Presidents ranked from worst to best, https://www.cbsnews.com/pictures/presidents-ranked-worst-best/; Presidential Historians Survey 2017, https://www.c-span.org/presidentsurvey2017/?page=overall; and Ranking America's Worst Presidents, https://www.usnews.com/news/special-reports/the-worst-presidents/articles/ranking-americas-worst-presidents.

[2] WILLIAM SAFIRE, SAFIRE'S POLITICAL DICTIONARY 672 (rev. ed. 2008). The entry "smoke-filled room" gives a full account of the disputed origins of the phrase.

[3] *See* MERRIAM-WEBSTER, ADVANCED LEARNER'S ENGLISH Dictionary (9th ed. 2016), definition of "smoke-filled room."

[4] Louis D. Brandeis, *What Publicity Can Do in* OTHER PEOPLE'S MONEY AND HOW THE BANKERS USE IT (1914).

[5] *See* 1898 Utah Laws § 202 (cited in R. James Assaf. *Mr Smith Comes Home: The Constitutional Presumption of Openness in Local Legislative Meetings*, 40 CASE W. RES. L. REV. 227 (1989).

[6] Public Law 94-409 94th Congress.

[7] *Id. See also* Alex Aichinger, *Open Meeting Laws and Freedom of Speech*, in THE FIRST AMENDMENT ENCYCLOPAEDIA. https://www.mtsu.edu/first-amendment/article/1214/open-meeting-laws-and-freedom-of-speech. For a convenient collection of these laws, *see* Ballotpedia, *State open meeting laws*, https://ballotpedia.org/State_open_meetings_laws.

[8] 5 USC 552b.

[9] *Id.*

of the people, and it should be fully accountable to them for the actions which it supposedly takes on their behalf."[10]

Sunshine laws with open meetings mandates speak to a commitment to concepts of popular sovereignty and public engagement with the processes of democratic decision-making that we now recognize as central to American public life. However, this has not always been the case; as constitutional historians point out, one of the first acts of the constitutional convention of 1787, was to require

> that no copy be taken of any entry on the journal during the sitting of the House without the leave of the House, that members only be permitted to inspect the journal, and that nothing spoken in the House be printed, or otherwise published, or communicated without leave.[11]

As Professor Kaminski points out, this level of secrecy was normal eighteenth century practice inherited from the English parliament.[12] The previous Continental and Confederation Congresses had also met in secret, albeit allowing their journals to be published regularly.[13] The reasons are not difficult to understand. As Virginia delegate to the 1787 Convention, George Mason, explained in a letter to his son:

> All communications of the proceedings are forbidden during the sitting of the Convention; this I think was a necessary precaution to prevent misrepresentations or mistakes; there being a material difference between the appearance of a subject in its first crude and undigested shape, and after it shall have been properly matured and arranged.[14]

James Madison had a similar view: "[T]he rule was a prudent one not only as it will effectually secure the requisite freedom of discussion, but as it will save both the Convention and the Community from a thousand erroneous and perhaps mischievous reports"[15] He further opined that "no Constitution would ever have been adopted by the convention if the debates had been public."[16] These views, suggests former Shelby County, Tennessee commissioner Professor Steven J. Mulroy, are as likely to be current today as they were more than 200 years ago; broadly worded open meetings laws that inhibit deliberations, and prevent compromises empower unelected staff and lobbyists and promote recourse to informal business interactions thereby, whether by accident or design, turning elected officials into casual lawbreakers.[17] As Professor Aichinger points out:

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[10] (U.S.C.C.A.N. 2183, 2186).
[11] JOHN P. KAMINSKI, SECRECY AND THE CONSTITUTIONAL CONVENTION 1-2 (2005).
[12] *Id.*(noting that the English parliament had allowed free speech in its secret debates since 1688, but only in 1771 did the House of Commons allow some of its debates to be published).
[13] *Id.* at 2.
[14] Letter from George Mason to George Mason, Jr., Philadelphia (Jun.1, 1787), *in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 33 (Max Farrand, ed., 1911).
[15] Letter from James Madison to James Monroe, Philadelphia (Jun. 10, 1787). *Id.* at 43.
[16] *Id.* at 479, quoted from H.B. ADAMS, 1 LIFE AND WRITINGS OF JARED SPARKS 560-64 (1893). Sparks had taken notes from a meeting he had with Madison.
[17] Id. at 314.

> Violations [range] from conducting public business during innocent chance meetings to purposely bypassing the public notification requirement by using serial telephone calls or e-mails to speak with fellow board or agency members. In either case, technically the attendance requirement that triggers an open meeting is not present under most state laws, but the intent or spirit of the law is being ignored.[18]

It is possibly for this reason that, as Professor Mulroy suggests, State legislatures prefer to pass open meetings laws that apply to local government bodies but not to themselves.[19] This Article now presents the findings of an empirical study of the operation of one such local government open-meetings sunshine law adopted by the state legislature of California in 1953. The Ralph M. Brown Act has for nearly seventy years assured to Californians the right to require that certain meetings of legislative bodies be held openly. This Act has received comparatively little attention in the academic literature, an omission which this Article seeks to address.[20]

The context for the enactment of the Brown Act in California was a series of articles written by investigative reporter Michael Harris and published in the *San Francisco Chronicle* in 1952[21] which exposed the dismissive attitude of Bay Area government to open meetings requirements and the tactics they adopted to avoid it. The remarks of M. A. Becker, then the superintendent of the Sylvan Elementary School District, were, claimed Harris, typical: "The board takes care of the district all right. […] We have visitors at the meetings sometimes, but they're mostly busybodies and troublemakers."[22]

Harris's articles are credited with inspiring the California legislature in 1953 to enact Assembly Bill 339, Government Code Sections 54950-54963, popularly called the Ralph M. Brown Act (hereafter the "Brown Act").[23] In its statement of legislative intent, the Legislature declared

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[18] Aichinger, *supra* note 7.

[19] Steven J. Mulroy, *Sunlight's Glare: How Overbroad Open Government Laws Chill Free Speech and Hamper Effective Government*, 78 TENN. L. REV. 309, 311-12 (2011).

[20] We are aware of only two articles that specifically focus on the Brown Act as opposed to mentioning it in passing: Oona Mallett, *Who's Afraid of the Big, Bad Wolfe? A Call for A Legislative Response to the Judicial Interpretation of the Brown Act*, 39 MCGEORGE L. REV. 1073 (2008); 4. Alexandra B. Andreen, *The Cost of Sunshine: The Threat to Public Employee Privacy Posed by the California Public Records Act,* 18 CHAPMAN L. REV. 869 (2015.

[21] *See* Michael Harris, *Your Secret Government: It Comes in Many Guises*, S.F. CHRONICLE, May 25, 1952, at 21; Michael Harris, *Your Secret Government: Anatomy of the Caucus,* S.F. CHRONICLE, May 26, 1952, at 19; Michael Harris, *Your Secret Government: Why Have a Closed Hearing?,* S.F. CHRONICLE, May 27, 1952, at 15; Michael Harris, *Your Secret Government: 'Executive Sessions' Are Common in Contra Costa,* S.F. CHRONICLE, May 28, 1952, at 17; Michael Harris, *A Star Chamber in Oakland,* S.F. CHRONICLE, May 29, 1952, at 13; Michael Harris, *Your Secret Government: After a Caucus Is Over, After Smoke Has Cleared…,* S.F. CHRONICLE, May 30, 1952, at 9; Michael Harris, *City Fathers Keep Doors Open,* S.F. CHRONICLE, June 1, 1952, at 19; Michael Harris, *A Hidden Button, Narrow Hall…,* S.F. CHRONICLE, June 2, 1952, at 19; Michael Harris, *The Average Citizen Wouldn't Have a Chance,* S.F. CHRONICLE, June 3, 1952, at 15; Michael Harris, *Making Public Business Public,* S.F. CHRONICLE, June 4, 1952, at 15.

[22] Michael Harris, *Making Public Business Public,* S.F. CHRONICLE, June 4, 1952, at 15.

[23] CAL. GOV'T CODE § 54950.5 (West).

> The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.[24]

As Harris noted, the Brown Act did not appear in a legislative vacuum; California had laws prior to 1952 requiring that much government business be conducted in open public meetings. In the opening paragraphs of his first article, Harris observed:

> When City Councils convene, the law is: "Meetings shall be public."
>
> For school boards, the California Government Code requires: "No action authorized or required by law shall be taken by the governing board of a school district except in a meeting open to the public."
>
> For Supervisors: "All meetings of the Board of Supervisors shall be public."
>
> There are similar requirements for other public agencies which have the power, among other things, to decide what type of services the State's voters and taxpayers will receive and how much they will be required to pay for them.[25]

Nevertheless, as he reported, these laws were routinely flouted; by the simple device of labelling their meetings with other names—caucus, star chamber, executive session, committee-of-the-whole, pre-council meeting, work session, and study meeting, Bay Area councils and boards contrived to avoid the reach of the legislation and conduct in private business that should have been conducted in public.[26] Harris's message was clear: despite the clear words of the law, public officials were confident in their ability to keep the conduct of their business hidden from public scrutiny. The Brown Act was a legislative response calculated to correct this situation. As we conclude in this Article, and with the benefit of hindsight, the Act may regarded as a success; we suggest that twenty-first century government in California is now largely conducted in the sunshine of public scrutiny. What is not immediately obvious is why the Brown Act succeeded where prior legislation had failed.

Rights are of little value unless they can be exercised by those entitled to them. Ubi ius, ibi remedium: where there is a right there must be a remedy. As Chief Justice John Marshall rightly observed, a government cannot be called a "government of laws, and not of men . . . if the laws furnish no remedy for the violation of a vested legal right."[27] Most States provide a variety of means by which their citizens can assert their right to observe and, sometimes, contribute to open government.[28] California is no exception. In this Article, we consider how the Brown Act is policed within California. We discuss possible mechanisms by which compliance with the Act's requirements is secured, including criminal sanctions, civil litigation, grand jury

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[24] CAL. GOV'T CODE § 54950 (West).
[25] Michael Harris, *Your Secret Government: It Comes in Many Guises*, S.F. CHRONICLE, May 25, 1952, at 21.
[26] *Id.*
[27] Marbury v. Madison, 5 U.S. 137, 163 (1803).
[28] For a good overview of mechanisms for enforcing sunshine laws, *see* Daxton R. "Chip" Stewart, *Let the Sunshine in, or Else: An Examination of the "Teeth" of State and Federal Open Meetings and Open Records Laws*, 15 COMM. L. & POLICY 265 (2010).

investigations and self-policing. We examine in detail the identities of those bringing civil claims or invoking grand jury investigations, the subject areas implicated, the nature of the alleged violations of the Act and the eventual outcomes. After evaluating the extent to which each contributes to state compliance, we conclude that the best explanation for the Act's success lies in the normalisation of a culture of openness and transparency that has occurred at government level. We suggest that the continued success which the Act now seems to enjoy owes much to the cooperation of government's own internal public law advisors in ensuring the quality of compliance that can instil public confidence in the transparency of governmental decision making. We begin with an outline of the main provisions of the Act and its subsequent revisions.

II. THE BROWN ACT AND ITS APPLICATION

Since its adoption in 1953, the Brown Act has undergone a series of additions, amendments and amplifications such that only two parts of the original statute remain in force.[29] The original 686-word statute has grown to one of more than 19,000 words. As the League of California Cities' guide to the Act notes, "The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office."[30] It is not the purpose of this Article to provide a full account of the Act's provisions. However, for the benefit of those unfamiliar with it, we provide a brief summary of its more significant and most commonly invoked provisions. Any summary of a lengthy and complex piece of legislation, such as the Brown Act, involves an element of subjectivity. To minimise this, our summary is focused on those provisions that were most frequently discussed or cited in cases heard on appeal. We chose cases heard on appeal as these provide more authoritative interpretations than cases heard at first instance and produced a more manageable

[29] The parts in question are the preamble in CAL. GOV'T CODE § 54950 ("In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.")
and the open meeting requirement in CAL. GOV'T CODE § 54953(a) ("All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.").
[30] LEAGUE OF CALIFORNIA CITIES, OPEN AND PUBLIC V: A GUIDE TO THE RALPH M. BROWN ACT 6 (rev'd 2016).

body of decisions for analysis.[31] The Brown Act operates at a local level and is complemented by the Bagley-Keene Open Meeting Act which operates at a State level.[32]

The opening section of the Act provides a statement of legislative intent that has guided courts' interpretation of the Act.[33] Successive courts have construed that section as requiring a liberal interpretation in favor of openness.[34] The Brown Act applies to the legislative bodies of local agencies and their members. Within the context of the Act, the phrase 'legislative body of a local agency' is a term of art, the meaning of which is defined in sections 54951 and 54952.[35] The scope of the phrase is wide and embraces, inter alia, the governing bodies, boards, commissions or agencies of counties, cities, towns, school districts, municipal corporations, districts, and political subdivisions. It is difficult to imagine a body within a county that raises or spends public monies that is not caught by the sweep of the phrase. The Act applies not only to current members of these bodies but also to elected members who have yet to assume office.[36] The Brown Act is concerned with the procedures at meetings of legislative bodies of local agencies for taking action. It defines broadly the phrase 'meeting' so as to catch not just the traditional physical coming together of members of the body in one place at the same time,[37] but also virtual meetings and asynchronous communications of every kind used to arrive at agreements to act.[38] The phrase 'action taken' is similarly broad, catching not just positive or negative decisions having immediate effect but also commitments or promises to act in a particular way at a future date.[39]

The central provision of the Brown Act is its original requirement that "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency. . . ."[40] The section provides for meetings to be held by teleconference subject to giving notice and complying with the relevant provisions for a physical meeting.[41] The subsection specifically provides that a teleconferenced

[31] We initially conducted a search on Aug 28, 2020 of Westlaw>Cases>California>All California courts using the search phrase "Ralph M. Brown Act". The result produced 253 reports. These were examined and reduced to a body of 136 decisions, discarding 119 decisions for a variety of reasons. Common reasons for excluding decisions were that Brown Act violations were not alleged in the claim (*see e.g. Kent v. Lake Don Pedro Community Services Dist.*, 2010 WL 5396126), that the decision only invoked the Brown Act by way of analogy in the Court's reasoning (*see e.g. Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors and Embalmers,* 14 Cal.App.4th 715, (1993), 18 Cal.Rptr.2d 39), the Brown Act was dismissed as irrelevant to the argument (*see e.g. Stribling v. Mailliard*, 6 Cal.App.3d 470 (1970), 85 Cal.Rptr. 924), or where an appeal turned on other legislation (often anti-SLAPP legislation) and where the Brown Act was a collateral issue mentioned but not the subject of the appeal (*see e.g. Harrell v. Hanson*, 2016 WL 5845784).
[32] *See* CAL. GOV'T CODE §§ 11130-11132. This Article only considers the workings of the Brown Act. As at the date of writing this Article (April 2021), the workings of the Bagley-Keene Open Meeting Act do not appear to have been explored in any depth in law review articles.
[33] *See* CAL. GOV'T CODE § 54950, *supra* note 29, for its text.
[34] *See e.g.* International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 294, 81 Cal.Rptr.2d 456.
[35] *See* CAL. GOV'T CODE §§ 54951-54952.
[36] *See* CAL. GOV'T CODE § 54952.1.
[37] *See* CAL. GOV'T CODE § 54952.2 (a).
[38] *See* CAL. GOV'T CODE §§ 54952.2 (b) (1) and 54952.3 (b) (1).
[39] *See* CAL. GOV'T CODE § 54952.6.
[40] CAL. GOV'T CODE § 54953(a).
[41] CAL. GOV'T CODE § 54953(b).

meeting must be conducted in a manner that protects the statutory and constitutional rights of parties or the public appearing before a legislative body of a local agency.[42] An important safeguard is the requirement that no legislative body may take action by secret ballot, whether preliminary or final.[43] Legislative bodies of local agencies are required to publicly report any action taken and the votes or abstentions on that action.[44] To prevent final action being taken on the remuneration of local agency executives in closed meetings, the legislative body must orally report a summary of its recommendations prior to taking final action during the open meeting in which any final action is to be taken.[45]

The section also provides some anti-evasion measures to deter officials from discouraging scrutiny. Section 54953.3 outlaws various conditions precedent to attendance at meetings. It further requires that it must be made clear that all persons may attend without signing, registering or completing any document.[46] Finally, the Section secures a right to record open meetings, unless doing so would cause persistent disruption of the meeting,[47] and prevents legislative bodies of local agencies from prohibiting or restricting broadcasts of their proceedings without good cause.[48]

Such a right would be of little value if the public could not discover when or where such meetings were to be held. Accordingly, Section 54954 requires that, with some exceptions, each legislative body of a local agency must give notice of the time and place for holding its regular meetings.[49] Normally, regular and special meetings are required to be held within the territory over which the body has jurisdiction.[50] Any person may require that a copy of the agenda or agenda packet be mailed to them and can file an annually renewable standing request for such items.[51]

In the interests of transparency, the Section also requires that an agenda containing a brief general description of each item of business must be posted at least 72 hours before scheduled meetings.[52] The 'brief general description' need not normally exceed 20 words.[53] As a general rule, no action or discussion may be undertaken on any item not appearing on the posted agenda,[54] although there are exceptions for emergency and continued meetings.[55]

A significant stipulation is the provision for active public participation in meetings subject to the Act. Section 54954.3, subdivision (a) stipulates that every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on

[42] CAL. GOV'T CODE § 54953(b)(3).
[43] CAL. GOV'T CODE § 54953(c)(1).
[44] CAL. GOV'T CODE § 54953(c)(2).
[45] CAL. GOV'T CODE § 54953(c)(3).
[46] CAL. GOV'T CODE § 54953.3.
[47] CAL. GOV'T CODE § 54953.5.
[48] CAL. GOV'T CODE § 54953.6.
[49] CAL. GOV'T CODE § 54954 (a).
[50] CAL. GOV'T CODE § 54954 (b).
[51] CAL. GOV'T CODE § 54954.1.
[52] CAL. GOV'T CODE § 54954.2 (a) (1).
[53] *Id.*
[54] CAL. GOV'T CODE § 54954.2 (a) (3).
[55] CAL. GOV'T CODE § 54954.2 (b) (1) & (3).

any item of interest to the public, before or during the legislative body's consideration of the item. The Legislature anticipated the chaos that might ensue if a number of members of the public insisted upon addressing the meeting at length under color of exercising their rights under subdivision (a). The right is qualified in subdivision (b) (1) by specifying: "The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker."[56]

The ability to impose limits on speakers' freedom to address Brown Act regulated meetings was tested in *Ribakoff v. City of Long Beach*.[57] Ribakoff was a regular attender at meetings of the Long Beach Transit Company Board of Directors. The practice of the Board was to require persons wishing to speak at their meetings to fill out a public speaker's card, whereupon they would be allocated three minutes in which to address the Board on the relevant agenda item. Ribakoff did so and addressed the Board. However, when he tried to address the Board for a second time on the same agenda item, he was prevented from doing so.[58] He subsequently brought suit alleging, inter alia, that the Board's actions infringed his rights under the Brown Act and the First Amendment to the United States Constitution.[59] The Court of Appeal, Second District, found that a three-minute time limit on each speaker at the meeting did not violate Ribakoff's right to free speech as there was no evidence it was applied based on the content of his stated or intended remarks.[60] The decision's subsequent history, including its denial of certiorari by the Supreme Court of the United States,[61] has assured its position as the leading authority on time limits that may be imposed under section 54954.3 (b) (1).

Any meeting may be adjourned or continued to a specified time and place.[62] There is also provision for calling special meetings on giving 24 hours notice.[63] Notice must be posted on the local agency's website, if it operates one, and given to media organizations that have previously requested notification of special meetings. The notice must specify the time and place of the special meeting and the business to be transacted or discussed.[64] In the event of an emergency situation, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement.[65]

There are special provisions for certain legislative bodies to hold closed sessions for the purposes of instructing their negotiators as to terms for real property transactions,[66] to consider the purchase or sale of particular, specific pension fund investments,[67] to hear a charge or

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[56] CAL. GOV'T CODE § 54954.3 (b) (1).
[57] Ribakoff v. City of Long Beach, 238 Cal. Rptr. 3d 81 (Cal. App. 2d Dist. 2018), *as modified* (Sept. 13, 2018), *reh'g den'd* (Oct. 3, 2018), *review den'd* (Dec. 19, 2018), *cert. den'd sub nom.* Ribakoff v. City of Long Beach, Cal., _U.S._, 139 S. Ct. 2640 (2019).
[58] *Id.* at 88.
[59] *Id.*
[60] *Id.* at 103.
[61] Ribakoff v. City of Long Beach, Cal., _U.S._, 139 S. Ct. 2640 (2019).
[62] CAL. GOV'T CODE § 54955 and § 54955.1.
[63] CAL. GOV'T CODE § 54956 (a).
[64] *Id.*
[65] CAL. GOV'T CODE § 54956.5 (b) (1). What constitutes an 'emergency situation' is defined in § 54956.5 (a).
[66] CAL. GOV'T CODE § 54956.8.
[67] CAL. GOV'T CODE § 54956.81.

complaint from members enrolled in their health plans,[68] or to confer with, or receive advice from, their legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice their position in the litigation.[69]

A frequently litigated provision of the Brown Act is found in Section 54957. Litigation often involves cases where local agencies are authorized to hold closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.[70]

Authority to enforce the Act's provisions through criminal prosecutions and civil actions are located in Sections 54959 and 54960 and are discussed in detail in Part III, sections A and B respectively hereafter.

III. ASSURING OBEDIENCE TO THE ACT

Michael Harris noted that, despite laws requiring that local government bodies conduct their business in public, compliance with pre-existing law was poor.[71] It is now nearly seventy years since Harris's *Your Secret Government* series of articles appeared and there has been no subsequent investigations suggesting that the Brown Act is being ignored as its predecessor laws were. What seems to be different is a cultural change brought about by a variety of mechanisms that, taken together, act as deterrents to non-compliance or, at least, encouragements to compliance. We examine each of these in turn.

A. Criminal Prosecution

State legislatures traditionally seek to assure compliance with statutes that impose unwelcome restrictions is to attach criminal sanctions for their breach. The original Brown Act, as enacted in 1953, contained no penal provisions for disobedience to its requirements.[72] It is notable that there were dissenting voices raised during passage of the Act. It is reported that the only disagreement that arose at a meeting of the Assembly Interim Judiciary Committee in September 1952, discussing the proposed law, was its severity.[73] A publisher, Dean Lesher, claimed the statute would amount to nothing without a penal clause but the executive director of the League of California Cities, Richard Graves, thought that unnecessary since the proposed Act would invalidate enactments passed in secrecy thus defeating the purpose of secret meetings.[74]

In 1961, the Legislature first attached criminal liability to the Act by adding a new section 54959: "Each member of a legislative body who attends a meeting of such legislative body

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[68] CAL. GOV'T CODE § 54956.86.
[69] CAL. GOV'T CODE § 54956.9.
[70] CAL. GOV'T CODE § 54957 (b) (1).
[71] Harris, *supra*, note 25.
[72] *See* 2 STATUTES OF CALIFORNIA 1952 and 1953, c. 1588.
[73] *See Newsmen Tell Dangers Of Secrecy*, S.F. CHRONICLE, Sept. 11, 1952, at 1.
[74] *Id*. at 4.

where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor."[75]

A little over thirty years later, a series of bills was presented to the California Legislature that sought, inter alia, to amend the mens rea component of the penal section. In 1992, Senate Bill 1538 and Assembly Bill 3476 that would have effected major changes to the Brown Act and its penal provision passed the Legislature but were vetoed by Governor Pete Wilson.[76] In 1993, section 54959 was amended by Assembly Bill 1426 and Senate Bill 36 to provide: "Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, with wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor."[77]

The wording was further revised the following year by Senate Bill 752 to provide:

> Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.[78]

This remains the current wording of section 54959.[79]

The essential difference between these definitions of the offense is the evolution of the requisite scienter. In 1961 it was "with knowledge of the fact that the meeting is in violation [of the Brown Act]." In 1993, it became "with wrongful intent to deprive the public of information to which it is entitled under [the Brown Act]." The current requirement, enacted in 1994, is that the member "intends to deprive the public of information to which the member knows or has reason to know the public is entitled under [the Brown Act]". The original definition required merely the accused's knowledge of the unlawfulness of the meeting attended. The 1993 definition shifted its focus to knowingly depriving the public of information to which it is entitled under the Brown Act. However, that definition was ambiguous as to whom the requisite knowledge was to be attributed—the accused or a majority of the Legislature. The current definition both clarifies that it is the accused whose knowledge of wrongfulness is in issue and extends such knowledge to include both actual and constructive knowledge.

The Brown Act section 54959 does not define the phrase "knows or has reason to know." The phrase occurs fairly frequently in California statutes.[80] Sometimes its appearance in a section is accompanied by a definition in a separate subsection[81] and at others it is left undefined.[82] In cases where the phrase is not defined, courts in California have construed the phrase as

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[75] 2 STATUTES OF CALIFORNIA 1960 and 1961, c. 1671.
[76] *See* Comments, CALIFORNIA BILL ANALYSIS, A.B. 1426 Sen., Jun. 30,1993 (Westlaw).
[77] 3 STATUTES OF CALIFORNIA 1993, c. 1136 and 4 STATUTES OF CALIFORNIA 1993, c. 1137.
[78] 1 STATUTES OF CALIFORNIA 1994, c. 32, § 18.
[79] *See* CAL. GOV'T CODE § 54959.
[80] A search of Westlaw's 'California Statutes and Court Rules' file in September 2020 returned 95 instances.
[81] *See, e.g.,* CAL. GOV. CODE § 87102.8(b) (prohibiting elected state officials using their position to make or influence governmental decisions before their agency when they know they have a financial interest).
[82] *See e.g*., CAL. HARB. & NAV. CODE § 656.3 (requiring operators of vessels involved in accidents they know have resulted in death or disappearance of a person to report the incident to law enforcement).

embracing both actual and constructive knowledge and have held that such a phrase is not unconstitutionally vague.[83]

Notwithstanding the legislative interest in refining the wording of the penal provision in the section, it appears that prosecutions are uncommon[84] and it is claimed that there has not been a single successful prosecution under it.[85] It is unclear why this should be so since, as we show in subsequent sections, alleged violations have been numerous. It may be that the low penalties associated with misdemeanor convictions deter district attorneys from prosecuting cases requiring specific, detailed mens rea and which are likely to be robustly defended by well-funded opponents. The section may serve a useful function in reminding members of a local agency that conducting their business in contravention of the Act may lead to prosecution.

B. Civil Actions

Civil actions to prevent violations of the Brown Act's meeting provisions are available.[86] Actions for mandamus or injunctions were first added in 1961 and provided: "Any interested person may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency."[87] These were enlarged to include declaratory relief in 1969 when the section was amended to read:

> Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body.[88]

The section was rewritten in 1993 to give district attorneys standing to commence civil proceedings and amending the scope of declaratory relief to include determining

> the validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members, or to compel the legislative body to tape record its closed sessions as hereinafter provided.[89]

New subsections were added enabling courts, in certain cases, to order legislative bodies to make audio records of their closed sessions and preserve copies of the recordings, providing for their labeling and preservation, and specifying the circumstances and procedures for

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[83] *See, e.g.*, People v. Jimenez, H038857, 2014 WL 692906, at *17-18 (Cal. App. 6th Dist. Feb. 24, 2014) (citing in support the Supreme Court of California in *In re Jorge M*., 23 Cal.4th 866 (2000), 98 Cal.Rptr.2d 466 (2000)).
[84] *See* LEAGUE OF CALIFORNIA CITIES, OPEN & PUBLIC V: A GUIDE TO THE RALPH M. BROWN ACT 59 (2016) (suggesting that prosecutions under the section are uncommon).
[85] *See* First Amendment Coalition, *Brown Act Primer—VII. Enforcement of the Brown Act: A*, https://firstamendmentcoalition.org/facs-brown-act-primer/ (stating that there has not been a successful prosecution for violation of the Act).
[86] *See* CAL. GOV'T CODE § 54960.
[87] 2 STATUTES OF CALIFORNIA 1960 and 1961, c. 1671, § 6.
[88] 1 STATUTES OF CALIFORNIA 1969, c. 494, § 2.
[89] 3 STATUTES OF CALIFORNIA 1993, c. 1196, § 17.

discovery of their content to be given.[90] Minor amendments followed in 1993,[91] 1994,[92] 2009[93] and 2012.[94]

An obvious liminal question is that of standing to sue. The 1993 amendment removed any uncertainty as to whether a district attorney had standing to bring an action but the question of exactly who was an "interested person" within the contemplation of the opening words of the section remained unclear. Attorney Ann Taylor Schwing has noted that grants of standing to "any interested person" are not unusual in California's statutes.[95] She observes that courts have usually construed the phrase as requiring prospective litigants to have a direct, not merely consequential, interest in the outcome of the action.[96] Courts have considered the meaning of the phrase in section 54960 in a number of cases and given it a broad interpretation in keeping with the statement of legislative intent in section 54950.[97]

We took a closer look at cases heard by California's courts where Brown Act issues were raised in argument. Our preferred research tool was the Westlaw database which contained appellate cases rather than those heard at first instance. We reasoned that the subject matter, underlying issues and character of parties in cases heard on appeal should not differ substantially from cases heard at first instance and not going to appeal. A search performed on February 6, 2021 revealed 257 cases.[98] Inspection revealed that some were appeals from decisions of non-county specific bodies, some cases recited a Brown Act issue in proceedings below but which were not in issue in the instant appeal, others were from federal courts where the Brown Act was mentioned obiter, others were cases where the Brown Act was raised as an analogy to aid interpretation, or for some other peripheral purpose. For our analysis, we decided to exclude all such cases,[99] leaving us with a body of 136 appellate decisions implicating the Brown Act.[100] The Act came into force in 1953 and these cases are drawn from appeals throughout the period 1953 to April 2021. It is notable that the first recorded appeal was heard in 1973 but more than

[90] *Id.*, subsections (b) and (c).
[91] 4 STATUTES OF CALIFORNIA 1993, c. 1197, § 17.
[92] 1 STATUTES OF CALIFORNIA 1994, c. 32, § 19.
[93] CAL. STATS. 2009, c. 88, § 58.
[94] CAL. STATS. 2012, c. 732, § 1.
[95] ANN TAYLOR SCHWING, 1 CALIFORNIA AFFIRMATIVE DEFENSES § 19:8 (2d ed. 2020 update).
[96] *Id.*, *citing* inter alia Chas. L. Harney, Inc. v. Contractors' State License Bd., 39 Cal.2d 561, 564, 247 P.2d 913, 914–15 (Cal. 1952) (construing "interested person" for declaratory relief);
[97] *See e.g.,* Sacramento Newsp. Guild v. Sacramento County Bd. of Sup'rs, 69 Cal. Rptr. 480, 484 (Cal. App. 3d Dist. 1968) (suggesting the public's right to disclosure should logically extend standing to any county elector), Ribakoff v. City of Long Beach, 238 Cal.Rptr.3d 81, 93 (2018) (noting a broad authorization for citizen standing) and McKee v. Orange Unified School Dist., 110 Cal.App.4th 1310, 1316, 2 Cal.Rptr.3d 774, 778-79 (2003) (concluding that 'interested person' in §§ 54960(a) and 54960.1(a) means 'a citizen of the State of California').
[98] The search was made of the file 'Westlaw>Cases>California>All California State Cases' using the phrase "Ralph M. Brown Act".
[99] For examples of the kinds of cases excluded, *see e.g.* Saraceni v. City of Roseville, 2003 WL 21363458, *6 (dismissing Brown Act argument as immaterial); Versaci v. Superior Court, 127 Cal.App.4th 805, 816, 821 (2005) (Public Records Act case with Brown Act analogies drawn); St. Croix v. Superior Court, 228 Cal.App.4th 434, 440, 442 (2014) (city sunshine ordinance and Public Records Act case referring to or analogizing with the Brown Act); Travers v. City of Morro Bay, 2008 WL 11338126 *2-3 (Brown Act mentioned only as part of factual background of case); Harrell v. Hanson, 2016 WL 5845784 *1 (anti-SLAPP motion case, Brown Act a collateral issue not ruled upon).
[100] The relevant cases are detailed in the Appendix to this Article.

100 of these cases have been heard in the last twenty years. This accords with the statutory history of the Act, with its most extensive expansions and amendments coming into force after 2000.

Getting an overall feel for such a large body of litigation is difficult. We performed an analysis of these cases and summarize our findings in the tables below. We began by looking to see who was bringing appeals against whom. It should be noted that the first-named party in the report of an appeal is not necessarily the appellant. Many of the cases involved multiple parties and we simplified our task by concentrating solely on the case report titular appellants and respondents. We distinguished between citizens acting in their private capacity and those acting as holders of an office, such as a district attorney. Our findings in Table 1 below show the respective percentages of all classes of parties in the appeals studied.

Appellants	**%**	**Respondents**	**%**
Private citizens	49.3	Private citizens	11.8
Campaigns and SIGs	23.5	Campaigns and SIGs	2.9
Companies & corporations	7.4	Companies & corporations	2.9
Educational bodies	5.9	Educational bodies	17.6
Press & media	5.1	Press & media	0
Counties & cities	4.4	Counties & cities	35.3
Public bodies	4.4	Public bodies	28.7
Office holders	0	Office holders	2.2

Table 1: Identity and proportions of parties in Brown Act appellate litigation 1973-2020.[101]

It can be seen that the majority of appeals (72.8%) were brought by private citizens, campaigns or special interest groups (SIGs) against counties, cities and educational and other public bodies, such as special districts and public utilities (81.6%). We have distinguished educational bodies from other public bodies because of the significant number in which such bodies figure in this litigation.

We next looked at the outcomes of these appeals and summarize our findings in Table 2.

Appeal outcomes	**%**
Lower court decision affirmed	59.6
Lower court decision aff'd in part, reversed in part	13.2
Lower court decision reversed	27.9

[101] Identity of cases and their citations on file with the authors.

Table 2: Outcomes in Brown Act appellate litigation 1973-2020.[102]

In the majority of cases the decisions of lower courts were affirmed or affirmed in part and reversed in part. In fewer than a third of cases (27.9%), lower court decisions were reversed. Combining these findings, we see that most appeals are brought by private citizens singly or in groups and that most appeals are unsuccessful.

In further analysis, we looked at the nature of the subject matter of the disputes in the original proceedings and the relief sought. The original proceedings involved a wide variety of claims but certain areas were more frequently litigated than others. In Table 3 we show the general areas of litigation that led to subsequent appeals involving, inter alia, alleged Brown Act violations.

General area of original dispute	**%**
Engagement and terms of employment	9.6
Employee evaluations, discipline and termination	19.1
Real property disputes	26.5
Appointments to vacancies in office	3.7
Disposal, transfer and leasing of public property	6.6
First Amendment rights	6.6
Contractual and tortious claims	8.8
Public governance	8.8
Other	10.3

Table 3: Areas of original dispute in Brown Act appellate litigation 1973-2020.[103]

Our categorizations are necessarily painted with a broad brush as a finer grained analysis would have led to many categories with but a few instances. This might have obscured the emergence of a clearer picture of where the greatest areas of conflict lay. More claims arose in relation to disputes involving public servants than any other area. Nearly one-third of those disputes related to general hiring and terms of service including remuneration and pensions but close to two-thirds related to staff evaluations, discipline and terminations.

The next largest area was what we loosely call real property disputes. Our use of this phrase encompasses land use, zoning and general development proposals but excludes exercise of eminent domain powers, rent control and disposals and leases of public land. These two broad areas–employment and real property–accounted for more than half of all original areas of dispute that culminated in appeals raising one or more alleged Brown Act violations.

[102] Identity of cases and their citations on file with the authors.
[103] Identity of cases and their citations on file with the authors.

Our heading of First Amendment rights should be read broadly as covering disputes involving freedoms of speech, the press and the right to petition government for redress of grievances. Finally, the heading ‘public governance’ covers a wide range of behaviors relating to the internal workings and decision-making processes of local government bodies and the conduct of public meetings.

We also analyzed the relief sought in the original proceedings that subsequently led to appeals that included alleged Brown Act violations. Some cases claimed the classic remedies of writ of mandate with or without other discretionary relief while others sought damages as well as other relief. In this Article, the discretionary remedies referred to are those of declaratory and injunctive relief and claims for discretionary awards of attorney fees under Section 54960.5 by prevailing litigants are treated separately in cases where they were explicitly claimed in the original proceedings.

Remedy sought	**%**
Mandamus	34,6
Mandamus + other discretionary relief	26.5
Discretionary relief	28.7
Attorney fees	5.1
Other remedies	5.1

Table 4: Relief sought in Brown Act appellate litigation 1973-2020.[104]

These figures show that mandamus, with or without other relief, was sought in more than sixty percent of cases.

The majority of these cases were ones where the alleged Brown Act violations raised on appeal were not the underlying cause of the original litigation. In these cases, the Brown Act issues were peripheral to the main claim. Brown Act claims were only central in cases we categorized as ‘public governance’ cases in Table 3. In most cases the Brown Act violations were used as a tool to advance other interests. As an example, the *Galbiso* litigation[105] raised, inter alia, a number of Brown Act violations. These included the Orosi Public |Utility District’s failure to afford Mary Galbiso an opportunity to make a public comment regarding its foreclosure action and by going into a closed private session to discuss litigation against her without making the required public disclosures. However, correcting the procedural inadequacies of the District’s meetings was not the purpose of the litigation but rather Ms. Galbiso’s determination to reverse an attempted tax sale to satisfy disputed sewer assessments on her land.

[104] Identity of cases and their citations on file with the authors. The heading “Mandamus + other discretionary relief” includes claims for declaratory relief, injunctive relief or both. The heading “Discretionary relief” includes claims for declaratory relief, injunctive relief or both. The heading “Other” includes claims such things as orders to compel discovery or arbitration, eminent domain actions. grant anti-SLAPP motions, etc.

[105] *See* Galbiso v. Orosi Public Utility Dist., 167 Cal.App.4th 1063 (2008), Galbiso v. Orosi Public Utility Dist., 182 Cal.App.4th 652 (2010), and Galbiso v. Orosi Public Utility Dist., 2011 WL 2348733.

We looked at the frequency of allegations of different Brown Act violations and the sections of the Act most often invoked in appeals.

Nature of violation alleged	**%**
Meeting was/should have been open/closed	40.4
Adequacy of notice of a meeting	24.3
Adequacy of agenda provided for meeting	19.1
Whether actions constituted a ‘meeting’	11.8
Whether participant a ‘legislative body’	11.8
Ability of public to participate in meeting	9.6
Award of attorney fees to prevailing party	8.1
Other	11.7

Table 5: *Nature of violations alleged in Brown Act appellate litigation 1973-2020.*[106]

Since the Brown Act is an ‘open meetings’ law, it is unsurprising that the issue of whether a particular meeting was improperly open or closed was the most frequently alleged violation. Less frequently alleged violations falling under the rubric ‘Other’ include the question of whether a particular body constituted a ‘local agency’, whether or not attorney-client privilege attached to proceedings, whether or not certain behavior constituted ‘action taken’ and whether a party had standing. Certain violations were commonly associated with particular kinds of underlying substantive disputes. So, allegations of improperly holding public meetings and failing to give notice of meetings and appropriate agenda descriptions often figure in personnel disputes involving disciplinary or dismissal proceedings.[107]

Our final table provides an analysis of the frequency with which particular sections of the Brown Act were discussed in detail in the ratio decidendi of appellate opinions.

Brown Act Section	**%**
§ 54951	2.2
§ 54952	23.5
§ 54953	8.8
§ 54954	26.5
§ 54956	19,9

[106] Identity of cases and their citations on file with the authors. *Note* that each percentage is expressed as that of all cases studied. Some cases involved more than one alleged violation, *see e.g*. Galbiso v. Orosi Public Utility Dist., 167 Cal.App.4th 1063 (2008).
[107] *See e.g*. Boceta v. Inglewood Unified School Dist., 2005 WL 647336 (‘notice’); Reid v. Fontana Unified School Dist., 2002 WL 1278069 (‘agenda’).

§ 54957	34.6
§ 54959	0.7
§ 54960	23.5

Table 6: Percentage of opinions citing sections of the Brown Act in Brown Act appellate litigation 1973-2020.[108]

Rather than subjecting these opinions to fine-grained scrutiny, we confined our analysis to citing the particular sections referenced rather than their numerous individual subdivisions. The section most frequently the subject of argument was Section 54957 which governs instances when local agencies may hold closed sessions and the procedures to be followed for holding such sessions. Section 54957 was discussed in 34.6 percent of appeals studied. The next most frequently discussed provision was Section 54960, which figured in 34 percent of cases and determines, inter alia, who has standing to bring proceedings under the Brown Act, the remedies available and the procedures to be followed.[109] This was closely followed by Section 54954, which was discussed in 29 percent of cases and which deals with, inter alia, the requirement to provide agendas and details of the time, date and place of meetings.[110]

Of the remaining sections of the Act, only Sections 54952, 54953 and 54956 were discussed with any frequency in opinions. Section 54952 is analyzed in 24 percent of cases and provides, inter alia, definitions of the terms 'legislative body', 'meeting' and 'action taken' and ensures that persons elected to office but who have yet to assume their duties are treated as if they had already assumed office.[111] Section 54953 lies at the heart of the Brown Act and requires, inter alia, that all meetings of the legislative body of a local agency shall be open and public and that all persons shall normally be entitled to attend their meetings. It may be that the clarity of its requirements are such that, despite its centrality, it was subject to detailed analysis in only 20 percent of cases.[112] Section 54956 deals, inter alia, with the circumstances in which special meetings may be called and the procedures for doing so. The section featured in 21 percent of opinions.[113] The remaining sections were significantly less frequently the subject of argument and together appeared in no more than 15 percent of cases.[114]

We have been unable to establish what proportion of civil suits generally, and Brown Act cases in particular, are tried and subsequently appealed. We noted previously that the number of appeals involving Brown Act principles has increased significantly in recent years. Nevertheless, only 107 appeals heard since 1999 have involved substantial argument about the

[108] Identity of cases and their citations on file with the authors. Sections not included in this table did not feature in detailed analysis in opinions even though they may have received passing mention.
[109] CAL. GOV'T CODE § 54960, or one or more of its subdivisions, was discussed in 46 cases (34%).
[110] CAL. GOV'T CODE § 54954, or one or more of its subdivisions, was discussed in 40 cases (29%).
[111] CAL. GOV'T CODE § 54952, or one or more of its subdivisions, was discussed in 32 cases (24%).
[112] CAL. GOV'T CODE § 54953, or one or more of its subdivisions, was discussed in 27 cases (20%).
[113] CAL. GOV'T CODE § 54956, or one or more of its subdivisions, was discussed in 29 cases (21%).
[114] CAL. GOV'T CODE §§ 54950, 54951, 54958, 54959, 54961 and 54962, or one or more of their subdivisions, were discussed in 20 cases (15%).

requirements of the Act—a mean of slightly fewer than five cases each year. This suggests that in a State with fifty-eight counties, a population greater than thirty-ninr million people[115] and thousands of local agencies, civil litigation alone is unlikely to be the means by which obedience to the Act is compelled. The suggestion is reinforced by the fact that the majority of appellants were private citizens and the majority of decisions of trial courts were affirmed.[116]

However, it is clear that certain characteristics make it more likely that a dispute implicating Brown Act principles will be litigated and appealed. A stereotypical appeal involved an underlying dispute concerning employment or land use brought by a private citizen seeking mandamus and declaratory and injunctive relief against a local authority or educational body. The appeal most likely raised Brown Act questions as to the propriety of meetings held by the respondent and the court subsequently affirmed the decision of the court below.

C. Investigations Made by Grand Juries and Responses to Them

As we observed in an earlier Article,[117] California is one of only two States requiring each county to appoint a civil grand jury with broad investigatory powers. California law requires that "one grand jury in each county, shall be charged and sworn to investigate or inquire into county matters of civil concern… ."[118] Another section of the Penal Code requires grand juries to

> investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.[119]

Remits such as these place grand juries in a strong position to investigate citizen complaints of Brown Act violations or to seek out such violations in the course of wider statutory investigations. Grand juries are judicial bodies[120] and their per diem allowances and expenses are met out of public funds.[121] On the other hand private citizens' Brown Act litigation carries the risk that they may not receive a discretionary award of their legal costs or, at worst, that they have to bear their own costs and also those of their prevailing opponents.

Our study of civil appellate litigation raising Brown Act issues covered the entire period the Act has been in force. Consideration of grand jury annual reports for the same period would

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[115] *See* STATISTA RESEARCH DEPARTMENT, *Resident population in California from 1960 to 2020*, https://www.statista.com/statistics/206097/resident-population-in-california/.
[116] *See* Tables 1 and 2 above and accompanying text.
[117] *See* Adeleye et al., *California's Civil Grand Juries and Prison Conditions 2007-2017,* 57 SAN DIEGO L. REV. 609, 613, note 31 (2020).
[118] Cal. Penal Code Ann. § 888 (West).
[119] CAL. PENAL CODE ANN. § 925 (West).
[120] *See* People v. Superior Court of Santa Barbara Cty., 531 P.2d 761, 766 (Cal. 1975) ("As [Penal Code § 888] indicates, and as the California precedents have long recognized, the grand jury is a 'judicial body,' 'an instrumentality of the courts of this state . . . .'" (first quoting *Ex parte* Sternes, 23 P. 38, 39 (Cal. 1889); then quoting *Ex parte* Shuler, 292 P. 481, 493 (Cal. 1930))).
[121] *See* BRUCE T. OLSON, GRAND JURIES IN CALIFORNIA: A STUDY IN CITIZENSHIP 85 *et seq*, (2000) for details of grand jury expenditure and other resources.

have required retrieval and examination of potentially more than 3,800 annual reports for the fifty-eight counties. Even confining our examination to reports for the last twenty years would have involved obtaining and examining as many as 1,160 reports. We therefore compromised and confined our examination of grand jury investigations implicating Brown Act issues to the potentially 580 annual reports for ten fiscal years. The COVID-19 pandemic has hampered the work of many grand juries and, at the time of writing in April 2021, many juries had yet to publish their reports for the fiscal year 2019-2020. We therefore decided to cover the fiscal years 2009-2010 through 2018-2019. During this period, around a third of all the appeals we studied in Section B were heard. We believe that this ten-year span of grand jury reports corresponds to a sufficiently large proportion of the appeals studied in this Article for us to draw valid conclusions as to the relative importance of private complaints of Brown Act violations and public judicial investigations of the same.

If every county's grand jury had completed and published an annual report during this period, there would be a total of 580 reports. The grand jury makes its annual report to the Superior Court of its county. There is no firm rule as to what happens to these reports once filed. In some cases, the local Superior Court will mount copies on its web site. Many counties' grand juries have their own web sites and mount copies of annual reports there. Another site, the University of California's Digital Resources for Law and Public Policy, aims to harvest copies inter alia of grand jury reports and mounts a searchable collection of them.[122] In some cases. county government or local media web sites mount copies of these reports. There is also a requirement that a copy of each report should be sent to the California State Archives maintained by the Secretary of State.[123] The State Archives does not have a searchable database of its holdings but rather specific queries as to particular documents must be submitted to the archivists and, if copies are held, a fee paid for paper delivery of the documents.[124]

We collected reports by searching initially all fifty-eight Superior Court web sites and downloading available reports. Where these sites failed to disclose reports, we sought and searched grand jury web sites, county government sites, newspapers, internet search engines, and the Digital Resources for Law and Public Policy site in that order. When those searches failed to reveal reports, we inquired of the California State Archives or made California Public Record Act requests to attempt to locate all missing reports. We eventually recovered 562 annual reports for the study period but were unable to obtain copies of the remaining eighteen reports from Alpine, Colusa, Del Norte, El Dorado, Sierra, Tehama and Trinity counties.[125] Sometimes the absence of reports is unexplained but we speculate that in other cases it may be because the county had a small population and the Superior Court was unable to recruit a

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[122] *See* University of California, DIGITAL RESOURCES FOR LAW AND PUBLIC POLICY, https://cdm16255.contentdm.oclc.org/digital/collection/p266301coll6/search/order/title/ad/asc.

[123] Cal. Penal Code §933(b).

[124] E-mail from Reference Archivist, California State Archives to Julian Killingley, Professor of Law (ret'd), Birmingham City University (Sep. 9, 2020, 8:04PM UTC) (on file with author).

[125] The missing reports were: Alpine County for fiscal years ending in 2012, 2013, 2014, 2015, 2016, 2018 and 2019; Colusa County for year ending 2010; Del Norte County for year ending 2010; El Dorado County for year ending 2013; Sierra County for year ending 2010; Tehama County for year ending 2013; and Trinity County for years ending in 2010, 2011, 2012, 2013, 2014, and 2019.

quorate jury in particular years.[126] In another case, the judge discharged an inquorate jury and decided there was insufficient time to recruit an alternate jury and allow it to complete its inquiries.[127] In another county's case, archived copies of reports were either inaccessible or comprised only a cover sheet and table of contents.[128]

All reports recovered were in portable document format (PDF) files. The majority of documents were machine searchable and had been converted into PDF files from text files. However, in a number of cases, the PDF file had been constructed from images of the original documents and was not directly searchable electronically. We used Nitro Pro 10 software as our PDF file reader and this reported when files were non-searchable image files. Nitro Pro offered the option to convert them using optical character recognition (OCR) and save them into a searchable PDF format. We examined each file using the search string "Brown Act" to find any investigations mentioning the Act. Many investigations ended by reminding prospective respondents of the need to discuss their responses in meetings that themselves conformed to Brown Act requirements. Reports were ignored where this was the only reference to the Brown Act.

Remaining files were ones where there was some substantive discussion of Brown Act provisions. Sometimes a grand jury would simply note with approval in passing that a body was conducting its affairs in accordance with Brown Act requirements. We discounted these investigations from further study. In some cases, a grand jury's investigation has been excluded because, for example, the single Brown Act mention was in the context of describing actions that could legitimately be done in secret but where the Act was not raised as an issue for investigation.[129] We looked for investigations where either an alleged Brown Act violation was the main focus of the investigation or where substantial Brown Act violations arose as collateral issues in the course of investigations of other matters of concern. This left us with a total of sixty-five investigations for analysis which are listed in Appendix 2 to this Article.

Our initial interest was the identity of the sources of the grand juries' investigations. In Table 7 we analyze the sources that inspired the investigations studied.

Reasons for investigations	**%**
Citizen complaints to grand jury	73.8

[126] *See e.g.* Alpine County. Alpine County had a population estimated in 2019 as 1,129 people. (United States Census Bureau, QUICK FACTS: ALPINE COUNTY, CALIFORNIA (Apr. 19, 2021, 4:17PM UTC), https://www.census.gov/quickfacts/alpinecountycalifornia. A quorate grand jury would have comprised probably more than 3% of the entire population of the county eligible for grand jury service.
[127] *See* Cole Mayer, *Grand Jury disbanded*, MOUNTAIN DEMOCRAT A1, Mar. 8, 2013 (available at https://www.mtdemocrat.com/news/grand-jury-disbanded/) (regarding the discharge of the 2012-2013 Del Norte County grand jury, noting "According to the court order, the Grand Jury fell below the minimum of 12 active jurors and was thus discharged. No annual report had been made and there was no time left to select new members before the next Grand Jury is selected.").
[128] *See* Trinity County grand jury reports for fiscal years ending 2010, 2012, 2013, and 2014 retrievable from the Digital Resources for Law and Public Policy website, *supra* note 122.
[129] *See e.g.* ALAMEDA COUNTY GRAND JURY, B*uilding Purchase by Alameda County: 2000 San Pablo Avenue, Oakland*, 2012-2013 FINAL REPORT 85, 94 (2013).

Sua sponte inquiries by grand jury	21.5
Other	4.6

Table 7: Reasons for investigations undertaken during 2010-2019.[130]

Unsurprisingly, the majority of investigations were prompted by citizen complaints. The two counties whose grand juries investigated the greatest number of complaints about Brown Act violations—Kern and Kings counties—each gave guidance to citizens on their web sites as to how to submit complaints using pro forma documentation provided.[131] Most of the remaining investigations were undertaken on grand juries' own initiative. Some counties undertook no investigations into alleged violations during the study period.[132] However, that is not necessarily indicative that no complaints were received by those juries because decisions on whether to investigate complaints lies in each grand jury's discretion and their deliberations are held in secret.

We next looked to see whether the activities of particular bodies were more frequently targeted than others. Table 8 presents our analysis of the distribution of investigations during the study period.

Legislative Body	**%**
Special Districts (Non-Educational)	32.3
Education Special Districts	26.2
Cities or Towns	23.1
Counties	12.3
Legislative bodies generally	6.2

Table 8: Identity of bodies the subject of investigations during 2010-2019.[133]

It should be noted that each category does not contain the same number of constituents, so strict comparisons cannot be drawn as to the relative frequency of investigations within their members. However, since there are likely to be many more non-educational special districts than other special districts, it is probable that allegations of Brown Act violations in Boards of Education, School and College Districts are more frequent than in other bodies. It is unclear

[130] Identity of investigations in each category and their citations on file with the authors.

[131] During the study period, each grand jury investigated three citizen-prompted Brown Act complaints. Kern County's web site has a grand jury complaint process page that includes a link to a downloadable PDF form and instructions on how to return it. It also has a telephone hotline for submission of anonymous complaints. *See* Kern County, GRAND JURY COMPLAINT PROCESS (Apr. 21, 2021, 14:45PM UTC), https://www.kerncounty.com/government/other-agencies/grand-jury/grand-jury-complaint-process. Kings County's web site has a Grand Jury page with a description of the complaints process and a link to a downloadable complaint form which contains instructions for its return. *See* Kings County, GRAND JURY (Apr. 21, `14:56PM UTC), https://www.countyofkings.com/departments/grand-jury.

[132] *See e.g.* San Francisco and San Mateo grand jury annual reports during the period.

[133] Identity of investigations in each category and their citations on file with the authors.

why this should be so, but we hypothesize that it may be because citizens have a closer and more personal interest in the governance of local educational bodies.

Our principal interest in the analysis lay in the frequencies of specific Brown Act violations. Most investigations involved more than one kind of alleged violation, although certain violations were frequently associated with other violations. So, for example, allegations that a legislative body had failed to provide an agenda for a particular meeting or had failed to describe agenda items with sufficient particularity were frequently associated with allegations that the same body had failed to provide details of when and where the relevant meeting would be held. Similarly, allegations that a body had held inappropriate closed meetings were also associated allegations that the body had conducted serial or secret meetings. Our findings are set out in Table 9 in descending order of frequency.

Nature of Alleged Principal Violations	**%**
Agenda inadequacies	32.3
Inappropriate closed sessions	24.6
Secret meetings	23.1
Inadequate familiarity with Brown Act	20.0
Impaired opportunity for public participation	16.9
Serial meetings	16.9
Breach of confidentiality	12.3
Inadequate notice of meeting	12.3
Defective minutes of meeting	12.3

Table 9: Frequency of allegations of particular Brown Act violations 2010-2019.[134]

The range of actions that might constitute a violation of the Brown Act is very wide, We have condensed most of these behaviors into a table of nine categories. A general description of what these categories cover is desirable. The topic 'agenda inadequacies' covers inter alia missing agendas, vague or misleading descriptions of agenda items, failure to provide the public with agendas and associated documents, and meetings dealing with matters not appearing on agendas. The topic 'inappropriate closed sessions' covers both closed sessions dealing with business that can only lawfully be dealt with in open meetings, and closed meetings that have been called, conducted or reported otherwise than in accordance with the Brown Act's requirements. The topics 'secret meetings' and 'serial meetings' cover different but related behaviors. A secret meeting includes any meeting that has not been publicly announced, to which the public are denied admission or whose decisions are not minuted or reported. Serial meetings include meetings where a quorum of members participate in a series of meetings, real or virtual, to discuss, deliberate or take action on any item of business within

[134] Identity of investigations in each category and their citations on file with the authors.

the subject matter jurisdiction of the body. The heading 'Inadequate familiarity with Brown Act' covers repeated actions by members of a body that suggests those members are either ignorant of the provisions of the Act or are wilfully defiant of them. The heading 'Impaired opportunity for public participation' covers a range of actions that prevent members of the public attending meetings, erecting measures that might deter public attendance at meetings, providing no opportunity for the public to comment or make suggestions on business or unduly limiting time afforded for public participation in meetings. 'Breach of confidentiality' is mostly confined to unlawful disclosures of closed meeting business. Some cases involved disclosures of privileged or personal information. The heading 'Inadequate notice of meeting' covers both failure to notify persons whose behavior is to be considered at the impending meeting as well as failures to comply with Brown Act requirements as to notification of time, date and place of scheduled or continued meetings. Finally, 'Defective minutes of meeting' covers failure to provide minutes, inaccuracies in minutes, and retrospective clandestine revisions of minutes.

From this analysis it is apparent that the commonest Brown Act breaches investigated comprised agenda violations, improperly held closed sessions and holding secret or serial meetings. It is unsurprising that investigations into closed sessions and secret or serial meetings should make up the greater part of alleged violations of an open meetings law.

Our final analysis of these investigations looked at the responses of the bodies and officials that were the subjects of the grand juries' findings and recommendations. California law requires that each grand jury submit its report to the presiding judge of its county's superior court.[135] Copies of the report are sent to any public agency or elected official that is the subject of findings or recommendations in the report. The governing bodies of public agencies are required to 'comment' to the presiding judge on any findings or recommendations that relate to them within 90 days of publication of the report.[136] Every elected county officer or agency head for which the grand jury has responsibility is also required to comment within 60 days to the presiding judge on findings and recommendations pertaining to matters under their control.[137]

The statutory requirement to comment to the presiding judge of the superior court is important. The fact that the reply is to a judge rather than to the grand jury is likely to make respondents take findings and recommendations seriously and give them a considered reply. However, it should be noted that the duty is no more than to 'comment' and there is no requirement to act upon any findings or recommendations made by a grand jury. Responses from agencies and officials, like the grand jury's original report, are sent to the presiding judge and copies forwarded to the State Archivist to be kept 'in perpetuity.'[138]

We were interested to see how local agencies and officials responded to findings and recommendations made by grand juries. Tracking down responses to these was not a simple task. A number of grand juries completed their investigations early in the fiscal year. These juries frequently forwarded the results of their investigations to the agencies and officials

[135] *See* CAL. PENAL CODE §933(a).
[136] *See* CAL. PENAL CODE §933(c).
[137] *Id.*
[138] *See* CAL. PENAL CODE §933(b).

affected and were able to incorporate their responses into their final reports. Other juries adopted a practice of forming a review or continuity committee which would gather and publish responses to findings and recommendations made by their predecessor grand jury and comment upon the perceived adequacy or otherwise of those responses. In some cases, what was perceived to be an inadequate response would prompt a further follow-up investigation. These subsequent inquiries constitute part of the sua sponte investigations referred to in Table 7 above. In some cases, responses do not appear in annual reports but are hypertext linked on one or more of the many web sites referred to above that host copies of reports. In a number of cases no responses could be found even though an annual report with findings or recommendations was found.

We present our findings in Tables 10, 11, and 12 below. Our summary is inevitably a simplification of a complex picture and there is some subjectivity in classifying responses. The analyses relate only to responses to juries' Brown Act-related findings and recommendations. In investigations where a jury has made numerous findings and recommendations there is often a range of responses encompassing all varieties of response. We have elected to group our findings into three tables. Table 10 analyzes occurrences of positive responses, Table 11 analyzes predominantly negative responses, and Table 12 analyzes other responses. Note that our analyses relate to occurrences of particular types of responses to investigations and not to the frequency of such types of response. Each type of response is counted only once in each investigation regardless of the number of individual responses of that kind. Accordingly, our data cannot be used to determine the balance of response, e.g. overwhelmingly positive or negative, to any particular investigation. To have attempted such an analysis would have increased our work by orders of magnitude.

We began by looking at what we classified as five positive responses identified.

Positive responses from agencies/officials	%
Agrees	24.6
Recommendation implemented	36.9
Recommendation not yet implemented but will be	15.4
Will try to implement/continue to comply	10.8
Denies breaches but has/will amend practices	3.1

Table 10: Positive responses to findings of Brown Act violations 2010-2019.[139]

Table 10 shows that in approximately a quarter of investigations respondents agreed with some of the grand jury's findings or recommendations and in more than half of investigations respondents reported that they had implemented or would implement the jury's recommendations. In a much smaller number of cases, respondents were less positive. Some would only go so far as to say they would 'try' to implement recommendations. Others denied breaching the Act but nevertheless stated they had or would implement a recommendation.

[139] Identity of investigations in each category and their citations on file with the authors.

We next looked at what we perceived as negative responses to a grand jury's findings or recommendations,

Negative responses from agencies/officials	%
Disagree	16.9
Agree in part/disagree in part	13.8
Denies breaching Brown Act	7.7
Jury's findings non-specific or unsubstantiated	4.6
Will not implement recommendations as unjustified	12.3

Table 11: Negative responses to findings of Brown Act violations 2010-2019.[140]

The most extreme negative reaction we encountered came from the Lassen County Board of Supervisors to findings and recommendations in a 2014 investigation.[141] The respectfully couched letter to the presiding judge begins with an acknowledgement of the contribution of grand jurors and thanking them for their service and constructive criticism.[142] However, their response quickly descends into a series of observations on the grand jury's motives and performance. The Board set the tone for what was to follow:

> The Board of Supervisors is also of the perception, and we don't believe we are alone, that some persons, whether they admit it or not, derive their interest in serving as a Grand Juror as a result of some experience or conflict with local government. Also, and perhaps for different reasons, some of the persons selected over the years to serve are, in fact, the "administrators, legislators, or politicians" that the Grand Jurors Association contends it is not made up of.[143]

It prefaced its detailed responses by warning what to expect:

> Contrary to past years where the Board has been fairly quiet, this year the Board will actively point out inaccuracies and misperceptions. This year, the Board of Supervisors will highlight the fact that the Grand Jury sometimes is composed of people who are not infallible, not always properly informed, and not always motivated to come to the proper conclusions.[144]

After some spirited dissents from the jury's findings, the Board went on to conclude:

> The Board specifically set out to show that the Grand Jury is not always right and to think so is also a mistake. Moreover, the Board tried to point out that dependent

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[140] *Id.*
[141] *See* LASSEN COUNTY GRAND JURY, *Lassen County Board of Supervisors – Ralph M. Brown Act - Emergency Agenda Item,* 2013-2014 FINAL REPORT 30 (2014).
[142] LASSEN COUNTY BOARD OF SUPERVISORS, A RESPONSE TO FY 2013-2014 GRAND JURY REPORT i (2014), *in* LASSEN COUNTY GRAND JURY, 2013-2014 FINAL REPORT (2014). The Lassen County Board of Supervisors' response is found among a collection of responses gathered towards the end of the grand jury's report
[143] *Id.*
[144] *Id.* at ii.

> on who becomes involved in the reporting process, the integrity of a report itself can be called into question, thereby affecting the credibility of the whole.[145]

Generally however, the responses disclosed in Table 11 suggest that agencies and officials responded negatively to a smaller proportion of findings and recommendations than those to which they responded positively. Although there was some disagreement in more than a quarter of investigations, nevertheless these figures suggest that there is confidence to be had in the general quality of grand jury fact finding and remedial suggestions regarding Brown Act violations.

In Table 12 we summarize other responses made to or required by grand jury investigations.

Other findings/responses	%
Recommendations require further analysis	4.6
No response required	9.2
Allegations not upheld	1.5
No response found or filed	7.7

Table 12: Other findings and responses to allegations of Brown Act violations 2010-2019.[146]

Perhaps the most striking figure in Table 12 is the very low proportion of investigations that resulted in the grand jury concluding that there had not been any Brown Act violations. That suggests three things to us. Firstly, the citizen-initiated complaints procedure is not being abused by citizens making malicious or frivolous complaints against agencies or officials. Secondly, sua sponte investigations commenced on a grand jury's initiative are not usually ill-founded. Thirdly, we might infer that there is usually no smoke without fire and that most investigations studied uncover some evidence of Brown Act non-compliance.

D. Self-Policing and Public Awareness

The Brown Act, in one form or another, has been around for close to 70 years. It would be surprising if California's public bodies and citizenry had not developed an awareness of the provisions of the Act and the rights and obligations imposed by it in such an extended period. We considered the extent to which two separate mechanisms might contribute to informal reinforcement of observance of the Brown Act.

1. Self-Policing by Public Bodies

One of the more interesting aspects of the grand jury investigations is that they give us some insights into how local agencies react to challenges to their behavior or recommendations for

[145] *Id*. at 22.
[146] *Id*.

their reform. When a grand jury makes findings or recommendations, the subject agency or officials are required to respond to the local superior court presiding judge. That requirement alone usually ensures a degree of civility in the responses regardless of how well criticisms were received. We show above that the majority of agencies and officials responded positively to the juries' findings and recommendations. Responses such as these give an insight into the degree to which Brown Act principles have been internalized by local government. The occasional hostility to scrutiny and criticism that we have previously commented upon suggests that jury findings of violations of the Brown Act may not always be a reliable indicator of impropriety—at least in the eye of those criticized. Nevertheless, the relatively low number of investigations over a ten-year period and the high degree of acceptance of recommendations suggest public bodies are largely observant of the Act and are willing to amend their conduct if found to be non-compliant with it. We attribute this degree of compliance first to the fact of training—we know that newly elected members and officials are routinely offered or given Brown Act training prior to their assuming office. Many are provided with guides to the Act such as that prepared by the California League of Cities—[147] and second, to the vigilance of local government officials, particularly the legal officers and advisors in ensuring that Brown Act requirements become internalised in terms of agency internal practices and procedures.

The 'local agencies' defined in the Act[148] extend to a large number of public bodies located within California's 58 counties. Many of these have full-time lawyers on their staff, such as county counsel and city attorneys, or can call upon the services of the same or their local district attorneys or specialist law offices for legal advice.

The office of county counsel is a statutory post appointed by a county's board of supervisors.[149] County counsel normally serve a four year term[150] and discharge all the duties vested by law in the district attorney other than those of a public prosecutor.[151] The California State Association of Counties provides a succinct overview of their responsibilities.[152] As the Association notes, "As the legal advisor to the Board of Supervisors, County Counsel attends its meetings, both public and closed sessions."[153] Similar functions are performed by city attorneys appointed by city councils.[154] The practice of public law is a specialism within the legal profession and practitioners are expected to have knowledge of areas of law outside the normal competences of ordinary private and corporate counsel. In particular, they have responsibility for ensuring that members of their local agencies do not act *ultra vires* and this extends to advising them as to their responsibilities under the provisions of the Brown Act.

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[147] *See* LEAGUE OF CALIFORNIA CITIES, *supra,* note 30.
[148] *See* CAL. GOV'T CODE § 54951.
[149] *See* CAL. GOV'T CODE § 27640.
[150] *See* CAL. GOV'T CODE § 27641.
[151] *See* CAL. GOV'T CODE § 27642.
[152] *See* CALIFORNIA STATE ASSOCIATION OF COUNTIES, *County Counsel,* https://www.counties.org/county-office/county-counsel.
[153] *Id.*
[154] *See* Jeffrey Kolin & Jonathan P. Lowell, *Role of the City Attorney and Development of the City Attorney/City Manager Relationship – It's All Good, or Should Be*, in LEAGUE OF CALIFORNIA CITIES, 2013 FALL CONFERENCE.

County counsels have their own professional association, the County Counsels' Association of California, which helps them share expertise and knowledge of local government law.[155] There is no corresponding association for city attorneys but rather their professional interests are catered for by a Department within the League of California Cities.[156] The competence and vigilance of county counsels and city attorneys in ensuring that their local agencies and officials comply with the Brown Act is attested to by the comparative scarcity of prosecutions, civil litigation and grand jury investigations discussed in this Article. They help ensure that meetings subject to the Act are correctly noticed and convened and this raises public awareness of local agency meetings and affords citizens opportunities to observe and participate in the conduct of civic business. They also provide or facilitate Brown Act awareness training for members and staff.[157] This is particularly important because the prohibition on serial communications means that members may often act in circumstances where their behavior cannot be directly observed by their legal advisers and timely advice given.[158]

It is not possible to quantify the precise significance of the role played by county counsels and city attorneys in ensuring that local agencies conduct their affairs in accordance with the Brown Act. However, it would be a serious dereliction of their duties if they failed to advise their local agencies and their members of what was required of them and what they must do to conduct their business lawfully. It is likely that their background advice and guidance has ensured that most public business is properly noticed and conducted in accordance with the Act. Over a period of many years this has brought about a situation whereby the open conduct of meetings is something that few citizens consciously think about but rather is part of the cultural and political landscape of California's conduct of public affairs. It is unexceptional because it has become the norm. Accordingly, it is likely that citizens notice when the requirements of the Brown Act are not adhered to rather than when local agencies are acting in compliance with it.

2. Sources of Public Awareness

Intuitively, it might appear that exercise of rights under the Brown Act could be related to the extent of political and civic engagement within the State. The phrase 'political and civic engagement' is nebulous and has been given a variety of different meanings. For the purposes of this Article, we adopt the meaning given by Professors Martyn Barrett and Bruna Zani. They used the phrase as embracing two distinct concepts: '*political engagement'*, denoting "the engagement of an individual with political institutions, processes, and decision-making", and

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[155] The goals of the County Counsels' Association of California are set out on the Association's home page at https://www.coconet.org/landing.php.

[156] *See* LEAGUE OF CALIFORNIA CITIES, *City Attorneys*, https://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys.

[157] *See e.g*. Office of Yolo County Counsel, *Brown Act Training for Advisory Committee Members and Staff Liaisons* (2020). https://www.yolocounty.org/home/showdocument/.

[158] *See* CAL. GOV'T CODE § 54952.2(b). "A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

'*civic engagement*', denoting "the engagement of an individual with the interests, goals, concerns and common good of a community."[159]

We might expect that the Brown Act's provisions would be important to a politically and civically engaged citizenry. A convenient indicator of broad political engagement is the participation of citizens in the election of officials. Such an indicator is easily measured from election returns. Measurable indicators of civic engagement are scarcer; however, figures are available for voluntary work in communities.[160] We might hypothesize that strong measures of political and civic engagement should be significant factors in ensuring that the Act would be observed by those local agencies and officials subject to it.

However, evidence suggests that political and civic engagement in California is lower middle ranking when compared with that of other States. In a 2002 study, the Public Policy Institute of California reported that voter turnout in municipal elections around the country averaged half that of national elections, and local voter turnout often falls below one quarter of the voting-age population.[161] Anecdotal evidence suggested that voter turnout in California was even lower than in the rest of the country.[162] The report went on to note the very uneven distribution of voters and non-voters across the population. California residents who voted were likely to be predominantly highly educated, wealthy, old and white.[163] Differences were found to be particularly large across educational levels.[164] More recent research has shown that basic educational attainment in California, i.e. graduating from high school, is the lowest for any State in the nation with some 17.1 percent of California's citizens not having graduated from high school.[165]

Although the usual measures of civic engagement do not suggest any strong correlation with Brown Act awareness, there are some other citizen-centered organizations that have a role in ensuring that the Brown Act is observed. The United States Supreme Court has determined that the First Amendment right to freedom of speech is not confined to the act of communicating information but also to receiving information.[166] Although we have been unable to obtain details of membership numbers, California is host to a number of organizations dedicated to policing First Amendment rights. These include the California branches of the American Civil Liberties Union, the First Amendment Coalition, and Californians Aware among others. We suggest that these are instrumental in disseminating awareness of Brown Act open meeting provisions among their members, including their right to be made aware of meetings and to participate in local government decision making. As evidence of that, we point to the fact that

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[159] Martyn Barrett & Bruna Zani, *Political and Civic Engagement: Theoretical understandings, evidence and policies* 3, *in* POLITICAL AND CIVIC ENGAGEMENT: MULTIDISCIPLINARY PERSPECTIVES (Martyn Barrett & Bruna Zani, eds., 2015).
[160] *See e.g.* the AmeriCorps' website page https://www.nationalservice.gov/vcla/state/California.
[161] ZOLTAN L. HAJNAL, PAUL G. LEWIS & HUGH LOUCH, MUNICIPAL ELECTIONS IN CALIFORNIA: TURNOUUT, TIMING AND COMPETITION 2 (2002).
[162] *Id.*
[163] *Id.* at 3.
[164] *Id.*
[165] *See* World Population Review, *Educational Attainment by State 2020* (source: U.S. Census Bureau, Educational Attainment in the United States: 2018). https://worldpopulationreview.com/state-rankings/educational-attainment-by-state.
[166] Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 756-57 (1976).

the First Amendment Coalition and Californians Aware both appear as parties in a number of the appeals cited in Appendix 1 to this Article.

Finally, we cannot overlook the role of the media in disseminating awareness of the activities of local government and reporting attempts to encumber public attendance at meetings and to contribute to decision making. The media draw attention to breaches of the Act and also help police its observance by, when necessary, litigating their right to attend meetings subject to the Act. The Los Angeles Times, Freedom Newspapers and Stockton Newspapers all appear as parties in a number of the appeals cited in Appendix 1 to this Article. Additionally, the San Francisco Chronicle's original series of article in 1952 were the very inspiration for the passing of the Act.

IV. CONCLUSIONS

In our Introduction, we took it as axiomatic that local government in California is presently conducted openly but noted that, despite open meetings laws being enacted prior to the passing of the Brown Act, transparent government had not always been the norm. We set out to investigate how the Act's requirements had come to be embedded in the conduct of local politics in California and the mechanisms by which this had been achieved.

The most direct way of enforcing statutes is to criminalize their breach. We noted that Government Code Section 54959 potentially criminalizes the behavior of those who would deprive members of the public of information to which they knew they were entitled. We also observed that there had been no known convictions for the offense. We cannot feasibly evaluate the deterrent effect of the section. The requirements for training previously mentioned will ensure awareness that such a penal provision exists and thus it may operate as an instance of the exhortation to speak softly and carry a big stick.

We considered the extent of civil enforcement through actions that invoked Brown Act requirements. We saw that a number of claims for mandamus, injunctions or declaratory relief resulted in appeals. We can say from the number of such appeals instanced in Appendix 1 that these claims are not unusual. However, this is more indicative of knowledge of the Brown Act among California's legal practitioners than it is of such knowledge among politicians and members of the public. Even in cases where violations of the Act are proven, we cannot say whether knowledge of this eventually filtered back to the members or officials who were found responsible for the violations. We suspect that, for the most part, adverse decisions against a local agency are more likely to result in better training and awareness within the organization than any substantial increase in wider public awareness.

The incidence of grand jury investigations into alleged Brown Act violations does suggest that there is at least a minimal degree of public awareness about the way local government should be conducting its decision making. Moreover we can infer from the number of sua sponte investigations that a body of jurors would come away with knowledge of the Act.

In Section III above, we ended by suggesting that the public in California may have relatively limited awareness of the Act and its provisions. Most of the formal policing of the Act's provisions is found in judicial rulings and grand jury recommendations, often prompted by private grievances or public complaints. This suggests wider awareness among attorneys and a few members of the public. However, we believe that the mechanisms by which implementation and observance of the Act's principles has been achieved are largely invisible to the public gaze. Public awareness in the form of media reports, assertion of legal rights in litigation and complaints to grand juries exist—but not to such an extent as to suggest that they are the most significant mechanisms by which Brown Act observance has been achieved. We must look elsewhere for these.

It seems to us that the unsung heroes of Brown Act compliance are most likely to be the public law attorneys who serve as inhouse or consultant counsel to California's county and city councils and local agency boards. Unlike courts and grand juries adjudicating and investigating after the event, their role is prophylactic. They go about their work, largely shielded from public view, quietly ensuring that their clients—the counties, cities and local agencies of California—do not breach the Brown Act. They usually only appear in public when they attend meetings where they act as advisors to chairs of meetings to ensure that the conduct of those meetings takes place in accordance with the Act. Their vigilance and advice have enabled the Brown Act to work as its framers intended and that the promise of open meetings is realized.

The fact that legal challenges and grand jury reports reveal occasional lapses from Brown Act ideals suggest that there may still be a slight haze in the air. However, the relative infrequency of these in a large and populous State dispels the myth that the conduct of local government business now takes place in a smoke-filled room.

APPENDIX 1

Appellate decisions implicating, inter alia, the Brown Act studied for the purposes of this article were in chronological order:

Edgar v. Oakland Museum Advisory Com., 36 Cal.App.3d 73 (1973); Wilson v. San Francisco Mun. Ry., 29 Cal.App.3d 870 (1973); Henderson v. Board of Education, 78 Cal.App.3d 875 (1978); Torres v. Board of Commissioners, 89 Cal.App.3d 545 (1979); Rowen v. Santa Clara Unified School Dist., 121 Cal.App.3d 231 (1981); Santa Clara Federation of Teachers v. Governing Board, 116 Cal.App.3d 831 (1981); Joiner v. City of Sebastopol, 125 Cal.App.3d 799 (1981); Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal.App.3d 813 (1981); San Diego Union v. City Council, 146 Cal.App.3d 947 (1983); Stockton Newspapers, Inc. v. Members of Redevelopment Agency of City of Stockton, 171 Cal.App.3d 95 (1985); Yoffie v. Marin Hospital Dist., 193 Cal.App.3d 743 (1987); Citizens for Public Accountability v. Desert Health Systems, Inc., 198 Cal.App.3d 1067, (1988); Farron v. City and County of San Francisco, 216 Cal.App.3d 1071 (1989); Residential Builders Ass'n of San Francisco v. City and County of San Francisco, 211 Cal.App.3d 912, (1989); Green v. Mt. Diablo Hospital Dist., 207 Cal.App.3d 63 (1989); Roberts v. City of Palmdale, 13 Cal.App.4th 298 (1992), Freedom Newspapers, Inc. v. Orange County Employees Retirement System Bd. Of Super's, 9 Cal.App.4th 134 (1992); Freedom Newspapers, Inc. v. Orange County Employees Retirement System Bd. of Dir's..., 6 Cal.4th 821 (1993); Sigala v. Anaheim City School Dist., 15 Cal.App.4th 661 (1993); Roberts v. City of Palmdale, 5 Cal.4th 363 (1993); Frazer v. Dixon Unified School Dist., 18 Cal.App.4th 781 (1993); Cohan v. City of Thousand Oaks, 30 Cal.App.4th 547 (1994); 216 Sutter Bay Associates v. County of Sutter, 58 Cal.App.4th 860 (1997); Gillespie v. San Francisco Public Library Com., 67 Cal.App.4th 1165 (1998); County of Del Norte v. City of Crescent City, 71 Cal.App.4th 965 (1999); Boyle v. City of Redondo Beach, 70 Cal.App.4th 1109 (1999); Ingram v. Flippo, 74 Cal.App.4th 1280 (1999); Bollinger v. San Diego Civil Service Com., 71 Cal.App.4th 568 (1999); Kleitman v. Superior Court, 74 Cal.App.4th 324 (1999); Epstein v. Hollywood Entertainment Dist. II Business Improvement District, 85 Cal.App.4th 152, (2000); Bell v. Vista Unified School Dist., 82 Cal.App.4th 672 (2000); Epstein v. Hollywood Entertainment Dist. II Business Improvement District, 87 Cal.App.4th 862, (2001); Duval v. Board of Trustees, 93 Cal.App.4th 902 (2001); H & H Real Estate Management & Development v. Sanitary District No. 1 of Marin County, 2001 WL 1559243; Windsor v. Sausalito School Dist., 2002 WL 399493; Reid v. Fontana Unified School Dist., 2002 WL 1278069; Shapiro v. San Diego City Council, 96 Cal.App.4th 904 (2002); Proud v. San Pasqual Union School Dist., 2002 WL 31174297; Amalgamated Transit Union, Local 265 v. Santa Clara Valley Transportation Authority, 2002 WL 31854947; Ad Hoc Committee for Clean Water v. Sonoma County Bd. Of Super's, 2002 WL 1454105; State ex rel. Clements v. Oechsle Intern. Advisors, LLC, 2003 WL 22026694; Los Angeles Times Communications v. Los Angeles Cty Bd of Supervisors, 112 Cal.App.4th 1313, (2003); Luman v. City Council of City of El Monte, 2003 WL 22476213; Dunlap v. City of Inglewood, 2003 WL 145592; Beverly Hills Government Ethics Committee v. City of Beverly Hills, 2003 WL 690649; Morrison v. Housing Authority of the City of Los Angeles Bd. Of Commrs., 107 Cal.App.4th 860 (2003); McKee v. Orange Unified School Dist., 110 Cal.App.4th 1310 (2003);

Horton v. San Diego Unified School Dist., 2003 WL 932375; People ex rel. Sabine v. Brabyn, 2003 WL 22049574;Tuolumne County Film Consortium, Inc. v. Tuolumne County Visitors Bureau, 2003 WL 1784510; Whitworth v. City of Sonoma, 2004 WL 2106606; Clark v. Willits Unified School Dist., 2004 WL 226289; Valladolid v. County of San Diego Bd. of Supervisors, 2004 WL 2699898; Bell v. Vista Unified School Dist., 2004 WL 966186; Chaffee v. San Francisco Library Com., 115 Cal.App.4th 461 (2004); Chaffee v. San Francisco Library Com'n, 2004 WL 473958; Chaffee v. San Francisco Public Library Com., 134 Cal.App.4th 109 (2005); McKee v. L.A. Interagency Met. Police Apprehension Crime Task Force, 134 Cal.App.4th 354 (2005); Harron v. Bonilla, 125 Cal.App.4th 738 (2005); County of Los Angeles v. Superior Court, 130 Cal.App.4th 1099 (2005); Taxpayers for Livable Communities v. City of Malibu, 126 Cal.App.4th 1123 (2005); Trancas Property Owners Assn. v. City of Malibu, 132 Cal.App.4th 1245 (2005); California First Amendment Coalition v. San Antonio Water Co., 2005 WL 19449; Boceta v. Inglewood Unified School Dist., 2005 WL 647336; Proe v. City of Auburn, 2005 WL 1101546; Coalition to Save Cambria and San Simeon v. Cambria Community Services District, 2005 WL 2496857; Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd.of Superv's., 129 Cal.App.4th 205 (2005); Britt v. Cupertino City Council, 2006 WL 3692710; Callahan v. Academic Senate of Long Beach City College, 2006 WL 1806539; Trancas Property Owners Assn. v. City of Malibu, 138 Cal.App.4th 172 (2006); Garmon v. Peralta Community College Dist., 2006 WL 208993; Wolfe v. City of Fremont, 144 Cal.App.4th 533 (2006); Mecca Family and Farmworker Service Center, Inc. v. County of Riverside, 2006 WL 351173; Western Mun. Water Dist. v. Atomic Investments, Inc., 2007 WL 1140370; Brethren In Christ Community Services of Ontario, Inc. v. San Bernardino Workforce Investment Bd., 2007 WL 431972; Brennan v. Anaheim Union High School Dist., 2007 WL 2498558; City of Palmdale v. Board of Directors of Antelope Valley Healthcare District, 2008 WL 204215; Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Board, 2008 WL 2791748; Californians Aware v. Orange Unified School Dist., 2008 WL 4078764; Galbiso v. Orosi Public Utility Dist., 167 Cal.App.4th 1063 (2008); Benitez v. Rio School Dist., 2006 WL 171519; Kolter v. Commission on Professional Competence of Los Angeles Unified School District, 170 Cal.App.4th 1346, (2009); Lynwood Redevelopment Agency v. Angeles Field Partners, 2009 WL 4690213; Smith v. Hanna, 2009 WL 1426800; Page v. MiraCosta Community College Dist., 180 Cal.App.4th 471 (2009); Hofman Ranch v. Yuba County Local Agency Formation Com., 172 Cal.App.4th 805 (2009); Rodriguez v. Harris, 2020 WL 2255625; Kent v. Lake Don PedroCommunity Services Dist., 2010 WL 1731555; Community Redevelopment Agency of City of Los Angeles v. Kramer Metals, 2010 WL 1633817; Canon Manor West Citizens Group v. City of Rohnert Park, 2010 WL 2806371; Galbiso v. Orosi Public Utility Dist., 182 Cal.App.4th 651 (2010); Californians Aware v. Joint Labor/Management Benefits C'ttee, 200 Cal.App.4th 972 (2011); Citizens for Open and Public Participation v. City of Montebello, 2011 WL 6849095; Brynjolfsson v. Los Angeles Unified School Dist., 2011 WL 817577; Brynjolfsson v. Los Angeles Unified School Dist. Personnel Com'n, 2011 WL 2044374; Los Rios Community College Dist. v. Superior Court, 2011 WL 2164553; McKee v. Tulare County Bd. of Sup'rs, 2011 WL 5184469; Galbiso v. Orosi Public Utility Dist., 2011 WL 2348733; First Amendment Coaltion v. Los Angele City Council, 2012 WL 593543; McKee v. San Francisco Bay Area Rapid Transit District Bd. of Dir's, 2012 WL 1114250; Squillacote v. Ridgecrest Charter

School, 2012 WL 1023570; Srago v. West Contra Costa Unified School Dist.,2012 WL 3137418; La Mirada Avenue Neighborhood Association of Hollywoo v. City of Los Angeles, 2012 WL 599582; Tri-City Healthcare District v. Sterling, 2012 WL 6128848; Bonny Doon Volunteer Fire Rescue, Inc. v. Santa Cruz County LAFCO, 2012 WL 2703024; Walnum v. City of Los Angeles, 2013 WL 6683986; Citizens for Open and Public Participation v. City of Montebello, 2013 WL 6786709; San Joaquin Raptor Rescue Center v. County of Merced, 216 Cal.App.4th 1167 (2013); Ortiz v. Yuba Community College District, 2013 WL 6804655; Golightly v. Molina, 229 Cal.App.4th 1501 (2014); Ontario Mountain Village Association v. City of Ontario, 2013 WL 6993057; Vietnamese-American Community of Northern California v. City of San Jose, 2014 WL 4198411; City of Petaluma v. County of Sonoma, 2014 WL 795657; Castaic Lake Water Agency v. Newhall County Water Dist., 238 Cal.App.4th 1196 (2015); Kent v. Lake Don Pedro Community Services Dist., 2015 WL 2329370; Fleming v. Capistrano Unified School District, 2015 WL 2329370; Cruz v. City of Culver City, 2 Cal. App.5th 239 (2016); Owen v. Castro Valley Sanitary Dist., 2016 WL 3597708; San Diegans for Open Government v. Poway Unified School District, 2018 WL 6629212; San Diegans for Open Government v. City of Oceanside, 4 Cal.App.5th 637 (2016); Center for Local Government Accountability v. City of San Diego, 247 Cal.App.4th 1146 (2016); Hartnett v. San Diego County Office of Education, 18 Cal.App.5th 510 (2017); Malibu Township Council, Inc. v. City Council of City of Malibu, 2017 WL 4510878; Sabey v. City of Pomona, 2017 WL 6491995; Hernandez v. Town of Apple Valley, 7 Cal.App.5th 194 (2017); Ricasa v. Office of Administrative Hearings, 31 Cal.App.5th 262 (2018); Ribakoff v. City of Long Beach, 27 Cal.App.5th 150 (2018); Citizens for Open and Public Participation V. City of Montebello, 2018 WL 636250; Preven v. City of Los Angeles, 32 Cal.App.5th 925 (2019); Los Angeles Times Communications LLC v. Southern California Regional Rail Authority, 2019 WL 4127260; Olson v. Hornbrook Community Services Dist., 33 Cal.App.5th 502 (2019); Tahoe Residents United for Safe Transit v. County of Placer, 2020 WL 967786; Fowler v. City of Lafayette, 45 Cal.App.5th 68 (2020), Martis Camp Community Assoc. v. County of Placer, 53 Cal.App.5th 569 (2020), New Livable California v. Association of Bay Area Governments, 59 Cal.App.5th 709 (2020), , Vue v. Fresno Unified. Sch. Dist., 2020 WL 3168557, Riddle v. Vallely, 2020 WL 5201221.

APPENDIX 2

Grand jury investigations held between fiscal years 2009-2010 through 2018-2019 that raised suspected Brown Act violations that warranted investigation and discussion and led to the formulation of findings or recommendations by the jury.

1. ALAMEDA COUNTY GRAND JURY, *Washington Hospital Health Care District – Brown Act/Conflicts of Interest*, 2013-2014 FINAL REPORT 29 (2014).

2. ALAMEDA COUNTY GRAND JURY, *Newark Unified School District Governance Issues*, 2014-2015 FINAL REPORT 33 (2015).

3. ALAMEDA COUNTY GRAND JURY, *Zone 7 Water Agency Purchase of Patterson Ranch*, 2014-2015 FINAL REPORT 73 (2015)

4. ALAMEDA COUNTY GRAND JURY, *Emery Unified School District Parcel Tax Measure*, 2014-2015 FINAL REPORT 105 (2015).

5. ALAMEDA COUNTY GRAND JURY, *Backroom Dealing in Developing City-Owned Properties in Oakland*, 2016-2017 FINAL REPORT 14 (2017).

6. ALPINE COUNTY GRAND JURY, *Brown Act Violations*: *Allegations against Alpine County School Board*, 2016-2017 FINAL REPORT 3 (2017).

7. ALPINE COUNTY GRAND JURY, *Brown Act Violations*: *Allegations against Alpine County Board of Supervisors*, 2016-2017 FINAL REPORT 3 (2017).

8. AMADOR COUNTY GRAND JURY, *Education Committee – Bad Behavior on the Board*, 2013-2014 FINAL REPORT 55 (2014).

9. AMADOR COUNTY GRAND JURY, *Amador Unified School District, Amador County Board of Education, School Board Investigation*, 2015-2016 FINAL REPORT 5 (2016).

10. AMADOR COUNTY GRAND JURY, *The Health and Human Services Building Lease: Rules Do Matter*, 2015-2016 SPECIAL INVESTIGATIVE REPORT (2016).

11. BUTTE COUNTY GRAND JURY, *Oroville Mosquito Abatement District*, 2009-2010 FINAL REPORT 189 (2010).

12. BUTTE COUNTY GRAND JURY, *City of Gridley,* 2010-2011 FINAL REPORT 45 (2011).

13. BUTTE COUNTY GRAND JURY, *City of Gridley,* 2011-2012 FINAL REPORT 55 (2012).

14. CALAVERAS COUNTY GRAND JURY, *Jenny Lind Fire Protection District*, 2010-2011 FINAL REPORT 13 (2011).

15. CALAVERAS COUNTY GRAND JURY, *Calaveras County Board of Supervisors*, 2011-2012 FINAL REPORT 21 (2012).

16. CALAVERAS COUNTY GRAND JURY, *Mokelumne Hill Fire Protection District*, 2012-2013 FINAL REPORT 27 (2013).

17. COLUSA COUNTY GRAND JURY, *City of Colusa*, 2012-2013 FINAL REPORT 4 (2013).

18. COLUSA COUNTY GRAND JURY, *City Committee Reports: City of Colusa*, 2013-2014 FINAL REPORT (2014).

19. CONTRA COSTA COUNTY GRAND JURY, *Report 1512: The Rodeo-Hercules Fire District Chief's Employment Contract -A Question of Transparency*, 2014-2015 GRAND JURY REPORTS 219 (2015).

20. CONTRA COSTA COUNTY GRAND JURY, *Report 1513: Ralph M. Brown Act*, 2014-2015 GRAND JURY REPORTS 228 (2015).

21. CONTRA COSTA COUNTY GRAND JURY, *Report 1514 West Contra Costa Unified School District: Bond Program and Citizens' Bond Oversight Committee – A Case Study in Stymied Oversight*, 2014-2015 GRAND JURY REPORTS 237 (2015).

22. DEL NORTE COUNTY GRAND JURY, *Klamath Fire Protection District*, 2012-2013 FINAL REPORT 35 (2013).

23. DEL NORTE COUNTY GRAND JURY, *Klamath Fire Protection District: Klamath Revisited*, 2013-2014 FINAL REPORT 32 (2014).

24. EL DORADO COUNTY GRAND JURY, *City of South Lake Tahoe City Council*, 2009-2010 FINAL REPORT 17 (2010).

25. EL DORADO COUNTY GRAND JURY, *A School Bell Rings Off-Key*, 2014-2015 FINAL REPORT 30 (2015).

26. FRESNO COUNTY GRAND JURY, *Political Turmoil Threatens Sanger's Recovery*, 2014-2015 ANNUAL, REPORT Report #2 (2015).

27. FRESNO COUNTY GRAND JURY, *Selma Unified Changes Come at a Steep Price*, 2015-2016 ANNUAL REPORT, Report #2 (2016).

28. HUMBOLDT COUNTY GRAND JURY, *Schools, Communication and the Brown Act*, 2014-2015 FINAL REPORT 4-1 (2015).

29. IMPERIAL COUNTY GRAND JURY, *Seeley County Water District* 2011-2012 FINAL REPORT 40 (2012).

30. KERN COUNTY GRAND JURY, *City of Taft Brown Act Violation* 2009-2010 FINAL REPORT 40 (2010).

31. KERN COUNTY GRAND JURY, *City of Ridgecrest Brown Act Violation Complaints,* 2010-2011 FINAL REPORT (2011).

32., KERN COUNTY GRAND JURY, *Lebec County Water District Board of Directors,* 2011-2012 FINAL REPORT 256 (2012).

33. KERN COUNTY GRAND JURY, *Golden Hills Community Service District,* 2015-2016 FINAL REPORT 94 (2016).

34. KINGS COUNTY GRAND JURY, *Corcoran City Council,* 2011-2012 FINAL REPORT 21 (2012).

35. KINGS COUNTY GRAND JURY, *Home Garden Community Services District and Home Garden Coalition*,, 2013-2014 FINAL REPORT 5 (2014).

36. KINGS COUNTY GRAND JURY, *Home Garden Community Services District and Home Garden Coalition*,, 2014-2015 FINAL REPORT 149 (2015).

37. KINGS COUNTY GRAND JURY, *Hanford City Council – Alleged Brown Act Violations,* 2015-2016 FINAL REPORT 133 (2016).

38. LASSEN COUNTY GRAND JURY, *Lassen County Board of Supervisors – Ralph M. Brown Act - Emergency Agenda Item,* 2013-2014 FINAL REPORT 30 (2014).

39. LASSEN COUNTY GRAND JURY, *Lassen County Board of Supervisors – Ralph M. Brown Act - Personnel* 2013-2014 FINAL REPORT 32 (2014).

40. MARIPOSA COUNTY GRAND JURY, *John C. Fremont Healthcare District Board of Directors*, 2015-2016 FINAL REPORT 19 (2016).

41. MENDOCINO COUNTY GRAND JURY, *Board of Supervisors – Standing Committees: "Public Access – Public Interest".*, 2012-2013 FINAL REPORT (2013).

42. MONO COUNTY GRAND JURY, *Town of Mammoth Lakes Proposed Materials Recovery Facility.*, 2013-2014 FINAL REPORT 12 (2014).

43. NEVADA COUNTY GRAND JURY, *Finance and Management Committee: A Better Board Member*, 2015-2016 FINAL REPORT (2016).

44. PLACER COUNTY GRAND JURY, *Special Fire Districts: Open-Meeting and Ethics Laws Compliance*, 2013-2014 FINAL REPORT 117 (2014).

45. PLACER COUNTY GRAND JURY, *Eureka Union School District School Lunch Program Contract: Brown Act Open Meeting Concerns*, 2014-2015 FINAL REPORT 21 (2015).

46. PLUMAS COUNTY GRAND JURY, *Who's in Charge Here? Chester Public Utility District*, 2012-2013 REPORT 36 (2013).

47. SACRAMENTO COUNTY GRAND JURY, *The Ralph M. Brown Act … Not to be Taken Lightly*, 2014-2015 FINAL REPORT 40 (2015).

48. SAN JOAQUIN COUNTY GRAND JURY, *San Joaquin Delta Community College – Brown Act Violations,* 2009-2010 FINAL REPORT 61 (2010).

49. SAN JOAQUIN COUNTY GRAND JURY, *Oak View Unified Elementary School District,* 2010-2011 FINAL REPORT 18 (2011).

50. SAN JOAQUIN COUNTY GRAND JURY, *District Board Ignores the Peoples' Right to Be Informed,* 2012-2013 FINAL REPORT 138 (2013).

51. SAN JOAQUIN COUNTY GRAND JURY, *Stockton City Council and the Brown Act,* 2013-2014 FINAL REPORT 55 (2014).

52. *Do they know what they approve?*, SAN JOAQUIN COUNTY GRAND JURY, *Agency Approval of Responses to Grand Jury Reports: Do they know what they approve?*„ 2013-2014 FINAL REPORT 87 (2014).

53. SANTA BARBARA COUNTY GRAND JURY, *The Brown Act: Closed or Open*? *The Cuyama Joint Unified School District*, 2011-2012 FINAL REPORT (2012).

54. SANTA CLARA COUNTY GRAND JURY, *Burbank Revisited: A Faltering District Shows Little Improvement*, 2010-2011 FINAL REPORT (2011).

55. SANTA CLARA COUNTY GRAND JURY, *Alum Rock School District Board: Time to Put 'Trust' Back In Trustee*, 2017-2018 FINAL REPORT (2018).

56. SANTA CRUZ COUNTY GRAND JURY, *Soquel Union Elementary School Board – Full Disclosure is Not Optional*, 2015-2016 FINAL REPORT 39 (2016).

57. STANISLAUS COUNTY GRAND JURY, *Oak Valley Hospital District*, 2010-2011 FINAL REPORT (2011).

58. STANISLAUS COUNTY GRAND JURY, *City of Patterson, Part IV: Council Member B*, 2010-2011 FINAL REPORT (2011).

59. TRINITY COUNTY GRAND JURY, *Community Development Block Grant Loans: Money, Money Nowhere … . The Bucks Stop Here*, 2015-2016 FINAL REPORT (2016).

60. TRINITY COUNTY GRAND JURY, *Board of Supervisors: Keeping the Public's Business Public*, 2016-2017 FINAL REPORT (2017).

61. TULARE COUNTY GRAND JURY, *Transparency – Open Meeting Law*, 2014-2015 FINAL REPORT 35 (2015).

62. TUOLUMNE COUNTY GRAND JURY, *Tuolumne Utilities District*, 2013-2014 FINAL REPORT 57 (2014).

63. TUOLUMNE COUNTY GRAND JURY, *Ralph M. Brown Act Committee Report*, 2015-2016 FINAL REPORT 23 (2016).

64. YOLO COUNTY GRAND JURY, *Winters Joint Unified School District Board of Trustees and Administration Deportment*, 2010-2011 FINAL REPORT 20 (2011).

65. YOLO COUNTY GRAND JURY, *Esparto Community Services District—Brown Act and Ethics Policy Violations*, 2010-2011 FINAL REPORT 28 (2011).