

The Grand Jury – the Ultimate Judge of a Genuine Public Inquiry

History in the UK and the US

The Grand Jury is also known as the people's panel. Every citizen should know the history and purpose of the grand jury in order to properly protect their fellow man from prosecutorial abuse. When citizens are unaware of their power, they cannot exercise that power to uphold justice. The origin of the grand jury dates back to 12th century England. King John recognized it in the Magna Carta -- at the demand of the people.

The grand jury was originally a body of twelve, and later twenty-three men that served as accusers who presented indictments at the request of not only the prosecutor of the king, but also at the request of individual citizens. In 1681 the grand jury rule of secrecy was adopted. This allowed the grand jury to meet in secret, especially out of the sight of the king's prosecutors who might interfere. This secrecy provided the grand jury great power as an independent body with oversight over the government.

The grand jury was brought from England to the American colonies. Grand juries provided a means for citizens to protest abuses by the king's agents. When the Royal Governor of New York sought to have newspaper editor John Zenger indicted for seditious libel, the grand jury twice refused to issue indictments. The U.S. Constitution mentions the grand jury in Article Five of the Bill of Rights:

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

The grand jury served the public in two ways. First, it limited the power of government to prosecute citizens by permitting the grand jury to vote for or against an indictment and second, it had the power to make a presentment. A presentment was a public report of the grand jury's activity. Through a presentment, the grand jury could make criminal activity known to the public, including criminal conduct committed by government officials, judges, or prosecutors.

It is significant that the grand jury is not part of any of the three branches of the U.S. government—it is a pre-constitutional institution. Washington attorney *John H. Clarke* wrote in a motion to the United States District Court for the District of Columbia, "Although today the grand jury is more of a prosecutor's panel, it is still a pre-constitutional institution, and is still a people's panel, not captive or relegated by the constitution to a position within any branches... and it still serves as a vehicle for effective citizen participation in government."

Citizens often mistakenly believe that because the grand jury meets at the courthouse, it is under the judiciary or because the grand jury meets with a prosecutor, it is under the executive branch. It is actually an independent institution adopted by the founders to protect the individual from prosecutorial misconduct.

In the early 20th century a grand jury used their power to investigate and indict the mayor of Minneapolis and force the police chief to resign. Under the leadership of foreman *Hovey C. Clarke*, the Minneapolis grand jurors paid private detectives out of their own pockets to investigate corrupt officials. When the county prosecutor refused to do his duty, Clarke dismissed him and took over the role of prosecutor. Much has changed in the last 100 years.

From 1789 when the Bill of Rights was ratified, until the codification of the Federal Rules of Criminal Procedure in 1946, the grand jury was not regulated by statute. All three branches of government shared a common interest in limiting the power of the grand jury—the pre-constitutional institution unregulated by any branch.

Gradually, the executive branch began to limit the power of the grand jury. It became standard practice for the government prosecutor to be present in the grand jury room to present evidence personally. With the government prosecutor present in the grand jury room, the adversarial roles between the prosecutor and the grand jury were weakened. The grand jurors tended to bond with the prosecutor and, ultimately, the institution has become a rubber stamp for the prosecutor's indictments. In 1985 former New York Court of Appeals Judge *Sol Wachtler*, said, "Any prosecutor who wanted to could indict a ham sandwich."

Rule Six of the Federal Rules of Criminal Procedure limited grand juries to make presentments public only with the permission of a judge or prosecutor. The Federal Rules of Criminal Procedure passed by Congress, enacted by the Executive, and upheld by the Judiciary, removed the independent power of the grand jury to publicly accuse government officials of misconduct.

But grand jurors can still write a final report or presentment of their activities, and they can ask the judge to make it public. If a grand jury's report accuses the judge or one of his friends of misconduct it is unlikely it will be made public. Thus, the power of grand jury secrecy has been reversed to the advantage of prosecutors and judges who decide what can be made public.

Assistant U.S. attorney and former associate Independent Counsel *Miquel Rodriguez* was once asked if the members of a grand jury would be able to protect the public from corrupt officials, he replied, "They're all you've got." Rodriguez advised, "Empowering the grand jury, [by] letting them know what they can demand, what they should

be wary of, what their independent subpoena powers are, whether they have the authority to ask questions on their own in the grand jury. The real check and balance is the grand jury, the common person, selected at random.”

Although the power of the grand jury in the United States has been diminished, it is still a powerful tool available to the citizens. Grand jurors can issue subpoenas and question witnesses and they may pursue an investigation anywhere it leads. Grand jurors can even subpoena and question federal prosecutors. They can write a report and ask the judge to make the report public. Grand jurors still have the power to refuse to indict citizens.

Private citizens can no longer bring criminal activity to the attention of a grand jury for investigation. However, members of a grand jury do have the power to issue subpoenas and investigate criminal activity that they know about.

Following the April 19, 1995 bombing of the Alfred P. Murrah Building in Oklahoma City, the grand jury brought indictments against *Tim McVeigh* and *Terry Nichols*. Although witnesses saw several other men, “John Does,” with McVeigh, these witnesses were never called to testify before the grand jury. Prosecutors were not interested in the identity of the men seen with McVeigh. Grand jurors were likely unaware that they could follow these leads. Only one grand juror, a horse breeder named *Hoppy Heidelberg*, tried to pursue the identity of the other men seen with Timothy McVeigh. The prosecutor succeeded in having the judge dismiss Mr. Heidelberg from the grand jury.

Grand jurors should be inquisitive and wary of federal prosecutors. Citizens should remember what happened to *Geronimo Pratt* a decorated veteran of two combat tours in Vietnam. A covert FBI program against political dissidents targeted Pratt. He was tried and convicted of murder in 1972 and spent 27 years in prison, eight of them in solitary confinement. He was innocent. Geronimo Pratt was released from prison in 1997. The grand jury indictment of Geronimo Pratt was part of the process that unjustly sent him to prison for so many years.

State and federal grand juries vary in size. A federal grand jury is made up of twenty-three people. State and federal grand juries have different rules. Federal and Maryland grand jury handbooks are available to citizens on the Internet. Grand jury handbooks available from the government naturally favor the prosecutors and attempt to limit the scope of grand jury investigations. The federal handbook offers “practical suggestions for grand jurors” such as asking “relevant and proper questions.” Citizens have the power to decide for themselves what questions are relevant and proper and to not allow prosecutors to limit the scope of their inquiry.

Every citizen has the opportunity and obligation to serve on a grand jury. Grand jurors are drawn at random from lists of registered voters. Although the power of the grand jury has been weakened, the grand jury remains the citizen’s defense against government misconduct.

Magna Carta - Article 52

If without the lawful judgement of his peers, a man has been dispossessed of his lands, castles, franchises or his rights, or had them removed by us, we will at once restore these to him. If a dispute arises over this, the dispute shall be decided by the judgement of the twenty-five barons referred to below in the clause for securing the peace. Moreover, in all cases where possessions have been disseised or removed from anyone without the lawful judgement of his peers, by our father King Henry or our brother King Richard, and which are retained by us (or which are held by others under our warranty), we will have the usual respite period allowed to crusaders, unless a lawsuit has been started or we had ordered an enquiry before we took the cross [as a Crusader]. However, as soon as we return from our expedition, or if by chance we abandon it, we shall immediately grant full justice.

Magna Carta - Article 61

Since for God, for the improvement of our kingdom, and to better allay the discord arisen between us and our barons, we have granted all these concessions, and wishing that the concessions be enjoyed in their entirety with firm endurance (for ever [5]), we give and grant to the barons the following security: namely, that the barons choose any twenty-five barons of the kingdom they wish, who must with all their might observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter. Then, if we, our chief justice, our bailiffs or any of our officials, offend in any respect against any man, or break any of the articles of the peace or of this security, and the offence is notified to four of the said twenty-five barons, the four shall come to us-or to our chief justice if we are absent from the kingdom-to declare the transgression and petition that we make amends without delay. And if we, or in our absence abroad the chief justice, have not corrected the transgression within forty days, reckoned from the day on which the offence was declared to us (or to the chief justice if we are out of the realm), the four barons mentioned before shall refer the matter to the rest of the twenty-five barons. Together with the community of the whole land, they shall then distrain and distress us in every way possible, namely by seizing castles, lands, possessions and in any other they can (saving only our own person and those of the queen and our children), until redress has been obtain in their opinion. And when amends have been made, they shall obey us as before. Whoever in the country wants to, may take an oath to obey the orders of the twenty-five barons for the execution of all the previously mentioned matters and, with the barons, to distress us to the utmost of his power. We publicly and freely give permission to every one who wishes to take this oath, and we shall never forbid any one from taking it. Indeed, all those in the land who are unwilling to take? this oath, we shall by our command compel them to swear to it. If any one of the twenty-five barons dies or leaves the country, or is in any other manner incapacitated, so the previously mentioned provisions cannot be undertaken, the remaining barons

of the twenty-five shall choose another in his place as they think fit, who shall be duly sworn in like the rest. If there is any disagreement amongst the twenty-five barons on any matter presented to them, or if some of them are unwilling or unable to be present, what the majority of those present ordain or command shall be held as fixed and established, exactly as if all twenty-five had consented in this. The said twenty-five barons shall swear to faithfully observe all the aforesaid articles and will do all they can to ensure that the articles are observed by others. And we shall procure nothing from any one, either personally or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and if any such thing has been procured, let it be void and null, and we shall never make use of it ourselves or through someone else.

NOTE: The following rules only apply to a republic such as the USA. For a monarchy such as Great Britain substitute the word "baron" for "people", and substitute the word "subject" for "citizen". Also, in the USA, a peer is one of the [people](#) (not citizens). In Great Britain, a peer is one of the [nobility](#).

Common Law Grand Jury Rules: APPLICABLE LAW

The government must accept the Magna Carta as common law if pleaded as such. Source: Confirmatio Cartarum, Article 1. www.1215.org/lawnotes/lawnotes/cartarum.htm . Basic requirements and procedures for a common law grand jury: Source: Magna Carta, Articles 52 & 61. www.1215.org/lawnotes/lawnotes/magna.htm#52 www.1215.org/lawnotes/lawnotes/magna.htm#61

CONSTITUTION

Grand jury members must be elected by the [people](#) (not citizens) of the jurisdiction in which they are operating. There are no rules defining a procedure for how they are elected. The people, without the influence of government, decide for themselves how the grand jury members are elected. There must be 25 members.

QUALIFICATIONS

The members must be "people" of the jurisdiction and not "citizens" of the jurisdiction. For example, they must be "People of the United States," or "People of California," or "People of the State of California"; not "citizen of the United States," nor "citizen of California," nor "citizen of the State of California."

www.1215.org/lawnotes/lawnotes/pvc.htm; <http://www.1215.org/lawnotes/lawnotes/sovereign.htm>

Each member must be sworn in and promise to observe all of these rules and, so far as within his power, cause all the rules to be observed.

QUORUM

When the grand jury meets, if any are absent after being summoned, then those present constitute a quorum. All decisions of grand jury are decided by majority vote of members present. If any member dies or leaves the country, or in any other way is prevented from carrying out the grand jury's decisions, the remaining grand jurors shall choose another to fill his place and he shall likewise be sworn in.

FINALITY OF DECISIONS

No decision of a grand jury is reviewable in any court of the government.

JURISDICTION

Any government transgression against anyone in any respect. Any government breaking of articles of peace or security. Any dispute regarding anyone who has been disseized or removed, by the government without a legal sentence of his peers, from his lands, castles, liberties or lawful right.

PROCEDURE I

Dispute Settlement

If the grand jury is informed of any dispute regarding anyone who has been disseized or removed (by the government without a legal sentence of his peers) from his lands, castles, liberties or lawful right, then the dispute shall be settled by the grand jury.

PROCEDURE II

Enforcement

Four of the members must be shown that because of the government, A. A transgression has occurred against any one in any respect, or B. Some one of the articles of peace or security has been broken. The four members must show to the government the government's error. The four members must ask the government to amend that error without delay.

If the government does not amend the error within 40 days after being shown the error, then the four members shall refer the matter to the remainder of the grand jury. The grand jury may distrain and oppress the government in every

way in their power, namely, by taking the homes, lands, possessions, and any way else they can until amends shall have been made according to the sole judgment of the grand jury.

LIMITATION OF POWERS

The grand jury may not imprison or execute any government personnel or their children.

PUBLIC SUPPORT

Anyone (people or citizen) who chooses to help enforce the grand jury decision must first swear that he will obey the mandates of the grand jury, and that with them to the extent of his power he will impose the grand jury's decisions upon the government. The authority to support the grand jury is pre-authorized by the government. If anyone refuses to support a grand jury decision, the government will force him to swear his support of the grand jury.

LIMITATIONS ON GOVERNMENT

The government is prohibited from doing anything to diminish the effect of the grand jury. If the government does prohibit or diminish the effectiveness of the grand jury, it shall be vain and invalid and may not be used in any later proceeding by the government or anyone else.

TERMINATION OF ENFORCEMENT

When all issues are settled to the satisfaction of the grand jury, things shall return to normal as they were before. No grudges.

Reactivating the Common Law Grand Jury

Strategy Suggestion

BACKGROUND

When the colonies separated from England, King John retaliated by revoking the charters. Technically, the colonies were without any legal authority to operate. However, civics (the branch of political philosophy concerned with individual rights) was generally taught and known by the people who asserted their rights and maintained order by applying the common law. The people united in the form of common law grand juries and continued the functioning of government.

As the legislatures matured, they slowly increased governmental power while simultaneously reducing personal sovereign power. This was done through a combination of passing pro-government legislation and reducing or eliminating education about civics. Today, two and a quarter centuries later, hardly anyone even knows the meaning of the word, "civics".

Despite the fact that the state and federal constitutions still acknowledge the common law as the ultimate law system, people everywhere are conditioned to believe that the statutory law and codes are the only source of law. The only remaining common law term generally known among the public is "common law marriage".

The common law grand jury is now dormant only because of the public ignorance of its powers that supersede all other government entities, including the modern statutorily defined grand jury. Awakening the grand jury will not be graciously accepted by the government. A strategy is needed to reintroduce this fundamental protection against tyranny and injustice.

STEP 1 - ESTABLISH LEGITIMACY

The first step is to get public acceptance. Every dictator in history understood the power of the people and cultivated their support either through enticements or threats. Reactivating the grand jury concept will go through four traditional stages: denial, ridicule, violent opposition, then self-evident acceptance.

Theoretically, the grand jury can meet anywhere, anytime. But that is hardly good image. One way to get public acceptance and minimize denial, ridicule, and violent opposition, is to hold the grand jury sessions in the public court house. The foreman could apply to a court administrator for use of one of the rooms in the public courthouse. If it is refused, then the court administrator should, under common law procedures, be sued for his dereliction of duty.

The grand jury should follow normal protocol. In other words, if the grand jury begins a process on its own, the resulting accusation is called a *presentment*. If a prosecutor originates a process, then the jury returns to the prosecutor an *indictment* (also called a "true bill") on acceptance, or a "no bill" on denial. [Note: be careful with your words. wrong words may result in inaction! If you call the presentment an indictment, the prosecutor may feel no obligation because he did not initiate the process!]

STEP 2 - GAIN PUBLIC ACCEPTANCE

The second step is to start small. The grand jury could take on issues which anyone can easily see should be prosecuted. As public acceptance increases, the grand jury can enlarge its field of inquiry. The grand jury should have a strong public relations program for this step.

STEP 3 - TAKE ON LARGER PROJECTS

The third step is to take on grander objectives. If the first two steps are well executed, then this step will be the easiest. With both legitimacy and acceptance established the grand jury can make itself felt.