



HANDBOOK

FOR

FEDERAL GRAND JURORS

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FOREWORD

This Handbook was originally prepared in 1969 by the Judicial Conference Committee on the Operation of the Jury System, which I presently chair. It was recommended by the Judicial Conference for use in the United States District Courts to orient and prepare newly impaneled grand jurors as to the high office which it is incumbent upon them to discharge. The drafting of the Handbook in 1969 was largely the effort of a subcommittee consisting of District Judge Howard C. Bratton of New Mexico (chairman), Circuit Judge Gerald W. Heaney of the Court of Appeals for the Eighth Circuit, and District Judge Bruce R. Thompson of Nevada.

The mission of the Handbook is to explain to persons selected for service on a federal grand jury, clearly and simply, the general nature of their obligations and duties and of the institution of which they will become a part. It was designed to supplement the oral instructions of the court to the grand jury, but in no sense to replace them. In 1978 the Judicial Conference affirmatively recommended that each grand jury being impaneled should be charged by a district judge upon the commencement of its term, and it approved a model charge which may be used by the District Courts for that purpose. This charge was developed for the Committee on the Operation of the Jury System by its subcommittee, chaired by District Judge Myron L. Gordon of the Eastern District of Wisconsin and also including District Judge Robert E. Varner of the Middle District of Alabama and Senior District Judge Howard F. Corcoran of the District of Columbia.

It is the purpose of the 1979 revision of the Handbook to incorporate the text of this model charge, which will be found beginning on page 19, for the convenience of the grand jurors while the judge is instructing them and for their later reference when necessary during the course of their service. The judges impaneling grand juries may wish to depart from or supplement the contents of the model charge, which is intended by the Judicial Conference only as a suggestion of

material appropriate for presentation to grand jurors as they embark upon the discharge of this important obligation of citizenship. I hope that this Handbook and its model charge will prove useful to the District Courts, and particularly to those citizens who will serve as grand jurors in the years to come.

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FEDERAL GRAND JURY HANDBOOK

HANDBOOK FOR FEDERAL GRAND JURORS PURPOSE OF THIS HANDBOOK

This Handbook will acquaint persons who have been selected to serve on a federal grand jury with the general nature and importance of their role as grand jurors. It explains some of the terms which grand jurors will encounter during their service and offers some suggestions helpful to them in performing this important public service.

This Handbook is not intended to state the principles of law that govern persons serving on a federal grand jury. The authoritative statements pertaining to the duties of a grand jury are contained in the grand juror's oath and in the instructions of the court.

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

ORIGIN AND HISTORY OF THE GRAND JURY

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

Over the years, the hallmarks of our modern grand jury developed in England. For example, grand jury proceedings became secret, and the grand jury became in-

dependent of the Crown. As a result, a grand jury may vote an indictment or refuse to do so, as it deems proper, without regard to the recommendations of judge, prosecutor, or any other person. This independence of action was achieved only after a long hard fight. It can best be illustrated by the celebrated English case involving the Earl of Shaftesbury who, in 1681, fell under the suspicion of the Crown. Displeased with him, the Crown presented to the grand jury a proposed bill of indictment for high treason and recommended that it be voted and returned. After hearing the witnesses, the grand jury voted against the bill of indictment and returned it to the King, holding that it was not true.

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

The grand jury as an institution was so firmly established in the traditions of our forebearers that they included it in the Bill of Rights. The Fifth Amendment to the Constitution of the United States provides in part that, "[no] person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . ." Moreover, the grand jury system is also recognized in the constitutions of many of the states of the Union.

NATURE OF THE GRAND JURY

The powers and functions of the federal grand jury

differ from those of the federal trial jury, which is called the petit jury. The petit jury listens to the evidence offered by the prosecution and the defense (if it chooses to offer any) during a criminal trial and returns a verdict of guilty or not guilty.

The grand jury, on the other hand, does not ordinarily hear both sides of a criminal case and does not determine guilt or innocence. The grand jury normally hears only that evidence tending to show the commission of a crime. The grand jury must determine from this evidence, and usually without hearing evidence for the defense, whether a person should be tried for a serious federal crime. This means that, as a general rule, no one can be prosecuted for a serious crime unless the grand jury decides that the evidence it has heard so requires. However, a person may waive grand jury proceedings and be charged by information.

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

(1) The Grand Jury's Tasks

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

After it has received evidence against a person, the grand

jury must decide whether the evidence presented justifies an indictment, or "true bill," which is the formal criminal charge returned by the grand jury. Upon the indictment being filed in court, the person accused must either plead guilty or stand trial.

If the evidence does not persuade the grand jury that there is probable cause to believe the person charged with a crime is guilty, it will vote a "no bill," or "not a true bill." When this occurs, no trial is required.

(2) Investigation

The major portion of the grand jury's work will probably be concerned with charges brought to its attention by the court or the United States Attorney. However, as to those incidents otherwise brought to its attention, probably no form of indictment will have been prepared in advance by the United States Attorney. The grand jury should consult with the United States Attorney or the court before undertaking a formal investigation. This is necessary since the grand jury has no investigative staff and legal assistance will be necessary in the event an indictment is voted.

The grand jury may consider any particular matter to determine if a federal offense has been committed, whether the facts have been brought to its attention officially or unofficially. However, its concern must be devoted solely to ascertaining whether there is probable cause to believe that a federal crime has been committed and to report accordingly to the court.

It should be borne in mind that a federal grand jury can take action only upon federal crimes that have been committed within the district in which it has been impaneled, including but not limited to federal crimes committed by public officials. A federal grand jury is not authorized to investigate situations involving the conduct of public officials, agencies or institutions which the grand jury believes are subject to mere criticism rather than a violation of federal criminal statutes.

MEMBERSHIP ON A FEDERAL GRAND JURY

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

SELECTION OF GRAND JURORS

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

ORGANIZATION, OATH, AND OFFICERS OF THE FEDERAL GRAND JURY

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

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

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

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

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

PROCEDURE

(1) Quorum

Sixteen of the 23 members of the grand jury constitute a quorum for the transaction of business. If fewer than this number are present, even for a moment, the proceedings of the grand jury must stop. This shows how important it is that each grand juror conscientiously attend the meetings. If a grand juror believes that an emergency prevents his attendance at the meeting, he must promptly advise the grand jury foreman. If his absence will prevent the grand jury from acting, he should attend the meeting.

(2) Evidence Before the Grand Jury

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

Each federal court district has a United States Attorney whose duty it is to represent the United States in federal matters within the district and to prosecute those accused of federal crimes. In the usual case, he or one of his assistants will present the evidence of alleged violation of the law. He will also advise as to the witnesses to be called and any documentary evidence which should be produced

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for examination by the grand jury. The grand jury may ask that additional witnesses be called if it believes this necessary. The United States Attorney will also prepare the formal written indictments which the grand jury wishes to present. But neither he nor any of his assistants may remain in the room while the grand jury deliberates and votes on an indictment.

(3) Questioning the Witness

Witnesses are called to testify one after another. As each witness appears to give his testimony, he will be sworn by the grand jury foreman or, in his absence, the deputy foreman. He will then be questioned. Ordinarily, the United States Attorney or one of his assistants questions the witness first, followed next by the foreman of the grand jury. Then, the other members of the grand jury may question the witness.

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

Because of the need for secrecy, it is very important that only authorized persons be present in the grand jury room while evidence is being presented. This means that only the grand jury, the United States Attorney or his assistant, the witness under examination, the court reporter, and the interpreter (if the foreman determines one is required), may be present. If an indictment should ultimately be voted, the presence of unauthorized persons in the grand jury room could invalidate it.

If a witness who is appearing before the grand jury refuses to answer a question, the grand jurors accompanied by the United States Attorney or his assistants, may bring the matter before the court in order to obtain a ruling as to whether or not the answer may be compelled.

(4) Calling the Person Under Investigation as a Witness

Neither the person under investigation (sometimes referred to as the "accused," although this does not imply he is guilty of any crime) nor any witness in his behalf normally will testify before the grand jury.

Upon request, preferably in writing, an accused may be given the opportunity by the grand jury to appear before it. If the accused is given this opportunity and appears, he cannot be forced to testify because of the provision in the federal Constitution against self-incrimination. If the grand jury attempts to force him to testify, an indictment returned against him may be nullified.

Because the appearance of an accused before the grand jury may raise complicated legal problems, a grand jury which has decided to allow an accused to appear before it should seek the United States Attorney's advice and, if necessary, the court's ruling before his appearance is permitted.

Even if the accused is willing to testify voluntarily, it is necessary that he first be warned of his right not to testify, and he should be required to sign a formal waiver before his testimony is received. The grand jury should be completely satisfied that he understands what he is doing.

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

It is the responsibility of the grand jury to weigh the evidence of guilt presented to it in order to determine whether this evidence, usually without any explanation being offered by the accused, persuades it that a crime has probably been committed. The grand jury must be satisfied that there is probable cause to believe that a crime has been committed and that the accused has probably committed it before he may be subjected to a trial. Jurors should pay careful attention to the judge's charge after their selection. The charge will set forth the precise requirements the evidence must meet before an

indictment may be voted. Only the evidence presented to the grand jury in the grand jury room may be considered in determining whether to vote an indictment.

(6) Determination to Ignore or Indict

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

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

The foreman of the grand jury must keep a record of the number of jurors concurring in the finding of every indictment and file the record with the Clerk of the Court. If an indictment is found, the grand jury will report it to the judge in open court. It will likewise report any "not true bills," or decisions not to indict. If the grand jury decides not to indict an individual who has been charged by a United States Commissioner and is either in jail or out on bail, the foreman must immediately report in writing to the court the grand jury's decision not to indict the accused, so that he may be promptly released.

SECURITY

The law imposes upon each grand juror an obligation of secrecy. This obligation is emphasized in the oath each

takes and in the charge given to the grand jury by the judge.

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

Except for its deliberations and the vote of any grand juror, the grand jury may disclose matters occurring before it to the attorneys for the government for use in the performance of their duties. The only other time matters occurring before the grand jury may be disclosed to anyone is when disclosure is ordered by the court in the interests of justice.

PROTECTION OF GRAND JURORS

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

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

Because of this immunity, each grand juror must perform his duties with the highest sense of responsibility.

PRACTICAL SUGGESTIONS FOR GRAND JURORS

Each grand juror should attend the grand jury sessions regularly, in order to insure that a quorum of sixteen

members will be present to conduct the grand jury's business.

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

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

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

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

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

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

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

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

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

Finally, every citizen who is selected to serve on a federal grand jury should bring to his task the determination to participate in a responsible manner and to assert his very best efforts to the end that the grand jury upon which he serves will be a credit not only to the community it represents but to the United States.

GLOSSARY OF TERMS

Accused:

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

Charge to the Grand Jury:

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

Deliberations:

The discussion by the grand jury members of a given charge against an accused, during which no one except the grand jury members may be present.

District:

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

Evidence:

Testimony of witnesses, documents, and exhibits make up the evidence presented to the grand jury by the United States Attorney. In some instances, the person under investigation may also testify.

Federal:

The national government as distinguished from the state governments.

Immunity:

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

Indictment:

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

Information:

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

"No Bill":

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

Probable Cause:

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

Petit Jury:

The trial jury, composed of 12 members, that hears a case after indictment and renders a verdict or decision.

only after hearing the prosecution's entire case and whatever evidence the defendant chooses to offer.

Quorum for grand jury to conduct business:

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

United States Attorney:

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

GRAND JURY CHARGE

Preliminary Matters

[This model charge was approved and recommended to the United States District Courts in September, 1978 by the Judicial Conference of the United States. See the 1978 Report of Judicial Conference Proceedings at page 77.]

When the prospective grand jurors convene in the courtroom, the judge advises them briefly why they are present and introduces the government's counsel who may be in attendance. An opportunity should be given to those individuals on the panel who want to request to be excused from service.

Thereafter the judge directs the clerk to select 23 of their number by lot. The judge then designates a foreperson and a deputy foreperson. The judge should advise the jurors of the prospective term of their service. All proceedings during which a witness is present shall be recorded stenographically or by an electronic recording device.

Thereupon, the grand jurors are sworn, and the judge proceeds with his instructions.

Here is a suggested form of oath for the grand jurors:

Do you, and each of you, solemnly swear that you shall diligently inquire into and make true presentment or indictment of all such matters and things as shall be given you in charge or otherwise come to your knowledge, touching your grand jury service; to keep secret the counsel of the United States, your fellows and yourselves; not to present or indict any person through hatred, malice or ill will; nor leave any person unrepresented or unindicted through fear, favor, or affection, nor for any reward, or hope or promise thereof; but in all your presentments and indictments to present the truth, the whole truth, and nothing but the truth, to the best of your skill and understanding? If so, answer "I do."

Ladies and gentlemen of the grand jury, you have now been empanelled and sworn as a grand jury. The duties with which you are charged are of the highest importance to the proper administration of justice. In serving as grand jurors you will be performing an important civic duty and fulfilling an important obligation of citizenship.

It is the court's responsibility to instruct you at this time as to the law which should govern your actions and your deliberations as grand jurors.

The grand jury existed in England long before it was brought over to the American colonies. There was a conflict between the powers of the English kings and the rights of the citizen, and the grand jury stood as a barrier against political and religious persecution. The grand jury developed as an entity independent of the king, so that the king could not charge a subject with a crime without first submitting the evidence to a grand jury which could decide whether to return an indictment against the accused. The resolute independence of the grand jury came about only after considerable blood was shed and punishment meted out to our forebearers.

The framers of our federal Constitution deemed the grand jury so important an instrumentality in the administration of justice that they included it in the Bill of Rights. The Fifth Amendment to the United States Constitution provides in part that "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury. . . ." An infamous crime is a serious crime which may be punished by imprisonment for more than one year.

Nature of the Grand Jury

We have two kinds of juries in the federal courts. First, there is the trial jury, sometimes known as the petit jury. The trial jury, consisting of 12 members, determines whether a person accused of a crime is guilty or not guilty of the crime charged. Federal jury trials take place in the

courtroom, in the presence of the judge, the jury, the attorneys, and the public, where the accused may confront the witnesses against him and may be convicted only when each juror is convinced of guilt beyond a reasonable doubt.

The other type of jury is the grand jury. Its function is equally important but entirely different. It consists of from 16 to 23 persons whose functions are conducted in secrecy. The grand jury has the responsibility to investigate charges of crime committed against the laws of the United States and, if the result of the investigation so warrants, to make an accusation against a person by returning an indictment against him. The decision to indict is normally made solely on the basis of the government's evidence without the accused person's having the opportunity to present his side of the case.

An indictment is the formal written accusation charging the accused person or persons with one or more crimes. In the event that an indictment is returned against an accused person, he becomes a defendant, and in due course he will be given the opportunity to plead not guilty or guilty to the indictment. If he pleads not guilty, he will be required to stand trial in open court before a trial jury. In short, the grand jury decides whether a person should be formally charged with a crime and brought to trial; it is the trial jury which then decides whether the accused person is guilty or not guilty of the crime charged in the indictment.

Thus, the purpose of the grand jury is to determine whether there is sufficient evidence to justify a formal accusation against a person. If law enforcement officials were not first required to submit to an impartial grand jury proof of guilt as to a proposed charge against a person suspected of having committed such crime, they would be free to arrest the suspect and bring him to trial no matter how little evidence existed to support the charge.

As members of the grand jury, you, in a very real sense, stand between the government and the accused. A federal grand jury shall never be made an instrument of private prejudice, vengeance or malice. It is your duty to see to it

that indictments are returned against those who you find probable cause to believe are guilty and not against the innocent. It is further your duty to see to it that the innocent are not compelled to go to trial before a trial jury. Only when you are satisfied that there is probable cause to believe that a crime has been committed by a specified person should you return an indictment against such person.

In addition to the protection of life, liberty and the property of the people, another important function of government is the administration of justice. The performance of these functions requires the vigorous, fearless and impartial enforcement of the criminal law, with due regard for the constitutional rights of the accused. The grand jury is one of the most forceful and effective agencies through which the government performs these functions and duties.

As set forth in the oath which you have taken, it is now the duty of each of you to inquire diligently, fully and impartially into all of the offenses which come to your knowledge and of which this court has cognizance. You have solemnly promised that you will charge no one from fear, favor, affection, reward or hope of reward. You are to keep secret the proceedings before the grand jury and also the views expressed by the United States Attorney, your fellow grand jurors, and your own. You are to perform all the duties imposed upon you as grand jurors to the best of your ability.

The grand jury is no place to shield or reward one's friends, nor to punish one's enemies. A member of the grand jury who finds himself or herself in a biased state of mind as to a person under investigation should not participate in that investigation or in the return of the indictment.

Now this does not mean that, if you have an opinion, you should not participate in the investigation; but it does mean that if you form a fixed opinion before the matter comes up, that is before you hear any evidence, on a basis of friendship or hatred or some other similar motivation, you should not participate in that investigation and in the return or failure to return an indictment.

Limitations on the Powers of the Grand Jury

It is a characteristic of our system of government to establish some checks against the unreasonable exercise of power. Your powers are extensive in many respects, but your powers are also limited in several important respects.

You are empowered to investigate conduct which violates federal law. Criminal activity of a local nature is punished by state law. This latter type of criminal conduct falls outside your inquiry. The federal courts deal only with those matters over which they have authority under the Constitution and deal only with criminal activity which violates an act of Congress. Sometimes the same conduct violates both federal law and state law, and you may properly consider such conduct.

As a grand jury, you are not concerned with the wisdom of the criminal laws enacted by Congress. Congress determines the policy in this field. It is every person's duty to conform his acts to the laws enacted by Congress. We are a government of laws and not of persons. All are equal under the law, and no one is above the law.

Furthermore, the punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the court and is not to be considered by the grand jury in its deliberations.

There is also a geographic limitation imposed on the scope of your inquiries and the exercise of your powers. You may inquire only into offenses committed in this district.

Finally, there are limits imposed on the exercise of your powers by your own common sense and sense of propriety. You have the power to call private citizens from their daily business and affairs to testify before you, but you should remember that citizens are not to be harried or inconvenienced unless the public interest and justice require it.

Just as it is hoped and expected that you will serve as the balance wheel between the power of government and the interests of personal liberty, it is also expected that you will achieve an appropriate balance in the exercise of your pow-

ers. Justice is not usually vindicated by excesses in the use of power or undue haste. Justice is best served by a balanced and reasonable approach to the tasks that await you.

The Grand Jury's Tasks and Procedures

As I have already explained to you, your function is to determine whether a person shall be tried for a serious federal crime alleged to have been committed within this district. This includes felonies and some misdemeanors. The cases which come before you will arise in various ways. Frequently, suspects are arrested during or shortly after the commission of an alleged crime. They are taken before a magistrate of the district before you become involved in the case. The United States magistrate holds a preliminary hearing to determine whether there is probable cause to believe that a crime was committed and that the accused committed it. If the magistrate finds such probable cause, he will direct that the accused be held for the action of the grand jury, so that you can consider whether an indictment should be issued.

Other cases will come to you before an arrest but after an investigation has been conducted by a governmental agency, such as the Federal Bureau of Investigation, the Treasury Department, postal authorities or other federal law enforcement officials. These cases are then brought to your attention by the United States Attorney or an Assistant United States Attorney.

In addition to the matters presented to you by the United States Attorney's office, you have the right and duty to investigate any other offenses committed in this district against the criminal laws of the United States of which you have knowledge or which come to your attention.

The existence of such crimes may come to your attention in two ways. First, during the course of your inquiry about one offense, the testimony may disclose a different offense. Second, some of you may have personal knowledge of the commission of a federal crime not known to the federal authorities. However, as you have no power to employ

investigators or to draw on federal funds for such purpose, it is best to take up such matters with the United States Attorney. If he refuses to act or is unable to act impartially on the matter, you may then take it up with the court.

By the terms of the Constitution, you may also make a "presentment" directly to the court. A presentment is an accusation initiated by the grand jury itself without any formal charge or written indictment having been submitted by the government. To form the basis for a prosecution, it must be followed by an indictment. You have the power to make a presentment, even over the active opposition of the government attorneys, if you believe it is necessary in the interests of justice. I mention this power of presentment to you only to indicate the extent of your powers, and not to suggest that you are likely to find it wise or necessary to exercise this procedure.

Sixteen of the 23 members of the grand jury constitute a quorum for the transaction of business. If fewer than this number are present, even for a moment, the proceedings of the grand jury must stop. This shows how important it is that each of you conscientiously attend the meetings. If an emergency prevents your personal attendance at a meeting, you must promptly advise the grand jury foreperson, who has the authority to excuse you from attendance. If your absence will prevent the grand jury from acting, you should, if humanly possible, attend the meeting. You have the right to regulate your sessions to accommodate the convenience of yourselves and the United States Attorney, but you have the over-all obligation to be available for duty at all times during the term for which you have been selected. If you find it necessary to seek your discharge from all continued service as a member of the grand jury, such request must be presented to the judge.

The United States Attorney represents the government in the prosecution of parties charged with the commission of public offenses against the laws of the United States. The United States Attorney or one of his assistants will present the accusations which the government desires to have con-

sidered by you. He will point out to you the laws which the government deems have been violated and will subpoena for you such witnesses as he may consider important and also such other witnesses as you may request or direct to have presented to you in connection with matters under consideration or which come to your knowledge.

Evidence

The evidence that you will consider will normally consist of oral testimony of witnesses and written documents. Each witness will appear before you separately. When the witness first appears before you, he will be sworn in by the grand jury foreperson. After being sworn, the witness may be questioned. Ordinarily, the United States Attorney or one of his assistants questions the witness first. Next, the foreperson questions the witness, followed by the other members of the grand jury.

In certain cases it may be necessary to have an interpreter brought into the grand jury room and sworn to assist the grand jury in interpreting the testimony of someone who does not speak the English language. If this be the case, the grand jury may arrange for an interpreter through the United States Attorney or one of his assistants.

Witnesses should be treated courteously when they appear before you. Questions should be put to them in an orderly fashion. If there is any doubt as to the propriety of any questions asked, the advice of the United States Attorney or his assistants may be sought. If necessary, a ruling may be obtained from the court.

As you listen to witnesses who are presented to you in the grand jury room and hear their testimony as to matters concerning a defendant or defendants, you are the judge of the credibility of these witnesses. You decide the value of each and every witness. You may believe the testimony of the witness, or you may not believe such testimony. The determination of the credibility of a witness involves a question of fact, and not a question of law. It is for you to decide whether you believe the testimony of a witness. It is not for the court, the prosecutors, or any officer of the court to

determine that for you.

It will assist you in passing on the credibility of witnesses to consider whether the witnesses are personally interested, whether their testimony has been corroborated by other witnesses or circumstances in the case, what opportunity the witnesses have had for observing or determining the matter about which they testify, the reasonableness of probability of the story which they narrate to you, and the manner and demeanor of the witnesses in testifying before you. From these factors, you will determine whether you believe the witnesses who testify before you.

Hearsay testimony, that is testimony as to facts not known by a witness of his own personal knowledge but told to him by others than the accused, may alone, if deemed by you to be persuasive, provide a basis for returning an indictment against an accused. You must be satisfied that there is evidence against the accused showing probable cause, even though such evidence is composed of hearsay testimony.

You will receive all the evidence presented which may throw light upon the matter under consideration, but you should be cautious in accepting as true mere reports and suspicions, unless they tend to provide you with probable cause to believe in the guilt of the accused. If in the course of your inquiries you have reason to believe that there is other evidence, not presented to you but within your reach, which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced. You have the right to subpoena witnesses from anywhere in the country and may direct the United States Attorney to issue such subpoenas as you see fit. Your right to subpoena witnesses is a powerful one and should be exercised with careful discretion. Persons should not ordinarily be subjected to disruption of their daily lives nor should public funds be expended to bring in witnesses unless you believe they can provide meaningful evidence which will assist you in your investigations.

You are the sole judges as to the number of witnesses you desire to hear. You are not required to summon witnesses which the accused person may wish to have examined unless you believe that an apparent violation may be explained by their testimony. Similarly, you may refuse to hear witnesses offered by the United States Attorney if you do not believe their testimony will assist you in your functions.

Witnesses are not permitted to have counsel present with them in the grand jury room. However, the law permits witnesses to confer with their counsel outside of the grand jury room. You are to draw no adverse inference if a witness chooses to exercise this right to confer with counsel outside the grand jury room; an appearance before a grand jury may present complex legal problems requiring the assistance of counsel. There are also other rights possessed by every witness before a grand jury. These include the right to refuse to answer any question if the answer thereto would tend to incriminate him, and the right to know that anything he says may be used against him.

Frequently charges are made against more than one person. It will be your duty to examine the evidence as it relates to *each* person and to make your finding as to each person in the relationship in which they may be joined in an indictment against more than one person. In other words, where charges are made against more than one person, in accordance with the evidence as you find it, you may indict all of the persons or only such persons whom you believe the evidence points to as being properly deserving of indictment.

Neither the accused nor any witnesses in his behalf normally will testify before the grand jury. Upon request, preferably in writing, you may afford the accused an opportunity to appear before you. If the accused is given this opportunity and appears, he cannot be forced to testify because of the provision in the federal Constitution against self-incrimination. If you attempt to force him to testify, an indictment returned against him may be nullified.

Because the appearance of an accused before you may raise complicated legal problems, if you decide to allow an accused to appear, you should seek the United States Attorney's advice and, if necessary, the court's ruling before his appearance is permitted.

Even if the accused is willing to testify voluntarily, it is necessary that he first be warned of his right not to testify, and he should be required to sign a formal waiver before his testimony is received. You should be completely satisfied that he understands what he is doing.

If a witness exercises his Fifth Amendment right against compulsory self-incrimination, the grand jurors should hold no prejudice against him for that reason, and it should play no role in the return of any indictment against such witness.

Deliberation and Vote

After you have heard all the evidence you wish to hear in a particular matter, you will then proceed to deliberate whether the accused should be indicted. No one, other than your own members, is to be present while you are deliberating or voting.

After all persons other than the grand jury members have left the room, the foreperson will ask the grand jury members to discuss and vote upon the question whether the evidence persuades the grand jury that a crime has probably been committed by the person or persons accused and that an indictment should be returned.

To return an indictment charging an individual with an offense, it is *not* necessary that you find that the accused is guilty beyond a reasonable doubt. You are not a trial jury, and your task is *not* to decide the guilt or innocence of the person charged. In your deliberative sessions, remember that the accused usually has had no opportunity to present a defense, so that ordinarily you hear only the government's side of the case. Your task is to determine whether the government's evidence as presented to you is sufficient to cause you to conclude that there is probable cause to believe that the accused is guilty of the offense charged against him — that is, whether the evidence presented to you is suf-

ficiently strong to warrant a reasonable person's believing that the accused is probably guilty of the offense with which he is charged.

Each grand juror has the right to express his view of the matter under consideration. Only after all grand jurors have been given full opportunity to be heard will the vote be taken. It should be remembered that at least 16 jurors must be present at all times, and 12 members must vote in favor of an indictment before one may be returned.

The foreperson shall designate another juror to serve as secretary, and the latter shall keep a record of the number of jurors concurring in the finding of every indictment. The record shall be filed with the clerk of the court. The voting record for each indictment shall not include the names of the jurors but shall indicate the number of affirmative votes.

You may decide, after deliberation among yourselves, that further evidence should be considered before a vote is taken. In such case, you may direct the United States Attorney to subpoena the additional documents or witnesses you desire to consider.

If 12 or more members of the grand jury, after deliberation, believe that an indictment is warranted, then you will request the United States Attorney to prepare the formal written indictment if a proposed indictment has not already been prepared. The indictment will be in the name of the United States, will designate the defendant or defendants, will set forth the date and place of the alleged offense, will assert the circumstances making the alleged conduct criminal and will identify the criminal statute violated. The foreperson will endorse the indictment as a true bill and place his signature in the space followed by the word "foreperson." It is the duty of the foreperson to endorse every indictment found with the concurrence of at least 12 grand jurors, whether he voted for or against the finding of the indictment. The grand jury will then return the indictment to the court for action. If less than 12 members of the grand jury vote in favor of an indictment which has been submitted to you for your consideration, the foreperson will endorse

the indictment "not a true bill" and return it to the court, and the court will impound it.

Indictments will be presented to a judge or magistrate in open court by your foreperson at the conclusion of each deliberative session.

In the absence of the foreperson, the deputy foreperson may act in all of the former's functions and duties.

Independence of the Grand Jury

You will recall from my earlier remarks that the grand jury developed in England as an entity independent from the king to protect a subject from an unwarranted prosecution. The king could not charge a subject with a serious crime without first submitting evidence and witnesses to a grand jury, which then decided whether to return an indictment against the accused person.

Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney, the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's office. There has been some criticism of the institution of the grand jury for allegedly acting as a mere rubber stamp approving prosecutions that are brought before it by government representatives. You would desecrate your oath and the tradition of the grand jury if you were merely to rubberstamp the contemplated prosecutions brought before you by the government representatives. Similarly, you would perform a disservice if you did not indict where the evidence warranted an indictment.

As a practical matter, you must work closely with the government attorneys. The United States Attorney and his assistants will provide you with important service in helping you to find your way when confronted with complex legal matters. It is entirely proper that you should receive this assistance.

However, you must remember that you are not the prosecutor's agent. Your role is related to but clearly distinct from that of the government attorneys who will assist you, and it is important that you keep the distinction between the roles clearly in mind. Although you must work closely with the government, you must not yield your powers nor forego your independence of spirit.

These comments are meant to be cautionary in nature. The government attorneys are sincere men and women, and you will develop ordinary human feelings as you work with them during your term of service. If past experience is any indication of what to expect in the future, then you can expect candor, honesty, and good faith efforts in every matter presented by the government. However, it is because you may tend to expect such high quality from the government's agents that there is a potentially grave risk to your independence of thought and action, which may cause you to lapse into reliance when you should be dubious or questioning.

You should also remember that the government attorneys are advocates for the government's interest. They are prosecutors; you are not. While they will usually balance fairly the government's interest against the interests of a citizen's personal liberty, it is your responsibility to ensure that the proper balance is achieved in every case brought to your attention. You must exercise your own judgment, and if the facts suggest a different balance than that advocated by the government attorneys, then you must achieve the appropriate balance even in the face of their opposition or criticism.

Further, in gauging your role and relationship with the government, you should be aware of the pressures inherent in the development of criminal cases. Frequently, a government law enforcement agent is the first governmental representative to detect some evidence or indication of a criminal offense. This may occur long before the matter is brought to the attention of the government attorneys or the grand jury. Occasionally, a law enforcement agent files

an incomplete report with the government attorneys, secure in his personal belief that he has a proper case or that he will soon have a proper case. This may happen in complete good faith on the agent's part. Thus it may develop that a case will find its way to the grand jury before a full or adequate investigation has been completed. The government attorneys may also believe that the investigation by law enforcement agents has been completed or they may be acting in reliance on the agent's good faith or personal reputation and expect the investigation to be shortly concluded and productive of appropriate evidence to support an indictment. Such developments are inherent in close working associations and offer serious considerations for you.

An adequate or incomplete investigation is a loosely drawn net that may snare the innocent and allow the true offenders to elude the law. It is here that you must be alert to your duties. You may find pressures exerted on you to decide on an indictment after being presented with an inadequate or incomplete investigation. Your task in such a situation may be further complicated by the realization that the government's request is made in complete good faith.

Your duties require that you act only after receiving evidence which shows probable cause. Thus, there is no room for you to act on the basis of the government's good faith. If you should encounter an incomplete investigation, then it is your responsibility to see that a full investigation is developed for your benefit before voting to return an indictment. As previously stated, you have considerable powers to ensure that a proper investigation is in fact accomplished. You must use your good judgment and be alert to those situations that either abstractly or concretely suggest some inadequacy. These considerations are part of your responsibilities as a separate and independent grand jury.

Just as you must maintain your independent office throughout your dealings with the government attorneys, so should your dealings with the court be on a formal basis. If you should ever have a question for the court or desire to make a presentment or to return an indictment to the court,

then you will assemble in the courtroom for these purposes. However, each juror is directed to report immediately to the court any attempt by any person who, under any pretense whatsoever, addresses such juror for the purpose of or with the intent to gain any information of any kind concerning the proceedings of the grand jury, or to influence a juror in any manner or for any purpose.

Within your prescribed sphere, you occupy an important and independent office in the administration of justice. The government attorneys cannot dominate or command your actions. The court may guide, but cannot dominate or command your actions.

In performing your duties, you are free to exercise your own judgment without fear or favor and shall not be deterred or influenced by the criticism of the public, the prosecutor or the court. You are the defenders of the innocent as well as the accusers of the guilty, and in both respects you vindicate the integrity of the law. Ours is a government based on law, and there can be no more significant role in maintaining this precept than that assigned to the grand jury.

The Obligation of Secrecy

Your proceedings are secret and must remain secret permanently unless and until the court determines that the proceedings or a portion of them should be revealed in the interests of justice.

There are several important reasons for this secrecy requirement. A premature disclosure of grand jury action may frustrate the ends of justice by giving an opportunity to the accused to escape and become a fugitive or to destroy evidence. Also, if the testimony of a witness is disclosed, he may be subjected to intimidation, retaliation or other tampering before he testifies at trial. Further, the secrecy requirement protects an innocent person who may have come under investigation but who has been cleared by the action of the grand jury. In the eyes of some, investigation alone carries with it a suggestion of guilt. Thus, great injury and injustice can be done to the good name and standing of a

person, even though he is not indicted, should it become known that there had ever been a question of his guilt or innocence of a crime considered by the grand jury. Because that person will not go to trial, he will have no opportunity to clear his name in the event of such an unfortunate disclosure. For all these reasons, the secrecy requirement is of the utmost importance and must be regarded by you as practically sacred.

To ensure the secrecy of grand jury proceedings, the law provides that only authorized persons may be present in the grand jury room while evidence is being presented. Only the grand jury, the United States Attorney or his assistant, the witness under examination, the court reporter, and the interpreter may be present. If an indictment should ultimately be voted, the presence of unauthorized persons in the grand jury room could invalidate it.

The law also provides that none of those authorized persons whom I have just mentioned may disclose any matter which occurs before you or them. You must be careful to preserve the secrecy of your proceedings by abstaining from communicating with your families, friends, representatives of the news media or any other persons concerning that which transpires in the grand jury room. Grand jurors may discuss these matters only among themselves and only in the grand jury room. You may disclose matters which occur before the grand jury to attorneys for the government for use of such attorneys in the performance of their duties. The content of your deliberations and the vote of any juror may not, however, be disclosed even to the government attorneys.

Conclusion

The performance of jury service is the discharge of one of the responsibilities of citizenship. You have taken a very comprehensive oath as grand jurors. It is an oath that is rooted in history. Thousands of your forebearers have taken

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that oath in years past. Their adherence to it has preserved for us to this time a system of law and a sense of justice. You are now the new link in this chain, and you must be strong and faithful in the discharge of your office.