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The NEW HAMPSHIRE GRAND JURY



September

1978

**Reprinted by Candidate for
Merrimack County Sheriff**

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Forward

This booklet is intended as an introduction to the New Hampshire Grand Jury. Hopefully students, teachers, grand jurors and other community members who are interested in expanding their understanding of the grand jury will find this information helpful. In order that each person may be assisted in understanding the functions of the Grand Jury, this booklet has been addressed to you - the interested, student, teacher or community member as if you were a Grand Juror. This booklet is not meant to be a complete statement of the law about the Grand Jury and its work. The Court itself is the sole authority as to the governing principles of law in its charge to the Grand Jury and in any later instructions. This booklet merely attempts to give our community members an understanding of the general nature of the function of our Grand Jury.

For More Information visit:

NHGrandJury.com

Empowering the Grand Jury Through Education

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I. IMPORTANCE OF THE GRAND JURY

Clearly a ". . . government of the people, by the people, and for the people," as Abraham Lincoln concisely described the American form of Government, requires the active participation of every citizen in at least two important duties: first, to vote; and 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."¹

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 protects the innocent against unjust prosecution. These important powers obviously create equally grave responsibilities to see that such powers are not perverted or abused.

II. ORIGIN OF THE GRAND JURY

The Grand Jury originated more than seven centuries ago in England, from which, in large part, this country inherited its legal system. Many legal historians trace its origin to events in the reign of Henry II and to one of the articles of the Constitution of Clarendon in 1164. It was recognized in the Magna Carta granted by King John at the demand of the nobles in 1215.

III. NATURE OF THE GRAND JURY

(a) The Accusing Body as to Serious Crimes

The Grand Jury is a constitutionally recognized body that gives any person accused of a felony the right to have that body determine whether that person shall be tried in court, a right that may be given up. This means that no one can be prosecuted for a felony, except by vote of the Grand Jury. The importance of this power cannot be overestimated.

The Grand Jury process does not extend to minor crimes (misdemeanors) and violations, which are initiated by the prosecuting authorities through proceedings called complaints or summons.

¹ State Grand Jury Handbook, Judicial Administration, ABA, West Publishing Co., St. Paul, Minn. Among the handbook committee members was Honorable Frank R. Kenison of New Hampshire.

In performing its duties, the Grand Jury's powers and functions differ widely from those of trial juries. The trial jury actually hears both sides of the case and determines the guilt or innocence of the accused person. The Grand Jury does not hear both sides of the case. Its function is simply to hear the evidence presented by the prosecutor and, without considering the defenses, determine whether or not the person charged should be brought to trial on those charges. If the evidence is sufficient to indicate the accused probably committed the crime, the Grand Jury votes an indictment, "A True Bill." If the evidence is sufficient to indicate the accused probably committed the crime, the Grand Jury votes an indictment, "A True Bill." If the evidence is not sufficient, the Grand Jury will vote "not a True Bill." If the Grand Jury feels the accused should be charged with a crime other than that specified in an indictment, it may make such a recommendation to the prosecuting attorney who usually is either a County Attorney or a member of the Attorney General's Office.

In order that the Grand Jurors may not be subjected to secret influences, no one has the right to approach an individual member of the Grand Jury in order to persuade him or her that a certain indictment should, or should not, be found. Any person approaching a Grand Juror should be referred to the Court and the Grand Juror must also immediately advise the Court of such behavior.

A Grand Juror is a public official, with the duty of protecting the public by enforcing the law. The criminal law is explained to the Grand Jury by the prosecuting attorney and his interpretation is to guide the Grand Jury in its consideration. If you do not agree with the prosecuting attorney as to what the law is, you are not to be guided by your own idea of the law. If you should think a certain law is 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.

(b) Grand Jury as an Investigatory Body

In addition to the duty of the Grand Jury to hear evidence and decide whether formal criminal charges should be made, the Grand Jury also has the important power to make investigations. The Grand Jury, on its own initiative, may on rare occasions subpoena witnesses to appear or compel the production of documents. This type of investigation is thereafter reported to the Court in what is called a Presentment or Report.

On the other hand, there are distinct limitations to Grand Jury investigations and a Report or Presentment. It can only begin an investigation where there is cause to believe that criminal activity exists. It can only investigate matters within its jurisdiction, geographic and otherwise. Because of these and other important legal principles governing Presentments, it is advisable for any Grand Jury, which is considering the initiation of an investigation that may result in a Presentment, to consult

the prosecuting officer and the Court before undertaking such an investigation.

IV. ORGANIZATION. OATH. CHARGE TO THE GRAND JURY.

When you report for duty as a Grand Juror, the Presiding Judge will consider such reasons for being excused from Grand Jury service as may be presented.

When you report with the other members of your Grand Jury, you will be conducted to Court, where your Foreman will be selected by the Presiding Judge. It is the Foreman's duty to preside over the Grand Jury (like the chairman of a meeting) and to act as spokesman for the Grand Jury before the Court. And, when there are sufficient affirmative votes in favor of finding an indictment, he will endorse the indictment "a True Bill," by signing on behalf of the Grand Jury.

Other than performing these duties, the Foreman is no different than any other member of the Grand Jury. He has no more power or authority and his vote is counted like any other member's vote.

The Court will then have the Foreman and you sworn in. After you have been sworn in, the presiding Judge will address you formally, and in greater detail, as to how to conduct your duties. This address is called "The Charge to the Grand Jury." This charge by the Court is your controlling guide. The prosecuting officer will also 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 be the final authority on these matters.

Upon receiving the Court's "Charge to the Grand Jury," you will then be escorted to the Grand Jury Room, where you will prepare to hear the testimony and see the documentary evidence in the cases to be brought to your attention.

V. PROCEDURE IN THE JURY ROOM

(a) Quorum

The Grand Jury consists of not less than 12 nor more than 23 members; of the total membership, not less than 12 must always be present for the transaction of business. If less than this quorum exists, the proceedings of the Grand Jury must stop. Hence it is important for any Grand Juror who finds that an emergency interferes with his presence at a scheduled meeting of the Grand Jury to advise the Clerk promptly.

Even if a quorum is present, a mere majority of those present is not sufficient to vote an indictment, "a True Bill." Twelve

Grand Jurors must concur in finding "a True Bill."

(b) Hearing Witnesses

Most of the work of the Grand Jury is concerned with hearing witnesses and determining whether the evidence presented, without regard to any possible defense evidence, is sufficient to justify an indictment. When so proceeding, the prosecuting attorney will explain the charge to the Grand Jury, and inform the Grand Jury of the witnesses to be presented. The Grand Jury may also call additional witnesses on its own initiative.

Witnesses will be called one by one and sworn to tell the truth in answering questions.

(c) Accused as a Witness

A defendant named in a criminal charge is not usually heard as a witness, nor will any witnesses for him probably be called. This is because 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 offer a defendant the opportunity to appear before it. This is not usually done and should not be done unless the Grand Jury really feels that it is desirable. If the defendant is given this opportunity, and appears, he cannot be forced to testify-because of his constitutional right not to testify against himself.

(d) Determination to Indict or Not to Indict

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 the vote on 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 the vote will be taken. No indictment can be found unless at least twelve members agree.

VI. SECRECY

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, because:

1. Secrecy protects Grand Jurors from being subjected to pressure by persons who may be interested in the outcome of Grand Jury action.
2. Secrecy may prevent the escape of persons against whom an indictment is under consideration.

3. Secrecy encourages witnesses to speak the truth freely before the Grand Jury.

4. Where an Indictment has been dismissed, secrecy saves the innocent person who has been improperly subjected to a charge, from the public disgrace associated with being accused of criminal activity.

It is imperative that a Grand Juror not say anything to his family, to his friends, or to anyone, about any matters which took place in the Grand Jury Room. All Grand Jurors must maintain this secrecy even after their service has ended, unless ordered to do otherwise by a court.

VII. COMPENSATION

The County cannot pay Grand Jurors in proportion to the value of the services they render. The law provides twenty dollars for the compensation of the Grand Jurors for each day of attendance, and mileage allowances for travel to and from Court. Each Grand Juror should report his attendance and mileage claim to the Clerk of Court. Service will be from one to a few days only.

A limited number of copies of this publication
are available on request:

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