

Take The Law Into Your Own Hands

The Grand Jury in America

By Dr. Jonathan Burgess, D.EM.

Introduction

I am a person who likes to fix things.

The key to fixing things is to find out exactly what is broken, and then apply the proper tool for the job.

There are many things about modern society that are "broken" and I believe the "tool" that is needed has been passed down to us through a thousand years of tradition: the Grand Jury.

Historically, Grand Juries have served as a weapon against corruption. A grand example was The Tea Pot Dome Scandal that brought down the Harding Administration. Criminals had created a safe haven surrounded by judges and politicians who had been paid off to protect the criminals while they stole half of the tax revenues of New York City! This criminal empire in the Empire State was dismantled by the diligent work of a Grand Jury when all other methods failed. Other examples abound of Grand Juries destroying corruption due to their unique and fearsome powers. Grand Juries were also used in the 1950's to fight Communism. I believe Grand Juries fell into disuse as judges, prosecutors and politicians systematically usurped power from the people.

The following book reveals that legal professionals have worked hard to isolate the Grand Jury from the people. An example is that when I inquired at the Federal Courthouse in Portland,

Oregon, I was told that I had to get written permission from the Chief Judge to even view a copy of the current Grand Jury Handbook! A search of libraries and law libraries revealed a lack of access to this important document or its prior editions. So I decided to reprint what I found when I was finally able to acquire copies.

Legal professionals and criminals and conspirators of all sorts fear the power of the Grand Jury. The very heart of the law is the Grand Jury and yet the secret nature of the Grand Jury's proceedings has helped to hide the heart of the law from the people. This book is meant to give the people access to the tool they need most to tangibly express their concern and moral outrage over the pervasive corruption that seems to be almost everywhere today. This book is designed to give the people physical access to the Sword and Shield of Justice, the Grand Jury.

A mighty tool, indeed!

Sincerely,

Dr. Jonathan Burgess DPM

7/16/97

TABLE OF CONTENTS

Section I	The Pre-1993 Handbook
Section II	The Current Grand Jury Handbook
Section III	A Comparison of Sections I and II
Section IV	A Current State Grand Jury Handbook
Section V	The Missing 13th Amendment
Section VI	How to Clean House
Section VII	Bibliography, Credits & Ordering

Section I
The Pre-1993 Handbook

FEDERAL GRAND JURY

Handbook

Prepared
Under the Auspices of the
SECTION OF JUDICIAL ADMINISTRATION
of the
AMERICAN BAR ASSOCIATION

TABLE OF CONTENTS

	Page
Preface.....	5
To the Grand Juror	7
I. Importance of the Grand Jury.....	7
II. Origin of the Grand Jury	9
III. Nature of the Grand Jury	9
IV Organization, Oath, Officers	12
V Procedure	
(a) Quorum	13
(b) Hearing Witnesses	14
(c) Determination to Indict or Dismiss	15
VI. The United States Attorney	16
VII. Secrecy	17
VIII. Protection of Grand Jurors.....	17
IX. Practical Suggestions	18
Appendix	21

PREFACE

Clearly a "Government of the People, By the People, and For the People," as Abraham Lincoln tersely described the American form of government, requires the active participation of every citizen in at least two important civic duties, first, to exercise the voting privilege, second, to serve on juries. As Harlan Fiske Stone, late Chief Justice of the United States Supreme Court, said:

"Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice between man and man and between government and the individual."

In time of peace no citizen can perform a higher duty than that of Grand Jury service. No body of citizens exercises public functions more vital to the administration of law and order. But, of course, when a citizen first serves as a grand juror, he has no clear idea of either the principles of law which control him in his actions as a grand juror, or indeed of the general nature of his functions and as to how he may best perform them. The court itself will be his sole authority, in its charge to the Grand Jury and in later instructions, as to these governing principles of law. This Handbook merely attempts to give the grand juror an understanding of the general nature of his functions, with some practical suggestions as to how best he can carry them out.

The Handbook has been prepared under the auspices of the Section of Judicial Administration of the American Bar Association by the Federal judges named below. A separate Handbook for state grand jurors has also been prepared by a similar committee of state judges. After its original drafting and repeated revision by the judges listed below, a copy of this Handbook was placed in the hands of every Federal District and Circuit judge throughout the

PREFACE

United States, with the request that he submit his suggestions for its improvement. These suggestions, coming from all these Federal judges were then considered by the committee in charge, and the Handbook was revised in many particulars.

The Handbook will not be distributed directly to grand jurors. It is simply intended to aid Federal judges in providing Handbooks themselves for the information of grand jurors in their own jurisdictions. However, since, after revision by these judges, this Handbook may be used for distribution by them to their grand jurors, it is not written in technical legal language.

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FEDERAL GRAND JURY HANDBOOK

TO THE GRAND JUROR:

This handbook is intended for citizens like yourself who have been selected as members of the Federal Grand Jury but have not yet commenced their duties. This Handbook does not purport to state the principles of law that govern you as a Grand Juror. Its purpose is simply to give you a clearer understanding of the general nature of your functions, with some practical suggestions in that regard. You should go to your oath and to the Court itself for the sole authoritative statement of your powers, functions and duties as a Grand Juror. Moreover, the powers and duties of a Federal Grand Jury differ in many respects from those of a State Grand Jury. This is because the source of authority of the Federal Grand Jury is the Federal Constitution, plus the Federal laws and rules of the Federal Courts, while the source of authority of the State Grand Jury is the Constitution of the particular state where the Grand Jury sits, plus the laws and rules of court of that state. Thus the Federal Grand Jury has nothing to do with State crimes, and the State Grand Jury has nothing to do with Federal crimes, except as the same physical act may sometimes involve a crime of both kinds.

I. IMPORTANCE OF THE GRAND JURY

The powers and functions of Grand Juries differ widely from those of trial or petit juries. The petit jury actually tries the case and renders the verdict after hearing both sides. The Grand Jury does not try the case. The Grand Jury does not hear both sides. Its function is simply to hear witnesses as to a charge of crime by the federal government, and to determine whether or not the person or persons

FEDERAL GRAND JURY HANDBOOK

so charged should be brought to trial on such charges. One against whom a charge of Federal crime has been brought can waive his right to have the matter placed before a Grand Jury for decision before he can be tried on such charge. In several foreign countries persons suspected of a felony may be put on trial at the will of the government, or its prosecuting officer, without the added protection of having a body of citizens, such as the Grand Jury, finally decide whether such person should or should not be brought to trial.

The Grand Jury accuses those charged with crime by a formal written accusation called an indictment, which is submitted by the United States Attorney and voted by the Grand Jury when evidence is found to sustain the charge. In the unusual situation when an accusation is initiated by the Grand Jury itself, as a result of their own knowledge or observation or upon information from others, it is called a presentment or report to the court. A presentment contains the facts and circumstances which constitute the offense and is given to the court. A presentment alone cannot form the basis of a prosecution. It must be followed by an indictment. Thus a presentment is a direction that a form of indictment be submitted to the Grand Jury for action.¹ However, formal Federal presentments have now generally fallen into disuse.

The Grand Jury is both a sword and a shield of Justice— a sword because it is the terror of criminals, a shield because it is the protection of the innocent against unjust prosecution. But these important powers obviously create equally grave responsibilities to see that such powers are in no wise perverted or abused. With its almost limitless powers, a Grand Jury might, unless motivated by the highest sense of justice, find indictments not warranted by the evidence and thus become a source of oppression to our citizens. On the other hand, a Grand Jury might dismiss charges against those who should be proceeded against. The importance

1. See Note 1 in Appendix, page 21.

FEDERAL GRAND JURY HANDBOOK

of its powers is emphasized by the fact that it is a completely independent body, answerable to no one, save, under certain circumstances, the Court of which it is an arm.

II. ORIGIN OF GRAND JURY

Not only in theory, but in actual historical fact, has the importance of the Grand Jury been demonstrated. It had its origin more than seven centuries ago in England, from which, in large part, this country inherited its legal system. It was recognized in Magna Carta, granted by King John of England at the demand of the people in 1215 AD., and some say its origin was even earlier. This power of the Grand Jury to protect the citizens from the despotic abuse of power has been repeatedly exerted not only in England, but in this country, and even before the Declaration of Independence. For instance, in New York City, in 1735, a colonial governor demanded that a Grand Jury find a formal criminal charge against the editor of a newspaper called the Weekly Journal, who had held up to scorn certain of the deeds of the royal governor. The Grand Jury denied this demand, and refused to indict.

However, these are the exceptions which prove the rule. As a rule, the Grand Jury is the source of indictments presented to it by the government, which, after approval by the Grand Jury, authorize the prosecution of those accused of crime. Such is the importance of the Grand Jury in its control of the initiation of prosecution for serious crime, as distinguished from petty offenses, that the authority of the Grand Jury is recognized in the Constitution of the United States and in the Constitution of most of the states of the Union.

III. NATURE OF THE GRAND JURY

The accusing Body as to Serious Crimes

As above indicated the Federal Grand Jury is the body which has the right to determine whether a person shall be tried for serious federal crime, unless that person himself

FEDERAL GRAND JURY HANDBOOK

waives or gives up that right. This means that no one can be prosecuted for serious federal crime except by vote of the Grand Jury. Thus the citizens themselves, by this representative body of Grand Jurors, hold in their own hand the control of the federal maintenance of law and order throughout the country, through prosecution for crime. The importance of this power cannot be overestimated.

The above does not apply to minor crimes which may be initiated by the United States Attorney, without action by the Grand Jury, through a proceeding called an information signed by the United States Attorney. Indeed, were it not so, the Grand Jury might be so submerged with complaints that it could not perform its more important duties.

In performing its duties, the Grand Jury should bear in mind that it does not finally try the case. It only hears the evidence presented by the United States Attorney. Then the Grand Jury determines whether or not the evidence presented, without considering the defense, justifies an indictment, which is the formal charge of crime. If the evidence is sufficient, it votes an indictment, a "true bill," to be formally drafted by the United States Attorney. If not, the Grand Jury will vote "not a true bill."

Charges of crime may be brought to your attention in several ways: (1) by the Court, (2) by the United States Attorney, (3) from your own personal knowledge or from matters properly brought to your personal attention. In all these cases, the Grand Jury should have testimony or other evidence presented regarding a charge before taking action.

The bulk of your work will probably be concerned with charges brought to your attention by the Court or the United States Attorney. Here the defendants will probably have been held preliminarily on a charge by a United States Commissioner for action by the Grand Jury. The defendants will, therefore, either have given bail or be in custody, in default of bail, awaiting your action. Your action as to them should therefore be reasonably prompt and result in voting either for or against an indictment.

FEDERAL GRAND JURY HANDBOOK

On the other hand, as to matters brought to your attention otherwise, probably no form of indictment will have been drawn in advance by the United States Attorney. Under such circumstances, it would be wise to consult with the United States Attorney or the Court in advance of undertaking a formal investigation by the Grand Jury. They will have to be consulted in any event in order to obtain the aid of the authorities in drafting the proper form of indictment, if the Grand Jury decides that a person should have a criminal proceeding brought against him.

Thus you may investigate any situation to see if a federal crime has been committed, whether that situation is brought to your attention officially or unofficially, but your investigation must be devoted solely to ascertaining if there is probable cause to believe that a Federal crime has been committed and to reporting accordingly either by indictment or by informal presentment to be followed by indictment. You thus see that a Federal Grand Jury does not have the authority, which State Grand Juries may have, to investigate situations as to the conduct of public officials or institutions which they believe are subject to mere criticism but which do not amount to the commission of crime.² In addition, you must bear in mind that you can take action only upon federal crimes that have occurred or are triable within your district.

In order that the Grand Jurors may not be subjected to partisan secret influences, no one has the right to approach an individual member of the Grand Jury in order to persuade him that a certain indictment should or should not be found. Any such individual should be referred to the United States Attorney, in order that he may be heard by the Grand Jury as a whole. On the other hand, a citizen is at liberty to suggest to a member of the Grand Jury that a certain situation should be investigated by it to see if a federal crime has been committed.

2. See Note 2 in Appendix, page 21.

FEDERAL GRAND JURY HANDBOOK

You will further bear in mind that as a Grand Juror you are a public official with the duty to protect the public by enforcing the law of the land. Thus, even if perchance you should think a certain law unduly harsh, that should not influence your judgment in carrying out your duties as a Grand Juror. As a citizen, you have the right to endeavor to change the law. As a public official and Grand Juror, it is your duty to enforce the law as it exists.

IV ORGANIZATION, OATH, OFFICERS

When you report for duty as a Grand Juror, the Presiding Judge will consider such excuses as may be presented. But, because of the great importance of your duty as a member of the Grand Jury and because it is a distinct honor to serve as a member of the Grand Jury, obviously you will not permit anything but a real emergency to stand in the way of your performing this outstanding civic duty.

When you report with the other members of your Grand Jury, you will be conducted to Court, where your Foreman— your presiding officer—and your Deputy Foreman will be selected. The Court will have them and you sworn in, under an oath which itself states your important powers and responsibilities. The oath to the Grand Jurors may be as follows:

"You do solemnly swear that, as Grand Jurors, you shall diligently inquire and true presentment make of all such matters, articles and things as shall be given to you in charge, and of all such other matters and things as shall come to your own knowledge touching this present service. The counsel of the United States, your fellows and your own, you shall keep secret. You shall present no one from envy, hatred or malice. Neither shall you leave anyone unrepresented from fear, favor or affection, for reward, gain or the

FEDERAL GRAND JURY HANDBOOK

hope thereof, but shall present all things truly as they shall come to your knowledge. So help you God."³

The oath may be administered separately to the Foreman and the Deputy Foreman and to the remaining Grand Jurors.

After you have been sworn, the Presiding Judge will advise you formally, and in greater detail, as to how to conduct these duties and the grave responsibilities that are yours. This address is called the "Charge to the Grand Jury." This charge by the Court, plus such other instructions as may be given you by the Court, are your controlling guide in your performance of your duties as a member of the Grand Jury. The United States Attorney will give you his advice, as a skilled official, as to how your duties should be performed. But, in the event of question, the Court will rule authoritatively on these matters, as before noted.

Upon receiving from the Court its "Charge to the Grand Jury," you will become a part of the Grand Jury. You will then be escorted to the Grand Jury Room, where you will prepare to hear the testimony and see documentary evidence, as presented by the United States Attorney, in the cases to be brought to your attention.

V PROCEDURE

(a) Quorum

Of the total membership of twenty-three on a Grand Jury, a quorum of sixteen must always be present for the transaction of business. If less than this quorum exists, even for a moment, the proceedings of the Grand Jury must stop. Hence it is important that any Grand Juror who finds that an emergency interferes with his presence at a scheduled meeting of the Grand Jury should advise the Foreman of the Grand Jury promptly, in order to see if this

3. See Note 3 in Appendix, page 21.

FEDERAL GRAND JURY HANDBOOK

will prevent the Grand Jury from acting at all at that meeting. Again, even if a quorum be present, at least twelve must concur to find an indictment.

(b) Hearing Witnesses

Most of the work of the Grand Jury is concerned with hearing witnesses and determining the sufficiency of the evidence, in order to determine whether, considering that testimony alone without regard to defense testimony, an indictment is justified. When so proceeding, the United States Attorney will present and explain the charge to the Grand Jury and advise as to the witnesses to be called. The Grand Jury itself may call additional witnesses.

Those witnesses will be called one by one and sworn to tell the truth by the Foreman in a dignified, deliberate manner, indicative of the solemnity of the occasion. The witness will ordinarily be questioned first by the United States Attorney, then by the Foreman, and then, if desired, by other members of the Grand Jury, each of whom is free to ask all proper questions of any witness. But, as to what is a proper question, the advice of the United States Attorney should be requested, and, in the event of doubt, a ruling may be obtained from the Court.

A stenographer may be present to take down the proceedings, as may an interpreter, if needed. But, outside of the stenographer, the interpreter, the United States Attorney and the witness, no other person, save the Grand Jury itself, should be present.

Should a witness, when brought before the Grand Jury to testify, refuse to answer questions, this refusal must be carefully recorded. Then, accompanied by the United States Attorney, the Grand Jury may bring the matter before the Court, with a copy of the record, in order to obtain the ruling of the Court as to whether the answer may be compelled or not. This is because of the technical questions of law which are involved.

You will note from the above that the defendant named in the criminal charge has not been heard as a witness, nor have any witnesses for him probably been called. This is because, as stated above, the Grand Jury does not try the merits of the case, but only the sufficiency of the evidence supporting the charge. However, the Grand Jury has the right to give the defendant the opportunity to appear before it. If the defendant is given this opportunity, and appears, he cannot be forced to testify, because of the provision in the constitution against self-incrimination. Indeed, if the Grand Jury attempts to force him to testify, the indictment of the defendant may be nullified. Further, even if the defendant is willing to testify voluntarily, in order that it may be clear that he is testifying voluntarily, he should first be warned of his right not to testify, and should then sign a formal waiver before he does so testify. This last is his agreement not to rely upon his rights and to be prosecuted even though he testifies. The Grand Jury should be satisfied that he understands what he is doing.

Forcing a witness to testify or giving the defendant an opportunity to testify raises complicated legal questions. The advice of the United States Attorney and, if necessary, the authoritative ruling of the Court thereon should always be sought, if any such question arises. Further legal questions may arise as to whether certain evidence is proper. Here you must normally be guided by your legal adviser, the United States Attorney.⁴

Finally, bear in mind that neither a defendant nor an ordinary witness, when appearing before a Grand Jury, is entitled to have his counsel present in the Grand Jury Room. To do so would be unlawful.

(c) Determination to Indict or Dismiss

When the hearing of the witnesses on a certain charge is closed, all persons present, other than the Grand Jury, should leave the room. This is because only members of

4. See Note 4 in Appendix, page 21.

FEDERAL GRAND JURY HANDBOOK

the Grand Jury can be present when the Grand Jury deliberates or votes on a charge. If this is not done, an indictment may be nullified.

When the Grand Jury has heard all necessary or available witnesses, and all persons, except the Grand Jury have left the room, the Foreman will ask the Grand Jury to discuss and vote upon the question of whether a True Bill should be found on the charge. Every Grand Juror now has the right to comment on the evidence and his view of the matter. Thereafter, and only after each member has been given the opportunity to be heard the vote will be taken. No indictment can be found unless twelve members concur.

VI. THE UNITED STATES ATTORNEY

The United States Attorney generally acts through one or more Assistant United States Attorneys, who perform the functions incumbent upon the United States Attorney. Where the expression "United States Attorney" is used, it applies to any assistant or other official then performing the functions of the United States Attorney in relation to a Grand Jury.

The United States Attorney will be actively engaged before the Grand Jury in presenting one by one the formal charges and in calling the witnesses to support them. Since he is a public official, usually of experience in this work and of both intelligence and sincerity, he will naturally be the constant legal adviser to the Grand Jury. However, the best of advisers are sometimes in error. Thus, if a difference of opinion arises between him and the Grand Jury, the matter should be brought before the Presiding Judge for his ruling.

Finally, you will remember that neither the United States Attorney nor any of his assistants nor anyone else may be permitted to be present while the Grand Jury is actually deliberating or voting on an indictment or presentment. If this occurs, an indictment may be nullified.

FEDERAL GRAND JURY HANDBOOK

VII. SECRECY

Absolute secrecy concerning proceedings of the Grand Jury is enjoined by the obligation of your oath and the public interest.

Secrecy as to all Grand Jury proceedings, including not only action upon an indictment or presentment, but the fact that any such matter was considered or any witnesses called, is of the utmost importance. Thus only can the Grand Jurors themselves be protected from being subjected to pressure by persons who may be involved in the action of the Grand Jury. Thus only can persons be prevented from escaping while an indictment against them is under consideration. Thus only can witnesses before the Grand Jury be prevented from being tampered with or intimidated before they testify at the trial. Thus only can such witnesses be encouraged to give to the Grand Jury information as to the commission of crime. Thus only can an innocent person who has been improperly subjected to a charge, where no indictment has been returned, be saved the disgrace attendant upon the making of such a charge. To achieve the above protection for the Grand Jury, for the individuals involved, including the witnesses, and for the citizens at large, the pledge of secrecy is paramount and permanent.

No more need be said as to the importance of a Grand Juror's not communicating to his family, to his friends, to the press, to anyone, that which transpires in the Grand Jury Room. The only time he may do so is when, after a full hearing of all concerned, the Court itself orders such disclosure, to do justice.⁵

VIII. PROTECTION OF GRAND JURORS

The secrecy to which Grand Jurors are sworn is of itself one of the major sources of protection of the members of the Grand Jury.

5. See Note 5 in Appendix, page 22.

FEDERAL GRAND JURY HANDBOOK

The Grand Jury is further protected by being a completely independent body, answerable to no one save, on occasion, the Court itself. No inquiry may be made to learn what a Grand Juror said or how he voted. The law gives a Grand Juror practically complete immunity for his official acts—acts within the authority of the Grand Jury— regardless, for instance, of the ultimate result on an indictment returned by the Grand Jury. With this complete protection for their official acts, it is obviously vital that our Grand Jurors should be citizens of unquestioned integrity and of high character.

IX. PRACTICAL SUGGESTIONS

Attend the sessions of the Grand Jury regularly. Not only each of your fellow-jurors, but the public is counting on you to do your job well.

Pay close attention to the testimony given and the evidence presented. The reputation or freedom of someone depends upon what is being told.

Be courteous to the witnesses and to your fellow-jurors. Don't try to monopolize the hearing or the deliberations.

In fixing the time and place of your meeting, consider the convenience of the public and the witnesses, as well as of yourselves and the United States Attorney.

The foreman should administer the oath to witnesses in an impressive manner in order that the witnesses will realize that the hearing is a serious judicial proceeding and that they are required to tell the truth.

Wait until the United States Attorney has finished before asking questions of a witness. It often happens that the evidence you are seeking will be brought out.

Listen to the evidence and the opinions of your fellow-jurors, but don't be a rubber stamp. Be independent but not obstinate.

FEDERAL GRAND JURY HANDBOOK

All jurors have an equal voice in determining upon an indictment. Each juror has the right to state his reasons for his views.

Be absolutely fair—you are acting as a judge. Because of the secrecy of the hearing, no one else may inquire into what you have done.

Express your opinion, but don't be dictatorial. Every juror has a right to his own opinion. You may try to persuade another juror, but do not try to force him to change his mind and agree with you. He might be right.

Don't keep silent when the case is under discussion and first talk about it after a vote has been taken.

A reckless Grand Jury can do as much harm to the community and to law enforcement as a weak Grand Jury.

Don't investigate matters out of the province of the Grand Jury, or merely because someone suggested an investigation, without sufficient information or merely because it would be an interesting matter to investigate.

Don't discuss cases with your fellow-jurors outside of the jury room.

It is of great importance that your attendance be regular and on time. If you are unable to attend the session or desire to be excused, ask permission. The unexpected lack of a quorum causes a great loss of time and money to the individual jurors as well as to the authorities and witnesses.

When considering undertaking any special investigation, it is wise to consult the United States Attorney beforehand, so that he may arrange routine business accordingly and advise you as to other matters bearing upon such an investigation.

Each juror has a duty and responsibility equal to yours. Each juror is entitled to be satisfied with the evidence before being called upon to vote. Although your mind may

FEDERAL GRAND JURY HANDBOOK

be made up, if others wish to pursue the matter further, you have no right to dismiss the witness or shut off proper discussion.

Your membership on the Grand Jury is a high honor. You are among a relatively small number of citizens of your community who are chosen to serve on the Grand Jury. This should therefore mean devoted, responsible participation in performance of Grand Jury duty.

APPENDIX

This Appendix is added solely for the understanding of the federal judges who decide to use it and is not to be made a part of the Handbook when distributed to the Grand Jurors.

The Notes set forth below bear upon certain of the technical provisions of law applicable to Federal Grand Juries throughout the United States, but are not intended to be all-inclusive. These Notes are therefore of interest to the courts and not to the Grand Jurors.

Note 1. See *Hale v. Henkel*, 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652 (1906); *Blair v. United States*, 250 U.S. 273, 280, 39 S.Ct. 468, 63 L.Ed. 979 (1919).

Note 2. Federal Grand Juries, as distinguished from State Grand Juries, do not have the power of the latter to investigate public institutions or the actions of public officials, where they have no reason to believe that a crime has been committed. Compare *United States v. Smyth*, 104 F.Supp. 283 (D.C.N. D.Cal.1952) and *Application of United Electrical Workers*, 111 F.Supp. 858 (D.C.S.D.N.Y.1953) with *State of Florida ex rel. Brautigam v. Interim Report of Grand Jury*, 93 So.2d 99 (Fla.1957). These cases contain carefully considered statements of the principles governing federal and state Grand Juries.

Note 3. See *Hale v. Henkel*, 201 U.S. 43, 60, 26 S.Ct. 370, 50 L.Ed. 652 (1906).

Note 4. It has been held that hearsay evidence is admissible before a Federal Grand Jury, at least where the production of direct evidence would cause undue expense and delay. In the same case, it was held that, to base an indictment upon such evidence would not under such circumstances be a violation of the Fifth Amendment. Indictments

FEDERAL GRAND JURY HANDBOOK

therefore may not be successfully challenged on the ground that they are not supported by adequate or competent evidence. *Costello v. United States*, 350 U.S. 359, 76 S.Ct. 406, 100 L.Ed 397 (1956).

Note 5. See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 234, 60 S.Ct. 811, 84 L.Ed. 1129 (1940); *Goodman v. United States*, 9 Cir., 108 F.2d 516 (1939); *United States v. Smyth*, 104 F.Supp. 283 (D.C.N.D.Cal.1952). See also *United States v. Procter & Gamble Company*, 356 U.S. 677, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958).

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INQUIRIES

Further inquiries in regard to this Handbook may be made to:

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Section II
The Current Grand Jury Handbook



HANDBOOK
FOR
FEDERAL GRAND
JURORS

HB - 101

HANDBOOK FOR FEDERAL GRAND JURORS

Prepared for the use of grand jurors serving in the United States district courts under the supervision of the Judicial Conference of the United States. Published by the Administrative Office of the United States Courts, Washington, D.C. 20544.

HANDBOOK FOR FEDERAL GRAND JURORS

CONTENTS

PURPOSE OF THIS HANDBOOK	1
ORIGIN AND HISTORY OF THE GRAND JURY	1
NATURE OF THE GRAND JURY.....	3
(1) The Grand Jury's Tasks	4
(2) Investigation	4
SELECTION OF GRAND JURORS.....	5
ORGANIZATION, OATH, AND OFFICERS OF THE FEDERAL GRAND JURY	6
PROCEDURE.....	6
(1) Quorum	6
(2) Evidence Before the Grand Jury.....	7
(3) Questioning the Witness	7
(4) Calling the Person Under Investigation as a Witness	9
(5) The Evidence Needed Before a "True Bill" May Be Voted	9
(6) Deliberations	10
SECRECY.....	11
PROTECTION OF GRAND JURORS.....	12
PRACTICAL SUGGESTIONS FOR GRAND JURORS	12
GLOSSARY OF TERMS.....	13

HANDBOOK FOR FEDERAL GRAND JURORS

PURPOSE OF THIS HANDBOOK

This Handbook will acquaint persons who have been selected to serve on a federal grand jury with the general nature and importance of their role as grand jurors. It explains some of the terms that grand jurors will encounter during their service and offers some suggestions helpful to them in performing this important public service. It is intended that this Handbook will, to a degree, repeat and provide a permanent record of much of the information presented in the grand jury orientation film, *The People's Panel*, which in most districts is shown to grand jurors at the commencement of their service. Grand jurors are encouraged to refer to this Handbook periodically throughout their service to reacquaint themselves with their duties and responsibilities.

This Handbook is designed as an aid only to persons serving on a federal — not a state — grand jury. The federal grand jury is concerned only with federal crimes; it derives its authority from the Constitution of the United States, national laws, and the rules of the federal courts. There are also grand juries impaneled in many of the states, but those grand juries investigate only state crimes; they derive their authority from the constitutions, laws, and rules of court of the states where they are impaneled.

ORIGIN AND HISTORY OF THE GRAND JURY

The grand jury has a long and honorable tradition. It was recognized in the *Magna Carta*, the first English constitutional document, which King John granted in 1215 at the demand of his subjects. The first English grand jury consisted of twelve men selected from the knights or other freemen, who were summoned to inquire into crimes alleged to have been committed in their local

community. Thus, grand jurors originally functioned as accusers or witnesses, rather than as judges.

Over the years, the hallmarks of our modern grand jury developed in England. For example, grand jury proceedings became secret, and the grand jury became independent of the Crown. As a result, a grand jury is able to vote an indictment or refuse to do so, as it deems proper, without regard to the recommendations of judge, prosecutor, or any other person. This independence from the will of the government was achieved only after a long hard fight. It can best be illustrated by the celebrated English case involving the Earl of Shaftesbury, who, in 1681, fell under the suspicion of the Crown. Displeased with him, the Crown presented to the grand jury a proposed bill of indictment for high treason and recommended that it be voted and returned. After hearing the witnesses, the grand jury voted against the bill of indictment and returned it to the King, holding that it was not true.

When the English colonists came to America, they brought with them many of the institutions of the English legal system, including the grand jury. Thus, the English tradition of the grand jury was well established in the American colonies long before the American Revolution. Indeed, the colonists used it as a platform from which to assert their independence from the pressures of colonial governors. In 1735, for example, the Colonial Governor of New York demanded that a grand jury indict for libel John Zenger, editor of a newspaper called "The Weekly Journal," because he had held up to scorn certain acts of the Royal Governor. The grand jury flatly refused.

The grand jury as an institution was so firmly established in the traditions of our forebears that they included it in the Bill of Rights. The Fifth Amendment to the Constitution of the United States provides in part that "[n]o person shall be held to answer for

a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..." Moreover, the grand jury system is also recognized in the constitutions of many of the states of the Union.

NATURE OF THE GRAND JURY

The powers and functions of the federal grand jury differ from those of the federal trial jury, which is called the petit jury. The petit jury listens to the evidence offered by the prosecution and the defense (if it chooses to offer any) during a criminal trial and returns a verdict of guilty or not guilty. The grand jury, on the other hand, does not determine guilt or innocence, but only whether there is probable cause to believe that a crime was committed and that a specific person or persons committed it. If the grand jury finds probable cause to exist, then it will return a written statement of the charges called an "indictment." After that, the accused will go to trial.

The grand jury normally hears only that evidence presented by an attorney for the government which tends to show the commission of a crime. The grand jury must determine from this evidence, and usually without hearing evidence for the defense, whether a person should be tried for a serious federal crime, referred to in the Bill of Rights as an "infamous crime." An infamous crime is one which may be punished by imprisonment for more than one year. As a general rule, no one can be prosecuted for a serious crime unless the grand jury decides that the evidence it has heard so requires. In this way, the grand jury operates both as a "sword," authorizing the government's prosecution of suspected criminals, and also as a "shield," protecting citizens from unwarranted or inappropriate prosecutions. A person may, however, waive grand jury proceedings and agree to be prosecuted by a written charge of crime called an information.

The grand jury is not completely free to compel a trial of anyone it chooses. The United States Attorney must sign the indictment before one may be prosecuted. Thus, the government and the grand jury act as checks upon each other. This assures that neither may arbitrarily wield the awesome power to indict a person of a crime.

(1) The Grand Jury's Tasks

As stated above, the federal grand jury's function is to determine whether a person shall be tried for a serious federal crime alleged to have been committed within the district where it sits. Matters may be brought to its attention in three ways: (1) by the United States Attorney or an Assistant United States Attorney; (2) by the court that impaneled it; and (3) from the personal knowledge of a member of the grand jury or from matters properly brought to a member's personal attention. In all these cases, the grand jury must hear evidence before taking action.

After it has received evidence against a person, the grand jury must decide whether the evidence presented justifies an indictment, or "true bill," which is the formal criminal charge returned by the grand jury. Upon the indictment's being filed in court, the person accused must either plead guilty or nolo contendere or stand trial.

If the evidence does not persuade the grand jury that there is probable cause to believe the person committed a crime, the grand jury will vote a "no bill," or "not a true bill." When this occurs, the person is not required to plead to a criminal charge, and no trial is required.

(2) Investigation

The major portion of the grand jury's work is concerned with evidence brought to its attention by an attorney for the government. The grand jury may consider additional matters

otherwise brought to its attention, but should consult with the United States Attorney or the court before undertaking a formal investigation of such matters. This is necessary because the grand jury has no investigative staff, and legal assistance will be necessary in the event an indictment is voted.

It should be borne in mind that a federal grand jury can take action only upon federal crimes that have been committed within the district in which it has been impaneled. Furthermore, a federal grand jury (except a special grand jury impaneled under 18 U.S.C. §§ 3331-3334) is not authorized to investigate situations involving the conduct of individuals, public officials, agencies or institutions that the grand jury believes is subject to mere criticism rather than a violation of federal criminal statutes. Its concern must be devoted solely to ascertaining whether there is probable cause to believe that a federal crime has been committed and to report accordingly to the court.

SELECTION OF GRAND JURORS

Federal law requires that a grand jury be selected at random from a fair cross section of the community in the district or division in which the federal grand jury convenes. Thus, all citizens have an equal opportunity and obligation to serve.

Pursuant to law, the names of prospective grand jurors are drawn at random from lists of registered voters or lists of actual voters, or other sources when necessary, under procedures designed to ensure that all groups in the community will have a fair chance to serve. Those persons whose names have been drawn and who are not exempt or excused from service are summoned to appear for duty as grand jurors. When these persons appear before the court, the presiding judge may consider any further requests to be excused. The judge will then direct the selection of 23 qualified persons to become the members of the grand jury.

ORGANIZATION, OATH, AND OFFICERS OF THE FEDERAL GRAND JURY

After the proper number of persons have been qualified as grand jurors, the court will appoint one of them to be the foreperson, or presiding officer, of the grand jury. A deputy foreperson will also be appointed, so that he or she can act as presiding officer in the foreperson's absence.

The foreperson, the deputy foreperson, and the remaining members of the grand jury are sworn in by the Clerk of the Court. Those persons who do not wish to swear may affirm.

The oath taken by the grand jurors binds them to inquire diligently and objectively into all federal crimes committed within the district of which they have or may obtain evidence and to conduct such inquiry without malice, fear, hatred, or other emotion.

After the grand jurors have been sworn, the presiding judge advises the grand jury of its obligations and how best to perform its duties. This is called the charge to the grand jury. Careful attention must be paid to the charge, for it and any additional instructions that may be given by the court contain the rules and directions the grand jury must follow during its term of service.

After the grand jury has been charged, it is taken to the grand jury room, where it will hear testimony and consider documentary evidence in the cases brought to its attention by the United States Attorney or an Assistant United States Attorney.

PROCEDURE (1) Quorum

Sixteen of the 23 members of the grand jury constitute a quorum for the transaction of business. If fewer than this number are present, even for a moment, the proceedings of the grand jury must stop. This shows how important it is that each grand juror

conscientiously attend the meetings. If an emergency will prevent a grand juror's attendance at the meeting, he or she must promptly advise the grand jury foreperson. If the juror's absence will prevent the grand jury from acting, the grand juror should, if at all possible, attend the meeting.

(2) Evidence Before the Grand Jury

Much of the grand jury's time is spent hearing testimony by witnesses and examining documentary or other evidence in order to determine whether such evidence justifies an indictment.

Each federal court district has a United States Attorney whose duty it is to represent the United States in federal matters within the district and to prosecute those accused of federal crimes. In the usual case, the United States Attorney or one of the Assistant United States Attorneys will present the evidence of alleged violations of the law to the grand jury. These attorneys also advise grand jurors as to what witnesses should be called and what documentary evidence should be produced for examination by the grand jury. The grand jury may ask that additional witnesses be called if it believes this necessary. The United States Attorney will also prepare the formal written indictments that the grand jury wishes to present. But neither the United States Attorney nor any Assistant United States Attorney may remain in the room while the grand jury deliberates and votes on an indictment.

(3) Questioning the Witness

Witnesses are called to testify one after another. Upon appearing to give testimony, each witness will be sworn by the grand jury foreperson or, in the foreperson's absence, the deputy foreperson. The witness will then be questioned. Ordinarily, the attorney for the government questions the witness first, followed

next by the foreperson of the grand jury. Then, the other members of the grand jury may question the witness.

All questions asked of each witness must be relevant and proper, relating only to the case under investigation. If doubt should arise as to whether a question is appropriate, the advice of the United States Attorney may be sought. If necessary, a ruling may be obtained from the court.

Because of the need for secrecy, described in more detail in the following section, the law forbids anyone other than authorized persons from being present in the grand jury room while evidence is being presented. This means that only the grand jury, the United States Attorney or the Assistant United States Attorney, the witness under examination, the court reporter, and the interpreter (if the foreperson determines one is required) may be present. If an indictment should ultimately be voted, the presence of unauthorized persons in the grand jury room could invalidate it.

Occasionally, prior to answering a question, a witness may ask to leave the grand jury room to consult with his or her attorney. The grand jury is to draw no adverse inference from such conduct, for every witness has the right to confer with counsel even though counsel may not be present in the grand jury room. In fact, a witness may confer with counsel after each question, as long as he or she does not make a mockery of the proceedings or does not, by such, make an attempt to impede the orderly progress of the grand jury investigation.

Additionally, a witness who is appearing before the grand jury may invoke the Fifth Amendment privilege against self incrimination and refuse to answer a question. In such a situation, the grand jurors may bring the matter before the court in order to obtain a ruling as to whether or not the answer may be compelled. One manner in which an answer may be compelled is by granting the

witness immunity from prosecution in exchange for the witness' testimony.

(4) Calling the Person Under Investigation as a Witness

Normally, neither the person under investigation (sometimes referred to as the "accused," although this does not imply he or she is guilty of any crime) nor any witness on the accused's behalf will testify before the grand jury.

Upon request, preferably in writing, an accused may be given the opportunity by the grand jury to appear before it. An accused who does so appear cannot be forced to testify because of the constitutional privilege against self-incrimination. If the grand jury attempts to force the accused to testify, an indictment returned against that person may be nullified.

Because the appearance of an accused before the grand jury may raise complicated legal problems, a grand jury that desires to request or to permit an accused to appear before it should consult with the United States Attorney and, if necessary, the court before proceeding.

Even if the accused is willing to testify voluntarily, it is recommended that he or she first be warned of the right not to testify. Also, he or she may be required to sign a formal waiver of this right. The grand jury should be completely satisfied that the accused fully understands what he or she is doing.

(5) The Evidence Needed Before a "True Bill" May Be Voted

It is the responsibility of the grand jury to weigh the evidence presented to it in order to determine whether this evidence, usually without any explanation being offered by the accused, persuades it that there is probable cause to believe that a crime has been committed and that the accused was the person who committed it.

Remember that the grand jury is not responsible for determining whether the accused is guilty beyond a reasonable doubt, but only whether there is sufficient evidence of probable cause to justify bringing the accused to trial. Only the evidence presented to the grand jury in the grand jury room may be considered in determining whether to vote an indictment.

(6) Deliberations

When the grand jury has received all the evidence on a given charge, all persons other than the members of the grand jury must leave the room so that the grand jury may begin its deliberations. The presence of any other person in the grand jury room while the grand jury deliberates or votes may nullify an indictment returned on the accusation.

After all persons other than the grand jury members have left the room, the foreperson will ask the grand jury members to discuss and vote upon the question of whether the evidence persuades the grand jury that a crime has probably been committed by the person accused and that an indictment should be returned. Every grand juror has the right to express his or her view of the matter under consideration, and grand jurors should listen to the comments of all their fellow grand jurors before making up their mind. Only after each grand juror has been given the opportunity to be heard will the vote be taken. It should be remembered that at least 16 jurors must be present and 12 members must vote in favor of the indictment before it may be returned.

The foreperson of the grand jury must keep a record of the number of jurors concurring in the finding of every indictment and file the record with the Clerk of the Court. If an indictment is found, the grand jury will report it to the judge or a magistrate in open court. It will likewise report any "not true bills," or decisions

not to indict. A decision not to indict should immediately be reported to the court in writing the foreperson so that the accused may promptly be released from jail or freed from bail.

SECRECY

The law imposes upon each grand juror a strict obligation of secrecy. This obligation is emphasized in the oath each grand juror takes and in the charge given to the grand jury by the judge.

The tradition of secrecy continues as a vital part of the grand jury system for many reasons. It protects the grand jurors from being subjected to pressure by persons who may be subjects of investigations by the grand jury or associates of such persons. It prevents the escape of those against whom an indictment is being considered. It encourages witnesses before the grand jury to give full and truthful information as to the commission of a crime. It also prevents tampering with or intimidation of such witnesses before they testify at trial. Finally, it prevents the disclosure of investigations that result in no action by the grand jury and avoids any stigma the public might attach to one who is the subject of a mere investigation by the grand jury.

Essentially, the grand jury may disclose matters occurring before it only to the attorneys for the government for use in the performance of their duties, but even attorneys for the government may not be informed of what took place during the grand jury's deliberations and voting. The only other time matters occurring before the grand jury may be disclosed to anyone is when disclosure is ordered by the court in the interests of justice. Disclosure of such matters may never be made to grand juror's friends or family, including a grand juror's spouse.

PROTECTION OF GRAND JURORS

The secrecy imposed upon grand jurors is a major source of protection for them. In addition, no inquiry may be made to learn what grand jurors said or how they voted, except upon order of the court.

The law gives the members of a grand jury broad immunity for actions taken by them within the scope of their authority as grand jurors.

Because of this immunity, all grand jurors must perform their duties with the highest sense of responsibility.

PRACTICAL SUGGESTIONS FOR GRAND JURORS

Each grand juror should attend the grand jury sessions regularly, in order to ensure that a quorum of 16 members will be present to conduct the grand jury's business.

Each grand juror should be on time for each meeting so that others are not kept waiting.

The time of meetings should be scheduled so as to be convenient for the grand jury, the United States Attorney, and the witnesses.

Witnesses should be treated courteously when they appear before the grand jury. Questions should be put to them in an orderly fashion. The United States Attorney should complete his or her questioning of each witness before the foreperson asks questions. The remaining grand jurors will then have a chance to ask relevant and proper questions.

Each grand juror has an equal voice in determining whether or not an indictment should be returned. Therefore, it is important that all grand jurors pay close attention to the testimony and other evidence presented.

Each grand juror must be absolutely fair in his or her judgment of the facts. Otherwise, the grand juror will defeat the democratic purpose the grand jury is designed to serve.

During deliberations on a case, each grand juror should feel free to express his or her opinion based upon the evidence.

Each juror has equal duties and responsibilities, and each is entitled to be satisfied with the evidence before being called upon to vote. No juror has the right to dismiss a witness or to shut off proper discussion if other jurors wish to pursue the matter further.

No grand jury should undertake to investigate matters outside its proper scope merely because someone suggested an investigation, or because the investigation would be interesting.

No grand juror should discuss the cases under investigation with anyone, except fellow grand jurors and the United States Attorney or the Assistant United States Attorney, and then only in the grand jury room. Of course, the grand jurors may always seek the advice of the judge.

Finally, every citizen who is selected to serve on a federal grand jury should bring to this task the determination to participate in a responsible manner and to make every effort to ensure that the grand jury will be a credit not only to the community it represents but to the United States.

GLOSSARY OF TERMS

Accused:

The person accused of the commission of a federal crime. Use of this term does not imply the person under investigation is guilty of any crime. After a person is indicted by the grand jury, that person is referred to as the "defendant."

Charge to the Grand Jury:

Given by the judge presiding over the selection and organization of the grand jury, the charge is the court's instructions to the grand jury as to its duties, functions, and obligations, and how to best perform them.

Deliberations:

The discussion by the grand jury members as to whether or not to return an indictment on a given charge against an accused. During deliberations no one except the grand jury members may be present.

District:

The geographical area over which the federal district court where the grand jury sits and the grand jury itself have jurisdiction. The territorial limitations of the district will be explained to the grand jury by the district judge.

Evidence:

Testimony of witnesses, documents, and exhibits as presented to the grand jury by an attorney for the government or otherwise properly brought before it. In some instances, the person under investigation may also testify.

Federal:

The national government as distinguished from the state governments.

Grand Jurors' Immunity:

Immunity is granted to all grand jurors for their authorized actions while serving on a federal grand jury and means that no grand juror may be penalized for actions taken within the scope of his or her service as a grand juror.

Indictment:

The written formal charge of a crime by the grand jury, returned when 12 or more grand jurors vote in favor of it.

Information:

The written formal charge of crime by the United States Attorney, filed against an accused who, if charged with a serious crime, must have knowingly waived the requirement that the evidence first be presented to a grand jury.

"No Bill":

Also referred to as "not a true bill," the "no bill" is the decision by the grand jury not to indict a person.

Petit Jury:

The trial jury, composed of 12 members, that hears a case after indictment and renders a verdict or decision after hearing the prosecution's entire case and whatever evidence the defendant chooses to offer.

Probable Cause:

The finding necessary in order to return an indictment against a person accused of a federal crime. A finding of probable cause is proper only when the evidence presented to the grand jury, without any explanation being offered by the accused, persuades 12 or more grand jurors that a federal crime has probably been committed by the person accused.

Quorum for Grand Jury to Conduct Business:

Sixteen of the 23 members of a federal grand jury must at all times be present at a grand jury session in order for the grand jury to be able to conduct business.

United States Attorney:

The chief legal officer for the United States government in each federal district.

Section III A Comparison of Sections I and II

In Section I, the Grand Jury is described as "a completely independent body" (page 18), with "almost limitless powers" (page 8), which include the power of "presentment" (page 8), the power to "call additional witnesses" (page 14), i.e., issue subpoenas. Section I implies the very real power to dismiss the prosecutor and get their own if the Grand Jury sees fit. In summary, the Grand Jury has the power to ask questions of anyone that the Grand Jury chooses to subpoena and interrogate about any crime.

In Section II, there are many subtle changes that are very important to understand.

Outstanding to my mind is that the Constitution of the United States is effectively amended without due procedure by the failure of the current handbook to even define the word "presentment" as it appears in Section II on the top of page 3. This failure to define the word thereby obliterates the concept for the Grand Jury. See Section I, page 8 for the definition of "presentment."

Section II creates from whole cloth a new relationship between prosecutors and the Grand Jury, to "act as checks upon each other" (page 4), that nowhere else exists in the literature and history of the Grand Jury prior to the Clinton Administration's rewrite of the current Grand Jury Handbook.

The Section II handbook says the Grand Jury "may ask that additional witnesses be called" (page 7), instead of the reality of Section I (page 14) where the

Grand Jury "may call additional witnesses." The difference is between the passive and the assertive, the powerless and the powerful.

Another important comparison is in the preface of the two handbooks. Section I lists the authors as five Honorable Jurists from different regions of the country who describe how they submitted their work for peer review. Section II lists no honorable author, which leads me to believe that it was authored without honor.

In summary, the Section II handbook creates the illusion that the Grand Jury is a weak derivative of the court, a rubber stamp for the prosecutors whim. This illusion is created by careful editing, outright lies and distortions.

In my opinion, the 1993 Handbook is nothing less than jury tampering by the Clinton Administration. Any Assistant U.S. Attorney who uses the current handbook should be charged by the Grand Jury with jury tampering and Janet Reno should be led out of office in handcuffs on the same charge.

Section IV
A Current State Grand Jury Handbook

HANDBOOK
FOR
GRAND JURORS

Multnomah County Circuit Court

TABLE OF CONTENTS

	Page
Foreward	
I. Origin and Importance.....	1
II. Nature of the Grand Jury.....	2
III. Organization of the Grand Jury.....	2
IV. Procedure.....	3
V. Prosecuting Attorney.....	6
VI. Protection of Grand Jurors	6
VII. Suggestions for Grand Jurors	6

FOREWARD

This handbook has been prepared for you as a member of the Grand Jury of this county to assist you in understanding the nature and extent of your duties and responsibilities, and to aid you in performing them. The information contained herein does not purport to state all of the principles of law that govern a Grand Jury. Its purpose is to give you a clearer understanding of the general nature of the functions of the Grand Jury and some suggestions that may assist you in discharging these functions. Upon being sworn as a Grand Juror you will receive more specific instructions.

I. ORIGIN AND IMPORTANCE OF GRAND JURORS

The Grand Jury had its origin more than seven centuries ago, in England, from whom, in large part, this country inherited its legal system. The Grand Jury was recognized in the Magna Carta granted by King John upon demand of the people in 1215 A.D., although various forms of inquisitorial and accusing bodies existed even earlier.

The Grand Jury is an institution of, and recognized by, the Constitutions of all of the States of the Union as well as the Federal Government, although the functions of the Grand Juries in the different jurisdictions differ considerably by law.

The powers and functions of Grand Juries differ widely from those of trial or petit juries. The petit jury actually tries the case and renders the verdict after hearing both sides. The Grand Jury does not try the case. The Grand Jury will occasionally hear both sides, however, most often its function is simply to hear witnesses as to a charge of crime by the State, and to determine whether or not the person or persons so charged should be brought to trial on such charges.

The Grand Jury is both a sword and a shield of Justice — a sword because it is the terror of criminals, a shield because it is the protection of the innocent against unjust prosecution. These important powers obviously create equally grave responsibilities to see that such powers are not perverted or abused. With its extensive powers, a Grand Jury might, unless motivated by the highest sense of justice, find indictments not warranted by the evidence and thus become a source of oppression to our citizens. On the other hand, a Grand Jury might dismiss charges against those who should be proceeded

against. The importance of its powers is emphasized by the fact that it is an independent body answerable to no one except the Court itself.

NATURE OF THE GRAND JURY

A. As An Accusatory Body

The Grand Jury in general is a body which has the right to determine whether a person shall be tried for a serious crime, a felony for which the sentence could be incarceration for more than one year, unless that person waives, or gives up, that right. This means that no one can be prosecuted for a serious crime except by vote of the Grand Jury, by waiver or by having a preliminary hearing in the District (lower) Court.

B. Investigatory Body

At least once yearly a Grand Jury shall inquire into the condition and management of every correctional facility and juvenile facility in the county.

III. ORGANIZATION OF THE GRAND JURY

A. Method of Selection

The Grand Jury is composed of seven (7) citizens who are selected monthly by lot from the jurors in attendance upon the Court for that month. Grand Jurors serve for a period of four (4) weeks or for whatever time period approved by the Court.

B. Oath of Office

The form of the oath which is administered by the court is prescribed by law. This oath briefly outlines your duties and requires of you three things—diligence, impartiality, and secrecy. The oath is as follows:

"You, as grand jurors for the County of Multnomah, do solemnly swear that you will diligently inquire into, and true presentment of indictment make of, all crimes against this state committed or triable within this county that shall come to your knowledge; that you will keep secret the proceedings before you, the counsel of the state, your own counsel and that of your fellows; that you will indict no person through envy, hatred or malice nor

leave any person not indicted through fear, favor, affection or hope of reward; but that you will indict upon the evidence before you according to the truth and laws of this state, so help you God."

C. Organization

Upon selection of the Grand Jury, the Court will appoint a foreman and alternate foreman. The members of the Grand Jury will subsequently appoint one of their members to serve as clerk.

D. Duties

The foreman's function is to preside over all Grand Jury sessions and to act as the Grand Jury liaison with the Court and the District Attorney's Office. The alternate foreman has the duties and powers of the foreman in his absence. The clerk is responsible for keeping minutes of the proceedings, except the votes of the individual jurors, and of the substance of the evidence given before them.

E. Duration of Session

When the term of Court (4 weeks) is completed the Grand Jury is discharged by the Court. However, upon good showing to the Court by the District Attorney's Office the Grand Jury may be extended.

F. Compensation

Each Grand Juror is compensated as provided by law. Compensation is at the rate of \$10 per diem and \$.08 per mile to and from the courthouse for each day of attendance. Compensation will be received approximately two weeks following the end of the term.

IV. PROCEDURE

A. Indictments

The Grand Jury may inquire into all public offenses committed or triable within the county and present them to the Court by indictment. An indictment is an accusation in writing, presented by the Grand Jury to the Circuit Court, charging a person with an offense.

B. Submission of Indictment

The District Attorney will submit an indictment to the Grand Jury in any case when he has good reason to believe that a crime has been committed which is triable within the county.

C. Hearing Witnesses

Most of the work of the Grand Jury consists of listening to the testimony of witnesses and considering the sufficiency of evidence presented in order to determine whether, considering the testimony alone, an indictment is justified.

Except as noted below, in the investigation of a charge for the purpose of indictment, the Grand Jury shall receive only evidence that is admissible during the trial of the person charged with the crime in question.

A report, or a copy of a report, made by a physicist, chemist, medical examiner, physician, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison or test performed by him in connection with a case which is the subject of a grand jury proceeding, when certified by such person as a report made by him, or as a true copy thereof, may be received in evidence in the Grand Jury proceeding.

The Grand Jury is not bound to hear evidence for the defendant, but it must weigh all the evidence submitted to it; and when it believes that other evidence within its reach will explain away the charge, it should order such evidence to be produced, and, for that purpose, may require the district attorney to issue subpoenas for witnesses.

D. Whom Indicted

The Grand Jury may indict a person for a crime when they believe the person to be guilty or when, in the grand jury's judgment all the evidence, taken together, would, if unexplained or uncontradicted, warrant a conviction by the trial (petit) jury.

E. Secrecy of Proceedings

During a hearing on an indictment no one may

be present other than members of the Grand Jury, the witness then testifying, the deputy district attorney and no other individuals unless authorized by the Court. When the Grand Jury is deliberating, after the evidence has been heard, no one but the members of the Grand Jury may be present.

No Grand Juror, reporter or other person except the district attorney or a peace officer in the exercise of his duties in effecting an arrest shall disclose any fact concerning any indictment while it is not subject to public inspection.

Secrecy as to all Grand Jury proceedings, including not only action upon indictments or accusations, but the fact that any such matter was considered or witnesses called, is of the utmost importance. This is so for the following reasons:

1. In order that Grand Jurors may be protected from being subjected to pressure by persons who may be involved in the action of the Grand Jury;
2. To prevent persons from escaping while an indictment against them is under consideration;
3. To prevent intimidation or tampering with witnesses appearing before the Grand Jury;
4. To encourage witnesses to give the Grand Jury information as to the commission of crimes; and,
5. To protect an innocent person, against whom no indictment is returned, from any avoidable disgrace attendant upon the making of the charge.

F. Returning An Indictment or a "Not True Bill"

When five (5) or more jurors, who have heard all the testimony, find that there is good cause for doing so, they issue an indictment or "true bill". Which is signed by the foreman and filed with the Circuit Court. Conversely, if five (5) or more jurors do not feel, from the evidence, that the individual should be charged with a crime, they return a "not true bill".

V. PROSECUTING ATTORNEY

The district attorney will be before the Grand Jury presenting one by one the formal charges, and in calling the witnesses to support them. The District Attorney is a public official, with experience in this work, and will be the legal adviser to the Grand Jury on questions of law.

VI. PROTECTION OF GRAND JURORS

The secrecy to which Grand Jurors are sworn is of itself one of the major sources of protection of the members of the Grand Jury.

The Grand Jury is further protected by being an independent body answerable to no one except the Court itself. No inquiry may be made to learn what a Grand Juror said or how he voted. The law gives a Grand Juror complete immunity for his official acts within the authority of the Grand Jury. With this complete protection for their official acts, it is vital that Grand Jurors must be citizens of unquestioned integrity and of high character.

VII. SUGGESTIONS FOR GRAND JURORS

Pay close attention to the testimony given and the evidence presented; the reputation or freedom of someone depends on what is being told.

Be courteous to the witnesses and to your fellow jurors; do not try to monopolize the hearing or the deliberations.

Wait until the district attorney has finished, ordinarily, before asking questions of a witness. It usually happens that the evidence you are seeking will be brought out.

Listen to the evidence and the opinions of your fellow jurors. but don't be a rubber stamp.

Be independent, but not obstinate.

Be absolutely fair. Because of the secrecy of the hearing, no one else may inquire into what you have done.

All jurors have an equal voice in determining on an indictment. Each juror has the right to state his reasons for his views.

Express your opinion, but don't be dictatorial. Every juror has a right to his own opinion. You may try to persuade another juror, but do not try to force him to change his mind and agree with you. He might be right.

Do not keep silent when the case is under discussion and begin to talk about it after a vote has been taken.

A reckless Grand Jury can do as much harm to the community and to law enforcement as a weak Grand Jury.

Do not discuss cases with your fellow jurors outside of the jury room.

It is of great importance that your attendance be regular and on time.

Your membership on the Grand Jury is a high honor. You are among a very small number of citizens of Multnomah County who are chosen to serve on the Grand Jury. This should mean, therefore, devoted, responsible participation in performing Grand Jury duty.

Section V

The Missing 13th Amendment

Excerpted from an article by J. Montgomery in *The American's Bulletin*

In January 1810 Senator Reed proposed the Thirteenth Amendment, and on April 26, 1810 [it] was passed by the Senate 26 to 1 (1st-2nd session, p. 670) and by the House 87 to 3 on May 1, 1810 (2nd session, p. 2050) and submitted to the seventeen states for ratification. The Amendment reads as follows:

"If any citizen of the United States shall Accept, claim, receive or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

From An "American Dictionary of the English Language, 1st Edition," Noah Webster, (1828) defines nobility as: "3. The qualities which constitute distinction of rank in civil society, according to the customs or laws of the country, that eminence or dignity which a man derives from birth or title conferred, and which places him in an order above common men."; and, "4. The persons collectively who enjoy rank above commoners; the peerage."

The fore-mentioned Sections in the Constitution for the united States, and the above proposed Thirteenth Amendment sought to prohibit the above definition, which would give any advantage or privilege to some citizens an unequal opportunity to achieve or exercise political power. Thirteen of the seventeen states listed below understood the importance of this Amendment.

Admitted to the Union	Date voted for Amendment
1788 Maryland	Dec. 25, 1810
1792 Kentucky	Jan. 31, 1811
1803 Ohio	Jan. 31, 1811
1787 Delaware	Feb. 2, 1811
1787 Pennsylvania	Feb. 6, 1811
1787 New Jersey	Feb. 13, 1811
1791 Vermont	Oct. 24, 1811
1796 Tennessee	Nov. 21, 1811
1788 Georgia	Dec. 13, 1811
1789 North Carolina	Dec. 23, 1811
1788 Massachusetts	Feb. 27, 1812
1788 New Hamp.	Dec. 10, 1812
1788 Virginia	Mar. 12, 1819
Admitted to the Union	Voted against Amendment
1788 New York	Mar. 12, 1811
1788 Connecticut	May 1813
1788 South Carolina	Dec. 7, 1813
1790 Rhode Island	Sept. 15, 1814

On March 10, 1819, the Virginia legislature passed Act No. 280 (Virginia Archives of Richmond, "misc." file, p. 299 for micro-film):

"Be it enacted by the General Assembly, that there shall be published an edition of the laws of this Commonwealth in which shall be contained the following matters, that is to say: the Constitution of the united States and the amendments thereto..."

The official day of ratification was March 12, 1819, this was the date of re-publication of the Virginia Civil Code. Virginia ordered 4,000 copies, almost triple their usual order. Word of Virginia's 1819 ratification spread throughout the states and both Rhode Island and Kentucky published the new Amendment in 1822. Ohio published the new Amendment in 1824. Maine ordered 10,000 copies of the Constitution with the new Amendment to be printed for use in the public schools, and again in 1831 for their Census Edition. Indiana published the new Amendment in the Indiana Revised Laws, of 1831 on P 20. The Northwest Territories published the new Amendment in 1833; Ohio published the new Amendment again in 1831 and in 1833. Connecticut, one of the states that voted against the new Amendment pub-

lished the new Amendment in 1835. Wisconsin Territory published the new Amendment in 1839; Iowa Territory published the new Amendment in 1843; Ohio published the new Amendment again, in 1848; Kansas published the new Amendment in 1855; and Nebraska Territory published the new Amendment six years in a row from 1855 to 1860. Colorado Territory published the new Amendment in 1865 and again 1867 in the 1867 printing, the present Thirteenth Amendment (slavery Amendment) was listed as the Fourteenth Amendment. The repeated reprinting of the Amended United States Constitution is conclusive evidence of its passage.

Also, as evidence of the new Thirteenth Amendment's impending passage; on December 2, 1817 John Quincy Adams, then Secretary of State, wrote to Buck (an attorney) regarding the position Buck had been assigned. The letter reads:

"...if it should be the opinion of this Government that the acceptance on your part of the Commission under which it was granted did not interfere with your citizenship.

It is the opinion of the Executive that under the 13th amendment to the constitution by the acceptance of such an appointment from any foreign Government, a citizen of the United States ceases to enjoy that character, and becomes incapable of holding any office of trust or profit under the United States or either of them..." J.Q.A.

By virtue of these titles and honors, and special privileges, lawyers have assumed political and economic advantages over the majority of citizens. A majority may vote, but only a minority (lawyers) may run for political office.

Definition of Esquire:

"...in the U.S. the title belongs officially to lawyers..." 1971
New Oxford Dictionary

(esquire) "...became a title of rank, intermediate between knight and gentleman, the right to which is still defined in law..."

Commentary on the meaning of the original 13th Amendment for today.

The reason you do not see the original 13th Amendment listed today in the Constitution is that it was skillfully deleted at the end of the Civil War during the tumult thereafter. Richmond, Virginia, the seat of the Confederacy, had been burned and there was a declaration made that the records did not exist to prove the passage of the original 13th Amendment. President Johnson declared it failed to pass.

I think that the article above is persuasive to the contrary. The question becomes how to breath life into a seemingly dead issue. I recommend three methods.

The first is the most direct and that is to run for office against judges (who almost always run unopposed) on the campaign platform of the Original 13th Amendment, thereby arguing that lawyers (esquires) should not be allowed to hold public office since they are petty nobility. So many people hate lawyers that this would surely raise some attention.

The second method is to start a ballot initiative in every state that has the initiative process. This will create tremendous attention, excitement and hope that the people might be free of the parasitic "over-class" of petty No-ability known as lawyers. The initiative for the State of Oregon will be launched in the very near future.

A third approach would be to raise a clamor demanding the revocation of citizenship for any office holder that receives foreign money, per the original 13th Amendment. That should get some attention, especially if channeled through Grand Jury Associations, into the press and into Grand Juries, leading possibly into Presentments. Lets use some of that "almost limitless power" to scare these thieving rascals in power.

Section VI

How To Clean House

1. The remarkable truth is that Grand Juries are accessible to the public by the simple expedient of writing letters and using the Post Office service. Grand Jury members are public officials who will receive letters that are not written to influence an indictment currently under their consideration. You can write to the Foreman of the Grand Jury. There is likely to be more than one Grand Jury panel meeting at any time, numbered panel #1, #2, etc. Your letter should be addressed to: Grand Jury Foreman, c/o The Jury Administrator, at your local federal or county courthouse. A request for an appearance before the Grand Jury must go through to the Grand Jury.
2. Form a Grand Jury Association. There is a tremendous need to help Grand Jury members who find themselves isolated and manipulated and surrounded by legal professionals who have their own priorities and careers in mind. A Grand Jury Association is a letter writing organization that pre-digests information about important issues and then communicates with the Grand Jury, supplying continuity and moral support. The Grand Jury Association is intended as an educational tool for both the public and the Grand Jury and is intended as a meeting ground for concerned citizens who want to translate their concerns into action.
3. The original 13th Amendment will drive lawyers into the street. My goal is to see lawyers with cardboard signs that say, "will write briefs for food"! Run for office on the 13th Amendment platform and encourage your friends to also run. Let no judge run

unopposed! Collect signatures for the ballot initiatives in your state or write to your Secretary of State and start an initiative if there isn't one started yet.

4. Support your alternative sources of information through the advertisers in those newspapers and radio shows. Waste no money that cannot be spent to help your friends.
5. Be aware that the political system is almost entirely corrupted and is a total waste of time. Spend your precious energy communicating with the most powerful and under-utilized public officials accessible to you — the Grand Jury.

Section VII

Bibliography, Credits & Ordering

The most excellent source of general information about Grand Juries is a book called *The Peoples Panel* by Younger (Can be found in libraries).

Material on the original 13th Amendment is an excerpt from an article entitled, "Is the United States Still A British Colony?... Facts Say YES - Read On!" by J. Montgomery. The complete article is available for \$10.00 from *The American's Bulletin*, c/o PO. Box 3096, Central Point, Oregon State 97502. Sample issue \$3.