

A Brief Look at the Grand Jury

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Purpose and Origins:

In the United States, the Grand Jury is regarded as the primary security to the innocent against hasty, malicious, and oppressive prosecution, and serves the function of standing as a protective bulwark between the Government and the Defendant. The purpose of the Grand Jury is to determine whether a charge is founded upon reason, or rather, dictated by an intimidating power or by malice and personal ill will. *See Wood v. Georgia*, 370 U.S. 375 (1962).

The protection originates from the establishment of juries in England during the reign of Henry II. A “petit” jury - comprised of 12 people - was established which would determine issues of guilt or innocence. A “graunde” jury, expanded in size of up to 23 jurors, was an investigative jury to review charges brought by the Crown. The Magna Carta, signed at the plain of Runnimeade, can also be seen as a source for the jury, including Civil Grand Juries, where 25 barons were selected from the Kingdom. They are also referenced by the great English common Lawyer such as Sir Edward Coke, and Vinerian Professor at Oxford, William Blackstone.

The Grand Jury, as it has become known in America, has constitutional underpinnings in the United States. Specifically, the 5th Amendment reads in relevant part,

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger. U.S. Const. Bill of Rights Am. V.

The Grand Jury is intended to act as an independent body, apart from the courts and prosecution, to scrutinize the evidence against a defendant. In states that have Grand Juries, each state has its own rules regarding a state-empanelled Grand Jury.

The Grand Jury is a body of laypeople who are summoned to court to review the evidence to determine whether an indictment should be issued against the defendant.

Trial juries generally get to hear both sides of the case: from the prosecution and the defence. However, in a Grand Jury, there is no judge and only the prosecution is able to present evidence. The Grand Jury is also generally a closed process, in that the jurors are sworn to secrecy, and the proceedings are not open to the public or media, as they generally are in jury trials.

Grand Juries also serve an investigative function, and have the ability to subpoena witnesses and effects. A witness who lies to a Grand Jury can be prosecuted for perjury. There is no right to counsel that attaches for witnesses, although one may invoke his or her 5th Amendment Right Against Self-incrimination. This privilege applies to both testimony and production of documents. Sometimes the privilege is overcome by the granting of statutory immunity, under Title 18 of the United State Code.

The Grand Jury also need not meet any burden of proof to open an investigation, and can investigate on mere suspicion or simply to ensure that a crime has not been committed. *See U.S. v. Morton Salt. Co.*, 338 US 632 642-643 (1950).

Also, the Grand Jury does not need to conform to rules of evidence, such as hearsay, and the Grand Jury can also view evidence that would normally be suppressed or suppressible. *See U.S. v. Williams*, 504 US 35, 50 (1992).

Federal Courts and Grand Jury:

There is also a federal Grand Jury for federal criminal cases. Federal courts are courts of limited jurisdiction and handle only a very small number of crimes compared to state courts. Federal crimes, prosecuted under the United States Code, include crimes involving inter-state matters, mail fraud, narcotics and immigration offenses, money laundering and currency reporting offenses, tax and firearm offenses, or other matters within Federal Jurisdiction.

In Federal Criminal Practice, the Grand Jury procedure is governed by Rule 6 of the Federal Rules of Criminal Procedure. In Federal District Court, the Grand Jury is the primary vehicle for bringing formal charges. They are used as both an investigative and charging body. Although the court summons and impanels the Grand Jury, they are under the supervision of the prosecution, in secret.

Grand Jurors are selected by the Federal District Court in which they sit. Each Grand Jury must consist of at least 16 members and no more than 23, with the possibility of alternate jurors. More than one Grand Jury may sit in a district at any given time.

Each grand jury has a foreperson and a deputy foreperson, who administer oaths, sign all indictments, and tally the voting.

The Defendant has no right to be present before the Grand Jury, and only grand jurors, US Government Attorneys, interpreters, and stenographers are permitted to be present.

Recent Criticism:

The Grand Jury has come under some scrutiny in the last 50 years, for being a mere rubber stamp of the prosecutor. This has led to the common saying that any prosecutor 'can obtain an Indictment of a ham sandwich' from a Grand Jury. Some of the chief complaints are that Defense counsel are not permitted audience, the prosecution generally controls the witness lists, and that the grand jury may consider evidence obtained unconstitutionally.

Some argue that the original purpose of the Grand Jury – being a shield that protected the citizenry against frivolous or abusive government claims - is now being used as a sword to investigate citizens in an aggressive and unparalleled manner. With the enactment of legislation such as the PATRIOT Acts, new concerns develop between the balance between the patent darkness of the individual and the latent darkness of the state.

As we move from the Warren Court era, and the sun has set on on the Rehnquist era, and increasing jurisdiction of the federal criminal law power, it will be interesting to see how the courts and Congress view the role of the Grand Jury.