



# LEGAL DEFENSE TRUST

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## LEARNING POINTS



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# PROHIBITION ON GRAND JURY REVIEW OF POLICE SHOOTINGS HELD UNCONSTITUTIONAL

*People ex rel. Pierson v. Superior Court*, C081603, January 10, 2017

Court of Appeal, Third Appellate District

By Michael P. Stone Esq.

In our January 2016 Training Bulletin, we reported that under newly enacted legislation, (SB 277), grand juries would no longer investigate or indict cases involving police shootings or the use of deadly force, because Penal Code §§ 917(b) and 919(c) were amended to bar grand juries from indicting or inquiring into cases involving a police officer's use of force that led to the death of someone he or she had detained or arrested.

Grand juries may once again investigate police shootings, because in a case brought by the District Attorney of El Dorado County, the Court of Appeal has found that the amendments to Penal Code § 917 are unconstitutional. The District Attorney had convened a grand jury and issued subpoenas to inquire into a peace officer's fatal shooting of a suspect. The Police Association and the Police Chief moved to quash the subpoenas and to dismiss the grand jury. The Superior Court granted the motions pursuant to the directives of Penal Code sections 917 and 919.

The District Attorney filed a petition seeking a writ of mandate to compel the Superior Court to vacate its orders. The District Attorney contended that the Legislature had no authority by statute to eliminate the constitutional authority of the grand jury to investigate and charge felonies by indictment.

The provision for a criminal grand jury was contained in California's original Constitution of 1849, and the Constitution of 1879 continued the institution of the grand jury without change. The amendments to Penal Code sections 917 and 919 were the first legislative effort in 167 years to constrict the grand jury's authority under the Constitution to exercise its power of indictment. These legislative amendments were supported by defense lawyers and civil rights groups, and followed decisions by grand juries not to indict police officers in highly publicized cases in Missouri and New York. The author of the legislation explained that "the outcome of the criminal grand jury proceedings can seem unfair or

inexplicable” to the general public because “[t]he criminal grand jury lacks transparency” and “[t]ransparency and accountability are key to establishing and keeping the [public trust].”

The Court of Appeal noted that the public has an interest in the investigation of a peace officer’s use of lethal force. The Court concluded though, that “the legislative object, however salutary, cannot be accomplished in this manner; it intrudes on the constitutional grant of authority to the criminal grand jury to issue an indictment after inquiry, which taken to its logical conclusion would allow the Legislature by statute to abrogate indictments entirely for all classes of offenses. The Legislature instead must seek a constitutional amendment to accomplish the same end as section 917, or otherwise act to amend grand jury procedures in lethal force cases to achieve its objective of greater ‘transparency’ and accountability.”

Stay Safe!

*Michael P. Stone* is the founder and principal partner of Stone Busailah, LLP. His career in police and the law spans 49 years. He has been defending law enforcement for 35 years in federal and state, criminal, civil, administrative and appellate litigation.