

What is a Grand Jury?

In Short:

A body of persons, selected and convened upon order of a judge, to inquire into and return indictments for crimes. The grand jury has the power to request that the circuit clerk issue subpoenas to bring people to testify before it. ...

and: a jury, usually composed of from twelve to twenty-three members, that determines whether or not a suspect should be charged with an offense.

and: A jury that examines accusations against persons suspected of committing a crime and, if the evidence warrants it, issues formal charges on which the accused are later tried (*see indictment*). It does not decide guilt or innocence, only whether there is "probable cause" to believe that a person committed a crime. Public officials (prosecutors and police) provide information and summon witnesses for the jury. The proceedings are usually secret. Some U.S. states have abolished the grand jury and authorize indictments by prosecutors.

Detailed Description:

An American criminal justice procedure whereby, in each court district, a group of 16-23 citizens hold an in camera inquiry on criminal complaints brought by the district attorney and decide if there is cause for criminal prosecution, in which case an indictment is issued.

It is the intent of the system, and the random selection process, to constitute a group representative of citizens of the relevant community generally. They have court officers assigned to them, elect a foreman and have access to a judge from time to time but just to guide them over legal hiccups, not to preside over their deliberations.

If a Grand Jury rejects a proposed indictment, decided not to indict, it is known as a "no bill", "no true bill" or an "ignoramus".

If they accept to endorse a proposed indictment it is known as a true bill and the accused must then face a criminal trial on the charge(s) so returned.

Many American states require a Grand Jury's true bill before any person can be formally charged with a felony.

Notably, a Grand Jury does not decide or even offer an opinion as to the guilt or innocence of the prospective defendant but, instead, decides on a majority vote basis whether or not the district attorney has provided enough evidence to justify a criminal trial.

The Grand Jury is designed to be a buffer or a referee between the ever-powerful government (i.e the district attorney), and individuals who are charged with crimes.

It is a specific requirements set out in the US Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury".

Grand juries are a peculiarity of the American criminal justice system.

Larger judicial districts usually enlist a standing Grand Jury for a set period of time, such as a year, where they review applications set before them from time to time by the relevant district attorney, who argues for a true bill. These standing Grand Juries, or those which are ad hoc, can sometimes be tasked to conduct inquiries into other matters of public interest such as public works.

All Grand Jurors must meet certain qualifications (such as having never been convicted of a felony) and be able to read and write.

The district attorney usually runs the show at a Grand Jury with normal rules of evidence put on the shelf. Hearsay is allowed, the hearings are held in secret, the accused has no right to present evidence although that right may be granted, or to cross-examine witnesses, or even to be represented by attorney (although some states do allow it), there is no supervision of a judge, the prosecutor is not obliged to present any evidence favorable to the prospective defendant, and unanimity is not required.

Some have estimated that grand juries issues indictments, true bills, 9 times out of 10.

The Common Law Grand Jury

Some states have opted out of the grand jury system, or present an option to the district attorney, and have an alternative that is similar to the Canadian process where the prosecutor describes the alleged offense in a document called "information" and takes that directly to the court for the commencement of proceedings against the accused.

The people of Georgia have done something VERY interesting. They convened a citizen's Grand Jury under the Common Law. This Grand Jury has indicted Obama for fraud and conspiracy to commit fraud, which... if (and I stress "IF") they can get any prosecutor in Georgia to pay attention to the law, President Obama will have to face his day in court.

For those of you who do not know, Grand Juries have come a long way from what they originally were...

Grand Juries are supposed to be chosen by lot, much like regular jurors. The only difference is that Grand Jurors are not sifted based on biases. The jurors are chosen and seated.

A typical Grand Jury has 23 members to serve every 3000 populace (a town of 6000 people would have 2 Grand Juries). A Grand Jury is supposed to hear the evidence a prosecutor has, and then judge whether or not he has a case for indictment. A mere majority vote of the Grand Jury grants indictment. There typically is no judge in the proceedings.

Grand Juries are allowed to deliberate, ask questions and hear additional witnesses if they desire, however, they are not there to try the case... simply to judge whether or not there IS a case to be tried. If a Grand Jury votes against indictment, the Prosecutor should NOT be allowed to try again with the same case and a different Grand Jury.

A Grand Jury typically sits for a week (5 business days) and hears several cases; however, it is not uncommon to have a Grand Jury sit for Months, meeting once or twice a week during those months. The proceedings are typically secret.

Example:

You get a jury summons. You show up at court, and they say they are seating a Grand Jury. Aside from being excused for medical/personal reasons, you should be placed without question.

Let's say that the Grand Jury you are on is being seated for 6 months, meeting every Monday and Wednesday during that time. You might hear 4 cases 1 week, 1 case the next week, 6 cases the next week, and 1 case that consumes 2 weeks, and so on. After your 6 months is over, the Grand Jury is dismissed, and another one is seated.

Grand Juries seem inclined to side with a prosecutor as far as indictment goes... however, Grand Juries (when properly applied) can exclude the prosecutor from an inquisition and can subpoena witnesses and issue indictments themselves if necessary. This typically happens when a Grand Jury feels that the prosecutor is corrupt, or part of a corrupt system.

According to the Common Law (upheld by the Supreme Court) a Grand Jury acts as a protector of the citizen against "arbitrary and oppressive government action" and that Grand Juries may "deliberate in secret and may determine alone the course of its inquiry" (*US vs Calandra, 414 US 338 (1974)*).

A Grand Jury is independent and is "a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation" (*Branzburg vs Hayes, 408 US 665 (1972)*). It has been ruled that "Without thorough and effective investigation, the grand jury would be unable either to ferret out crimes deserving of prosecution, or to screen out charges not warranting prosecution." (*US vs Sells*

Engineering, 463 US 418 (1983)).

Grand Juries are a right protected under the 5th amendment to the Constitution, however, most people today believe that a Prosecutor or Court has to assign a Grand Jury, but the reality is, under the Common Law the community may assign a Grand Jury, and the Grand Jury has considerable power.

Under Common Law, Grand Juries can be have between 12 and 23 members, with an indictment allowed upon a majority vote, with no less than 12 jurors voting to indict (in other words, a GJ of 12 would have to be unanimous, but a GJ of 13 to 23 would only need 12). They are not governed by the Prosecutor or Court, and (as stated above) may even by-pass or exclude the Prosecutor, Judge, etc. and issue its own subpoenas, indictments, etc. Especially if the GJ has reason to believe the system or persons involved are corrupt or misapplying the law. Grand Juries also have the power to investigate public officials without interference from the government. Historically it has always been their JOB to pin government corruption to the mat.

In *US vs Williams, 504 US 36 at 48 (1992)* the Supreme Court decided: "[R]ooted in long centuries of Anglo-American history," *Hannah v. Larche, 363 U.S. 420, 490 (1960)* (Frankfurter, J., concurring in result), the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. It "is a constitutional fixture in its own right." *United States v. Chanen, 549 F.2d 1306, 1312 (CA9 1977)* (quoting *Nixon v. Sirica, 159 U.S. App. D.C. 58, 70, n. 54, 487 F.2d 700, 712, n. 54 (1973)*), cert. denied, *434 U.S. 825 (1977)*. "

...and...

"In fact, the whole theory of its function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people. See *Stirone v. United States, 361 U.S. 212, 218 (1960)*; *Hale v. Henkel, 201 U.S. 43, 61 (1906)*; G. Edwards, *The Grand Jury* 28-32 (1906). Although the grand jury normally operates, of course, in the courthouse and under judicial auspices, its institutional relationship with the Judicial Branch has traditionally been, so to speak, at arm's length. Judges' direct involvement in the functioning of the grand jury has generally been confined to the constitutive one of calling the grand jurors together and administering their oaths of office. See *United States v. Calandra, 414 U.S. 338, 343 (1974)*; *Fed.Rule Crim.Proc. 6(a)*. [504 U.S. 36, 48]"

Historically, and under the Common Law, Grand Juries have the right to be assembled by the community, to investigate and independently determine a case should not proceed to trial, or hand out indictments; and to act as a balance of power against a corrupt government that tries to usurp their Constitutionally limited powers or otherwise circumvent the law.

Many will try to dismiss this indictment as "frivolous", or that it has no legal merit...

but anyone who still has an understanding of Natural Law, the Common Law, and the the beliefs and aims of the Founding Fathers to which this entire system of government was founded, knows better.

What does a grand jury do?

Historically, the grand jury--which was known as "the voice of the community" or "the people's panel"--was a way of injecting the common sense of the individuals who make up the community into government affairs. Specifically, grand juries were used to bring the everyday person's perspective into two aspects of government: investigating crime and/or community conditions and bringing charges against people who may have committed crimes. They still do both these things.

Bringing charges

In the federal system and in all but two of the states, grand juries are used to bring charges against persons who are believed to have committed crimes. In the federal system and in some states, they **HAVE** to be used to bring charges for felonies, which are the more serious crimes that normally carry a prison term for those who are convicted. In other states, they **CAN** be used to bring charges for felonies (or for other crimes), but don't have to be used. If a prosecutor doesn't **HAVE** to use a grand jury and doesn't **WANT** to, he or she can bring charges on their own, using what is called an "information" as the charging document. When a grand jury brings criminal charges, the charges are contained in a charging document that is called an "indictment."

If a prosecutor wants a grand jury to charge someone, the prosecutor reserves time with the grand jury and then presents evidence to them. In presenting the evidence, the prosecutor is trying to persuade the grand jurors that the people he or she wants to charge have committed certain crimes. The evidence can be almost anything--testimony from witnesses (including police officers or federal agents), documents, video recordings, tape recordings, the results of scientific tests (like DNA tests), photographs, etc. Here, you see a prosecutor presenting evidence to a grand jury (the gentleman is the prosecutor; the lady is the court reporter):

The grand jurors listen to the evidence and decides if it establishes probable cause to believe the person the prosecutor wants to charge has committed the crime(s) the prosecutor claims. Here, you seen grand jurors discussing evidence that has been presented to them:

After they hear all the prosecutor's evidence, the jurors vote on a set of proposed charges--known as an "indictment"--which the prosecutor has drafted and gives to the grand jurors. If the grand jurors decide the evidence creates probable cause to believe the persons named in an indictment committed the crimes it charges them with, they vote to "return" the indictment, i.e., to charge the person with those crimes. Voting to return charges is usually known as "returning a true bill." If a grand jury votes to return a true bill, the indictment is valid and it initiates a criminal case against the people named as defendants in the indictment. A majority of the grand jurors must vote for an indictment in order to return a true bill.

If a majority of the grand jurors don't think the prosecutor's evidence creates probable cause, they will vote not to return the indictment. When a majority of grand jurors vote not to return an indictment, this is known alternatively as "returning a bill of ignoramus" or "returning a no bill." If the grand jurors vote not to return an indictment, the indictment is not valid and no criminal case results.

But even if a grand jury votes not to indict, that isn't the end of things. A grand jury's vote not to return an indictment is not a final judgment that triggers the constitutional protection against "double jeopardy." To be protected against double jeopardy, a person has to have been "put into jeopardy" and then the proceeding in which "jeopardy attached" had to end without that person's being convicted. The basic rule of thumb is that "jeopardy attaches" when the first witness is sworn in a bench trial (that is, a trial to the court, where there is no jury) or when the jury is sworn in if the case is to be tried by a jury. This means, for example, that if a jury has been sworn in and heard the evidence in a criminal case and they vote to acquit the defendant, he or she cannot be re-tried on those charges. That is precisely what happened to O.J. Simpson: Because the jury in the criminal case acquitted him, he cannot be re-tried on any charges arising out of the death's of Nicole Brown Simpson or Ronald Goldman. (The civil trial was not barred by double jeopardy because the double jeopardy provision only protects you from being repeatedly tried on the same CRIMINAL charges.)

Investigating

Grand juries also investigate, either as part of bringing criminal charges or as a purely separate function.

In the federal system, there are two kinds of grand juries: "Regular grand juries" primarily decide whether to bring charges. But a different kind of grand jury--a "special grand jury"--is called into existence to investigate whether organized crime is occurring in the community in which it sits.

"Organized crime" is defined very broadly--it is not limited to the "Godfather"-style image of the Mafia or La Cosa Nostra. Instead, a special grand jury can investigate, for example, organized drug activity or organized corruption in government. If a special federal grand jury investigates and establishes that organized crime is, or has been, occurring in the area, the grand jury can charge the individuals responsible for the organized crime and/or can issue a report describing what has been going on. If the grand jury issues a report, it has to submit the report to the court that supervises the grand jury; the court then decides whether the report can be made public.

Many states have "regular" (indicting) grand juries. But a number of states also have grand juries that investigate organized crime, especially organized drug crime. And some states let grand juries investigate any kind of crime--organized or otherwise. A few states follow the old, common law practice and let grand juries initiate their own investigations based on what the grand jurors know about what is going on in their community. At common law, grand juries could bring criminal charges in a special document--which was known as a "presentment"--when they acted on their own. If they returned charges brought to them by a prosecutor, those charges were contained in an indictment. If the grand jury acted without the prosecutor, they brought charges in a presentment. Some states still let grand juries do this. Both the presentment and the indictment have the same legal effect--both initiate a criminal case.

Since no law forbids their investigating on their own, federal grand juries could also do this, although they can't bring charges in a presentment.

In the 1970's, a federal court of appeals (the court just below the Supreme Court) held that charges cannot be brought except in an indictment signed by a prosecutor. According to this court, if the prosecutor won't sign the charging document (which has to be an indictment), no case results. That decision effectively stymies federal grand juries from bringing charges on their own.

Even though they may (after all, it was only a court of appeals decision) not be able to bring charges on their own, federal grand juries can still investigate; there is no statute or decision that says they can't. In practice, though, federal grand juries don't initiate their own investigations --they depend on prosecutors who decide what they will investigate. Part of the reason why federal grand juries don't bring their own investigations may be the complexity of many federal crimes. Tax fraud and racketeering offenses, for example, can be very legally and factually complex, so it may not be possible for lay jurors to initiate these.

A number of states follow common law practice and use grand juries to investigate things other than crime, such as conditions in the community. At common law, grand juries administered county government, dealing with

roads, bridges, and other community affairs. With the rise of administrative agencies, this aspect of their responsibilities has fallen away for the most part. (In California, however, grand juries continue to oversee the operation of county government; these "civil grand juries" investigate all aspects of county government, and often issue reports.)

States do still use grand juries for some civil investigations. Many states, for example, use grand juries to inspect local jails, to ensure they're being maintained properly. And some states use grand juries to monitor the conduct of various public affairs and the operation of various public agencies.