

GRAND JURIES IN THE *DE JURE* REPUBLIC

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The words "grand jury" are mentioned only once in the Constitution for the United States of America; they appear in Amendment V, as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger . . .".

For some time, many in the Republic have been discussing grand juries and their function in our judicial system. An understanding of the true nature and lawful, Constitutional function of grand juries in the Republic is necessary for the re-establishment of justice for the American people. Since the details of the operation of the grand jury were not spelled out by our founding fathers, we will examine the practices in place at the time the Constitution was written, and consider both what is and is not the proper definition of a grand jury.

First, what is not the correct definition of a grand jury? It is nowhere defined as a fourth branch of our government. There has been much conjecture about this point, along with misquotes and out-of-context quotes from corporate Supreme Court justices. In researching these, I have not found it specifically stated anywhere that the grand jury is a fourth branch of government. Perhaps those who speak of a "fourth branch" are referring to instances in which corporate Supreme Court justices have stated that the grand jury 'acts like' a "fourth branch of government," implying that it is a means by which the American people can hold their elected officials accountable for their actions while in office. This is correct; being an elected official does not exempt one from the consequences of unlawful actions. However, the grand jury does not have, neither has it been given, any legislative authority nor power of adjudication. The grand jury is not granted any delegated or enumerated powers in the Constitution, so it cannot be a "fourth branch." To in any way expand on the narrow definition given it by the Amendment V to the Constitution is either wishful thinking or a work of fiction.

Next, let us see what the function of the grand jury was according to the intentions of our founding fathers when the Constitution was written. A grand jury is a group of citizens who have been impaneled to consider the accusations brought against an individual or individuals of a "capital" or "infamous crime." Note that there must be a suspicion of the commission of a crime; a mere difference of opinion, without suspicion of the commission of an unlawful act, is not the basis of a grand jury hearing.

The grand jury may consist of from 12 to 23 members impaneled to determine if there is sufficient evidence to proceed with a trial. They are to:

1. make inquiry by asking questions,
2. deliberate among themselves to determine if the evidence supports the accusation, and
3. deliver a decision as to their findings.

If the grand jury believes the indictment to be groundless or not supported by the evidence, the back of the bill of indictment would be formally endorsed "*ignoramus*," meaning "we know nothing of it." Now in plain English the grand jury would simply endorse the bill as "not a true bill" or "not found", and the accused, if in custody, would be discharged. All proceedings against him or her concerning this charge would cease. A new bill, however, with different charges, may be initiated.

Hearings are held in secret so that jury members and witnesses can speak freely without fear of retaliation, and so that possible defendants' reputations are not damaged should the jury decide not to indict. These hearings are not bound by the strict rules of evidence and procedure that apply to an actual criminal trial; this ensures that all information that may apply to the case can be thoroughly investigated and considered by the grand jury. Then finally, the jury decides whether the accused should be brought to trial. In summary, the function of a grand jury is only to determine if there is enough evidence for a trial to be held concerning the commission of a "capital" or "infamous crime."

If, on the other hand, the grand jury is satisfied of the truth that the evidence supports the accusation, and there is reason to believe merit exists in the charges brought before them, then the back of the bill of indictment would be endorsed "*billa vera*," meaning "a true bill." This latter is the way a modern grand jury would endorse the bill.

It should be apparent what an important function grand juries perform for the people. They are a great security to the citizens against vindictive prosecution, rogue government agents, political partisans, and private enemies. They are the check valve that prevents unlimited and unmerited litigation against innocent defendants. Another especially important function of a grand jury is to hold public officials accountable for their unlawful actions. In a constitutional Article III court, a true bill indictment from a grand jury would be a great deterrent to improper conduct of public officials. Perhaps it is this function of the grand jury to which others in the past were referring, in saying that the grand juries 'acted as' a fourth branch of the government, to hold our public officials accountable.

Studies of human behavior, as well as countless observations of laboratory animals, have proven beyond the shadow of a doubt that it is not the severity of punishment that is a deterrent to bad behavior; it is the certainty of punishment. Should the American people ever regain control of the proper intended function of grand juries, this would be a deterrent against unfair prosecution of innocent individuals in our judicial system. It would also return to the people the ability to hold our public officials accountable for bad behavior.