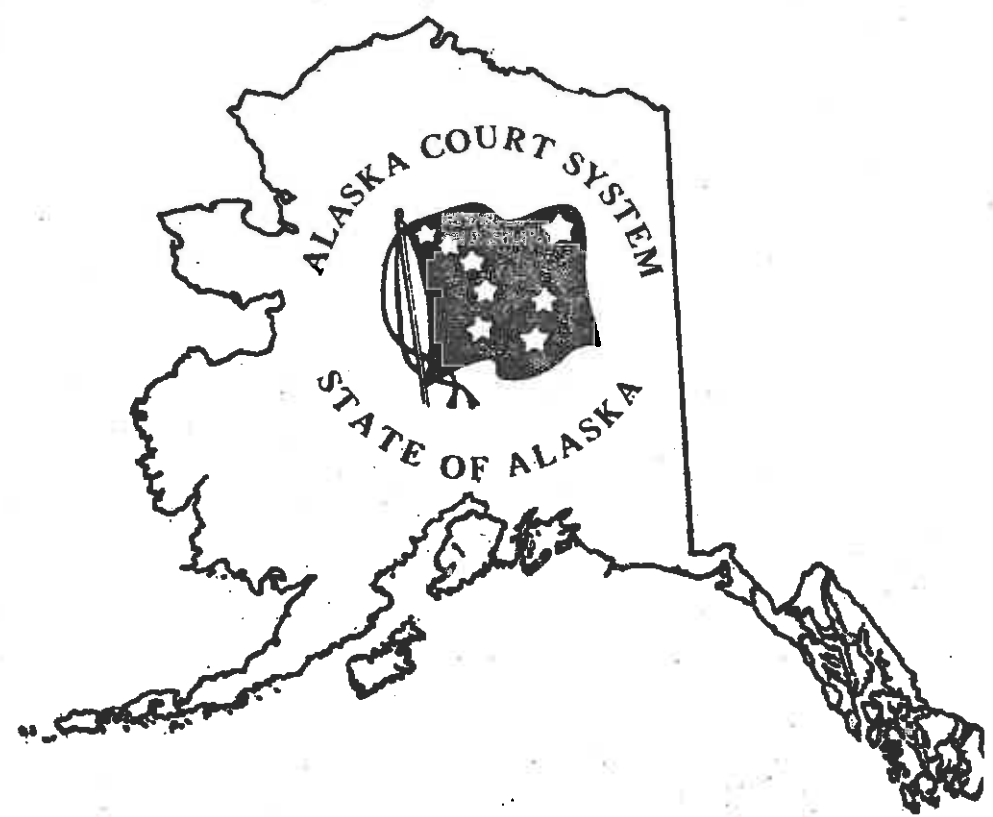


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ALASKA GRAND JURY

HANDBOOK

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**Based on the Original Draft Prepared by
The Section of Judicial Administration
of the
American Bar Association**

Alaska Grand Jury Handbook

I. IMPORTANCE OF THE GRAND JURY.

This Handbook is intended for citizens who have been selected as members of the Grand Jury, and are about to report to carry out their duties in that regard.

Clearly a "... government of the people, by the people, and for the people," as Abraham Lincoln tersely described the American form of Government, requires the active participation of every citizen in at least two important civic duties, first to exercise the voting privilege, second to serve on juries. As Harlan Fiske Stone, late Chief Justice of the United States Supreme Court, said:

"Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice between man and man and between government and the individual."

In time of peace no citizen can perform a higher duty than that of Grand Jury service. No body of citizens exercises public functions more vital to the administration of law and order.

The powers and functions of Grand Juries differ widely from those of trial or petit juries. The petit jury actually tries the case and renders the verdict after hearing both sides. The Grand Jury does not try the case. The Grand Jury does not hear both sides. Its function is simply to hear witnesses as to a charge of crime and to determine whether or not the person or persons so charged should be brought to trial on such charges.

The Grand Jury is both a sword and a shield of Justice—a sword, because it is the terror of criminals, a shield, because it is the protection of the innocent against unjust prosecution. These important powers obviously create equally grave responsibilities to see that such powers are in nowise perverted or abused. With its extensive powers, a Grand Jury might unless motivated by the highest sense of justice, find indictments not warranted by the evidence and thus become a source of oppression to our citizens. On the other hand, a

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Grand Jury might dismiss charges against those who should be proceeded against. The importance of its powers is emphasized by the fact that it is an independent body answerable to no one except the court itself.

II. ORIGIN OF GRAND JURY

Not only in theory, but in actual historical fact, the importance of the Grand Jury has been demonstrated. It had its origin more than seven centuries ago, in England, from which, in large part, this country inherited its legal system. It was recognized in Magna Carta granted by King John of England at the demand of the people in 1215 A.D., and some say its origin was even earlier. This power of the Grand Jury to protect the citizens from the despotic abuse of power has been repeatedly exerted not only in England, but in this country, even before the Declaration of Independence. For instance, in New York City, in 1735, a Colonial Governor demanded that a Grand Jury find a formal criminal charge against the editor of a newspaper called the Weekly Journal, who had held up to scorn certain of the deeds of the Royal Governor. The Grand Jury denied this demand, and refused to indict. Many similar instances could be cited.

However, such cases are exceptional. As a rule the Grand Jury is the source of indictments which authorize the prosecution of those accused of crime. Such is the importance of the Grand Jury in its control of the initiation of prosecutions for serious crime, as distinguished from petty offenses, that the authority of the Grand Jury is recognized in the Constitution of the United States and in the Constitutions of most of the states of the Union, including that of Alaska.

III. NATURE OF THE GRAND JURY

(a) The Accusing Body as to Serious Crimes

As above indicated, the Grand Jury is the principal body which has the right to determine whether a person shall be tried for a serious crime unless that person himself waives, or gives up, that right. This means that no one can be prosecuted for serious crime except by vote of the Grand Jury.

Thus the citizens themselves, by this representative body of Grand Jurors, hold in their own hand the control of the maintenance of law and order throughout the state, through prosecution for crime. The importance of this power cannot be overestimated.

The above does not apply to minor crimes and traffic violations, for which prosecution is generally initiated by the district attorney, without action by the Grand Jury, through proceedings called informations or complaints. Indeed, if this were not so, the Grand Jury would be so submerged with complaints on minor offenses that it could not perform its more important duties.

In performing its duties, the Grand Jury should bear in mind that it does not finally try the case. Generally it hears only the evidence presented by the district attorney; but when it has reason to believe that other evidence within reach will explain away the charge, the Grand Jury should order such evidence to be produced, and for that purpose may require the district attorney to issue process for witnesses. The Grand Jury then determines whether or not the evidence presented, without considering the defense, justifies an indictment, which is a formal charge of crime, according to the legal principals of which the presiding judge and district attorney will advise the Grand Jury. If the evidence is sufficient, it votes an indictment, "a true bill," to be formally drafted by the district attorney. If not, the Grand Jury will vote "not a true bill."

Charges of crime may be brought to your attention in several ways: (1) by the Court, (2) by the district attorney, (3) from your own personal knowledge, or from matters properly brought to your personal attention, (4) by private citizens heard by the Grand Jury in formal session, with the Grand Jury's consent.

The bulk of your work will probably be concerned with charges falling within classes (1) and (2) above. Here the defendant will probably have been held preliminarily on a charge by a committing Magistrate for action by the Grand Jury. The defendant will therefore either have given bail or be in custody, in default of bail awaiting your action.

Your action should therefore be reasonably prompt, and result in voting either for or against an Indictment. As to matters brought to your attention in classes (3) and (4) above, emanating directly or indirectly from the Grand Jury itself, it would be wisest to consult with the district attorney or the Court, in advance of undertaking a formal investigation by the Grand Jury, although this is not mandatory. In any event, you will generally have to consult with them in the end, if the Grand Jury decides that a person should be proceeded against criminally, in order to obtain aid in drafting the proper form of Indictment. In most instances this type of Grand Jury investigation will concern persons not then in custody. In the event you vote a true bill, indictment or presentment against such person, such indictment or presentment should be endorsed by you as "secret"—not to be given publicity until released by the Court.

In order that the Grand Jurors may not be subjected to partisan secret influences, no one has the right to approach an individual member of the Grand Jury in order to persuade him that a certain Indictment should, or should not, be found. Any such individual should be referred to the district attorney, in order that he may be heard by the Grand Jury as a whole. On the other hand, a citizen is at liberty to apply to the Grand Jury for permission to appear before it in order to suggest or urge that a certain situation should be investigated by it.

You will further bear in mind that as a Grand Juror you are a public official, with the duty of protecting the public by enforcing the law of the land. Thus even if, perchance, you should think a certain law unduly harsh, that should not influence your judgment in carrying out your duties as a Grand Juror. As a citizen you have the right to endeavor to change the law. As a public official and Grand Juror it is your duty to enforce the law as it exists.

(b) Grand Jury as an Investigatory Body

In addition to the duty of the Grand Jury to hear evidence and decide whether formal criminal charges should be proceeded with, the Grand Jury has the additional important duty of making investigations on its own initiative,

which it can thereafter report to the Court. Thus a Grand Jury may investigate how officials are conducting their public trust, and make investigations as to the proper conduct of public institutions, such as prisons and courts of justice. This gives it the power to inspect such institutions, and if desired, to call before them those in charge of their operations, and other persons who can testify in that regard. If as a result of such investigation the Grand Jury finds that an improper condition exists, it may recommend a remedy.

On the other hand, there are distinct limitations as to what a Grand Jury may do in the course of such investigations and in its Report. Specifically, "a Grand Jury cannot forage at will upon any whim it may entertain." It can only investigate such matters as are within its jurisdiction, geographic and otherwise. Nor, can a Grand Jury in such a Report specify individuals as being personally responsible for the conditions which it criticizes. This is because such a Report gives the individual criticized no opportunity to give his reply thereto, as he could were this criticism to be the subject of an Indictment for crime. Further, the Grand Jury should bear in mind that both in these investigations and as to indictments, the duty of secrecy is paramount.

IV. ORGANIZATION. OATH. OFFICERS.

When you report for duty as a Grand Juror, the presiding Judge will consider such excuses as may be presented. But because of the great importance of your duty as a member of the Grand Jury, and because it is a distinct honor to serve as a member of the Grand Jury, obviously you will not permit anything but a real emergency to stand in the way of your performing this outstanding civic duty. You will already have been properly selected as a qualified Grand Juror when you read this, but the Court will be glad to advise you with regard to exemption from service if you so desire.

When you report with the other members of your Grand Jury, you will be conducted to Court, where your Foreman—your presiding officer—and your Deputy Foreman or Assistant will be appointed by the Judge. The Court will have

them and you sworn in, under an oath which itself states your important powers and responsibilities.

After you have been sworn, the presiding Judge will advise you formally by written instructions, and in greater detail, as to how to conduct these duties and the responsibilities that are yours. This address is called "The Charge to the Grand Jury." This charge by the Court, plus such other instructions as may be given you by the Court, are your controlling guide. The district attorney will also give you his advice, as a skilled official, as to how your duties should be performed. But in the event of question, the Court will rule authoritatively on these matters. You will note that this Handbook does not purport to state the principals of law that govern you as a Grand Juror. Its purpose is simply to give you a clearer understanding of the general nature of your functions, with some practical suggestions as to carrying out such functions. You should go to your oath and to the Court itself for the sole authoritative statement of your powers, functions and duties as Grand Juror.

Upon receiving from the Court its "Charge to the Grand Jury" you will become a part of the Grand Jury. You will then be escorted to the Grand Jury Room, where you will prepare to hear the testimony, and see the documentary evidence, as presented by the district attorney, in the cases to be brought to your attention.

V. PROCEDURE

(a) Quorum

A Grand Jury consists of not less than 12 nor more than 18 members; of the total membership not less than twelve must always be present to constitute a quorum for the transaction of business. If less than this quorum exists, even for a moment, the proceedings of the Grand Jury must stop. Hence it is important that any Grand Juror who finds that an emergency interferes with his presence at a scheduled meeting of the Grand Jury, should advise the Grand Jury Foreman promptly, in order to see whether his absence will prevent the Grand Jury from acting at all at the meeting.

(b) Hearing Witnesses

Most of the work of the Grand Jury is concerned with hearing witnesses and determining the sufficiency of the evidence, in order to determine whether, considering that testimony alone without regard to defense testimony, an indictment is justified. When so proceeding, the district attorney will present and explain the charge to the Grand Jury, and advise as to the witnesses to be presented, either voluntarily, or at the request of the district attorney or the Grand Jury, or under order of subpoena from the Grand Jury or the Court. Indeed the Grand Jury itself may insist on the calling of additional witnesses.

These witnesses will be called one by one and sworn to tell the truth by the Foreman in a dignified, deliberate manner, indicative of the solemnity of the occasion. The witness will ordinarily be questioned first by the district attorney, then by the Foreman, and then, if desired, by other members of the Grand Jury, each of whom is free to ask all proper questions of any witness. But as to what is a proper question the advice of the district attorney should be requested, and in the event of doubt, a ruling may be obtained from the Court.

All questioning should be impartial and objective, without indicating any viewpoint on the part of the questioner. A stenographer may be present to take down the proceedings, as may an interpreter, if needed.

Should a witness, when brought before the Grand Jury to testify, refuse to answer questions, this refusal must be carefully recorded. Then accompanied by the district attorney, the Grand Jury may bring the matter before the Court, with a copy of the record, in order to obtain the ruling of the Court as to whether the answer may be compelled or not. This probably involves the technical question of whether the question asked violates the witness' constitutional freedom from self-incrimination. If it does, the witness cannot be compelled to answer. If it does not, the Court will order the witness to answer, and if he fails to do so, will order the witness held, or tried, for contempt of court.

You will note from the above that the defendant named in the criminal charge has not been heard as a witness, nor have any witnesses for him probably been called. This is because, as stated above, the Grand Jury does not try the merits of the case, but only the sufficiency of the evidence supporting the charge. However, the Grand Jury has the right to offer the defendant the opportunity to appear before it. This is not usually done and should not be done unless the Grand Jury really feels that it is desirable. If the defendant is given this opportunity, and appears, he cannot be forced to testify because of the constitutional provisions above alluded to. Indeed, if the Grand Jury attempts to force him to testify, the indictment of the defendant may be nullified. Further, even if the defendant is willing to testify voluntarily, in order that it may be clear that he is testifying voluntarily, he should first be warned of his right not to testify, and should then sign a formal waiver of his constitutional privilege against self-incrimination before he does so testify. This last is his agreement not to rely upon the above constitutional right, and to be prosecuted even though he testifies, and the Grand Jury should be fully satisfied that he understands what he is then doing.

From the above, it is clear that the matter of forcing a witness to testify, or of giving the defendant an opportunity to testify, raises complicated legal questions. The advice of the district attorney and the ruling of the Court thereon should be sought if any such question arises.

Further legal questions may arise as to whether certain evidence is proper. The law of Evidence is technical, and here you must be guided by the district attorney or by the Court.

Finally, bear in mind that neither a defendant nor an ordinary witness, when appearing before a Grand Jury, is entitled to have his counsel present in the Grand Jury Room.

(c) Determination to Indict or Dismiss

When the Grand Jury has heard all necessary or available witnesses, and all persons except the Grand Jury have left the room, the Foreman will ask the Grand Jury to discuss and vote on the question of whether a True Bill should be found on the charge. Every Grand Juror now has the right to

comment on the evidence and his view of the matter. Thereafter, and only after each member has been properly heard, the vote will be taken. No indictment can be found unless a majority of the members present concur.

Similar proceedings are taken when the matter to be discussed is not a formal charge or Indictment, but a Report, as noted above—the result of an investigation into public affairs with which the Grand Jury has concern, but which do not constitute a formal charge of crime.

When the hearing of the witnesses on a certain charge is closed, all persons present, other than the Grand Jury, should leave the room. Only the members of the Grand Jury can be present when the Grand Jury deliberates or votes on a charge. If this is not done, an Indictment may be nullified.

VI. DISTRICT ATTORNEY

The district attorney will be actively engaged before the Grand Jury in presenting one by one the formal charges, and in calling the witnesses to support them. Since he is a public official, usually of experience in this work, and of both intelligence and sincerity, he will naturally be the constant legal advisor to the Grand Jury.

However, the best of advisers sometimes are in error. Thus, if a difference of opinion arises between him and the Grand Jury, the matter should be brought before the presiding Judge for his ruling.

Finally, you will remember that neither the district attorney nor any of his assistants, nor anyone else, may be permitted to be present while the Grand Jury is actually deliberating or voting on an Indictment or Presentment. If this occurs, an Indictment may be nullified.

VII. SECRECY

Secrecy as to all Grand Jury proceedings, including not only action upon an Indictment or Presentment, but the fact that any such matter was considered or any witnesses called, is of the utmost importance. Thus only can the Grand Jurors

themselves be protected from being subjected to pressure by persons who may be involved in the action of the Grand Jury. Thus only can persons be prevented from escaping while an Indictment against them is under consideration. Thus only can witnesses before the Grand Jury be prevented from being tampered with, or intimidated, before they testify at the trial. Thus only can such witnesses be encouraged to give the Grand Jury information as to the commission of crime. Thus only can an innocent person who has been improperly subjected to a charge, but where the Indictment has been dismissed, be saved the disgrace attendant upon the making of such a charge. Note that to achieve the above protection for the Grand Jury for the individuals involved, including the witnesses, and for the citizens at large, this pledge of secrecy is paramount and permanent.

No more need be said as to the importance of a Grand Juror's not communicating to his family, to his friends, to anyone, that which takes place in the Grand Jury Room. The only time he may do so is when the Court under certain circumstances itself orders such disclosure, in order to do justice.

VIII. PROTECTION OF GRAND JURORS

The secrecy to which Grand Jurors are sworn is of itself one of the major sources of protection of the members of the Grand Jury.

The Grand Jury is further protected by being an independent body answerable to no one except the Court itself. No inquiry may be made to learn what a Grand Juror said or how he voted. The law gives a Grand Juror complete immunity for his official acts within the authority of the Grand Jury regardless, for instance, of the ultimate result on an indictment returned by the Grand Jury. The one apparent exception to this is, if he himself testifies before the Grand Jury to the commission of a crime, and his testimony is perjured. With this complete protection for their official acts, it is obviously vital that our Grand Jurors should be citizens of unquestioned integrity and high character.

IX. PRACTICAL SUGGESTIONS

Attend the sessions of the Grand Jury regularly; not only each of your fellow jurors, but the public, is depending on you to do your job well.

Pay close attention to the testimony given and the evidence presented; the reputation or freedom of someone depends on what is being told.

Be courteous to the witnesses and to your fellow jurors; do not try to monopolize the hearing or the deliberations.

In fixing the time and place of your meeting, consider the convenience of the public and the witnesses, as well as of yourselves and the district attorney.

The oath should be administered to witnesses in an impressive manner, so that they will realize that it is a serious, judicial hearing, and that they must tell the truth.

Wait until the district attorney has finished, ordinarily, before asking questions of a witness. It usually happens that the evidence you are seeking will be brought out.

Listen to the evidence and the opinions of your fellow jurors, but don't be a rubber stamp.

Be independent, but not obstinate.

Be absolutely fair—you are acting as a judge. Because of the secrecy of the hearing, no one else may inquire into what you have done.

All jurors have an equal voice in determining on an indictment. Each juror has the right to state his reasons for his views.

Express your opinion, but don't be dictatorial. Every juror has a right to his own opinion. You may try to persuade another juror, but do not try to force him to change his mind and agree with you. He might be right.

Do not keep silent when the case is under discussion, and begin to talk about it after a vote has been taken.

A reckless Grand Jury can do as much harm to the community and to law enforcement as a weak Grand Jury.

Do not investigate matters out of the province of the Grand Jury, or merely because someone suggested an investigation, without sufficient information, or merely because it would be an interesting matter to investigate.

Do not discuss cases with your fellow jurors outside of the jury room.

It is of great importance that your attendance be regular and on time. If you are unable to attend the session, or desire to be excused, ask permission. The unexpected lack of a quorum causes a great loss of time and money to the individual jurors as well as to the authorities and witnesses.

When considering undertaking any special investigation, it is wise to consult the district attorney beforehand, so that he may arrange routine business accordingly and advise you as to other matters bearing on such an investigation.

Each juror has a duty and responsibility equal to yours. Each juror is entitled to be satisfied with the evidence before being called upon to vote. Although your mind may be made up, if others wish to pursue the matter further, you have no right to dismiss the witness or shut off proper discussion.

Your membership on the Grand Jury is a high honor. You are among a relatively small number of citizens of your community who are chosen to serve on the Grand Jury. This should therefore mean devoted, responsible participation in performing Grand Jury duty.