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# The Grand Jury Of *Tomorrow*

NEW LIFE FOR AN ARCHAIC INSTITUTION

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COUNCIL FOR COURT EXCELLENCE  
DISTRICT OF COLUMBIA GRAND JURY STUDY COMMITTEE FINAL REPORT  
*Recommendations To Improve the Grand Juries Of Washington, D.C.*  
July 2001



**EXECUTIVE SUMMARY**

July 2001

Dear Fellow Citizen:

Over twenty years ago the D.C. Bar's Horsky Committee recommended that a broad scale study be undertaken of the grand jury in the District of Columbia. The Bar group proposed that the focus be on improving the relevance and effectiveness of this important yet little understood bedrock judicial branch institution. The report that follows addresses this twenty year-old challenge.

Entitled *The Grand Jury of Tomorrow*, this report was researched and developed by a special committee under the sponsorship of the Council for Court Excellence. Directed to the judiciary, the legislature, the bar, and the broader community, the report makes a variety of constructive and practical proposals for improving the grand jury process and system in the local and federal courts in the District of Columbia. Included are suggestions to improve the structure, organization, and selection of the grand jury; the independence and effectiveness of the grand jury; the protection of grand jury targets and witnesses; and finally grand jurors' safety, comfort and convenience.

For many important reasons, the grand jury is a judicial branch institution that operates largely in secrecy. Yet its procedures, actions, and powers can have lasting effects on grand jurors, on individuals and businesses appearing before grand juries, and on our community and nation. Because of the tremendous inherent power the grand jury has, and the fact that it operates largely out of the public eye, it is even more important that our grand jury system be independently examined from time to time; that the grand jury function fairly and impartially; that it enjoy public confidence and respect; and that grand juries' independence be preserved and strengthened.

On behalf of the Board of Directors of the Council for Court Excellence, we express our sincere appreciation to the members of the D.C. Grand Jury Study Committee for all their work and study to prepare this report, and for the quality of their efforts. We were fortunate to attract such a variety of talent and competency for this initiative, and we are especially pleased to have had a number of former grand jurors participate directly in the Committee's efforts. Special thanks are due to the distinguished Co-Chairs of the Council for Court Excellence's D.C. Grand Jury Project – the Honorable John Garrett Penn, Senior Judge, U.S. District Court for D.C., and Michael D. Hays, Esquire.

The Council for Court Excellence especially acknowledges and thanks the Clark-Winchcole Foundation, and the annual contributors to the Council for Court Excellence for their financial support of this two-year study. We also wish to thank the Bureau of National Affairs, Inc. for printing this final report.

We commend this document to you for your review, and we invite your attention to its constructive reform proposals.

Sincerely,



Timothy J. May  
Board President

Stephen D. Harlan  
Board Chairman



**DISTRICT OF COLUMBIA GRAND JURY STUDY COMMITTEE FINAL REPORT**

**EXECUTIVE SUMMARY**

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## LETTER FROM THE CO-CHAIRS

### DISTRICT OF COLUMBIA GRAND JURY STUDY COMMITTEE

We are very pleased to share with you this final report of the Council for Court Excellence District of Columbia Grand Jury Study Committee. The Committee's Report has been prepared under the active sponsorship of the Council for Court Excellence, a non-partisan law-related civic organization based in the Nation's Capital.

The Report that follows addresses both far reaching legal reform proposals as well as recommendations to enhance the quality of the grand jury experience for individual citizen grand jurors. As with the Council for Court Excellence's earlier February 1998 major petit jury policy reform report, *Juries for the Year 2000 & Beyond*, this grand jury study examines issues and policies in both the Superior Court of the District of Columbia and the United States District Court for the District of Columbia.

The quality and substance of the District of Columbia Grand Jury Study Committee's research and deliberations have been materially enhanced by the participation on the Committee of a number of former D.C. Superior Court grand jurors. (At the express request of the then United States District Court Chief Judge, Norma Holloway Johnson, no former federal district court grand juror participated on this Study Committee). In addition to former grand jurors, our Committee also included a number of judges, criminal defense lawyers, former prosecutors, and academics. We regret that the United States Attorney for the District of Columbia withdrew from service on the Committee early in our work.

The organization of this report includes a brief project overview, an explanation of the role of the grand jury in the criminal justice system, and summary descriptions of the local and federal grand jury process in the District of Columbia. The body of the *Report of the District of Columbia Grand Jury Study Committee* includes twenty-three individual recommendations together with supporting text, any dissents, and suggested implementation provisions. Several appendices are also included.

We wish to acknowledge and individually thank the members of the District of Columbia Grand Jury Study Committee for the wisdom, insight, and diligence they brought to the development and formulation of this report. Senior Judge Henry Greene, in particular, helped above and beyond the call of duty with final copy editing of the final report. We especially recognize and thank Ms. Susan Lynch, Esquire, Committee Reporter, for her extraordinary assistance. We also recognize and thank Samuel F. Harahan, Executive Director, and the staff of the Council for Court Excellence for their helpful guidance and support of the Committee's work from beginning to end.

A draft of this final report was submitted for review to the chief judges of the D.C. Superior Court and the U.S. District Court for the District of Columbia, to the United States Attorney for D.C. and to the D.C. and Federal Public Defenders. We sincerely appreciate the thoughtful and constructive comments offered to the draft final report by these respective courts and agencies. During the course of the Committee's year long deliberations, the main issues raised in these letters were considered by the Study Committee. The reader will find specific discussions throughout this report regarding many of the individual issues raised by the courts, the prosecution and the defense agencies in their latest replies. Appendix H contains copies of responses received from these entities as of the time this report went to press.

In conclusion, we commend this Report and its reform proposals to the Chief Judges and other members of the judiciary, to practicing lawyers and academics, to members of the legislative branch, and to our fellow citizens.

Honorable John Garrett Penn  
Senior Judge, U.S. District Court for the District of  
Columbia  
Co-Chair  
District of Columbia Grand Jury Study Committee

Michael D. Hays, Esquire  
Co-Chair  
District of Columbia Grand Jury Study Committee



## DISTRICT OF COLUMBIA GRAND JURY STUDY COMMITTEE MEMBERS

**Co-Chairs:** **Honorable John Garrett Penn**  
U.S. District Court for D.C.  
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## SUMMARY OF RECOMMENDATIONS

### Improving the Structure, Organization, and Selection of the Grand Jury

- Reduce number of Jurors** —1— The size of grand juries should be reduced in both the federal and local courts in the District of Columbia. The grand jury should consist of 15 persons. An indictment should be returnable only if: (a) at least 11 grand jurors are present; and (b) at least 8 grand jurors vote in favor of indictment.
- Create two distinct terms** —2— There should be two distinct terms of service for grand juries in the D.C. Superior Court and the United States District Court for D.C., depending on whether the cases involve simple or more complex felony matters.
- Reduce term length for DC Superior Court** —2a— The following terms of service should be adopted for the D.C. Superior Court grand jury:
- a. the term of service for most grand juries, including the Rapid Indictment Program (RIP) grand juries, should be reduced to 3 weeks, with the grand jury meeting no more than 4 days a week; and
  - b. the term of service for grand juries hearing serious felony cases requiring extended investigative time should be 8 weeks, with the grand jury meeting no more than 3 days a week. If the government believes that additional grand jury time is needed, a petition must be made to the Chief Judge, as soon as reasonably possible, for an extension of the 8-week grand jury term.
- The Annual Report of the Court should include grand jury utilization statistics similar to the petit jury data which is now part of the Annual Report.
- Reduce term length for US District Court for DC** —2b— The following terms of service should be adopted for the United States District Court for the District of Columbia grand jury:
- a. The term of service for most grand juries should be reduced to 3 months, with the grand jury meeting no more than twice a week; and
  - b. The term of service for grand juries available to hear cases involving extensive investigations should be reduced to 12

months, with the grand jury meeting no more than two days a week. If the government believes that additional grand jury time is needed, a petition must be made to the Chief Judge, as soon as reasonably possible, for an extension of the 12-month grand jury term.

The Administrative Office of the U.S. Courts should annually publish a compendium report similar to its 1990 report, entitled *1989 Grand and Petit Jury Service*.

Establish written procedures for impaneling of jurors and selection of foreperson

- 3— The grand jury foreperson should be selected, and the grand jurors impaneled, by the Chief Judge in accordance with written rules or procedures promulgated by the court that set out qualifications for grand jurors and the grand jury foreperson and define the process by which grand jurors are to be impaneled and the foreperson is to be selected.

### Improving the Effectiveness and Independence of the Grand Jury

Locate grand jury in courthouse

- 4— The grand jury should be physically located in a secure location in a court building and proximate to the offices of the prosecutor.

Provide additional, and earlier, orientation materials

- 5— The U.S. Attorney and the D.C. Superior Court should comprehensively review the current orientation procedures in order to provide additional procedural, administrative, and legal information to grand jurors early in their service. Among other things, the D.C. Superior Court should mail the grand jury orientation booklet to the prospective grand jurors several days before the first day of service.

Instruct under Superior Court's Grand Jury Charge and advise jurors of right to court advice and to direct production of evidence

- 6— The initial instructions to both the D.C. federal and local grand juries should apprise the grand jurors of the law regarding their responsibilities in accordance with the Grand Jury Charge presently given in D.C. Superior Court. Additionally, grand jurors should be told of their right to seek advice on matters of law from the court and their authority to direct the production of evidence bearing on the guilt or innocence of an accused, and should receive a written copy of the Grand Jury Charge.

Develop uniform structure for case presentations

- 7— The U.S. Attorney should establish and direct Assistant U.S. Attorneys to follow a uniform structure for case presentations in grand jury proceedings. Among other things, this uniform

presentation should include the following: the provision of a three-ring binder to each grand juror; the provision of a fill-in-the-blank form on which to list case numbers and other information; and explanation of the contents and use of the "Red Book."

Instruct on elements of crime under Criminal Jury Instructions for DC

- 8— The prosecutor should instruct the grand jury on the elements of each crime in accordance with the Criminal Jury Instructions for the District of Columbia, and should assure that all instructions on legal matters, including questions by grand jurors and responses to such questions, are recorded and transcribed.

### Improving the Protection of Targets, Subjects and Witnesses

Do not subpoena target or subject who intends to claim 5th

- 9— A witness who is the target or subject of an investigation and who has formally indicated his intention to assert his Fifth Amendment right not to testify should not be subpoenaed before the grand jury to assert that right.

Give all witnesses right to have counsel present during testimony

- 10— All witnesses before grand juries in the D.C. Superior Court and the U.S. District Court for the D.C. should have the right to have counsel present during their testimony before the grand jury. Counsel should be authorized only to advise the witness and not to participate in the proceedings in any other manner (e.g., counsel should not speak to the grand jurors or to the prosecutor). In the event that counsel is disruptive of the proceedings, counsel should be subject to exclusion from the grand jury proceedings by the court.

Appoint counsel for indigent witnesses

- 11— Indigent grand jury witnesses who request counsel should have counsel appointed for them.

Give target or subject right to testify

- 12— The target or subject of a grand jury investigation should, upon request, have the right to testify before the grand jury, provided that the target or subject, (1) explicitly and on the record before the grand jury, waives his or her Fifth Amendment privilege, and (2) is represented by counsel, or voluntarily and knowingly appears without counsel and consents to full examination under oath.

Give all witnesses  
Miranda-type  
warnings

—13— All grand jury witnesses (other than law enforcement personnel testifying on behalf of the government) should be given the following *Miranda*-type warnings as to their rights before the grand jury:

You may refuse to answer any question if a truthful answer to the question would tend to incriminate you.

Anything that you do say in the grand jury may be used against you by the grand jury or in subsequent legal proceedings.

If you have counsel, the grand jury will permit you a reasonable opportunity to consult with your counsel.

You have the right to consult with counsel; you also have the right to retain counsel, or if you cannot afford counsel, one can be provided free of charge.

Enumerate rights in  
subpoena, or at  
earliest opportunity

—14— The government should include a list of the rights, enumerated in Recommendation 13, in the subpoena seeking grand jury testimony or otherwise inform all witnesses of these rights at the earliest practicable time prior to their testimony. In addition, the government should repeat these rights to the witness in the grand jury room and ask the witness if he or she understands them.

Require disclosure of  
substantial evidence  
that directly negates  
guilt

—15— The U.S. Congress should adopt legislation incorporating § 9-11.233 of the U.S. Attorneys' Manual ("USAM") as law. The provision specifically directs that when a prosecutor conducting a grand jury inquiry is personally aware of "*substantial evidence that directly negates* the guilt of a subject of the investigation, the prosecution must present or otherwise disclose such evidence to the grand jury before seeking an indictment against such person."

Dismiss when such  
evidence is not  
disclosed

—16— If the prosecution fails to present exculpatory evidence to the grand jury as required by USAM § 9-11.233, the court should dismiss the indictment without prejudice.

Discourage naming  
of unindicted co-  
conspirators

—17— A grand jury should not name a person in an indictment as an unindicted co-conspirator to a criminal conspiracy.

Provide witnesses  
transcript of  
testimony upon  
request

—18— A witness who has testified before the grand jury and is subsequently subpoenaed or who voluntarily appears to testify at trial should have the right, upon request, to a transcript of his or her testimony.

- Reimburse expenses for document production when burdensome —19— A grand jury witness served with a *subpoena duces tecum* should be able to obtain from the government funds to cover the expense of having to make one set of copies of the documents sought by the subpoena where the witness has shown good cause to believe that such expense would constitute undue burden on the witness, based on all the circumstances.

### Improving Grand Jurors' Safety, Comfort, and Convenience

- Segregate witnesses from jurors when not testifying —20— The U.S. Attorney, with guidance from the Superior Court, should promptly take steps to prevent the exposure of grand jurors to community witnesses by requiring that such witnesses, when not actually testifying, be segregated from the spaces where grand jurors are assembled.
- Provide better Superior Court accommodations —21— The Superior Court should promptly assure that grand jurors are provided with more adequate lounges, including a quiet room, sanitary restrooms, food storage areas, a refrigerator, and telephone space.
- Notify jurors of "recall days" in initial notice of service —22— The U.S. Attorney and the D.C. Superior Court should notify grand jurors of specific "recall days" in the initial notice of service. Business on recall days should be limited to finishing cases heard during the term of service and should not include new cases.
- Solicit juror feedback through exit questionnaire —23— The Superior Court and the U.S. Attorney should solicit feedback from grand jurors at the conclusion of their service through the use of an exit questionnaire.

**Notes**



## OVERVIEW OF THE GRAND JURY

The grand jury is one of the most powerful, yet least understood institutions in our democracy. Although composed of between sixteen and twenty-three citizens, selected from the same jury lists as the petit (or trial) jurors, it nonetheless operates in secrecy. Grand jurors are precluded by law from unauthorized disclosure of grand jury proceedings. The grand jury issues no press releases or status reports. Yet when the grand jury does speak, it speaks with devastating effect: a criminal indictment.

Traditional grand jury secrecy has limited scrutiny of even non-confidential aspects.

Can burdens on jurors be minimized by new efficiencies, such as fewer jurors and shorter terms?

Grand jury has become arm of prosecutor. Can original balance be restored through changes such as witness' right to counsel, and mandatory exculpatory evidence?

Because the grand jury's proceedings are by law shrouded in secrecy, even its non-confidential aspects seldom enjoy the same refreshing scrutiny as other institutions in our democracy. Current grand jury practice poses a number of issues that deserve attention. For example, grand jury service imposes an enormous burden on those citizens selected to serve. Are there more efficient ways that it can perform its work, while minimizing the burden on citizens? For example, although traditionally composed of between sixteen and twenty-three people, could it perform its functions equally well with fewer citizens? Although in the federal court in the District of Columbia, grand juries sit for eighteen months, could some grand juries sit for shorter periods?

Moreover, although it originally was established as an institution designed to protect citizens from the power of the state, the grand jury is commonly viewed today as simply an arm of the prosecutor. Indeed, in the federal system, conventional wisdom is that federal grand juries issue over 99 percent of the indictments that prosecutors request.<sup>1</sup> Are there ways that some balance can be restored to the grand jury's function, without undermining its important investigative powers? For example, under current practice in the District of Columbia, grand jury witnesses are not entitled to have counsel present with them in the grand jury room. Would it be appropriate for grand jury witnesses to have the right to have counsel present in the grand jury room with them when they testify, under appropriate strictures? At present, prosecutors are under no legal obligation to present exculpatory evidence to the grand jury. Are there circumstances in which it would be

<sup>11</sup> See Andrew D. Leipold, *Why Grand Juries Do Not (and Cannot) Protect the Accused*, 80 CORNELL L. REV. 260 (1995).

appropriate to require prosecutors to present such exculpatory evidence to the grand jury?

The Council for Court Excellence convened a group of former D.C. Superior Court grand jurors, trial and appellate judges (including a former Chief Judge of the United States District Court and a former Chief Judge of the D.C. Superior Court), and defense attorneys (many of whom are former prosecutors) to address issues such as those noted above.<sup>2</sup> Based on the same methodology employed in a 1997-1998 study by the Council for Court Excellence of the petit jury, the Grand Jury Study Committee formed a series of six subcommittees to examine discrete aspects of the grand jury practice in the District of Columbia federal and local courts. The full Committee met on a monthly basis for over nine months to consider the reports of its various subcommittees. The following recommendations are the product of that effort.

In addition to its' recommendations, the Council for Court Excellence District of Columbia Grand Jury Study Committee has also included two sections at the beginning of this Report to provide additional context and background for the recommendations. The first section briefly describes the role of the grand jury in our constitutional system. The second section gives an overview of the procedures applicable in the District of Columbia to grand jury service in the United States District Court and the District of Columbia Superior Court.

To assist in the further consideration of the twenty-three reform proposals set forth in this report, the District of Columbia Grand Jury Study Committee has included a description of the proposed methodology for implementation with each recommendation. These implementation notes are not all-inclusive and are offered to advance the thinking about appropriate means of effecting the proposed reforms.

Study by group of DC Superior Court grand jurors, trial and appellate judges, defense (and former prosecution) lawyers led to Report's 23 recommendations.

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<sup>2</sup> The immediately preceding Chief Judges of the United States District Court for the District of Columbia and of the D.C. Superior Court, the Honorable Norma Holloway Johnson and the Honorable Eugene N. Hamilton respectively, and the immediately preceding United States Attorney for the District of Columbia, the Honorable Wilma A. Lewis, declined to participate in this study. The District of Columbia Grand Jury Study Committee circulated a draft of this final report to these individuals and to the federal and District of Columbia Public Defender Services prior to publication soliciting their comments. Copies of the responses received as of the publication date may be found at Appendix H.



## THE ROLE OF THE GRAND JURY SYSTEM

Federal court 5<sup>th</sup>  
Amendment guarantee  
in felony cases

The Fifth Amendment to the United States Constitution guarantees that no person shall be prosecuted for a capital or otherwise infamous crime unless indicted by a grand jury.<sup>3</sup> This Fifth Amendment guarantee applies to federal courts throughout the United States and to both federal and local prosecutions in the District of Columbia.<sup>4</sup> Thus, felony cases in the District of Columbia must be presented to a grand jury unless the defendant waives the right to an indictment.<sup>5</sup>

Grand jury's duties  
both to find probable  
cause and to protect  
against unfounded  
prosecutions

A principal duty of the grand jury is to determine whether there is probable cause to believe that an individual has committed a crime. In criminal cases where the grand jury determines that probable cause does exist, the grand jury formally acts by issuing what is called an indictment. "For centuries the grand jury's responsibilities have included ... 'the determination whether there is probable cause to believe a crime has been committed . . .'"<sup>6</sup> While the traditional duties of the grand jury also included "'the protection of citizens against unfounded criminal prosecutions,'" the grand jury system has come under increasing criticism for failing to discharge this duty.<sup>7</sup>

Much broader range  
of information can be  
considered than at  
trial

In determining whether there is probable cause to indict, the grand jury may consider a variety of information, including evidence that would be inadmissible at trial. The grand jury may

<sup>3</sup> United States Constitution, Amendment V.

<sup>4</sup> Because indictment by a grand jury is not "essential to due process under the Fourteenth Amendment," *Reed v. Ross*, 468 U.S. 1, 16 n.11 (1984), this Fifth Amendment right does not apply to the states. *Hurtado v. California*, 110 U.S. 516 (1884). However, because criminal prosecutions in the Superior Court of the District of Columbia are brought in the name of the United States, the Fifth Amendment guarantee applies directly to the Superior Court of the District of Columbia.

<sup>5</sup> *Smith v. United States*, 304 A.2d 28, 31 (D.C.), cert. denied, 414 U.S. 1114 (1973); Fed. R. Crim. P. 7(b); Super. Ct. Crim. R. 7(b).

<sup>6</sup> *Miles v. United States*, 483 A.2d. 649, 653 (D.C. 1984) (quoting *United States v. Calandra*, 414 U.S. 338, 343 (1974)).

<sup>7</sup> See *supra* note 1, 80 CORNELL L. REV. 260.

inquire into and consider the opinions of witnesses, rumors, and evidence obtained in violation of the Constitution:

The grand jury's sources of information are widely drawn and the character of evidence considered does not affect the validity of an indictment.<sup>8</sup> "[T]he prosecutor has considerable discretion in determining what evidence to present to the grand jury."<sup>9</sup>

Fewer protective rights before grand juries

The grand jury's "operation generally is unrestrained by the technical, procedural and evidentiary rules governing the conduct of criminal trials."<sup>10</sup> Thus, the indictment may rest entirely on hearsay,<sup>11</sup> or on evidence seized in violation of the Fourth Amendment<sup>12</sup> or the Fifth Amendment.<sup>13</sup> A grand jury can act on information from a wide variety of sources including tips and rumors.<sup>14</sup> The prosecutor has no duty to present evidence to the grand jury exculpating or exonerating a target or defendant. Moreover, in the local and federal courts of the District of Columbia, witnesses before grand juries have no right to have their counsel present in the grand jury room during their testimony, although witnesses appearing before grand juries in many state courts long have had such rights.

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<sup>8</sup> *Miles v. United States*, 483 A.2d 649, 654 (D.C. 1984) (quoting *United States v. Calandra*, 414 U.S. 338, 344-45 (1974)).

<sup>9</sup> *Miles*, 483 A.2d at 654.

<sup>10</sup> *United States v. Calandra*, 414 U.S. 338, 343 (1974).

<sup>11</sup> *Costello v. United States*, 350 U.S. 359 (1956).

<sup>12</sup> *United States v. Calandra*, 414 U.S. at 358.

<sup>13</sup> *United States v. Blue*, 384 U.S. 251 (1966); *United States v. Washington*, 328 A.2d 98, 100-01 (D.C. 1974), *rev'd. on other grounds*, 431 U.S. 181 (1977).

<sup>14</sup> *United States v. Dionisio*, 410 U.S. 1, 15 (citing *Branzburg v. Hayes*, 408 U.S. 665, 701 (1972)).



## GRAND JURY PRACTICE IN THE DISTRICT OF COLUMBIA

23 jurors:

16 for quorum;  
12 required for  
indictment

Federal grand juries  
18 months term, with  
extension of up to  
six months  
permissible

Usually 2-3 federal  
grand juries are  
sitting at any given  
time, two days each  
week.

In both the U.S. District Court for D.C. and the D.C. Superior Court, the grand jury consists of twenty-three people. Sixteen people represent a quorum to hear evidence. When voting, twelve grand jurors must vote in favor for an indictment to be issued.<sup>15</sup> Grand jurors may be replaced by the Chief Judge for good cause during their term.<sup>16</sup> The grand jury must agree on the specific charging language of the indictment in open court.<sup>17</sup>

The grand jury term in the U.S. District Court for D.C. is eighteen months. The Chief Judge may extend its service for up to six additional months if the Chief Judge determines that the extension is in the public interest.<sup>18</sup> As of the publication date of this Report there are usually two to three federal grand juries sitting at any one time in the U.S. District Court for D.C. They normally sit two days each week, usually on a Monday and Wednesday, or on a Tuesday and Thursday.

These federal grand juries are impaneled to hear a wide variety of federal criminal cases. One of them usually hears evidence regarding narcotics offenses, firearm violations and other arrest-generated cases where indictments must be returned within thirty days. These short-term matters often involve the presentation of evidence to the grand jury on only one day. The remaining federal grand juries hear a wide variety of cases, including those that involve lengthy federal investigations that require the presentation of evidence during many different grand jury sessions.<sup>19</sup> Federal grand juries in the District of

<sup>15</sup> Fed. R. Crim. P. 6(f); Super. Ct. Crim. R. 6(f).

<sup>16</sup> Fed. R. Crim. P. 6(g); Super. Ct. Crim. R. 6(g).

<sup>17</sup> *Gaither v. United States*, 413 F.2d 1061, 134 U.S. App. D.C. 154 (1969).

<sup>18</sup> Fed. R. Crim. P. 6(g).

<sup>19</sup> The Chief Judge of the U.S. District Court for D.C. in the past has impaneled special grand juries at the request of an Independent Counsel, whether such counsel were appointed pursuant to the former Independent Counsel Act or otherwise by the Attorney General of the United States. These special grand juries ordinarily only consider evidence relating to the subject matter under investigation by the Independent Counsel.

Columbia meet, hear testimony, and deliberate at the E. Barret Prettyman Courthouse at Third Street and Constitution Avenue, N.W. in Washington, D.C.

Five sitting DC Superior Court grand juries, two of which meet five days/week for five consecutive weeks

In the D.C. Superior Court, while individual citizens are also subject to eighteen-month grand jury terms, with up to a six-month extension, in practice, D.C. grand juries actually sit for far shorter terms.<sup>20</sup> As of January 2001, on any given day, there were five Superior Court grand juries sitting and hearing matters. Two of these grand juries meet five days a week for five consecutive weeks. The grand juries with shorter terms ordinarily consider certain routine criminal offenses, usually requiring few witnesses, as part of the U.S. Attorney's Office Rapid Indictment Program. The remaining three D.C. Superior Court grand juries meet three days a week over an eight-week period.

Three DC grand juries meet three days/week over eight weeks

All grand juries then return for two days for final votes and late returns

After the regularly scheduled five or eight week term, each D.C. Superior Court grand jury also returns for two days approximately one week after the end of its normal service period to do final votes and grand jury returns for matters heard late in the regular grand jury session. Unlike federal grand juries, which are located within the U.S. Courthouse, D.C. Superior Court grand juries meet, hear testimony, and deliberate in separate facilities located within the offices of the United States Attorney's Office, located at 555 4<sup>th</sup> St., N.W., Washington, D.C.

Jury pool same as for petit juries

In the District of Columbia all grand jurors are selected from the same pool of citizens used, in the instance of federal grand jurors, for the selection of trial juries for federal cases, and in the instance of Superior Court grand jurors, for the selection of Superior Court trial juries. Prospective grand jurors are contacted by mail, notified of their duty to report for grand jury duty and advised of their opportunity to seek a deferment of their service for compelling reasons.

Jury Office personnel for the U.S. District Court and the D.C. Superior Court preliminarily screen prospective grand jurors for consideration of assignment to Federal and Superior

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<sup>20</sup> Super. Ct. Crim R. 6(g).

Court grand juries, respectively. Individual grand juror assignment to Federal or Superior Court grand juries is made under direction of the Chief Judge of the United States District Court and the Chief Judge of the Superior Court, respectively. These judges also may rule whether a citizen has raised a sufficient reason to be excused from grand jury service.

#### **SELECTION OF FOREPERSON**

Chief judge of each court directs individual grand juror assignments and establishes procedures for selection of forepersons

The Chief Judges of the U.S. District Court for D.C. and the Superior Court of D.C. also establish the procedures for the selection of the foreperson, the deputy foreperson, and the secretary for each court's grand juries. The Chief Judge or one of his or her judicial colleagues will sometimes seek volunteers for these positions. At other times, the Chief Judge will make selections based upon information made available to him or her by the Jury Office, interviews with prospective grand jurors, or consultations with the United States Attorney's Office. As is the case in most other jurisdictions, the foreperson or, in his or her absence the deputy foreperson, signs indictments, swears in witnesses, notifies the Court about grand jury attendance, maintains the order and decorum of the grand jury room, and often leads the grand jury's deliberations. The foreperson is also the grand jury's liaison with both the Jury Office and, when necessary, the Chief Judge.

#### **THE GRAND JURY CHARGE**

Chief judge gives formal "charge," or instructions

After each federal or Superior Court grand jury is selected, the applicable Chief Judge, or one of the Chief Judges' colleagues, addresses and formally "charges" the new grand jury, *i.e.*, instructs the grand jury on its duties and responsibilities. The charge, or instructions, given by the Chief Judge of Superior Court to the grand jury is contained in Appendix C to this Report.<sup>21</sup> At this point, federal grand jurors usually receive written information that describes the purpose of the grand jury, the requirement of grand jury secrecy, procedures the grand jurors are to use during the course of their term, and more general information regarding their per diem compensation and their day-to-day routine. Federal grand jurors also receive further information about the Courthouse and security matters from a Deputy U.S. Marshal assigned for this

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<sup>21</sup> The immediately preceding Chief Judge of the United States District Court for the District of Columbia declined to provide a copy of her grand jury instructions to the Committee.

purpose by the United States Marshal for the District of Columbia.

Further orientation  
by US Attorney's  
representative

At the initial stage of service, both federal and D.C. Superior Court grand jurors also usually receive further orientation from an Assistant United States Attorney.<sup>22</sup> These representatives of the prosecuting authority describe generally the nature and type of matters the grand jurors will hear during the course of their terms, explain the procedures that will be followed by the prosecutors, and answer any questions the grand jurors may have.

#### **PRESENTATION OF MATTERS TO THE GRAND JURY**

Assigned prosecutor  
formally presents  
case

After the general orientation, the actual work of the grand jury begins when prosecutors assigned to the investigation of specific criminal offenses formally present specific matters to the grand jury. The prosecutor will outline the nature and scope of the investigation, which may include, among other things: the identity of the individual who has been arrested for the offense or the initial target or targets of the investigation; the documents and other types of subpoenas the prosecutor intends to issue on behalf of the grand jury; the expected witnesses who will be called to testify; and the violations that may be a part of the proposed indictment and the elements of such offenses. The grand jury ordinarily then assigns a number or a name to the investigation so that grand jurors can keep track of the progress of the specific case in their notes. These notes become increasingly important when evidence is presented over a period of several weeks during a series of grand jury sessions, rather than on a single day. The grand juror notes, which remain in the grand jury room at all times, are also used by individual grand jurors during their deliberations prior to the return of an indictment.

Grand jurors make  
notes to keep track  
of cases

Notes must remain  
in juror room at all  
times

The opening session for a particular case often includes the testimony of the first witness or witnesses in the case. In federal grand juries, witnesses remain in an area adjacent to the grand jury rooms until called to testify. The area is shielded from the public and within the control of the Deputy United

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<sup>22</sup> In the case of a federal grand jury, the orientation may instead be presented by a trial attorney in the Criminal Division of the U.S. Department of Justice, or an Independent Counsel, depending upon the type of grand jury impaneled.

States Marshal assigned to the grand juries. By contrast, for D.C. Superior Court grand juries, the witnesses are sometimes present in the common area used by the grand juries on their breaks.

Witnesses questioned by prosecution

When a witness enters the grand jury room, he or she is sworn in by the foreperson or deputy foreperson. The witness is then questioned by the prosecutor, with questions and answers recorded stenographically by the court reporter.

Then questioned by grand jurors, procedures for which vary from case to case and from grand jury to grand jury

Following the completion of the prosecutor's questions, grand jurors may ask questions on their own, although the procedures for doing so can vary from case to case and from grand jury to grand jury. Depending on the witness and the nature of his or her testimony, prosecutors may encourage grand jurors to pose questions directly to the witness. At other times, prosecutors may first excuse the witness and then discuss with the grand jury the questions the grand jurors may want to pose.

Prosecution summarizes case and reads proposed indictment

At the conclusion of his or her presentation of the case, the prosecutor may summarize the evidence and review the elements for each of the violations to be considered by the grand jury. The prosecutor will then read the proposed indictment to the grand jurors. This process is accomplished either by reading the indictment verbatim or by distributing a copy to each grand juror. The prosecutor then leaves the room, and the grand jurors deliberate and vote on the proposed indictment.

Grand jurors deliberate, vote, and, if approved, return indictment

Where an indictment is approved, the grand jurors and the prosecutor formally "return" the indictment by presenting it in court. This process is called the grand jury return. Federal grand juries make the grand jury return before one of the three United States Magistrate Judges. D.C. Superior Court indictments are returned to the Chief Judge or the Chief Judge's designee in the applicable grand jury courtroom located within the facilities of the United States Attorney's Office or in the Chief Judge's courtroom within the D.C. Courthouse. The foreperson presents the indictment signed on behalf of the grand jury, as well as related documents. The federal Magistrate Judge or the D.C. Superior Court Chief Judge, as applicable, accepts the documents and directs the grand jurors to return to hear further evidence or excuses them for the day.

**—Notes—**



## ABOUT THE COUNCIL FOR COURT EXCELLENCE

Formed in Washington, D.C., in January 1982, the Council for Court Excellence is a nonprofit, nonpartisan, civic organization. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area and in the nation. The Council accomplishes this goal by:

- Identifying and promoting court reforms;
- Improving public access to justice; and
- Increasing public understanding and support of our justice system.

The Council for Court Excellence has built a substantial record of success in the major court reform initiatives it has undertaken. The Council has been the moving force behind adoption of the one day/one trial jury system in the D.C. Superior Court, modernization of the jury system, reform of the District of Columbia probate laws and procedures, expansion of crime victim rights, improvement in court handling of child abuse and neglect cases, and proposing methods to speed resolution of civil cases by the D.C. trial and appellate courts.

Since 1995 the Council for Court Excellence has devoted a substantial level of energy to petit and grand jury reform. In 1998, the Council published a comprehensive report on the trial jury system in Washington D.C. *Juries for the Year 2000 and Beyond* is available from the Council's offices. *The Grand Jury of Tomorrow* Report, July 2001, sets forth 23 policy and legislative proposals to improve local and federal grand juries in Washington D.C.

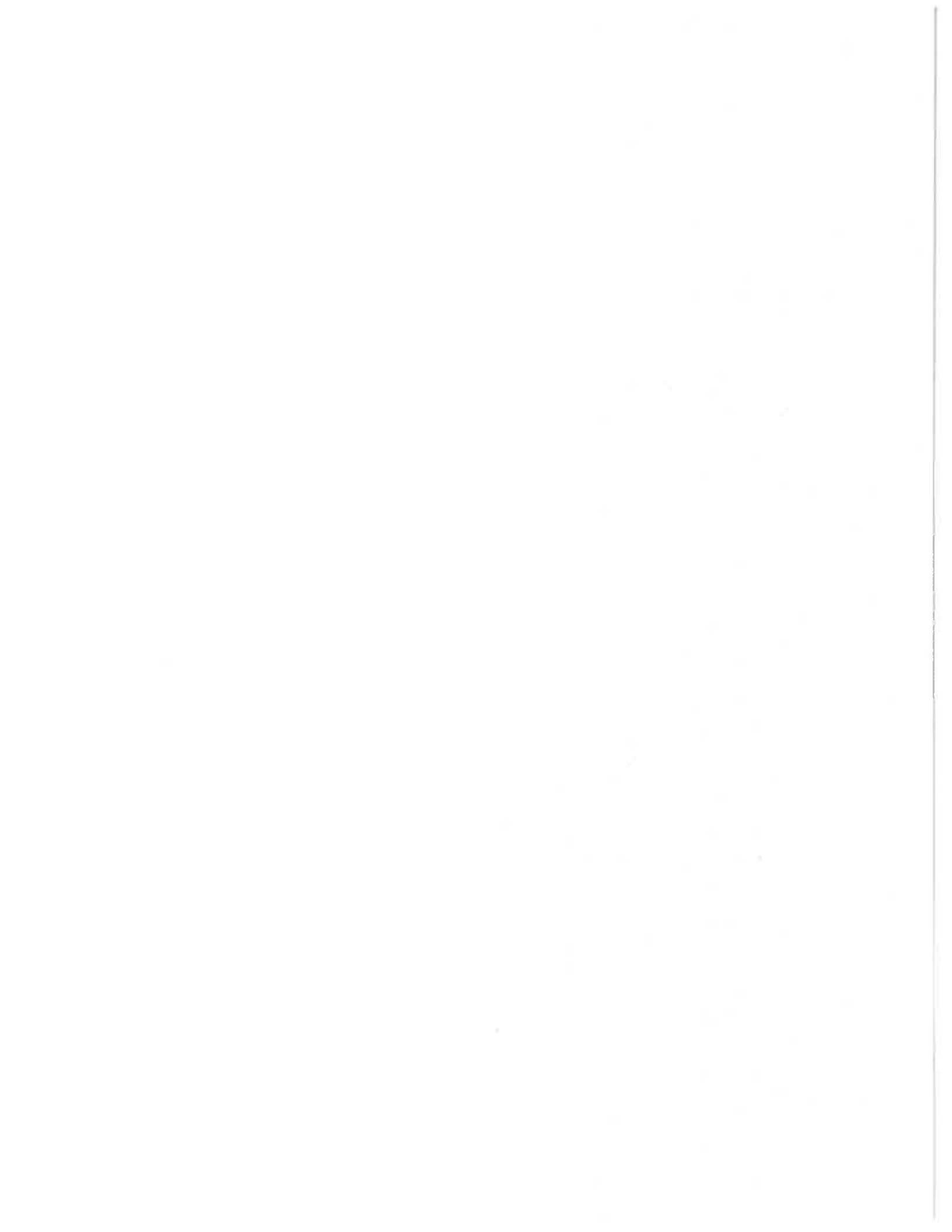
To improve the public's access to justice and increase their understanding of our justice system, the Council over the years has published and disseminated over 250,000 copies of plain-language booklets and other materials explaining a wide variety of court systems.

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