

HANDBOOK FOR HENNEPIN COUNTY GRAND JURORS

You have been selected as a grand juror. While serving here, you are part of the Court system, a part of the government. The judges feel sure that you will act conscientiously. To serve is an honor. For your service, the community is grateful.

If you perform your duties as grand jurors conscientiously, you should derive lasting benefits from your service. You will have learned something of how the criminal justice system works. You will have taken a part in seeing that justice is done. You will be in the position, when you are through, to enjoy the gratifying feeling that your faithfulness in the discharge of your duties as a grand juror has strengthened the faith of the people in our form of government and in democracy.

This Handbook will acquaint persons who have been selected to serve on a grand jury with the general nature and importance of their role as grand jurors. It explains some of the terms which grand jurors will encounter during their service and offers some suggestions helpful to them in performing this important public service.

This Handbook is not intended to state the principles of law that govern serving on a grand jury. The authoritative statements pertaining to the duties of a grand jury are contained in the grand juror's oath and in the instructions of the Court.

ORIGIN AND HISTORY OF THE GRAND JURY

The grand jury has a long and honorable tradition. It was recognized in the Magna Carta, the first English constitutional document, which King John granted in 1215, at the demand of his subjects. The first English grand jury consisted of twelve men selected from the knights or other freemen, who were summoned to inquire into crimes alleged to have been committed in their local community. Thus, originally they functioned as accusers or

witnesses, rather than as judges.

Over the years, the hallmarks of our modern grand jury developed in England.

For example, grand jury proceedings became secret, and the grand jury became independent of the Crown. As a result, a grand jury may vote an indictment or refuse to do so, as it deems proper, without regard to the recommendations of judge, prosecutor, or any other person. This independence of action was achieved only after a long hard fight. It can best be illustrated by the celebrated English case involving the Earl of Shaftesbury who, in 1681, fell under the suspicion of the Crown. Displeased with him, the Crown presented to the grand jury a proposed bill of indictment for high treason and recommended that it be voted and returned. After hearing the witnesses, the grand jury voted against the bill of indictment and returned it to the King, holding that it was not true.

When the English colonists came to America, they brought with them many of the institutions of the English legal system, including the grand jury. Thus, the English tradition of the grand jury was well established in the American colonies long before the American Revolution. Indeed, the colonists used it as a platform from which to assert their independence from the pressures of colonial governors. In 1735, for example, the Colonial Governor of New York demanded that a grand jury indict for libel John Zenger, editor of a newspaper called, "The Weekly Journal," because he had held up to scorn certain acts of the Royal Governor. The grand jury flatly refused.

The grand jury as an institution was so firmly established in the traditions of our forebearers that they included it in the United States Constitution Bill of Rights.

NATURE OF THE GRAND JURY

The powers and functions of the grand jury differ from those of the trial jury, which is called the petit jury. The petit jury listens to the evidence offered by the prosecution and the defense (if it chooses to offer any) during a criminal trial and returns a verdict of guilty or not guilty. The petit jury must presume the defendant innocent and may not return a verdict of

guilty until it is convinced beyond a reasonable doubt. The verdict of a petit jury must be unanimous.

The grand jury is not free to compel a trial of anyone it chooses. The issuance of an indictment is a serious matter. Procedural formalities such as a quorum and transcript of the proceedings are necessary. The standard of probable cause for the offense must be met. Although the grand jury acts as a body, each of you as individual grand jurors has a responsibility for the final product. . .a just determination of the issues before you.

MEMBERSHIP OF A GRAND JURY

Minnesota statutes require that a grand jury be selected at random from a fair cross section of the district of Hennepin County. Thus, everyone has an equal opportunity and obligation to serve.

Pursuant to law, the names of prospective grand jurors are drawn at random from lists of registered voters and licensed drivers. These procedures are designed to assure that all groups in the community will have a fair chance to serve. Those persons whose names have been drawn and who are not exempt or excused from service are summoned to appear for duty as grand jurors. When these persons appear before the court, the presiding judge may consider any further requests to be excused. The judge will then order the first twenty-three qualified persons to become the members of the grand jury.

ORGANIZATION, OATH AND OFFICERS OF THE GRAND JURY

After the proper number of persons have been qualified as grand jurors, the court will appoint one of them to be the foreperson or presiding officer, of the grand jury. A deputy foreperson may also be appointed, so that he or she may act as the presiding officer in the foreperson's absence.

The oath taken by the grand jurors binds them to inquire diligently and objectively into all crimes committed within the courts of which they have or may obtain evidence and to

conduct such inquiry without malice, fear, hatred, or other emotion.

After the grand jurors have been sworn, the presiding judge advises the grand jury of its obligations and how best to perform its duties. This is called the "Charge to the Grand Jury." Careful attention must be paid to the charge, for it and any additional instructions that may be given by the court contain the rules and directions the grand jury must follow during its term of service. A written copy of the judge's charge is included for your information.

After the grand jury has been charged, it is taken to the grand jury room for further orientation. The grand jury room is where you will hear testimony and consider documentary evidence in the cases brought to your attention by the Hennepin County Attorney or his/her assistants.

GRAND JURY PROCEDURE

THE GRAND JURY'S TASK

The grand jury's function is to determine whether a crime has been committed in Hennepin County and whether a person shall be tried for that crime. Matters may be brought to its attention in three ways; (1) by the Hennepin County Attorney or his/her assistants; (2) by the court that impaneled it; and (3) from the personal knowledge of a member of the grand jury or from matters properly brought to a member's personal attention. In all these cases, the grand jury must hear evidence before taking action.

After it has received evidence against a person, the grand jury must decide whether the evidence presented justifies an indictment, which is the formal criminal charge returned by the grand jury. Upon the indictment being filed in court, the person accused may either plead guilty or stand trial.

If the evidence does not persuade the grand jury that there is probable cause to believe the suspect is guilty of a crime, it must vote a "no bill." If the grand jury finds there is probable cause, but does not believe the evidence justifies an indictment, then it may vote a

"no bill." When there is a vote of a no bill, no trial is required.

INVESTIGATION

The major portion of the grand jury's work will be concerned with charges brought to its attention by the County Attorney. Although the grand jury may initiate an investigation on its own motion, the grand jury should consult with the County Attorney or the court before undertaking a formal investigation. This is necessary since the grand jury has no investigative staff.

The grand jury may consider any particular matter to determine if an offense has been committed, whether the facts have been brought to its attention officially or unofficially. However, its concern must be devoted solely to ascertaining whether, at a minimum, there is probable cause to believe that a crime has been committed and to report accordingly to the court.

It should be borne in mind that a grand jury can take action only upon crimes that have been committed within Hennepin County. A grand jury is not authorized to investigate situations involving the conduct of public officials, agencies or institutions which the grand jury believes are subject to mere criticism rather than a violation of criminal statutes.

Conduct of Grand Jurors Outside the Courtroom

In discharging your duties, conduct yourself in such a way that no one will question your integrity. Judicial decisions have no higher sanction than public confidence in judicial integrity. Any grand juror who does any act tending to destroy that confidence, thereby becomes unfit for performing his/her duty. Integrity is evidenced not by words but by conduct. Be watchful of that conduct. Do not act in a way which will arouse the distrust of the most suspicious. Accept no gifts or favors, no matter how insignificant or trivial, from litigants, their attorneys or representatives, whether these favors be extended during or after the grand jury presentation. Avoid all familiarity and all appearance of familiarity with

everyone interested in your decision. Lest you may be suspected of receiving an improper communication, receive no communication of any kind from anyone in any way connected with a case in which you are a grand juror.

Outside the grand jury room, you must not talk with lawyers, their witnesses, agents, detectives, or with any other person interested in any way in the case under consideration.

Transcript of the Proceedings

The rules of court require that a transcript be maintained of grand jury proceedings. A court reporter is assigned to the grand jury and each grand juror should attempt to insure that all of the proceedings including your questions or comments to the County Attorney are "on the record" except for the actual deliberations of the grand jury.

Occasionally grand jurors have requested that the transcript of a witness's testimony be provided to them. Except in the most rare occasion, this is not permitted. Be attentive. Take notes if you wish. Do not hesitate to speak up if you do not hear the witness's testimony.

Quorum

Sixteen of the 23 members of the grand jury constitute a quorum for the transaction of business. If fewer than this number are present, even for a moment, the proceedings of the grand jury must stop. This shows how important it is that each grand juror conscientiously attend the meetings. If a grand juror believes that an emergency prevents his attendance at the meeting, promptly advise Lynn Lahd or Tara Briggs(348-3158). Because your absence may prevent the grand jury from acting, every attempt should be made to attend the meeting.

Evidence Before the Grand Jury

Much of the grand jury's time is spent hearing testimony by witnesses and examining documentary or other evidence in order to determine whether such evidence justifies an indictment.

The Hennepin County Attorney has the duty to represent the State of Minnesota in matters within the county and to prosecute those accused of state crimes. In the usual case, the County Attorney or one of his/her assistants will present the evidence of alleged violation of the law. The County Attorney will also advise as to the witnesses to be called and any documentary evidence which should be produced for examination by the grand jury. The grand jury may ask that additional witnesses be called if it believes this necessary. The County Attorney will also prepare the formal written indictments which the grand jury wishes to present. But neither the County Attorney nor any of his/her assistants may remain in the room while the grand jury deliberates and votes on an indictment.

Questioning the Witness

Witnesses are called to testify one after another. As each witness appears to give his or her testimony, he or she will be sworn by the grand jury foreperson or, in his or her absence, the deputy foreperson. The witness will then be questioned. Ordinarily, the County Attorney or one of his/her assistants questions the witness first, followed next by the foreperson of the grand jury. Then, the other members of the grand jury may question the witness.

All questions asked of each witness must be relevant and proper. For example, all questions should relate to the case under investigation. If doubt should arise as to whether a question is appropriate, the advice of the County Attorney or his/her assistants should be sought. If necessary, a ruling may be obtained from the court.

Listen to every question and answer. Since you must base your verdict on the evidence, you should hear every question asked and the answer given. If you do not hear some of the evidence--for any reason--ask to have it repeated. Generally no transcript will be provided to you after the completion of testimony. If you do not understand some phrase or expression used, it is proper to have it explained. You may take notes.

Control your emotions. You should not indicate by exclamation, facial contortion, or any other expression, how any evidence of any incident of the presentation affects you.

When in doubt, ask the County Attorney or the court. If you are in doubt about your rights or duties as a grand juror, you should not ask anyone but the County Attorney or the judge for information. If an emergency affecting your service should arise, consult Lynn Lahd or Tara Briggs.

Maintain the secrecy of grand jury proceedings. Because of the need for secrecy, it is very important that only authorized persons be present in the grand jury room while evidence is being presented. This means that only the grand jury, the Hennepin County Attorney or his/her assistant, the witness under examination and possibly the witness's attorney, the court reporter, and possibly an interpreter or deputy sheriff may be present. If an indictment should ultimately be voted, the presence of unauthorized persons in the grand jury room could invalidate it.

If a witness who is appearing before the grand jury refuses to answer a question, the Hennepin County Attorney or his/her assistants, may bring the matter before the court in order to obtain a ruling as to whether or not the answer may be compelled.

How to Judge A Witness

In order to reach a correct decision, you must determine what part of the evidence you will believe and what part you will reject as not worth of belief. Unfortunately, there is no "foolproof" way of sifting the true from the false. As yet, no one has discovered an infallible truth detector. In forming your opinions you must take into consideration various factors affecting the credibility of the witnesses, as far as the evidence discloses them. Some of these may be age, education, occupation, or appearance and conduct on the witness stand. Other factors influencing testimony may be a relationship between the witness and the parties; interest in the outcome of the case; a possible motive for testifying as they have; a bias or prejudice, if one appears; the degree of intelligence displayed; the strength or weakness of the

witness's recollection; the opportunities they have had to see, hear and know things to which they testified; their frankness and candor or lack of it; the extent to which their testimony sounds reasonable and is in line with probabilities.

It is not unusual for witnesses to differ in some details. Such discrepancies be due to differences in the witnesses' powers to observe accurately, or in their ability to remember or to relate what they saw, heard or did. You should try to reconcile discrepancies as far as you reasonably can, taking into account these differing capacities to observe, to remember, and to relate.

You should also consider the possible causes of untrue statements such as confusion, nervousness, mistakes, poor memory, thoughtlessness, lack of intelligence and evil intent.

In reaching your conclusions, consider, examine and weigh all the evidence in the case, including the exhibits, if any, and act on the evidence that you find reasonable and probable.

Of course, you may disregard such parts of the evidence as you consider unworthy of belief.

Calling the Person Under Investigation as a Witness

Normally, the person under investigation (sometimes referred to as the "suspect" although this should not imply guilt of any crime) will not testify before the grand jury.

A suspect cannot be forced to testify because of the provision in the Constitution against self-incrimination. If the grand jury attempts to; force the suspect to testify, an indictment returned may be nullified. However, upon request, preferably in writing, a suspect may be given the opportunity by the grand jury to appear before it. If the suspect is given this opportunity and appears, the suspect must sign a waive of his or her right against self-incrimination. The grand jury should be completely satisfied that the suspect understands what he or she is doing.

The Evidence Needed Before An Indictment May Be Voted

It is the responsibility of the grand jury to weigh the evidence presented to it in order to determine whether evidence, usually without any explanation being offered by the suspect, persuades it that a crime has probably been committed. The grand jury must be satisfied that there is probable cause to believe that a crime has been committed and that the accused has probably committed it before he/she may be subjected to a trial. Jurors should pay careful attention to the judge's charge after their selection. The charge will set forth the precise requirements the evidence must meet before an indictment may be voted. Only the evidence presented to the grand jury in the grand jury room may be considered in determining whether to vote an indictment.

Probable cause has been defined as reasonable cause, or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent person to believe that the accused person had committed the crime charged.

However, you may take into consideration the obligation imposed on the prosecutor to only charge crimes by complaint where there is sufficient admissible evidence to support a conviction, and the fact that at trial a defendant cannot be convicted except by proof beyond a reasonable doubt. You are not obliged to return an indictment, even though you find there is probable cause, if you do not feel there is a reasonable prospect of a conviction.

Determination to Ignore or Indict

When the grand jury has received all the evidence on a given charge and any legal instructions from the County Attorney, all persons other than the members of the grand jury must leave the room. The presence of any other person in the grand jury room while the grand jury deliberates or votes may nullify an indictment returned on the accusation.

After all persons other than the grand jury members have left the room, the foreperson will ask the grand jury members to discuss and vote upon the question of whether the evidence persuades the grand jury that a crime has probably been committed by the person

accused and that an indictment should be returned. Every grand juror has the right to express their view of the matter under consideration. Only after each grand juror has been given the opportunity to be heard will the vote be taken. It should be remembered that at least 16 jurors must be present and at least 12 members must vote in favor of the indictment before it may be returned.

If an indictment is found, the grand jury will report to the judge in open court. It will likewise report any decisions not to indict.

SECRECY

The law imposes upon each grand juror an obligation of secrecy. This obligation is emphasized in the oath each takes and in the charge given to the grand jury by the judge.

The tradition of secrecy continues as a vital part of the grand jury system for many reasons. It protects the grand jurors from being subjected to pressure by persons who may be involved in the actions of the grand jury. It prevents the escape of those against whom an indictment is being considered. It encourages witnesses before the grand jury to give full and truthful information as to the commission of a crime. It also prevents tampering with or intimidation of such witnesses before they testify at trial. Finally, it prevents the disclosure of investigations that result in no action by the grand jury and avoids any stigma the public might attach to one who is the subject of a mere investigation by the grand jury.

Except for its deliberations and the vote of any grand juror, the grand jury may disclose matters occurring before it to the County Attorney for use in the performance of his/her duty. The only other time matters occurring before the grand jury may be disclosed to anyone is when disclosure is ordered by the court in the interests of justice.

PROTECTION OF GRAND JURORS

The secrecy imposed upon grand jurors is a major source of protection for them. In

addition, no inquiry may be made to learn what a grand juror said or how he or she voted, except upon order of the court.

The law gives the members of a grand jury broad immunity for actions taken by them within the scope of their authority as grand jurors.

Because of this immunity, each grand juror must perform his or her duties with the highest sense of responsibility.

PRACTICAL SUGGESTIONS FOR GRAND JURORS

Each grand juror should attend the grand jury sessions regularly, in order to insure that a quorum of sixteen members will be present to conduct the grand jury's business.

Each grand juror should be on time for each meeting so that others are not kept waiting.

The time of meetings are usually Thursdays.

Witnesses should be treated courteously when they appear before the grand jury. Questions should be put to them in an orderly fashion. The County Attorney should complete his/her questioning of each witness before the foreperson asks questions. The remaining grand jurors will then have a chance to ask relevant and proper questions.

Each grand juror has an equal voice in determining whether or not an indictment should be found. Therefore, it is important that all grand jurors pay close attention to the testimony and other evidence presented.

Each grand juror must be absolutely fair in his/her judgment of the facts. Otherwise, he/she will defeat the democratic purpose the grand jury is designed to serve.

During deliberations on a case, each grand juror should feel free to express their opinion based upon the evidence.

Each juror has equal duties and responsibilities, and each is entitled to be satisfied with the evidence before being called upon to vote. No juror has the right to dismiss a witness

or to shut off proper discussion if other jurors wish to pursue the matter further.

No grand jury should undertake to investigate matters outside its proper scope merely because someone suggested an investigation, or because the investigation would be interesting.

No grand juror should discuss the cases under investigation with anyone, except fellow grand jurors and the Hennepin County Attorney and his/her assistants, and then only in the grand jury room. Of course, the grand jurors may always seek the advice of the judge.

Finally, every citizen who is selected to serve on a grand jury should bring to their task the determination to participate in a responsible manner and to assert their very best effort to the end that the grand jury upon which they serve will be a credit not only to the community, but also the criminal justice system of our state and country.

GLOSSARY OF TERMS

Charge to the Grand Jury:

Given by the judge presiding over the selection and organizing of the grand jury, the charge is the court's guidance to the grand jury as to how best to perform its functions and obligations.

Deliberations:

The discussion by the grand jury members of a given charge against a suspect, during which no one except the grand jury members may be present.

Direct and Circumstantial Evidence:

A fact may be proved by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other.

A fact is proved by direct evidence when, for example, it is proved by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proved by circumstantial evidence when its existence can be reasonably inferred from other facts proved in the case.

District:

The geographical area over which the district court where the grand jury sits and the grand jury itself have jurisdiction. The territorial limitation of this grand jury is Hennepin County.

Evaluation of Testimony--Credibility of Witnesses:

You are the sole judges of whether a witness is to be believed and of the weight to be given to the testimony of each. There are no hard and fast rules to guide you in this respect. In determining believability and weight you should take into consideration as to the witnesses the following:

- (1) Their interest or lack of interest in the outcome of the case,
- (2) Their relationship to the parties,
- (3) Their ability and opportunity to know, remember, and relate the facts,
- (4) Their manner and appearance,
- (5) Their age and experience,
- (6) Their frankness and sincerity, or lack thereof,
- (7) The reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case,
- (8) Any impeachment of their testimony,
- (9) And any other factors that bear on believability and weight.

You should in the last analysis rely upon your own experience, good judgment, and common sense.

Evidence:

Testimony of witnesses, documents, and exhibits make up the evidence presented to the grand jury by the County Attorney. In some instances, the person under investigation may also testify.

Exhibit:

Articles such as pictures, books, letters and documents are often received in evidence. These are called "exhibits" and are generally given to the jury to take to the jury room while deliberating.

Hennepin County Attorney:

The chief legal officer for the State of Minnesota in this county.

Immunity:

Immunity is granted to all grand jurors for their authorized actions while serving on a grand jury and means that no grand juror may be penalized for actions taken within the scope of his or her authority as grand juror.

Indictment:

The written formal charge of a crime by the grand jury, returned only if 12 or more grand jurors vote in favor of the specific crime or crimes specified.

"No Bill":

The "no bill" is the decision by the grand jury not to indict a person.

Petit Jury:

The trial jury, composed of 12 members, that hears a case after indictment and renders a verdict or decision only after the prosecution's entire case and whatever evidence the defendant chooses to offer.

Presumption of Innocence:

That a defendant is on trial, that he/she has been arrested, and that he/she has been brought before the court by the ordinary processes of the law should not be considered as in any way suggesting guilt. The defendant is presumed to be innocent of the charge made against him/her, and that presumption abides with him/her unless and until he/she has been proved guilty of the charge beyond a reasonable doubt. The burden of proving guilt is on the state. The defendant does not have to prove his/her innocence.

Probable Cause:

Probable cause has been defined as reasonable cause, or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent person to believe that the accused person has committed the crime charged.

Proof Beyond a Reasonable Doubt:

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense; it does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

Quorum for Grand Jury to Conduct Business:

Sixteen of the 23 members of a grand jury must be present at a grand jury session in order for the grand jury to be able to conduct business.

Suspect:

The person suspected of the commission of a crime. Use of this term does not imply the person under investigation is guilty of any crime. After a person is indicted by the grand jury, he/she is referred to as the "defendant."

