Dear Merrimack County Grand Jurors, November 2025

On behalf of the *New Hampshire Grand Jurors Association* I would like to thank you for your service. We stand ready to assist you in the execution of your oath:

> *You, as grand jurors, do solemnly swear that you will diligently inquire, and a true presentment make, of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own you shall keep secret; and shall present no person for envy, hatred or malice; neither shall you leave any unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God. (New Hampshire RSA 600:3)*

The orientation video, circa 1994, posted on the **New Hampshire Judicial Council** website is curiously silent on your authority, stated so plainly in your oath, to Present those who have abused The People and the Public Trust. Your role in deciding whether indictments brought to you by the County Attorney ought to proceed to a jury trial is important, but only a part of your duties.

> ***In criminal law, a presentment is a formal written accusation issued by a grand jury on its own initiative, without a prior request or bill of indictment from a prosecutor. In State v. Womack, 120 So. 3d 419 (Fla. 2d Dist. Ct. App. 2013), the Court held that grand jury statements in a presentment alleging misconduct by public officials were permissible when factually supported and relevant to the investigation, and therefore could not be suppressed or expunged.*** *Source: Cornell Law School.*

The power to investigate government officials, corporations and other entities has been upheld numerous times by the United States Supreme Court. Justice Scalia, for the majority in United States v. Williams, 504 U.S. 36 (1992), wrote:

> **The grand jury's functional independence from the judicial branch** is evident both in the scope of its power to investigate criminal wrongdoing, and in the manner in which that power is exercised. **"Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury `can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.' "** United States v. R. Enterprises, 498 U. S. ___, ___ (1991) (slip op. 4) (quoting United States v. Morton Salt Co., 338 U.S. 632, 642-643 (1950)). It need not identify the offender it suspects, or even "the precisenature of the offense" it is investigating. Blair v. United States, 250 U.S. 273, 282 (1919). **The grand jury requires no authorization from its constituting court to initiate an investigation**, see Hale, supra, at 59-60, 65, nor does the prosecutor require leave of court to seek a grand jury indictment. And in its day to day functioning, the grand jury generally operates without the interference of a presiding judge. See Calandra, supra, at 343. It swears in its own witnesses, Fed. Rule Crim. Proc. 6(c), and deliberates in total secrecy, see United States v. Sells Engineering, Inc., 463 U. S., at 424-425.

Although you may not be versed in the law that is not a requirement for serving on the *Grand Inquest*. Your job is to be the voice of the community as explained in *The People's Panel* (1963),

> Although the object of their investigations has shifted from place to place through the years, **Grand Juries have remained guardians and spokesmen of their communities**. Grand Juries have the effect of placing criminal justice in the hands of community members. They possess broad inquisitorial powers derived from a constitutional republic, yet they are of the people, not the state. **By constantly changing personnel, it prevents small groups from gaining a vested interest in law enforcement and gives all persons an opportunity to participate in their constitutional republic.**
>
> The Grand Jury enables the American people to act for themselves rather than do an official act. **It is the one Institution that combines the necessary measure of disinterestedness with sufficient authority to effectively investigate malfeasance and corruption in public office.** Today, as in the past, it is the one body that can effectively handle the complaints of individual citizens, whether the grievances are against their fellow citizens or their government. (Page 247, 2022 reprint)

In order to assist you in your duties and responsibilities to hold government officials, corporations and any others to account who abuse The People this binder has been put together which includes the following documents:

1. "The People's Big Stick" (1937) by J.C. Furnas printed in *The Reader's Digest*.

2. Excerpt from *United States v. Williams* (1992)

3. Excerpt from the California Civil Grand Jurors Association website, *The Watchdog Function of Grand Juries*.

4. Excerpt from the *Florida Grand Jury Handbook*.

5. Excerpt from "Reviving Federal Grand Jury Presentments" by Renee B. Lettow *The Yale Law Journal* (1994)

For more information please consult the collection of primary source documents at www.NHGrandJuryAssociation.com. This website is still in the process of being populated with pertinent information, but contains more than enough resources to start you on your journey of reclaiming the power that has been hidden from The People.

After serving a term as a State Representative (2022-2024 Northfield – Franklin) I realized that there was no effective way to perform the important duty of oversight from that position. Government bureaucrats were under no obligation to testify under oath and were masters of obfuscation as can be seen from the dearth of information regarding the true powers of Grand Jurors on the New Hampshire Judicial Council website.

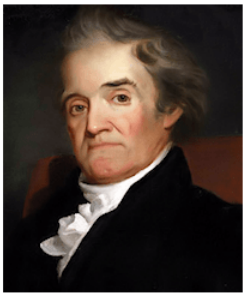
History is replete with examples of Grand Juries wielding their immense power for the betterment of The People, bringing corrupt government officials, rogue corporations and other criminal entities to account for their actions. It is my hope that the courage demonstrated by previous Grand Juries will guide you towards a judicious use of your powers. This history is rich and inspiring. We The People possess the tools necessary to bring government back under the chains of the Constitution, if we only choose to use them.

God bless you and may His love and divine protection be with you while you serve The People of this county and state.

At your service,

Jason Gerhard

Northfield, New Hampshire



Noah Webster

Topics

- Bible
- Constitution
- Literature
- Grammar
- Education
- Science
- Mathematics
- Medical

Presentment

PRESENT'MENT, *noun* s as z. The act of presenting.

1. Appearance to the view; representation.

2. In law, a *presentment* properly speaking, is the notice taken by a grand jury of any offense from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king; as the *presentment* of a nuisance, a libel or the like, on which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it.

3. In a more general sense, *presentment* comprehends inquisitions of office and indictments.

In the United States, a *presentment* is an official accusation presented to a tribunal by the grand jury in an indictment; or it is the act of offering an indictment. It is also used for the indictment itself. The grand jury are charged to inquire and due *presentment* make of all crimes, etc. The use of the word is limited to accusations by grand jurors.

4. The official notice in court which the jury or homage gives of the surrender of a copyhold estate.

TITLE LIX
PROCEEDINGS IN CRIMINAL CASES

CHAPTER 600
GRAND JURIES

Section 600:3

600:3 Oath. – Grand jurors before entering upon their duties shall take the following oath: You, as grand jurors, do solemnly swear that you will diligently inquire, and a true presentment make, of all such matters and things as shall be given you in charge; the state's counsel, your fellows' and your own you shall keep secret; and shall present no person for envy, hatred or malice; neither shall you leave any unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God.

Source. RS 176:22. CS 186:23. GS 242:5. GL 260:5. PS 253:5. PL 367:4. RL 427:4. RSA 600:3. 1992, 284:78, eff. Jan. 1, 1993.

presentment

In commercial law, a presentment is a formal demand for payment or acceptance of a negotiable instrument, such as a promissory note or bill of exchange, when it becomes due. Under the Uniform Commercial Code § 3-501, presentment is "a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument, or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee."

In criminal law, a presentment is a formal written accusation issued by a grand jury on its own initiative, without a prior request or bill of indictment from a prosecutor. In *State v. Womack*, 120 So. 3d 419 (Fla. 2d Dist. Ct. App. 2013), the Court held that grand jury statements in a presentment alleging misconduct by public officials were permissible when factually supported and relevant to the investigation, and therefore could not be suppressed or expunged.

[Last reviewed in October of 2025 by the Wex Definitions Team]

Wex

- COMMERCE
- commercial activities
- THE LEGAL PROCESS
- criminal procedure
- business law
- contracts
- wex definitions

¶ The grand jury — the citizens' neglected weapon against crime

The People's "Big Stick"

Adapted from The New Republic

J. C. Furnas

"LUCKY" Luciano was put behind bars for the rest of his life because he was czar of New York's vice racket. The power that put him there, along with 100 other racketeers, was that docile old juridical wheelhorse, the grand jury.

The notable fact is this: the substantial citizens of practically every community in the United States legally have a weapon with which to attack civic corruption in any form as effectively as was done in New York. For the famous Dewey prosecution was initiated not by an elected public official, but by a group of independent citizens — among them eight merchants, three bankers, three insurance men, two manufacturers, a warehouseman, a butcher and an engineer — acting under powers as old as common law and as fundamental as freedom of speech.

The grand jury was an established institution of English law long before the Norman conquest, and was originally designed to protect the individual from unjust prosecution by agents of the Crown. It met in secrecy, was accountable to no one for its actions, and had the power of accusing, or indicting, any evildoer on evidence known to its members. Thus as both shield and weapon for the common citizen the grand jury survived many centuries of English history and was adopted in the federal and all the state constitutions in America.

Today its use for the routine indictment of criminals is familiar. But its potentially greater function, as an independent body of representative citizens inquiring into the condition of their government, has been too commonly neglected. As a board of inquiry, it may summon witnesses and public officials, who, because the sessions are secret, may testify freely without fear of reprisal. It may instruct the district attorney to gather evidence; it can call him in and kick him out of its sessions; it can go over his head, and, if his conduct is wholly improper, indict him for malfeasance in office. So long as it is looking for evidence of crime — which takes in immense territory — it can dig

(The New Republic, September 15, '37)

into anything without so much as by your leave from judge, district attorney, governor or political boss.

In this power to conduct general investigations lies the real dynamite of the modern grand jury. Many states, notably California and Georgia, have adopted "auditing" grand juries, which dispense entirely with routine indictment of criminals, and which convene automatically every six months for the sole purpose of dealing with matters of general welfare. Such a grand jury is fully aware that its job is to dig out incriminating dirt wherever it may be suspected. California's auditing grand juries hire their own independent accountants to go over public records. In Georgia they also check voting lists and tax assessments.

When the system was installed in Michigan for counties over 200,000 population, the Detroit police noted with amazement that the cream of the local gangsters left town. It worked so well, in fact, that the local political machine finally managed to have it stricken from the statute books!

How does it happen, then, that this potent weapon has not been used more often before? Because ordinary citizens, swept as grand jurors into an unfamiliar world of juridical procedure, are not aware of their powers. Judges and district attorneys frequently take pains to see that they remain uninformed, for nothing can throw a well-greased political machine so completely out of kilter as a grand jury which knows its strength.

New York's "runaway grand jury" of March 1935, which was directly responsible for the Dewey prosecution, is an object lesson in public service. To appreciate its achievement, however, we must realize the difficulties that faced it. Vast though its powers are, no grand jury can accuse a man of a crime unless it has evidence which it believes sufficient to convict him. It may fuss and fume, protest and abhor and set up a commendable clamor, but without evidence, it cannot indict.

The grand jury has the power, under the law, to go out and gather such evidence, and many have done just that. But investigating a complicated crime structure requires a trained, full-time staff. For the bulk of its evidence, therefore, the grand jury looks to the district attorney, whose sworn duty is to gather such evidence.

Among the matters casually brought to the March grand jury's attention by the district attorney were certain facts bearing on rackets in New York City. The grand jury was evidently not convinced that the Tammany district attorney had done his utmost to gather evidence against the racketeers; this became increasingly

apparent when they asked him to assign a satisfactory special prosecutor to rackets. Normally, the matter might have ended here.

But this grand jury knew its rights. It sent a scorching communication to the governor of the state, demanding a special prosecutor of caliber sufficient to handle the job. The story filled the papers; the grand jury's accusations shook the state. Jurors' lives were threatened, but they refused to be scared off. And the Governor gave them Thomas E. Dewey.

Its job done, the March grand jury was dissolved. And Dewey's corps of investigators set methodically to work. Their findings went to special grand juries; and a procession of the biggest, richest, most vicious, and supposedly invulnerable racketeers in the business of crime started on its way to jail. The grip of fear in which the lords of crime had held the city was broken. The whole thing was started because a group of private citizens, serving as a grand jury, knew their powers.

That they did was no mere happenstance. It was the direct result of a movement started back in 1913, when an organization known as the Grand Jury Association of New York County was formed to "disseminate knowledge to grand jurors of their duties and obligations." Today the Association exercises national influence and is thoroughly unpopular with all our worst people. Grand jurors are invited to join at the time their names are drawn for service. Its roster includes some of the most important names in the city. It publishes a magazine, the *Panel*, which has a national circulation, and it conducts an unrelenting campaign to educate jurors to their powers, and to keep before the successive grand juries the matters that most urgently need attention. As a private organization with the public good at heart, it is legally entitled to recommend names for the grand jury lists. In this way it has aided immensely in improving the caliber of New York grand juries.

The Grand Jury Association has successfully pioneered in bringing to light such various matters as bail bond reforms, "fences" for stolen goods, a new courthouse and jail, a central fingerprint bureau, and uniform state felony laws. And best of all, it has inspired imitation; similar associations now exist in all five counties of New York City and in eleven other cities. For eight years the Association was spurred and guided by Robert Appleton, a retired publisher who is now its honorary president. The present head is Lee Thompson Smith, foreman of the famous "runaway" grand jury."

Largely because of the Association's steady propaganda, grand juries elsewhere are kicking over

the traces. When nobody in New Jersey would touch the politically "hot" Wendel kidnaping case, aftermath of Governor Hoffman's intervention in the Hauptmann execution, a federal grand jury in New Jersey held its own investigation, indicted the chief suspects, and had the satisfaction of seeing them convicted. In San Francisco a grand jury, as I write, is making it so hot for the local police administration that two of its three police commissioners have resigned under fire.

After the exposure of the notorious Drukman case in Brooklyn, the grand jury was shocked at the political ramifications of the case. When they disbanded, the jurors, as private citizens, brought formal charges against the district attorney. Later, when the governor of the state exonerated him, they paid their own expenses to Albany to protest. It was sensational newspaper copy, and resulted in a salutary public airing of the affairs of the district attorney's office.

A Cleveland grand jury in 1933 was presented with a routine case of a taxi driver being beaten up by four arrogant gunmen. This grand jury did not confine itself to the case at hand; it traced the gunmen's connections, revealed the whole crime structure of Cleveland, and brought about a major exodus of thugs and an extensive shake-up in local officialdom.

The skeptic might ask if politicians, having succeeded in corrupting the rest of the local government, could not easily "rig" a grand jury to their liking. In most states, this danger is negligible. In a body of 23 men representing the community's best you may "reach" two or three; your chances of reaching 12 are extremely remote.

The method of selecting grand jurors varies somewhat from state to state, but that employed in New York is representative enough to serve as an illustration. At their annual meeting, the supervisors of each county prepare a list of 300 names of citizens definitely known to be persons of superior character. These names are written on separate slips of paper and deposited in a box. When a grand jury is required, 50 names are drawn by the county clerk, in the presence of the sheriff and a county judge. Those drawn are summoned to the court by the sheriff; 23 are sworn in as jurors, the rest excused. In some states, such as Illinois, selection is in the hands of county jury commissioners. In Illinois these commissioners are selected by a majority vote of all the judges in the state.

Once sworn in, these 23 men become the regular grand jury for that county for that term of court, usually a month. To them the district attorney presents evidence which he has gathered against criminals. If an indictment is

voted, the accused must be brought to trial. If the jury suspects that the district attorney is withholding evidence, it may take any steps within its very extensive powers. And though normally dissolved when its own term of court is ended, it may if it wishes remain in session until it has satisfactorily completed the business before it.

Occasionally there are cases so involved that the regular grand jury could not hear all the evidence and do anything else during its term. In this event, a special grand jury is called for that case alone. There have been as many as seven grand juries simultaneously in New York County. One was in session for seven months.

If passages of this article have dealt severely with district attorneys, it is not to infer that all district attorneys are hirelings of crime. As Courtney Riley Cooper has pointed out,* there are a tremendous number of honest district attorneys. But as he has further pointed out, "no office on earth permits of so much crookedness without danger of detection; so much political pressure; such opportunity to give every evidence of integrity, yet to doublecross honest citizenship." The strain on the human factor is too great for the peace of mind of those who respect clean government.

With ancient common sense, the common law has handed down to us a check: a body of 23 "good and lawful men" with appropriate powers. Out of six years' experience with grand juries before he undertook to clean up New York, Thomas E. Dewey says, "I am profoundly convinced that the grand jury, in coöperation with honest and vigorous prosecution, can play a vital part in crushing the structure of organized crime." It is up to the individual grand juror to see that "honest and vigorous prosecution" becomes a fact.

There is your answer to the citizen who shrugs his shoulders at political rottenness and asks what a decent citizen can do about it anyway — and then moves heaven and earth to "get out of it" when called for grand jury service. Actually, if he but knew it, the decent citizen can do more than anyone else in the world. Service on a grand jury demands the best any man has to offer. It demands judgment and restraint, as well as zeal — for power, poorly managed, can run amuck of its own momentum. The weapon is there, ready-made, and it is a deadly one. All we have to do is to use it.

* See "Here's to Crime," The Reader's Digest, June, '37, page 109.

Syllabus

UNITED STATES *v.* WILLIAMS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 90–1972. Argued January 22, 1992—Decided May 4, 1992

Respondent Williams was indicted by a federal grand jury for alleged violations of 18 U. S. C. § 1014. On his motion, the District Court ordered the indictment dismissed without prejudice because the Government had failed to fulfill its obligation under Circuit precedent to present "substantial exculpatory evidence" to the grand jury. Following that precedent, the Court of Appeals affirmed.

Held:

1. The argument that the petition should be dismissed as improvidently granted because the question presented was not raised below was considered and rejected when this Court granted certiorari and is rejected again here. The Court will not review a question that was *neither* pressed *nor* passed on below, see, *e. g.*, *Stevens* v. *Department of Treasury*, 500 U. S. 1, 8, but there is no doubt that the Court of Appeals passed on the crucial issue of the prosecutor's duty to present exculpatory evidence to the grand jury. It is appropriate to review an important issue expressly decided by a federal court where, as here, although the petitioner did not contest the issue in the case immediately at hand, it did so as a party to the recent proceeding upon which the lower courts relied for their resolution of the issue, and did not concede in the current case the correctness of that precedent. Pp. 40–45.

2. A district court may not dismiss an otherwise valid indictment because the Government failed to disclose to the grand jury "substantial exculpatory evidence" in its possession. Pp. 45–55.

(a) Imposition of the Court of Appeals' disclosure rule is not supported by the courts' inherent "supervisory power" to formulate procedural rules not specifically required by the Constitution or the Congress. This Court's cases relying upon that power deal strictly with the courts' control over their *own* procedures, whereas the grand jury is an institution separate from the courts, over whose functioning the courts do not preside. Any power federal courts may have to fashion, on their own initiative, rules of grand jury procedure is very limited and certainly would not permit the reshaping of the grand jury institution that would be the consequence of the proposed rule here. Pp. 45–50.

(b) The Court of Appeals' rule would neither preserve nor enhance the traditional functioning of the grand jury that the "common law" of

ards of prosecutorial conduct before the grand jury, but as a means of *prescribing* those standards of prosecutorial conduct in the first instance—just as it may be used as a means of establishing standards of prosecutorial conduct before the courts themselves. It is this latter exercise that respondent demands. Because the grand jury is an institution separate from the courts, over whose functioning the courts do not preside, we think it clear that, as a general matter at least, no such "supervisory" judicial authority exists, and that the disclosure rule applied here exceeded the Tenth Circuit's authority.

A

"[R]ooted in long centuries of Anglo-American history," *Hannah* v. *Larche*, 363 U. S. 420, 490 (1960) (Frankfurter, J., concurring in result), the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. It "'is a constitutional fixture in its own right.'" *United States* v. *Chanen*, 549 F. 2d 1306, 1312 (CA9) (quoting *Nixon* v. *Sirica*, 159 U. S. App. D. C. 58, 70, n. 54, 487 F. 2d 700, 712, n. 54 (1973)), cert. denied, 434 U. S. 825 (1977). In fact the whole theory of its function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people. See *Stirone* v. *United States*, 361 U. S. 212, 218 (1960); *Hale* v. *Henkel*, 201 U. S. 43, 61 (1906); G. Edwards, The Grand Jury 28–32 (1906). Although the grand jury normally operates, of course, in the courthouse and under judicial auspices, its institutional relationship with the Judicial Branch has traditionally been, so to speak, at arm's length. Judges' direct involvement in the functioning of the grand jury has generally been confined to the constitutive one of calling the grand jurors together and administering their oaths of office. See *United States* v. *Calandra*, 414 U. S. 338, 343 (1974); Fed. Rule Crim. Proc. 6(a).

The grand jury's functional independence from the Judicial Branch is evident both in the scope of its power to investigate criminal wrongdoing and in the manner in which that power is exercised. "Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.'" *United States* v. *R. Enterprises, Inc.*, 498 U. S. 292, 297 (1991) (quoting *United States* v. *Morton Salt Co.*, 338 U. S. 632, 642–643 (1950)). It need not identify the offender it suspects, or even "the precise nature of the offense" it is investigating. *Blair* v. *United States*, 250 U. S. 273, 282 (1919). The grand jury requires no authorization from its constituting court to initiate an investigation, see *Hale*, *supra*, at 59–60, 65, nor does the prosecutor require leave of court to seek a grand jury indictment. And in its day-to-day functioning, the grand jury generally operates without the interference of a presiding judge. See *Calandra*, *supra*, at 343. It swears in its own witnesses, Fed. Rule Crim. Proc. 6(c), and deliberates in total secrecy, see *United States* v. *Sells Engineering, Inc.*, 463 U. S. 418, 424–425 (1983).

True, the grand jury cannot compel the appearance of witnesses and the production of evidence, and must appeal to the court when such compulsion is required. See, *e. g.*, *Brown* v. *United States*, 359 U. S. 41, 49 (1959). And the court will refuse to lend its assistance when the compulsion the grand jury seeks would override rights accorded by the Constitution, see, *e. g.*, *Gravel* v. *United States*, 408 U. S. 606 (1972) (grand jury subpoena effectively qualified by order limiting questioning so as to preserve Speech or Debate Clause immunity), or even testimonial privileges recognized by the common law, see *In re Grand Jury Investigation of Hugle*, 754 F. 2d 863 (CA9 1985) (opinion of Kennedy, J.) (same with respect to privilege for confidential marital communications). Even in this setting, however, we have insisted that the grand jury remain "free to pursue its investi-

gations unhindered by external influence or supervision so long as it does not trench upon the legitimate rights of any witness called before it." *United States* v. *Dionisio*, 410 U. S. 1, 17–18 (1973). Recognizing this tradition of independence, we have said that the Fifth Amendment's "constitutional guarantee *presupposes* an investigative body 'acting independently of either prosecuting attorney *or judge*'. . . ." *Id.*, at 16 (emphasis added) (quoting *Stirone*, *supra*, at 218).

No doubt in view of the grand jury proceeding's status as other than a constituent element of a "criminal prosecutio[n]," U. S. Const., Amdt. 6, we have said that certain constitutional protections afforded defendants in criminal proceedings have no application before that body. The Double Jeopardy Clause of the Fifth Amendment does not bar a grand jury from returning an indictment when a prior grand jury has refused to do so. See *Ex parte United States*, 287 U. S. 241, 250–251 (1932); *United States* v. *Thompson*, 251 U. S. 407, 413–415 (1920). We have twice suggested, though not held, that the Sixth Amendment right to counsel does not attach when an individual is summoned to appear before a grand jury, even if he is the subject of the investigation. See *United States* v. *Mandujano*, 425 U. S. 564, 581 (1976) (plurality opinion); *In re Groban*, 352 U. S. 330, 333 (1957); see also Fed. Rule Crim. Proc. 6(d). And although "the grand jury may not force a witness to answer questions in violation of [the Fifth Amendment's] constitutional guarantee" against self-incrimination, *Calandra*, *supra*, at 346 (citing *Kastigar* v. *United States*, 406 U. S. 441 (1972)), our cases suggest that an indictment obtained through the use of evidence previously obtained in violation of the privilege against self-incrimination "is nevertheless valid." *Calandra*, *supra*, at 346; see *Lawn* v. *United States*, 355 U. S. 339, 348–350 (1958); *United States* v. *Blue*, 384 U. S. 251, 255, n. 3 (1966).

Given the grand jury's operational separateness from its constituting court, it should come as no surprise that we

have been reluctant to invoke the judicial supervisory power as a basis for prescribing modes of grand jury procedure. Over the years, we have received many requests to exercise supervision over the grand jury's evidence-taking process, but we have refused them all, including some more appealing than the one presented today. In *United States* v. *Calandra*, *supra*, a grand jury witness faced questions that were allegedly based upon physical evidence the Government had obtained through a violation of the Fourth Amendment; we rejected the proposal that the exclusionary rule be extended to grand jury proceedings, because of "the potential injury to the historic role and functions of the grand jury." 414 U. S., at 349. In *Costello* v. *United States*, 350 U. S. 359 (1956), we declined to enforce the hearsay rule in grand jury proceedings, since that "would run counter to the whole history of the grand jury institution, in which laymen conduct their inquiries unfettered by technical rules." *Id.*, at 364.

These authorities suggest that any power federal courts may have to fashion, on their own initiative, rules of grand jury procedure is a very limited one, not remotely comparable to the power they maintain over their own proceedings. See *United States* v. *Chanen*, 549 F. 2d, at 1313. It certainly would not permit judicial reshaping of the grand jury institution, substantially altering the traditional relationships between the prosecutor, the constituting court, and the grand jury itself. Cf., *e. g.*, *United States* v. *Payner*, 447 U. S. 727, 736 (1980) (supervisory power may not be applied to permit defendant to invoke third party's Fourth Amendment rights); see generally Beale, Reconsidering Supervisory Power in Criminal Cases: Constitutional and Statutory Limits on the Authority of the Federal Courts, 84 Colum. L. Rev. 1433, 1490–1494, 1522 (1984). As we proceed to discuss, that would be the consequence of the proposed rule here.


CIVIL GRAND JURORS' ASSOCIATION
OF CALIFORNIA
CGJA

THE WATCHDOG FUNCTION OF GRAND JURIES

While the primary function of the inquest in early England was as a means of apprehending and punishing criminals, records from the early days of the grand inquest indicate that

"The inquest was required to present those whose duty it was to keep in repair bridges, causeways and highways, for neglect of duty; to inquire into defects of gaols and the nature thereof, who ought to repair them and who was responsible for any escapes which had occurred; if any sheriff had kept in gaol those whom he should have brought before the justices. . .".

In some states, early grand juries developed quasi-legislative functions. In New York, the grand jury assumed direct ordinance-making powers. In the Carolinas in 1862, legislation was promptly considered if it was suggested by a majority of county grand juries.

Early in this century, statutes of many states required grand jurors to examine the condition of jails, asylums and other public institutions; to examine the books and accounts of the various public officials in the county, to fix the tax rate and to have general supervision over public improvements. "A town could be prosecuted on a presentment, and matters that were complained of, such as failure to repair streets and roads, were sometimes corrected after a grand jury report."

A Pennsylvania statute of the late 1890's provided that no public buildings and no bridges could be built within the county unless approved by two successive grand juries. Similar statutes of the period required Georgia grand juries to act as boards of revision of taxes and to fix tax rates. Mississippi grand juries were required to examine tax collectors' accounts. Alabama and Tennessee grand juries were charged with investigating the sufficiency of the bonds of all county officers. Vermont grand juries had the responsibility of arresting persons having liquor for sale contrary to law.

In 1890, San Francisco grand jurors issued a report denouncing extravagance and fraud in municipal government, calling attention to personal profits made by city officials on railway franchises, graft in street widening projects, padding payrolls and exorbitant prices paid for land to be used for public buildings.

During the latter half of the twentieth century, the watchdog function of grand juries of most states have been weakened or discontinued. A 1974 review of the California system found that ". . .only seven other states provide for any investigation of county government by ay grand jury beyond cases alleging willful misconduct by public officials . . .and only California and Nevada mandate that grand juries be impaneled annually to specifically function as a 'watchdog' over county government. . .".

Sample Documents

Table of Contents

Starter Kits; Grand Jury Procedures Manuals

Starter Kits (a list of essential sample documents)

Butte County Procedures Manual

Fresno County Procedures Manual

San Francisco Civil Grand Jury Handbook

Grand Jury Subpoena Request Form

Please complete this form and give it to the foreperson when your committee wishes to request a subpoena be issued by the District Attorney's Office for a witness to appear or for documents to be provided (or both). A separate form should be completed for each witness. Allow at least 10 days to process and serve.

Requestor: _____Committee: _____ Case: _____

Information for Subpoena:

Witness Name: _____

Position/Title: _____

Agency: _____

Full Address (not a PO Box): _____

_____

Date and Time of Appearance: _____

Place to Appear: _____

Documents requested:

1) _____
2) _____
3) _____
4) _____

Foreperson's Record

Rec'd Form: _____To DA: _____ Ready: _____Served: _____

Investigation Proposal Worksheet

The use of this form can simplify the prioritization and selection of investigations.

Possible subject for investigation (be somewhat specific): _____
_____

Where and how did this suggestion originate? _____
_____

Is this within our jurisdiction? _____ What possible concerns do we have about jurisdiction?
_____

Should we consult with our legal advisor regarding jurisdiction? _____

Have previous grand juries reported on this specific topic before? _____ When? _____
(Consider attaching earlier report)

Is any other entity (government, court, private, or media) studying this topic?_____
Describe _____

Is the scope too large? _____ Is the scope too limited? _____ Comments on scope:
_____

How much time should it take to complete this investigation? _____

How many jurors should be assigned to this investigation? _____

Are there any members of the jury who might have a potential conflict of interest? _____

If we proceed with this investigation, how will our final report benefit our county?

_____

Additional comments:
_____

_____

Proposed by _____Committee Date _____

FLORIDA GRAND JURY HANDBOOK

The Supreme Court Committee
On Standard Jury Instructions
In Criminal Cases

required to initiate the prosecution of less serious crimes through indictment, the grand jury would be so overwhelmed with complaints that it could not perform its more important duties.

Charges of crime may be brought to your attention in several ways: by the court; by the state attorney (or the statewide prosecutor); from personal knowledge brought to your body by any member of the grand jury; and, lastly, by private citizens who have a right to be heard by a grand jury in formal session and with the grand jury's consent. The bulk of the grand jury's work probably will be concerned with cases brought to its attention by the state attorney (or the statewide prosecutor). In most instances a person being considered for indictment by the grand jury will have been held preliminarily on a charge brought before a judge sitting as a committing magistrate, who bound that person over for action by the grand jury. The accused will be either in custody or on bail. Your action, therefore, should be reasonably prompt in either voting an indictment as to the charge or returning a "no true bill."

The grand jury should consult with the state attorney (or the statewide prosecutor) or an assistant state attorney (or the assistant statewide prosecutor) in advance of undertaking a formal investigation on the grand jury's own initiative.

A grand juror may not be subject to partisan secret influences. Consequently, no one has the right to approach a juror in order to persuade that juror that an indictment should or should not be found. Any individual who wishes to be heard by the grand jury should be referred to the state attorney (or the statewide prosecutor) or to the foreperson of the grand jury, and thereafter be heard only in formal session of the grand jury.

It is imperative that you always keep in mind that as a grand juror you are a public official, with the duty of protecting the public by enforcing the law of the land. Therefore, even though you may think a certain law to be unduly harsh or illogical, that should not influence your judgment in carrying out your duties as a grand juror. A citizen has the right to endeavor to change the law. A grand juror, being a public official, has a duty to enforce the law as it exists despite any personal inclinations to the contrary.

The grand jury in addition to the duty of formally indicting those charged with crime has the further important duty of making investigations on its own initiative, which it will report as a "presentment." This duty permits investigation of how public officials are conducting their offices and discharging their public trusts. The grand jury may investigate as to whether public institutions are being properly administered and conducted. It has the power to inspect those institutions and, if necessary, may call before the grand jury those in charge of the operations of public institutions as well as any other person who has information and can testify concerning them. If the grand jury finds that an unlawful, improper, or corrupt condition exists, it may recommend a remedy.

The grand jury may not act arbitrarily. Investigations shall not be based upon street rumor, gossip, or whim, and the investigations cannot be the subject of a grand jury presentment. The grand jury can only investigate those matters that are within its jurisdiction, geographic and otherwise. The limitations of the grand jury's jurisdiction have been set forth for you by the court in its instructions.

It is important to keep in mind that no individual should be unjustly criticized or held up to scorn or public resentment, particularly when it is remembered that the individuals who may be criticized had no opportunity to defend themselves or give reply to the charges. A grand juror must keep in mind that the grand jury is the ultimate instrument of justice and should never be subverted to become the vehicle for harassment or oppression.

Reviving Federal Grand Jury Presentments

Renée B. Lettow

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . .[1]

In March 1992, Rockwell International pled guilty to five environmental felonies and five misdemeanors connected with its Rocky Flats plant, which manufactured plutonium triggers for nuclear bombs. Prosecutors were elated; the $18.5 million fine was the largest environmental crimes settlement in history. The grand jury, however, had other ideas. The majority of the grand jurors wanted to indict individual officials of both Rockwell and the Department of Energy (DOE), but the prosecutor had resisted individual indictments. So the grand jury, against the prosecutor's will, drew up its own "indictment" and presented it to the judge.[2] Its action has confounded legal scholars: what is the status (or even the correct name) of this document?

The consternation this question has caused is a measure of the confusion surrounding grand jury law. Although grand juries had considerable independence and were a major avenue for popular participation in the early Republic, their powers have dwindled. Courts have clouded the issue by periodically reasserting the grand jury's traditional powers, then suppressing them again. The Supreme Court has largely been silent.

The number of recent articles praising grand juries points to a revival of interest in this institution. Commentators see the grand jury as an antidote to citizens' alienation from their government. One author urges the recreation of administrative grand juries.[3] Another argues for an expansion of the grand jury's reporting function.[4] When she was a state's attorney, Attorney General Reno made a point of using grand juries to investigate social ills in Florida.[5]

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1. U.S. CONST. amend. V.

2. *See infra* Part II.A.

3. Ronald F. Wright, *Why Not Administrative Grand Juries?*, 44 ADMIN. L. REV. 465 (1992).

4. Barry J. Stern, *Revealing Misconduct by Public Officials Through Grand Jury Reports*, 136 U. PA. L. REV. 73 (1987). In the early years of the Republic, all documents that the grand jury itself drafted were called presentments. However, this usage was not technically correct. In theory, presentments were and are accusations of criminal conduct only; other documents are reports. *See* Note, 54 TEX. L. REV. 663, 664-65 (1976).

5. During Janet Reno's service as a state's attorney, Dade County grand jurors investigated, among other matters, homelessness, child welfare, public housing, hurricane preparation, firearms regulation, and hazardous waste. Terry Eastland, *Attorney General and Social Worker*, WALL ST. J., Mar. 10, 1993, at A15. A spokesman for Reno said that "when a government agency is 'dysfunctional' or an industry is 'acting irresponsibly' or 'any function of our community' is at risk, the grand jury looks into it." *Id.* As one grand

Despite this growing interest, however, no one has recently discussed resurrecting the federal grand jury's presentment power.[6] At common law, the presentment function was at least as important as the indictment; its inclusion in the Constitution shows its significance to the Framers.

A presentment is a charge the grand jury brings on its own initiative. In contrast, an indictment is almost always first drawn up by a prosecutor and then submitted to the grand jury for approval. In federal courts, a presentment cannot by itself initiate a prosecution. To begin a prosecution, the prosecutor must sign the document.[7] The act of signing, which is wholly within the Executive's discretion, transforms the presentment into an indictment. While a presentment is capable of serving as a formal charging document, its main function is to publicize. The Federal Rules of Criminal Procedure, however, prevent the grand jury from publicizing its conclusions by giving the judge discretion to seal documents such as presentments.

Although restoring the presentment power would therefore not automatically initiate a prosecution of Rockwell and DOE officials, the publicity of a grand jury accusation would serve three key goals. First, allowing presentments of government officials and contractors would check prosecutors' tendency to favor other members of the executive branch. The grand jury, a body of private citizens, is more likely to be free from bias than a politically beholden prosecutor; it can avoid even the appearance of impropriety. Second, presentments would prevent frustration and disillusionment among citizens who are told to act independently, who perform long hours of public service, and whose opinion is then suppressed because of a plea bargain. Not surprisingly, the Rocky Flats grand jury was bitter at not even being able to express its opinion after a two-and-a-half-year investigation. Third, if jurors could take a more active role in the administration of justice, they would grow in their knowledge of public affairs and in their attachment to American democracy.

Part I of this Note examines the origins and modern fate of the federal grand jury presentment power. In the early Republic, the power was frequently used; in the nineteenth and twentieth centuries it declined and became mired in confusion. The Federal Rules of Criminal Procedure, promulgated by the Supreme Court in 1945, affirmed and hastened this decline. The Rules deliberately make no provision for presentments; they ignore the Constitution's language. Part I then turns to subsequent decisions and the current muddled

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juror put it, "'We act as the conscience of this community.'" *Id.*

6. *See* United States v. Cox, 342 F.2d 167, 196 (5th Cir. 1965) (Wisdom, J., concurring specially) (advocating characterization of document as "presentment"); *In re* Presentment of Special Grand Jury Impaneled January, 1969, 315 F. Supp. 662, 678 (D. Md. 1970) (permitting disclosure of presentment); Note, *supra* note 4, at 672 (applauding holding of *In re Presentment of Special Grand Jury Impaneled January, 1969*).

7. *See infra* text accompanying note 66.

state of federal grand jury presentment law. Part II discusses the Rocky Flats case, including the specific factors that prompted the grand jurors' revolt and their frustration with the criminal justice system. Part III suggests steps for safe revival of the presentment power. These include limiting presentments to government officials and contractors, providing for declaratory judgment at the option of the accused, and allowing the grand jury appropriate staff and protection from early discharge.

I. THE HISTORY OF THE FEDERAL GRAND JURY PRESENTMENT POWER

The history of federal grand jury powers is the story of descent into confusion. In emphasizing the grand jury's function as a shield against government oppression, historians have glossed over its use as a sword. Before the Constitution, the colonies relied heavily on grand juries to perform accusatorial, administrative, and even legislative functions. Early federal grand juries remained spirited and regularly issued presentments. In the twentieth century, however, grand jury law became murkier, particularly with the passage of the Federal Rules of Criminal Procedure. Lawyers and judges now doubt the existence, let alone the extent, of the presentment power.

A. *Background: The Grand Jury Before the Constitution*

The grand jury was a creation of English medieval law carried to the American colonies and later formally enshrined in the United States Constitution. By including the grand jury in the Bill of Rights, the United States inherited not only the institution's defensive function, but also its accusatory function.[8] Indeed, the common law oath of a grand juror "says not a single word about indictments; on the contrary, at common law the grand jury swore to 'diligently inquire and true presentments make.'"[9] In 1758, Blackstone gave the classic definition of a presentment:

> A presentment, *properly* speaking, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any

8. Established by Henry II's Assize of Clarendon in 1166, the grand jury's original function was to bring accusations before royal judges. At first all accusations originated with the grand jury, but later the jurors considered accusations from outsiders and passed upon indictments drawn up by crown prosecutors. The jurors, however, retained the power to accuse on their own initiative. Such an accusation was called a presentment. *See* 1 WILLIAM S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 147-48 (1908); 2 FREDERICK POLLOCK & FREDERIC W. MAITLAND, THE HISTORY OF ENGLISH LAW 641-42 (photo. reprint 1982) (1898); 4 JAMES F. STEPHEN, COMMENTARIES ON THE LAWS OF ENGLAND 243-44 (21st ed. 1950); 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 590-93 (Boston, Little, Brown, 3d ed. 1858).

9. *In re* Presentment by Camden County Grand Jury, 89 A.2d 416, 426 (N.J. 1952) (quoting Rex v. Shaftsbury, 8 Howell's State Trials 759 (1681)); *see* Hale v. Henkel, 201 U.S. 43, 60 (1906) ("This oath has remained substantially unchanged to the present day.").