



National Association of Criminal Defense Lawyers

Federal Grand Jury Reform

“The grand jury is a total captive of the prosecutor, who can indict anybody, at any time, for almost anything.”

— Rep. Henry Hyde (R-IL) (former Chairman of the House Judiciary Committee)

- ⚖️ **Rubber Stamp.** Once considered an important bulwark against arbitrary and oppressive governmental action, the federal grand jury has been reduced to a rubber stamp for federal prosecutors. The framers of our Constitution so valued this buffer between the accused and the government that indictment by a grand jury is required in the Fifth Amendment. Notwithstanding this original purpose, federal grand juries return indictments in 99.9% of the cases presented to them, leading many to agree that “a good prosecutor could get a grand jury to indict a ham sandwich.”
- ⚖️ **Abusive Tactics Behind Closed Doors.** Shrouded in secrecy, dominated by prosecutors and unregulated by the courts — grand jury proceedings provide the perfect setting for governmental misconduct. Federal courts have essentially abdicated any responsibility to police the grand jury room and rarely grant defense requests to see grand jury transcripts. The courts’ hands-off approach allows misconduct to flourish and completely ignores the fact that unwarranted indictments can and do ruin businesses and individuals.
- ⚖️ **Bipartisan Commission Urges Reforms.** To examine this languishing institution, NACDL established “The Commission to Reform the Federal Grand Jury,” a bipartisan, blue-ribbon panel of current and former prosecutors, academics and others. Among the Commissioners are Deputy Attorney General Larry Thompson and past-President of the National District Attorney’s Association, William Murphy. The Federal Grand Jury Reform Report & “Bill of Rights” sets forth the Commission’s unanimous recommendations, many of which have been in effect in various states for some time, without any adverse consequences to effective law enforcement.
- ⚖️ **Right to Counsel for Grand Jury Witnesses Who Are Not Receiving Immunity.** Almost nowhere else in the criminal justice system is a person who wants a lawyer denied that right. The importance of counsel in the grand jury room is particularly compelling as an appearance before the grand jury may subject an individual to self-incrimination, imprisonment for contempt or other grave consequences. Twenty-one states currently permit some witnesses to have counsel during their grand jury testimony.
- ⚖️ **Duty to Present Evidence Which May Exonerate the Target or Subject.** The Commission also recommends that Congress adopt as law the provision of the *United States Attorneys’ Manual* regarding the presentation of exculpatory evidence. This proposal will help reduce the number of indictments that cannot be supported at trial and protect the reputation of potential defendants. Most states have recognized the prosecutor’s duty to provide such information, and there can be no real justification for failure to do so.
- ⚖️ **Right for Targets or Subjects to Testify.** A few states have codified the right of a target or subject to testify before a grand jury, and there are no indications of any problems with this practice. Even the *United States Attorneys’ Manual* allows for a qualified opportunity for such testimony in certain circumstances.
- 📌 **Past Supporters of Grand Jury Reform:** The American Bar Association, General Motors Corporation, Litton Industries, Bethlehem Steel, The National Council of Churches, The Newspaper Guild, The International Longshoremens & Warehousemen’s Union, Watergate prosecutor Charles Ruff, and Deputy Attorney General Larry Thompson.

For more information about federal grand jury reform, go to NACDL’s web site, www.criminaljustice.org, or contact Kyle O’Dowd, NACDL Legislative Director, at (202) 872-8600 (ext. 226), or kyle@nacdl.org.