



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

THE GRAND JURY – THE PEOPLE’S GATEKEEPER

One of the most important parts of our federal judicial system is the jury. Most people know the role of the trial jury in determining guilt or innocence in a criminal trial and liability in a civil trial. But there is another type of federal jury that is critical to the operation of our federal judiciary—the grand jury. Unless you have served on a grand jury or worked in the criminal-justice system, it is unlikely you know much about it. Nevertheless, both types of juries bring the will of the people into the federal judiciary.

The Fifth Amendment to the United States Constitution states 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,” with certain exceptions. An “infamous” crime is a felony, a crime for which a term of imprisonment of a year or longer may be imposed. This means that a person cannot be made to stand trial for the loss of life, liberty, or property unless a grand jury first returns an indictment against the person.

The name “grand jury” comes from its size compared to the trial jury. A trial jury is made up of twelve people; it is also called the “petit” jury, from the French word for “small.” A grand jury has twenty-three people, nearly twice the size of the trial jury. So the word “grand” just means it is bigger than the “petit” trial jury. Grand jurors must be selected at random from a fair cross section of their communities, so names are randomly selected from voter registrations and other sources.

The grand jury hears cases presented by federal prosecutors to determine whether there is probable cause to conclude that a federal crime has been committed and the suspected person committed the crime. Since what the grand jury is determining is only whether a suspect may be made to stand trial for the loss of life, liberty, or property, the standard of proof is “probable cause,” and not the higher trial standard of “beyond a reasonable doubt.” A majority of the grand jury, at least twelve jurors, must agree that the suspect should be indicted. The grand jury thus acts as a gatekeeper. Without the grand jury’s assent, a person cannot be charged with a serious crime.

The grand jury also has powerful investigative authority, including the power to issue subpoenas. With this authority, grand juries often investigate possible federal crimes. Witnesses before the grand jury are sworn to tell the truth and are subject to prosecution for perjury if they lie.

Grand juries meet in secret. Only the grand jurors themselves can be present during deliberations. Only the federal prosecutor and a court reporter can join them while any witness is being questioned. And unlike trial jurors, who may talk about trials after they are done if they want to, grand jurors are not allowed to talk about investigations even once they are over. This kind of secrecy is necessary to protect innocent suspects from having unfounded suspicions against them become known to the public. It also promotes the safety of witnesses who testify before the grand jury and protects the confidentiality of ongoing investigations.

In establishing the Legislative and Executive branches, the Framers of the Constitution provided for the people to exercise democratic control through elections and limited terms of office. The Framers established a different way for the people to limit the power of the Judicial branch. They did this through the jury system. Prosecutors and judges, although very powerful figures, cannot subject a person to the loss of life, liberty, or property on their own. The people, through the grand jury, reserve that power to themselves, and only the petit jury can actually cause a person to lose their life, liberty, or property by conviction after trial of a serious crime.

The federal grand jury represents the people in “We the People” when it comes to the federal criminal system. It not only enables the detection and prosecution of serious crimes in violation of federal law, but it also stands as a barrier to the exercise of power by the Executive branch in prosecuting crimes and the power of the Judicial branch in trying crimes. It is the people’s gatekeeper to the federal criminal system.

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