

Grand Jury 2.0

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Modern Perspectives on the Grand Jury

Edited by
Roger Anthony Fairfax, Jr.

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Introduction

Many believe the grand jury—one of the oldest protections known to the American constitutional order—has strayed from its moorings and has eroded beyond recognition. A common criticism is that the grand jury’s central purpose has morphed from the protection of individual rights to the facilitation of governmental investigative power. Others echo Jeremy Bentham’s 19th century critique that the grand jury is unnecessary and redundant in a modernized criminal justice system. Although commentators differ as to the degree of the grand jury’s atrophy, most scholars, lawyers, and judges paint a fairly bleak portrait of the grand jury’s present utility as the bulwark of liberty it was designed to be. This book challenges the American legal culture to re-imagine the grand jury, both by restoring its proud heritage and adapting it to modern realities.

Although the field boasts several excellent grand jury treatises—including *Grand Jury Law and Practice* (Sara Sun Beale, William C. Bryson, Michael J. Elston, James E. Felman), *Federal Grand Jury* (Susan Brenner), and *Federal Grand Jury Practice and Procedure* (Judge Paul Diamond)—there have been relatively few scholarly books on the grand jury since George Edwards published his classic *The Grand Jury* in 1906. In 1963, Richard D. Younger published *The People’s Panel: The Grand Jury in the United States, 1634–1941*, which provided an historical look at the American grand jury from the colonial era through the beginning of World War II. The 1970s brought two critical examinations of the grand jury’s role in American political life: *The Grand Jury: The Use and Abuse of Political Power* (1975) by Leroy D. Clark, and *The Grand Jury: An Institution on Trial* (1977) by Marvin E. Frankel and Gary P. Naftalis. A 1993 book on the grand jury, *The Not So Grand Jury: The Story of the Federal Grand Jury System*, by Blanche Davis Blank, provided an interesting critique of the grand jury based, in part, on the author’s personal experience as a grand juror.

This volume, thus, seizes the opportunity to update the discussion and offer modern perspectives on the grand jury—all of which lead to a coherent vision for reforming and remaking the grand jury. Each of the chapters represents a fresh contribution to the grand jury literature by leading criminal law

and procedure scholars and commentators. The book's synthesis of constitutional theory and history and concrete policy proposal make it required reading for any scholar, student, jurist or lawyer interested in the past, present, or future of the American grand jury.

In Chapter 1, "Enlisting and Deploying Federal Grand Juries in the War on Terrorism," Sara Sun Beale and James E. Felman explore the role the grand jury—an ancient law enforcement investigative tool—plays in the modern counterterrorism efforts.

In Chapter 2, "Grand Jurors Speak," Susan Brenner takes us inside the "black box" of grand juror deliberations. As a result of operating an informational website devoted to the grand jury, Professor Brenner has received numerous unsolicited communications for sitting and former grand jurors. Their queries and statements give is a rare peek into how grand juries operate and how grand jurors think.

In Chapter 3, "Does Grand Jury Discretion Have a Legitimate (and Useful) Role to Play in Criminal Justice?," Roger Fairfax illuminates grand jury discretion and places it in its constitutional and historical context, arguing that the grand jury can assist prosecutors in the exercise of their discretion in a way that enhances crime control, criminal justice efficiency, and the protection of individual rights.

In Chapter 4, "Honoring the Voice of the Citizen: Breathing Life into the Grand Jury Requirement," Judge Michael Daly Hawkins, the author of an influential Ninth Circuit opinion explaining the grand jury's historical role and function, makes a compelling case for revitalizing the modern grand jury.

In Chapter 5, "Retelling Grand Jury History," Niki Kuckes challenges the conventional wisdom that modern grand jury law and practice are firmly rooted in historical practice.

In Chapter 6, "Implementing the Neighborhood Grand Jury," Adriaan Lanni proposes a reengineering of the grand jury as an organ of local democratic influence on prosecutorial charging practices.

In Chapter 7, "Prosecutorial Charging Practices and Grand Jury Screening: Some Empirical Observations," Andrew Leipold mines empirical data to attempt to shed light on the question whether the grand jury is an effective screen for criminal charges in a system driven by guilty pleas.

In Chapter 8, "The True Goals of the Modern Grand Jury—and How to Achieve Them," Ric Simmons sets forth a blueprint for helping the grand jury to fulfill its true potential in the modern criminal justice system.

In Chapter 9, "Restoring the Grand Jury," Kevin Washburn advances a community-based conception for restoring the grand jury's original purpose.

In Chapter 10, “Grand Juries and Expertise in the Administrative State,” Ronald Wright proposes the grand jury as a model for greater utilization of lay citizens in the oversight and administration of government.

Finally, in Chapter 11, “Remaking the Grand Jury,” Roger Fairfax sketches a blueprint for the grand jury’s functional makeover designed to make it relevant and responsive to the needs of modern criminal justice.