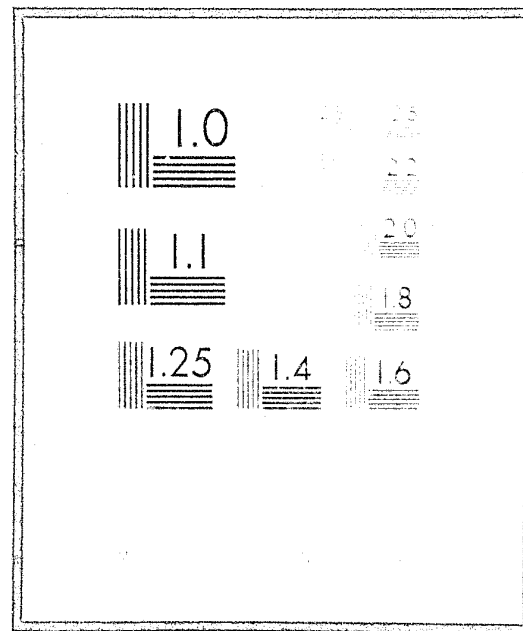


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



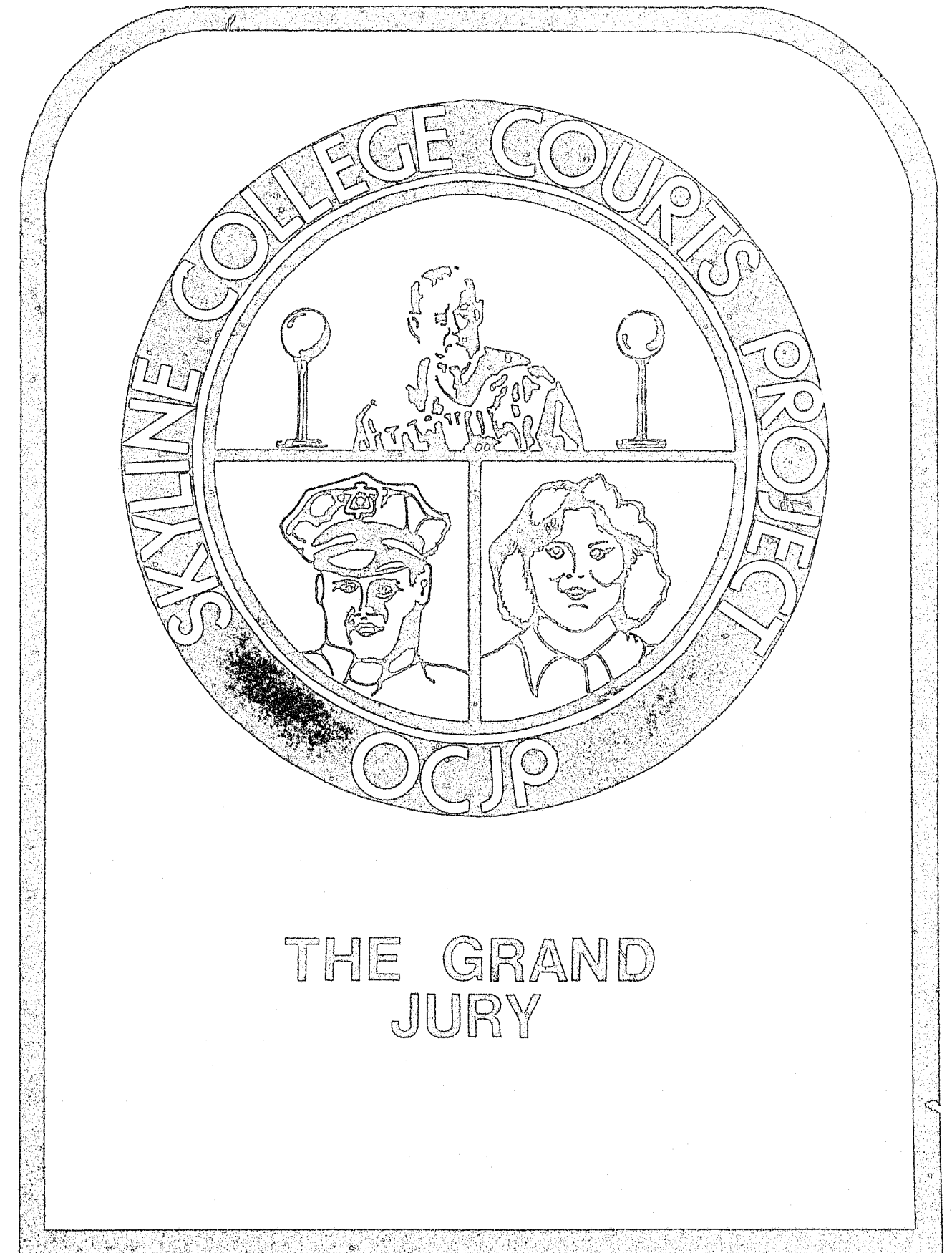
Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

2/11/77

3 a . . . i l m e d



36418

THE GRAND JURY

This booklet was produced under a grant conceived by Judge F. J. de Larios of the Northern District Municipal Court of San Mateo County, California. The project was financially assisted through a federal grant from the Law Enforcement Assistance Administration and the California Office of Criminal Justice Planning. Opinions, findings and conclusions in this publication are those of the project staff and not necessarily those of LEAA, COCJP or assisting agencies.

Court Support Personnel Project
Skyline College
San Bruno, CA 94066
Douglas C. Oliver,
Project Director

NCJRS

SEP 14 1975

ACQUISITION

Booklet

Researcher/Writer: Daniel Branch

Editor: Theani Louskos

Graphics: Jan Kirkpatrick

Manuscript Typing: Donna Hughes

CONTENTS

	PAGE
INTRODUCTION	1
PROGRAM OBJECTIVES	4
COMMENTARY	5
Definition of the Grand Jury	5
History of the Grand Jury	6
Selection of a Grand Jury	7
The Functions of the Grand Jury	8
Court Personnel and Procedures for the Grand Jury .	13
Criticism of the Grand Jury	15
CONCLUSION	18
SELF-REVIEW TEST	19
GLOSSARY	21
SUGGESTED READING	23

INTRODUCTION

So you have been arrested for bank robbery. Sitting in your cell you search past memory for information. What was that you heard about constitutional rights? While you ponder this problem a lawyer enters your cell. After explaining your innocence, you ask him to describe the rights you have as one accused of such a serious crime. He smiles briefly, takes a deep breath, and begins a short lecture.

Well Mr. McHenry, you are charged with bank robbery. Since that crime is punishable by imprisonment in the state prison it falls into the general classification of crimes called felonies. All other crimes are classified as either misdemeanors or infractions.

As a felony suspect you have the right to force the prosecutor to substantiate the charge against you. This must be done without delay. In California the prosecutor has two alternative ways of satisfying this burden of proof. He may seek a Grand Jury indictment or file an information. This afternoon you are scheduled to appear in Municipal Court for arraignment. The judge will arraign you by reading you a formal statement of the charges against you given him by the prosecutor. The court calls this formal statement a Complaint. At this time you will also enter your plea of not guilty and ask that a preliminary hearing date be set within ten days as is your statutory right. The Municipal Court holds a preliminary hearing on all felony charges filed with them. The hearing determines whether enough evidence exists to justify continuing the criminal proceedings against you. The prosecutor must show that a crime has been committed and that it is reasonable to believe you committed the crime. Witnesses

will testify at the hearing and relevant physical evidence will be introduced. You have the right to cross-examine all of the prosecutor's witnesses. You may also put witnesses on the stand to testify in your behalf. At the end of the hearing the Municipal Court judge must decide if the prosecutor successfully substantiated the charges against you. If he did, the judge will issue a formal order to have you bound over for trial in Superior Court. This is appropriately called a binding order.

Let's assume the prosecutor successfully substantiates the charges against you in the Municipal Court Preliminary Hearing. While you are still in jail he must make out a new formal statement of the charges against you to file in Superior Court. The Superior Court calls this formal statement an information. You will appear in Superior Court for arraignment just as you did in Municipal Court. The judge will read you the charges contained in the information and give you a copy of it. You will again enter a plea of not guilty. The judge then sets a trial date.

All of the Municipal Court proceedings are by-passed when a criminal action is brought against you by a Grand Jury indictment. In effect, the Grand Jury replaces the preliminary hearing. It determines whether enough evidence of a crime exists to justify your arrest and subsequent trial in the Superior Court. If the Grand Jury determines that there is sufficient evidence, it issues an indictment. The indictment authorizes the arrest of the person named in it and serves to initiate criminal action against that person in the Superior Court.

In the Criminal Procedures series produced by the Courts Project, we followed three different cases, one misdemeanor and two felonies, from the filing of a complaint in the Municipal Court through the various court

proceedings (in both Municipal and Superior Courts) required for their disposition.

In this booklet on the Grand Jury, we examine in depth, an alternate means for initiating criminal action against an individual suspected of a crime. As you will realize from this reading, there are some marked differences between the two methods of prosecution.

The booklet will present a brief introduction to the concept and historical background of the Grand Jury system. It will also examine selection procedures for the Grand Jury, how the Grand Jury examination and investigation process works and the role of Superior Court personnel in providing support services to the Grand Jury itself. Finally, the booklet focuses on some of the controversy and criticism surrounding the Grand Jury System today.

PROGRAM OBJECTIVES

After reading this booklet, you should be able to:

1. Define "Grand Jury" and describe its function within the criminal justice system.
2. Describe two methods presently used to select potential Grand Jurors.
3. Briefly explain the steps of a Grand Jury investigation.
4. Describe the role of the prosecutor in the Grand Jury's investigation.
5. Describe the recordkeeping and support services provided the Grand Jury by the:
 - a) Grand Jury Clerk
 - b) Courtroom Clerk
6. Describe and comment on three major criticisms levelled against the Grand Jury system as it exists today.

After you have finished reading this booklet, take the Self-Review Test at the end of the text.

DEFINITION OF THE GRAND JURY

Section 888 of the California Penal Code defines the Grand Jury as "a body of persons selected from the citizens of a county to inquire into public offenses committed or triable in the county..." Its principal function is to hear evidence presented by the district attorney and decide whether an individual should be "indicted," that is, formally charged with a criminal offense.

In addition, the Grand Jury has the duty to make criminal charges on its own initiative when they discover facts justifying such an investigation. All Grand Jury investigations dealing with criminal charges must be limited to felony charges committed within the county it sits in.

The Grand Jury also investigates civil matters such as municipal government corruption and prison administration.

Each Grand Jury is loosely attached to the local Superior Court. A Superior Court Judge presides over the jury, ruling on any questions of evidence that might arise. In addition, Superior Court support personnel, including deputy and courtroom clerks, provide administrative and clerical services to the Grand Jury itself.

HISTORY OF THE GRAND JURY

The Grand Jury originated in England. Most scholars trace its origins to the Assize of Claredon that took place in 1166 A.D. There King Henry II provided that "12 good and lawful men among every 104 men in each village reveal under oath the homes of those guilty of criminal offenses." Reports by this body of 12 were made to the royal sheriff. Those accused of specific crimes could defend themselves before the King's representatives by denying the charges and submitting to ordeal by water. If after being lowered into the water, the suspect sank he was declared innocent. If he floated he was deemed guilty. Considering the average swimming ability of citizens at this time a good many innocent persons must have been lost in the waters of justice.

Initially the Grand Jury was used by the King to enlarge his power and increase the number of persons standing trial. Eventually, however, it evolved into a device protecting the innocent from overzealous prosecution. Today, as noted by the American Bar Association, the Grand Jury is both a sword and a shield of Justice. It is a sword because it is a terror to criminals. It is a shield because it is the protector of the innocent against unjust prosecution.

SELECTION OF A GRAND JURY

Generally, citizens are picked from the general public to serve as grand jurors. Jurors selected must be citizens of the United States and residents of the county which the Grand Jury is to represent, for at least one year. These are the only uniform requirements. The Superior Court Judges of each county carry out the actual selection process. Jurors are usually outstanding members of the community selected in part on the basis of their civic activity. They are often known personally by the Superior Court Judge nominating them. Grand Juries selected in this fashion are called "Blue Ribbon Juries." Since much of the criticism of the Grand Jury focuses upon this rather undemocratic method of selecting jurors some counties have abandoned the "Blue Ribbon" method for a more republican process.

In California, Marin County actively seeks community participation in the Grand Jury selection process. The county seeks applications for Grand Jury positions from a diverse collection of community groups by placing ads in the local newspapers and by sending out requests to community groups. Using a computer, these applications are sorted out and a manageable group selected. From this group the Superior Court Judges select the Grand Jury Panel.

In January 1976 the San Francisco Superior Court Judges voted to use a new method of selecting jurors. Instead of the judges nominating jurors as in the past, the jurors are randomly selected by the county clerk from the voter registration list. This proposed change effects only the 1976 Grand Jury selection. At the time of this writing no commitment has been made to make it a permanent change.

In San Francisco and the "Blue Ribbon" counties, all those called to serve must report to the presiding judge at a specified time. Some may not be able to serve on the Grand Jury. If these people have proper excuses they will not be forced to serve. Only a real emergency will excuse those nominated from serving as Grand Jurors. The selection process ends when the required number of jurors are present, qualified, and willing to serve as Grand Jurors. California state law sets this number at 23 in counties with more than 4 million people and 19 in all other counties.

THE FUNCTIONS OF THE GRAND JURY

After the selection process ends, the jurors must be sworn in. The presiding judge administers a special oath to each juror. After all have been sworn in, the presiding judge explains to the jurors the extent of their duties. Even after this lecture, the juror's knowledge of their duties is very limited. To fill this void the district attorney is authorized to give the jury information and advice. Initially the court and the district attorney explain that the prime purpose of the Grand Jury is to determine whether or not criminal indictments should issue. They also explain the meaning of the term "criminal indictment." When the Grand Jury votes to issue a criminal indictment against a person, they in effect, authorize the district attorney to bring charges against that person in Superior Court. In this sense the indictment is an authorization to proceed with criminal prosecution. The Grand Jury may not issue an indictment unless they have heard evidence concerning criminal charges

against a person and have decided that such evidence alone, if presented in a trial, would warrant a conviction by a jury (PC 939.8). As mentioned earlier, the indictment allows the district attorney to avoid filing a complaint against the criminal suspect in Municipal Court. It also eliminates a preliminary hearing. With the indictment the district attorney goes directly to Superior Court and files an information.

Most criminal indictments are the result of investigation organized by the district attorney and issue solely upon information and evidence he/she produces. The Grand Jury may also initiate its own investigation and call witnesses to further such investigation if it chooses to do so. Such investigations, however, are the exceptions, not the rule.

Once members of the Grand Jury receive this introduction, the actual examination and investigative work begins. The central figure around which the Grand Jury operates is the district attorney, who largely coordinates the investigation.

The district attorney conducts the examination and investigative process by first presenting and explaining the charge(s) against a particular suspect, and then presenting witnesses and physical evidence to support the charge(s). In preparing his case, the district attorney contacts the witnesses he plans to have testify in front of the Grand Jury. At this time he/she requests their voluntary appearance before the jury. If a witness doesn't appear voluntarily the district attorney will ask the Grand Jury to demand his/her presence by exercising their power of subpoena. The Grand Jury may issue a subpoena demanding the presence of any person they feel can give testimony relevant to their investigation. This "subpoena" is nothing more than a legal order demanding that a person

appear at a designated place on a specified day and time. Failure to appear before the Grand Jury leads to serious consequences for the offender. When a Grand Jury subpoena is ignored and an individual fails to appear, the presiding judge issues a bench warrant. The warrant directs any police officer to arrest the offender on sight and incarcerate him/her in jail until he/she can be brought before the Grand Jury for questioning.

Before presenting evidence, the witness must swear to tell only the truth to the Grand Jury. After being sworn in, he/she will be questioned by the district attorney. After the district attorney's questioning ends, the foreman of the Grand Jury and then the other jurors may ask questions. Sometimes a witness will refuse to testify. When this happens the presiding judge must examine the witness to determine if it is proper to compel him/her to answer. This involves the technical question of whether the question violates the witness's constitutional right against self-incrimination. The Fifth Amendment of the Constitution guarantees every person the right to refuse to answer a question when the answer would somehow link him/her to some criminal activity. The presiding judge must determine whether the answer will really incriminate the witness. If the judge feels that the witness only seeks to protect a friend from prosecution he will demand an answer. If the witness still refuses, the judge may order the witness placed in jail until he/she changes his/her mind. If, however, the judge finds the Fifth Amendment applicable, he will not force an answer. If the Grand Jury wishes, it may offer such a witness immunity from prosecution. This means that none of the witness's testimony can be used by the district attorney as basis for criminal prosecution against them. In short, once an offer of immunity is accented, the witness is

guaranteed his/her constitutional right against self-incrimination. However, if the witness receives an offer of immunity and still refuses to testify, the judge may order the witness jailed until he/she decides to answer the question.

After the Grand Jury has heard all the available witnesses, the Grand Jury room is cleared of all persons except the jury members. The foreman takes control at this point, by leading a discussion of the matter at hand. After all the jurors have had a say in the matter, the jury votes on whether to hand down an indictment. If a juror feels that all the evidence, if uncontradicted, would lead a reasonable jury to convict the suspect charged, the juror must vote in favor of an indictment. In California counties with more than 4 million people, 14 Grand Jurors must vote for an indictment before one can issue. In all other California counties, only 12 need vote in favor of the indictment, for it to issue.

If the Grand Jury votes in favor of an indictment the foreman presents the presiding judge with the indictment. If the judge is satisfied that the required number of jurors voted in favor of the indictment and that it is otherwise proper, the judge will certify it a "true bill of indictment." After certification, a Grand Jury clerk files the indictment with the Superior Court Clerk's Office. The filing authorizes the district attorney to proceed with the criminal prosecution, by filing an information against the defendant in Superior Court. From this point on, the defendant's case will be processed the same way as that of a defendant who underwent a preliminary hearing in Municipal Court and was bound over for trial in Superior Court. After the filing of the information the defendant is arraigned in Superior Court. The Superior Court judge arraigns him by

reading him the formal charges against him as they appear in the information. Following the reading of the charges the judge sets the matter for trial, where the guilt or innocence of the defendant will be determined.

Once the Grand Jury issues an indictment, their work on that particular case is finished and they are free to begin a new investigation. Frequently, if the previous investigation brought evidence of another crime to their attention, the Grand Jury would immediately move to subpoena witnesses and further investigate that crime.

The Grand Jury also investigates a variety of civil matters that may range from examining prison administration policies to studying the procedures followed by certain government agencies. The process of investigating civil matters is similar to the criminal investigation process in that the district attorney provides the Grand Jury with witnesses and evidence. The difference between the two is that the "civil" Grand Jury only makes recommendations based on the evidence, and does not issue indictments.

COURT PERSONNEL AND PROCEDURES FOR THE GRAND JURY

The Grand Jury System requires two court support personnel to run smoothly--the Grand Jury Clerk and the Courtroom Clerk. The Courtroom Clerk sits in the Grand Jury Room with the jury and keeps a record of which witnesses testify and what physical evidence is introduced. The Grand Jury Clerk performs a more administrative role, providing clerical and administrative services necessary for the Grand Jury to function.

When the district attorney seeks an indictment he contacts the Grand Jury Clerk. The Clerk then notifies the Superior Court Judge assigned to the Grand Jury that the Grand Jury will meet, when it will meet, and where. Next the Clerk makes sure the Grand Jury Room is available. She/he arranges for a court reporter, notifies the sheriff's department so they can provide a bailiff for that day, and notifies the foreman of the Grand Jury. Finally the Grand Jury Clerk contacts the County Clerk's Office to insure that a courtroom clerk will be available when the jury meets.

While the Grand Jury meets to hear witnesses or consider evidence as part of its investigation, the Grand Jury Clerk carries out other tasks. In Marin County, California, the Grand Jury Clerk uses this time to carry out the Grand Jury selection process unique to that county. She/he sends out questionnaires to such diverse community groups as the Grange Association, Canoe Clubs, The Black Student Union, and the Nova Grandmother's Club. These questionnaires are addressed to persons interested in serving on the Grand Jury. In addition, the Grand Jury Clerk arranges for ads to be published in local newspapers inviting anyone interested to send for

a similar questionnaire. The county sets a deadline for returning the questionnaires. After the deadline passes, the Grand Jury Clerk assembles all the questionnaires and submits them to a computer firm. The computer selects a list of questionnaire names that are most representative of the community. In 1976 the county received a total of 286 completed questionnaires. From this number, the computer selected 88 questionnaires. For each of these 88, the Grand Jury Clerk compiles a portfolio, including the name of the interested party and some background information on that individual. All the Superior Court Judges go over this portfolio and together they select 40 to 45 names. Each of these semi-finalists are interviewed by a Superior Court Judge. This interview process narrows the number of potential Grand Jurors to 30. A simple lottery procedure then determines which of these people will be jurors and which will be alternates.

While the Grand Jury Clerk pours over questionnaires the Grand Jury hears evidence concerning an individual's guilt or innocence. When the district attorney has presented all his evidence, members of the Grand Jury are left alone to determine the matter. In this total secrecy the Grand Jurors weigh the evidence and decide whether or not an indictment should issue. When they reach a decision the foreman of the jury notifies the Grand Jury Clerk. She/he then notifies the presiding judge, the district attorney, and the court reporter, and proceeds with this group to the Grand Jury Room for the decision.

If an indictment is handed down, the judge examines it to see that the required number of jurors voted for it, and that it is otherwise a proper indictment or "true bill." Following the indictment, the judge immediately sets bail for the defendant and schedules a date for his arraignment in Superior Court. A major responsibility of the Courtroom

Clerk at this time is to keep accurate minutes of the proceeding. In this instance the Clerk must record that the indictment was found to be proper and that the required number of jurors voted for it. The Clerk must also note the amount of bail set and record the date scheduled for the defendant's Superior Court arraignment. In addition to recording the minutes, the Courtroom Clerk is responsible for collecting all exhibits presented during the investigation and transferring them to a secure storage area of the Superior Court. As a final recordkeeping procedure, the Clerk files the indictment and a copy of the minutes in the Clerk's Office of the Superior Court. With this filing of the indictment, the Grand Jury's involvement in that particular criminal proceeding ends. The district attorney, however, will continue to prosecute the case, by filing an information against the defendant, charging the same crimes as found in the indictment.

CRITICISM OF THE GRAND JURY

Both Federal and State Grand Juries co-exist in California. The Federal Grand Jury considers only felony violations of the Federal Criminal Law. In contrast, local Grand Juries that meet in each California county, consider felony violations of State laws. Outside of this difference in jurisdiction, both Grand Juries function in a similar manner. Because of these similarities, both institutions have been subject to criticism.

During Richard Nixon's presidency, many political and legal commentators complained that the Federal Grand Jury was being misused by then Attorney General, John Mitchell. In particular, it was charged that Mitchell and other Department of Justice prosecutors were manipulating and using the Grand Jury to indiscriminately investigate persons remotely suspected of subversive activities. The Federal Grand Jury, in effect, was being used to harass individuals critical of and politically active against the U.S. government. Supreme Court Justice William O. Douglas condemned this improper use of the Federal Grand Jury when he wrote in the dissent opinion for United States v. Dionisio:

"It is indeed, common knowledge, that the Grand Jury, having been conceived as a bulwark between citizen and government, is now a tool of the executive..."

While some of the more blatant abuses stopped when the Nixon Administration left the White House, criticism of the system still persists. Unfortunately, the very nature of the system makes it susceptible to misuse in the hands of overzealous prosecutors or unscrupulous public officials. Consider these characteristics of the Grand Jury process:

First, the Grand Jury relies entirely upon a prosecutor, either a local district attorney or United States attorney to present information and evidence of a crime. In most instances, the prosecutor alone determines which witnesses will be called to testify before the Grand Jury. If an overzealous prosecutor chose to harass an individual, for whatever reason, that person could be subpoenaed and compelled to testify before the Grand Jury whether they had any knowledge of a specific crime or not.

A second major criticism of the Grand Jury process is that it is entirely one-sided. Only the prosecution may present evidence in support

of their case. Unlike a regular court of law, which takes great care to make sure that both sides are equally represented, there is effectively no "defense side" to a Grand Jury investigation. The suspect of such an investigation is not allowed to have an attorney defend him, nor is he allowed to defend himself.

In fact, the suspect has no right to cross-examine the witnesses against him, and he may not even testify in his own behalf. This method of criminal prosecution contrasts dramatically with the alternative method which begins with a formal filing of a complaint in the Municipal Court. When this route is taken, the defendant is guaranteed an attorney to defend him and has the right to a preliminary hearing, to determine right at the start, whether there is sufficient evidence against the defendant to warrant a full scale trial. In addition, the defendant has the right to hear all the evidence and witnesses against him. He has the right to cross-examine those witnesses, and he has the right to call witnesses to testify on his behalf.

The defendant loses all these rights if the district attorney decides to seek a Grand Jury indictment rather than file a complaint. Another point of criticism is the secrecy in which the Grand Jury conducts its investigations and makes its decisions. The public may not be informed of what is said in the Grand Jury Room. Any record of testimony given remains hidden from the defendant and the public. Many critics suggest that this rule of secrecy opens up the way for significant abuse of the Grand Jury system.

CONCLUSION

Despite the criticism, in the proper hands the Grand Jury acts as a sword and a shield of Justice. Unfortunately, it is also susceptible to improper use. Acceptance or rejection of the Grand Jury System may ultimately turn upon the faith of the populace in its leaders. We are governed by men placed in a position to manipulate laws either for good or ill. Proponents of the Grand Jury System say we must trust our leaders. The system is run by men. If we can't rely upon their integrity, then the whole system must fail. The Grand Jury critics will quickly point out that we should eliminate those parts of the system that are particularly susceptible to abuse, especially when safer alternatives exist in the present criminal justice system.

SELF-REVIEW TEST

1. Define "Grand Jury" and describe its function within the criminal justice system.
2. Describe two methods presently used to select potential Grand Jurors.
3. Briefly explain the steps of a Grand Jury investigation.
4. Describe the role of the prosecution in the Grand Jury's investigation.
5. Describe the recordkeeping and support services provided the Grand Jury by the:
 - a) Grand Jury Clerk

b) Courtroom Clerk

6. Describe and comment on three major criticisms levelled against the Grand Jury system as it exists today.

GLOSSARY

- Arraignment: Court appearance where the presiding judge reads the criminal defendant a formal statement of his rights. When the arraignment takes place in Municipal Court the judge reads the charges from a complaint given him by the district attorney. When the arraignment takes place in Superior Court the judge reads the charges from an information submitted by the district attorney.
- Binding Order: Order handed down by the Municipal Court judge after a preliminary hearing if the judge finds enough evidence exists to reasonably believe a crime has been committed and that the suspect committed that crime.
- Complaint: Formal statement of charges against an individual the district attorney files in Municipal Court. The filing initiates the criminal prosecution against the individual.
- Felony: General classification of crimes. In California any crime punishable by a term in the state prison is considered a felony.
- Indictment: (1) Document returned by the Grand Jury after examination of evidence. The document states the conclusion of the Grand Jury that sufficient evidence exists that if uncontradicted would lead a reasonable jury to convict the suspect of the crime charged.
- (2) Method of bringing criminal charges against an individual. If the district attorney obtains an indictment he may immediately file an information against the person indicted in Superior Court.
- Information: (1) A formal statement of the criminal charges against an individual.
- (2) Method of bringing criminal charges against an individual. If the district attorney chooses this method he must first file a complaint in Municipal Court. Within ten days after the formal reading of this complaint in Municipal Court (arraignment) a preliminary hearing takes place in Municipal Court. If the Judge hands down a Binding Order the district attorney may then file an information in Superior Court. If the Municipal Court judge doesn't hand down a Binding Order the charges are dismissed.

Minute Report: Report made out by the Grand Jury Clerk of the activities taking place when the Grand Jury Foreman presents the indictment to the presiding judge.

Subpoena: Legal order demanding the presence of a person at a certain place at a specific time on a specific day.

SUGGESTED READING

American Bar Association, Grand Jury Handbook

Costello, Mary, "Grand Juries", Editorial Research Reports, Vol. II, 1973

Fricke, Charles, California Criminal Procedure

Kagel, John, "The California Grand Jury", California Law Review, 101 (1964)

Younger, Pichard, The People's Panel