

**The Supreme Court Committee
On Standard Jury Instructions
In Criminal Cases**

TABLE OF CONTENTS

INTRODUCTION

WHAT IS A GRAND JURY?

TERM OF THE GRAND JURY

WHO ARE GRAND JURORS?

DISQUALIFICATION TO SERVE AS A GRAND OR PETIT JUROR

FREQUENTLY USED WORDS AND PHRASES

GRAND JURY AND PETIT JURY DISTINGUISHED

HISTORY OF THE GRAND JURY

THE GRAND JURY AS AN ACCUSING AND INVESTIGATIVE BODY

OFFICERS OF THE GRAND JURY

PROCEDURES

PROCEEDINGS OF THE GRAND JURY

DETERMINATION WHETHER TO RETURN AN INDICTMENT OR
A NO TRUE BILL

THE STATE ATTORNEY (OR THE STATEWIDE PROSECUTOR)
AS LEGAL ADVISOR TO THE GRAND JURY

SECRECY OF GRAND JURY PROCEEDINGS

PROTECTION AND IMMUNITY OF GRAND JURORS

ON BEING A GRAND JUROR — SOME PRACTICAL SUGGESTIONS

CONCLUSION

INTRODUCTION

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

Harlan Fisk Stone
Chief Justice
United States Supreme Court

You are one of those citizens who have been selected to perform this "highest duty of citizenship."

In time of peace there is no higher duty a citizen can perform than that of jury service; however, few citizens when called to serve have any understanding of the principles that control the actions of the grand juror.

This handbook is intended only to give the juror a better understanding of the general nature of his or her functions, together with some suggestions as how best to carry them out. The court itself will be the final authority in its instructions to the grand jury. This handbook is not intended in any manner whatever as a substitute for the instructions given by the presiding judge.

WHAT IS A GRAND JURY?

A grand jury is an investigating, reporting, and accusing agency of the circuit court (or of the Florida Supreme Court in the case of the statewide grand jury). It consists of citizens of a specified number who have been summoned and empaneled by a judge of the circuit court (or by a judge appointed by the Florida Supreme Court, in the case of the statewide grand jury). The grand jury is an agency and an arm of the circuit court (or the Florida Supreme Court in the case of the statewide grand jury) and is uniquely independent.

The grand jury is answerable to no person or agency of government except the court that empanels it and, even then, only to the extent that it may exceed its authority and privileges.

TERM OF THE GRAND JURY

At least two terms of court are held each year and once the grand jury is empaneled, it will serve for the balance of the term of court. In exceptional cases, its term may be extended. (The statewide grand jury's term is for a period of 12 months, but may be extended for up to 18 months.) The grand jury will not be in continuous session but will be called in from time to time as necessary.

WHO ARE GRAND JURORS?

Grand jurors are United States citizens and legal residents of this state and their respective counties who are at least 18 years of age and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles, or who execute an affidavit indicating a desire to serve as a juror.

All jurors are selected at random and their names are taken from lists prepared by the clerk of the circuit court.

The process of selecting jurors is done in most counties by the county commissioners and in some counties by a specially constituted jury commission. The process of selecting the statewide grand jury is handled by the State Courts Administrator for the Florida Supreme Court.

When making up the jury list, the officers compiling it are required to select only citizens they believe to be law-abiding, and of proven integrity, good character, sound judgment and intelligence, and who are not mentally infirm.

DISQUALIFICATION TO SERVE AS A GRAND OR PETIT JUROR

Any person who has been convicted of a felony or bribery, forgery, perjury, or larceny is disqualified to sit as a juror, unless his or her civil rights have been restored.

A person under prosecution for any crime is disqualified.

Most government officials are disqualified to serve on a jury. An elected public official is not eligible to be a grand juror.

FREQUENTLY USED WORDS AND PHRASES

Throughout this handbook and during your term as a grand juror certain terms will occur frequently. Some of these are:

Capital Crime. A capital crime is any crime for which the maximum punishment is death.

Circuit Court. The State of Florida is divided into 20 judicial "circuits." Each circuit covers one or more counties. The circuit court is the highest trial court in the circuit.

Defendant. A "defendant" is a person who has been accused of a crime and is defending himself or herself in a court against the criminal charge. The words "defendant" and "accused" are used interchangeably.

Felony. A "felony" is any crime which is punishable by imprisonment in a state penitentiary for a term in excess of one year. A "misdemeanor" is any crime which is punishable by imprisonment in a county correctional facility for a term of not more than one year.

Indictment; True Bill. A "true bill" is a charge brought by the grand jury accusing a person of a crime. A true bill, when it is filed in court, then becomes an "indictment."

Judge. The judge presiding over the trial is often called or referred to as "the court."

No True Bill. A "no true bill" is a finding by the grand jury that on a given charge no indictment should be filed.

Presentment. A "presentment" is a presentation to the court of a grand jury's report of its actions and recommendations.

State Attorney. Each circuit in the State of Florida has a "state attorney" who, together with assistants, prosecutes all crimes and offenses in the circuit and county courts in the circuit. Some other states refer to this officer as a "district attorney" or "prosecuting attorney."

Statewide Prosecutor. The statewide prosecutor is appointed by the Attorney General of the State of Florida to investigate and prosecute certain multi-circuit criminal activity.

GRAND JURY AND PETIT JURY DISTINGUISHED

There are two kind of juries: grand juries and petit juries.

The grand jury consists of not fewer than 15 nor more than 21 (or 18 for statewide grand jury) members. A petit jury, depending upon the type of trial, consists of either 6 or 12 members.

The grand jury and the petit jury have entirely different purposes and functions. A petit jury actually tries a case and renders a verdict of guilty or not guilty after hearing both sides. A grand jury does not try a case on the issue of guilt or innocence. The grand jury rarely hears both sides. Its function is simply to hear witnesses as to a charge of crime, by the State, and to determine whether the person, or persons, so charged should be brought to trial. The grand jury has been called both a sword and shield of justice — a sword because it is a terror to criminals, a shield because it is protection of the innocent against unjust prosecution.

The tremendous power of the grand jury obviously creates grave and solemn responsibilities to see that these powers are not perverted or abused. A grand jury, being possessed with these tremendous powers and unless motivated by the highest sense of justice, might find indictments not warranted by the evidence and thus become a source of oppression to the citizenry.

Conversely, a misguided grand jury might dismiss charges against those who should be prosecuted. The importance of the grand jury's power is emphasized by the fact that it is one of the most independent bodies known to the law.

HISTORY OF THE GRAND JURY

The grand jury originated more than seven centuries ago in England. It was recognized in the Magna Charta granted by King John of England upon the demand of the people in 1215 A.D. Its present form evolved in the period 1327 to 1377. Its origins can be traced back even further. As early as 997 A.D., a Danish king, "Ethelred the Unready," charged an investigative body of his reign that it should go about its duty by accusing no innocent person, and sheltering no guilty one.

This high principle is echoed in the oath that you took as a grand juror:

"You, as grand jurors for _____ County (or the statewide grand jury) do solemnly swear (or affirm) that you will diligently inquire into all matters put in your charge and you will make true presentments of your findings; unless ordered by a court, you will not disclose the nature or substance of the deliberations of the grand jury, the nature or substance of any testimony or other evidence, the vote of the grand jury, or the statements of the state attorney (or the statewide prosecutor); you shall not make a presentment against a person because of envy, hatred, or malice, and you shall not fail to make a presentment against a person because of love, fear, or reward. So help you God."

The early colonists brought the grand jury system to this country from England. It has been with us ever since. It is recognized in the Constitution of the United States and in the Constitution of Florida.

(The Statewide Grand Jury was created in 1973 to "strengthen the grand jury system and enhance the ability of the State to detect and eliminate organized criminal activity by improving the evidence gathering process in matters which transpire or have significance in more than one county." Section 905.32, Florida Statutes.)

THE GRAND JURY AS AN ACCUSING AND INVESTIGATING BODY

Our constitution provides that no person shall be brought to trial for a capital crime except upon indictment of a grand jury. This means that no one may be prosecuted for a capital crime except by a vote of the grand jury. Except for capital crimes, the state attorney (or the statewide prosecutor) may initiate all other criminal charges. The grand jury of course may indict for any crime that the evidence justifies.

The wisdom of leaving to the state attorney (or the statewide prosecutor) the bringing of charges as to crimes less than capital crimes and traffic violations is readily apparent. If the grand jury was 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.

OFFICERS OF THE GRAND JURY

The judge who presided over the impaneling of the grand jury in the "charge to the grand jury" advised you formally and in great detail as to how the grand jury is organized and functions. In summary, the grand jury consists of 15 but no more than 21 members. Its officers are the foreperson, who will preside over the grand jury deliberations to make sure they are carried on in an orderly fashion including overseeing the examination of the witnesses; a vice-foreperson, who will preside in the absence of the foreperson or if for any reason the foreperson is not able to carry out his or her duty; and the clerk, who will keep a record of the proceedings had before the grand jury and formally make return of these records to the clerk of the circuit court (or clerk of the Supreme Court in the case of the statewide grand jury) for safekeeping. The foreperson and vice-foreperson are appointed by the judge and the clerk is appointed by the foreperson (or in the case of the statewide grand jury, may be selected by the group). The state attorney (or the statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) will act as the legal advisers to the grand jury. The grand jury also will be provided an official court reporter or recorder to record the testimony before the grand jury.

If the grand jury has its own budget, a treasurer of the grand jury may also be appointed to keep account of all receipts and disbursements made to or from the grand jury budget.

If any question should arise concerning how the grand jury shall operate or function, you may apply to the judge, who will advise you.

PROCEDURES

Not less than 15 members of a grand jury must always be present to constitute a quorum. If less than a quorum exists, the proceedings of the grand jury must be halted until a quorum is present. Grand

jurors, who, because of an emergency, find that they will be unable to attend a grand jury session should advise the grand jury clerk or foreperson immediately.

An affirmative vote of at least 12 members of the grand jury is necessary to the return of a true bill or indictment. Therefore, even though a quorum is present it still requires at least 12 votes of individual members, rather than a mere majority of those present, in order to return a true bill.

PROCEEDINGS OF THE GRAND JURY

Most of the work of the grand jury involves hearing witnesses and determining the sufficiency of evidence on the issue of whether that evidence, without regard to possible defenses, justifies indictment. Generally, the state attorney (or statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) will present and explain the charge to the grand jury and advise as to the witnesses who will be presented, either voluntarily or upon being summoned on the request of the state attorney (or statewide prosecutor) or the grand jury itself. The grand jury may call any witness it deems appropriate and necessary.

The witnesses will be called one by one and placed under oath to tell the truth. Generally, the state attorney (or statewide prosecutor) will administer the oath. This oath should be administered in a solemn, dignified, and deliberate manner in order to impress upon the witness the seriousness of the situation and the duty to be truthful. The state attorney (or the statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) ordinarily will undertake to question the witnesses first. If the foreperson, or any member of the grand jury desires to do so, they then also may propound questions. It is suggested, however, that any question first be submitted to the state attorney (or statewide prosecutor), who will determine whether the question is appropriate.

Grand jurors should keep in mind that they are acting in a judicial capacity and sitting in judgment of evidence before them. For this reason all questioning should be done in a calm, impartial, and objective manner without indicating the personal feelings of the person asking the questions.

Occasionally, a witness when brought before the grand jury refuses to testify or answer questions. If this occurs, both the question the witness has refused to answer and the fact of refusal should be carefully recorded. The matter then should be brought before the court, with a complete copy of the record, in order to obtain from the court a ruling on whether the witness may be compelled to answer the question. In most instances a refusal to answer is based upon the claim of the witness that the answer will violate the constitutional right against self-incrimination. If the answer does tend to incriminate the witness, the witness cannot be made to answer. If it does not, however, the witness will be ordered to answer under penalty of contempt.

An accused person cannot be compelled to testify before a grand jury although one under investigation by the grand jury may appear voluntarily to testify. In that event, however, the grand jury should proceed with great caution and should not permit one under investigation to testify until after first conferring with the state attorney (or the statewide prosecutor). If an accused, or any person under investigation, is permitted to testify before the grand jury without waiving the constitutional right against self-incrimination, any indictment or presentment would be null and void.

It is clear that the matter of forcing a witness to testify or of giving the accused an opportunity to testify raises complicated legal questions. The advice of the state attorney (or the statewide prosecutor) and, when necessary, a ruling from the court, therefore, always should be sought when these questions arise.

A witness is permitted to be represented before the grand jury by one attorney. The attorney may be present for the purpose of advising and consulting with the witness, but may not address the grand jurors, raise objections, or make arguments. (This provision does not apply to proceedings of the Statewide Grand Jury.)

DETERMINATION WHETHER TO RETURN AN INDICTMENT OR A NO TRUE BILL

When the grand jury has heard all necessary or available witnesses and is prepared to deliberate on the issue whether to indict or return a no true bill, the foreperson must compel all persons to leave the grand jury room except the members of the grand jury themselves. No other person is permitted in the grand jury room during its deliberations, even including the state attorney (or the statewide prosecutor), court reporter, and interpreter.

When the question of whether to indict or return a no true bill is presented, all grand jurors have the right to comment on the evidence and to express their views of the matter. Only when all members of the grand jury have expressed themselves and each has been given the opportunity to be heard should a vote be taken. A vote to return an indictment can be found only upon the affirmative vote of at least 12 members of the grand jury.

Similar proceedings should be taken when the matter to be discussed is not a criminal charge or indictment but a presentment, as noted above.

If all persons, except the grand jurors, are not removed from the grand jury room during its deliberations, any indictment or presentment would be nullified.

THE STATE ATTORNEY (OR THE STATEWIDE PROSECUTOR) AS LEGAL ADVISOR TO THE GRAND JURY

The court in its charge to the grand jury outlined the part that the state attorney (or the statewide prosecutor) will play in assisting the grand jury. The state attorney (or the statewide prosecutor) will assume responsibility for presenting witnesses and bringing testimony before the grand jury. The state attorney (or the statewide prosecutor) is a public official and is entitled to the confidence and cooperation of the grand jury.

It occurs sometimes, however, that even the best of advisors may be in error. If a difference of opinion arises between the state attorney (or the statewide prosecutor) and the grand jury and it cannot be resolved amicably, the matter should be brought before the presiding judge for a ruling.

SECRECY OF GRAND JURY PROCEEDINGS

Secrecy as to all grand jury proceedings is of the utmost importance. This includes not only the actions upon an indictment or a presentment but even the fact that any such matter was considered, or any witness was called. It is only in this manner that the grand jurors themselves can be protected from pressure by persons who may be involved by the action of the grand jury. Secrecy also is the only protection that a witness may have before a grand jury, which will protect the witness from being tampered with or intimidated before testifying at the trial. Further, secrecy may prevent one under indictment, or subject to indictment, from escaping while the issue of indictment is under consideration. It also should be remembered that secrecy may encourage witnesses to give the grand jury frankly and candidly any knowledge they may have concerning crime or corruption. Lastly, and of equal importance to all other consideration of secrecy, is the fact that an innocent person who has been subjected to a charge but not indicted should be protected from the embarrassment and disgrace attendant upon the making of a charge before a grand jury.

The pledge of secrecy is paramount. It also is permanent.

A grand juror will not communicate to family, friends, associates, or anyone concerning any matter that takes place in the grand jury room. The only time this veil of secrecy may be lifted is by order of the court after a full hearing, and then only in exceptional cases.

PROTECTION AND IMMUNITY OF GRAND JURORS

Grand jurors are fully protected from actions against them by being an independent body answerable to no one except the court that empanels it. No inquiry may be made to learn what grand jurors said or how they voted. The law gives the grand juror complete immunity for official acts. There is only one exception: if a grand juror testifies as a witness for the grand jury as to a commission of a crime and that testimony is perjured, the juror could be prosecuted for that perjury. This complete protection for the official acts obviously is vital to the operation of the grand jury and points up that grand jurors should be citizens of unquestionable integrity and high character.

ON BEING A GRAND JUROR — SOME PRACTICAL SUGGESTIONS

Attend all sessions of the grand jury. Your attendance should be regular and on time. If you are unable to attend a session and wish to be excused, obtain permission from the foreperson. The unexpected lack of a quorum could cause a great loss of money, as well as the time of the jurors, the authorities, and the witnesses. The public is depending on you.

Pay close attention to testimony given and the evidence presented.

Be courteous to the witnesses and your fellow jurors.

Fix the time and place of your meetings, keeping in mind the convenience of the public and the witnesses as well as yourselves and the state attorney (and the statewide prosecutor).

Do not interrupt until the state attorney (or the statewide prosecutor) has finished questioning the witness. In all probability the evidence you are interested in will be brought out by those questions.

Listen to the opinions of your fellow jurors, but maintain your own independent viewpoint.

Be independent, but not obstinate.

Be absolutely fair. You are acting as a judge. You therefore must be guided by your own good conscience and sense of justice.

All jurors have an equal voice in determining whether an indictment shall be returned. Each of you has a right to state your reasons.

Do not remain silent when the case is under discussion and then, after a decision has been made, criticize the acts of the grand jury.

A reckless grand jury is as bad as a weak grand jury.

Do not attempt to investigate matters beyond the province of the grand jury, or merely because someone suggested an investigation.

Above all, refrain from discussing grand jury matters with fellow jurors outside of the grand jury room.

Each juror has a duty and responsibility equal to yours. Each juror is entitled to be satisfied with the evidence. If others wish to pursue a matter further, no effort should be made to dismiss the witness or shut off proper discussion.

CONCLUSION

Your membership on the grand jury is an honor. You are one of the few citizens who have been called upon to perform this service. Your service as a grand juror will be a source of pride and satisfaction to you if you devote to it the responsible participation and dedicated service that the grand jury is entitled to expect from its members.

Comment

The grand jury handbook was initially approved in 1981. It was amended in 1991, in June 2002, and September 2005.