



State of North Carolina

HANDBOOK FOR GRAND JURORS

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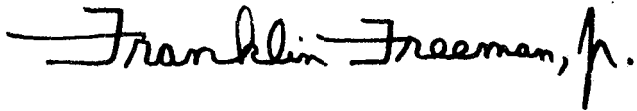
To Grand Jurors in North Carolina:

Upon recommendation of the North Carolina Courts Commission, this Handbook was prepared by Professor James C. Drennan of the Institute of Government, The University of North Carolina at Chapel Hill. The Courts Commission action was in recognition of the need of grand jurors for written information on their responsibilities.

The Administrative Office of the Courts is pleased to publish this Handbook and to provide for its distribution to grand jurors throughout the State; we express our appreciation to Professor Drennan for his authorship of the Handbook.

We trust that you will find this Handbook to be of assistance to you in your service as grand juror. When your term as grand juror is completed, will you please return this booklet to the Clerk of Superior Court so that it can be used again by other grand jurors.

Sincerely,



Franklin Freeman, Jr.
Director

December, 1988

CONTENTS

	Page
Purpose of Handbook	1
Origin and History of the Grand Jury	1
Selection	2
Term of Service	3
Appointment and Duties of Foreman	3
Function	4
Bills of Indictment	4
Presentments	5
Inspection of Jail and Other Facilities	6
Hearing Witnesses	7
Passing on Bills of Indictment	8
Secrecy	9
Practical Suggestions	9
Investigative Grand Jury	10
 Appendices	
Sample Indictment Form	15
Sample Oaths	17
Jail Inspection Checklist	19

Purpose of this Handbook

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

The handbook is not intended to state the principles of law that govern persons serving on a state grand jury. The judge presiding in the court will give the jury instructions. Grand jurors should rely on those instructions for guidance as to the laws governing their work.

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. These grand jurors 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 important fact finders.

The guiding principles of our modern grand jury developed in England. Over many years, grand jury proceedings became secret, and the grand jury became independent of the crown. As a result, a grand jury was expected to vote for or against an indictment as it deemed proper, without regard to the recommendations of the judge, prosecutor, or any other person. This independence of actions was achieved only after a long struggle over many years.

When the English colonists came to America, they brought with them many institutions of the English legal system, including the grand jury. 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 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 the newspaper called *The Weekly Journal*, because he had held up to scorn certain acts of the royal governor. The grand jury refused.

The grand jury as an institution was so firmly established in the traditions of our forebears that they included it in the Bill of Rights. The Fifth Amendment to the Constitution of the United States provides in part that, "[no] person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." Article 1, Section 22 of North Carolina's constitution provides that "Except for misdemeanors initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, . . . may, . . . waive indictment in noncapital cases."

Selection

Members of the grand jury are chosen from the master jury list from the county. The master jury list is composed of names drawn from the voter and driver license list. The law requires those preparing the master list to be sure that all people on both the driver license and voter lists have an equal chance of being selected. The members of the trial (or petit) jury and the grand jury are selected at random from the master jury list.

For grand jury service nine names are selected at random from the master jury list in the first session of criminal superior court for the county after each January 1 and July 1. These nine join another nine members of the grand jury

who have already served for six months. Together, the eighteen persons constitute the grand jury.

Term of Service

Service on the grand jury lasts approximately twelve months. During those twelve months, the members are notified when to meet. A meeting can be called only when the court is in session. The grand jury continues from day to day until all pending business has been completed, and it then adjourns until its next regular time to convene unless it is called back by its foreman. As a practical matter, this means that service on the grand jury will probably require only a few days of time during the twelve months, but more or less time may be required depending on the work load in the particular county. In a few of the larger counties in which grand juries meet more often, the senior judge for the judicial district in which the county is located may reduce the length of service to six months. In such cases, nine new members are chosen every three months.

It is the duty of each member of the grand jury to be present every time the grand jury is convened, unless excused by the foreman. At least twelve members must be present for the grand jury to transact business lawfully. If at any time less than twelve are present, the proceedings of the grand jury must stop until the required number is present.

Appointment and Duties of Foreman

All of the proceedings of the grand jury are presided over by a foreman. It is the duty of the presiding judge to appoint one of the grand jurors as foreman of each grand jury. The judge must make this appointment in a fair and impartial manner and may have to question members of the grand jury to determine who can serve best as foreman. The questions are not intended to pry into a juror's life; they are needed to

help the judge assess individuals on the grand jury. The person selected will serve as foreman until his or her term on the grand jury expires or until a successor is appointed.

Anyone selected as a foreman has several duties:

1. The foreman may excuse up to two members of the jury from attendance at a particular meeting for reasons of sickness or other similar emergency. The foreman may not excuse a member permanently; only the judge can do that.

2. The foreman presides over meetings of the grand jury. In that role it is the foreman's duty to keep order and to let every member who is interested have an opportunity to question witnesses and participate in decisions.

3. The foreman calls witnesses to appear before the grand jury. The foreman, who must follow a list of witnesses presented by the district attorney, should indicate on the bills of indictment the witnesses who have appeared. The foreman is authorized to administer the appropriate oath to each witness, interpreter, or law enforcement officer who may be present. A copy of each of these oaths is in the appendix.

4. The foreman must record or cause to have recorded the results of grand jury deliberations. The foreman should be very careful to record accurately the disposition of each case.

5. The foreman must insure that the grand jury complies with its duty to inspect the county jail facilities.

Functions

Bills of Indictment. A grand jury's primary duty is to investigate and pass upon such bills of indictment as may be given to it by the district attorney. A bill of indictment is simply a

written accusation charging a person with the commission of one or more criminal offenses. The District Attorney will prepare these bills and enter upon each bill the names of the witnesses needed to be heard on behalf of the State. A sample bill of indictment form is included in the appendix of this handbook.

It is not the duty of the grand jury to determine whether the defendant named in a bill of indictment is guilty or innocent of the charge in the bill of indictment. Determination of guilt or innocence is the responsibility of a *trial* jury (also called the petit jury) in the presence of the court, where the defendant is present and may be heard.

The grand jury's duty is to hear the evidence on behalf of the State and to return a *true* bill of indictment if the grand jury finds from the evidence that there is probable cause for the charge made. In the alternative, the grand jury must return a bill submitted by the district attorney as a *not true* bill of indictment if the grand jury fails to find probable cause for the charge made. At least 12 members of the grand jury must concur in returning a *true* bill of indictment; that is, that the crime named in the bill under consideration has probably been committed and that there is probable cause to believe that the defendant committed that crime.

Probable cause is a reasonable suspicion supported by circumstances sufficiently strong to warrant a cautious person to believe that the person accused is guilty of the offense charged. To pass on a bill of indictment, only two questions need be answered. First, was a crime probably committed, and second, did the defendant probably commit that crime?

Presentments. A grand jury in North Carolina is not restricted to considering bills of indictment presented by the district attorney, although that is the usual way that a grand jury does its work. It may also consider an offense brought to

its attention by the presiding judge or district attorney, as well as any offense which comes to its attention in the course of an investigation of other matters or from the personal knowledge of its own members. At least twelve members would have to concur to investigate an offense not requested by the judge or district attorney. The judge or the district attorney must approve the calling of any witness to investigate such matters.

After investigating such offenses, the grand jury cannot charge a person with a specific crime. But if it finds probable cause, it may return to the court a *presentment*. This is the grand jury's statement — in a form similar to that of an indictment — charging one or more persons with the commission of one or more criminal offenses. At least twelve members must agree to the bringing of a presentment. A presentment does not institute criminal proceedings, but the district attorney is obliged to investigate the factual background and submit a bill of indictment if it is found appropriate to do so.

Inspection of Jails and Other Facilities. Sometime during its term, the grand jury must inspect all county jail facilities and report in writing to the court concerning the condition of the facilities it has inspected and the manner in which the jailer(s) or superintendent(s) have discharged their lawful duties. As an aid to this process, a sample checklist is included in the appendix at the back of this handbook. In addition, the grand jury may inspect and report on other county offices and agencies, either acting on its own or in response to matters called to its attention by the presiding judge.

In the exercise of these duties a grand jury may be very useful to its county. A grand jury should make an honest investigation. If conditions are not as they should be, a written report should be submitted to the court, together with

recommendations as to how such conditions can be remedied. The grand jury should not be unwilling to praise officers who deserve it and to expose mismanagement where it is present. But the report of the grand jury is solely for the information of the courts and the citizens of the county. A grand jury cannot order anyone to perform a duty or to correct anything.

Hearing Witnesses

In disposing of bills of indictment submitted to the grand jury, the foreman will call the persons listed on the bill as witnesses, one at a time. The foreman must record their attendance on the bill itself. If any member of the grand jury wishes to hear any other person not named on a bill under consideration, the foreman may request the district attorney to add that person's name to the bill of indictment as a witness. The district attorney may call that witness but does not have to. The person accused in a bill of indictment is never called to be questioned by the grand jury.

No one may be present with the grand jury when it is in session except a witness, an interpreter for the witness, or a law enforcement officer holding the witness in custody. If any of the latter is present, they must be sworn to secrecy.

The foreman is authorized to administer oaths or affirmations to all witnesses. The witnesses have to be examined one at a time and only one witness may be present in the room at any time. A witness is sworn in and first questioned by the foreman. Then other members of the grand jury may ask questions. All questions should be impartial and objective, without indicating any viewpoint or opinion on the part of the questioner.

The United States Constitution provides that no individuals called as witnesses before a grand jury may be compelled to

testify against themselves. This means that a witness has a right to refuse to answer any question in a grand jury proceeding if an answer would in any way be self-incriminating.

Passing on Bills of Indictment

When all of the evidence is heard on a bill, the foreman will preside over a discussion of that case. During the deliberations and voting of the grand jury, only the grand jurors may be present in the grand jury room.

The foreman must return to the presiding judge in open court all bills of indictment submitted by the district attorney. The grand jury may act on a bill in any of four ways:

- (1) If it finds that there is probable cause for the charge made in the bill of indictment, it must return that bill of indictment as "a true bill." This action requires the vote of at least *twelve* members, no matter how many are present.
- (2) It may, if twelve members concur, return a bill to the court with the indication that it has not been able to act upon it because some of the listed witnesses were not available.
- (3) If at least twelve members do not find probable cause for the charge made, and all witnesses listed on the bill have been heard, it must return the bill of indictment as "not a true bill."
- (4) If it concludes that a bill of indictment is not a true bill, it may at the same time request the district attorney to submit a bill of indictment to a lesser-included or related offense.

Secrecy

Secrecy of all grand jury proceedings is of the utmost importance. The purpose of secrecy is threefold. First, it guarantees that each member of the grand jury is free to discuss and debate the evidence fully and vigorously without any fear that what is said or done will be made public at any future time. Second, it prevents anyone charged with a crime from learning of an investigation before it is complete and reduces the chance that such a person will escape and defeat the process of criminal justice. Finally, it shields from publicity those persons against whom unfounded accusations are brought. If grand jury investigations were publicized, the reputations of those initially charged but not indicted could be unnecessarily damaged.

The grand jury oath makes it clear that any comment or publicity on what happens in the grand jury room is forbidden. It is the solemn obligation of each person serving as a grand juror to keep secret everything that takes place in the grand jury room, including the subjects discussed or the identity of the persons who appear. Unless ordered to do so by a judge, any grand juror who discloses any matter occurring before the grand jury can be held in contempt of court. Secrecy also protects members of the grand jury, as it is improper for anyone other than the court to question a grand juror about proceedings of the grand jury.

Practical Suggestions

The following advice is contained in the judge's standard instructions to a grand jury. It is worth repeating here.

Pay close attention to the testimony of witnesses. Listen to the evidence and the opinions of your fellow jurors and be absolutely fair. Because of the secrecy of the proceedings in a grand jury, no one else may inquire into what you have done. Each of you should make your opinion known,

but none of you should be adamant or dictatorial, as each is entitled to his or her own opinion. At all times, remember that you are *NOT* determining the guilt or innocence of the accused. Rather, in order for you to return a bill as a true bill, you must find that a crime has probably been committed and, from the evidence presented to you, there is probable cause to believe that the person charged in the bill of indictment committed the crime. Do not try the case in the grand jury room.

In your proceedings, if you require an explanation of the charge or bill of indictment, you should seek advice or information from the presiding judge. You should keep in mind that it is your right to approach the Court at any time. This right the law regards as paramount. When you have occasion to come to the court for any purpose whatsoever, either in a body or individually, you are not required to wait. The Court will pause to await your pleasure.

Investigative Grand Jury

Many of the rules and procedures described in this handbook do not apply to a grand jury serving as an investigative grand jury. An investigative grand jury is one that follows special procedures to investigate certain very serious drug offenses. It can be convened only by a panel of three judges appointed by the Chief Justice of the North Carolina Supreme Court, upon petition of a district attorney and concurrence of the Attorney General.

The procedures differ in several important ways from the ones described above. The investigative grand jury's purpose is not to consider an indictment or presentment; it simply examines possible offenses brought to its attention by the district attorney. The investigation may lead to the preparation of indictments or presentments, however. The district

attorney may subpoena any witnesses desired and is entitled to be present to question the witness. A transcript is made of the proceedings, and witnesses may be forced to testify if they are given immunity from the use of the testimony against them.

Grand jurors serving on an investigative grand jury can expect to be given special instructions before serving in that capacity.

APPENDICES

Sample Indictment Form

Text of Oaths

Checklist for Jail Inspection

OATHS

Oaths should be administered by the Foreman to witnesses, interpreters and law enforcement officers. Oaths should be administered in a serious way. If a person has an objection to swearing with his or her hand on a Bible, he or she may affirm instead. To do that, the word "affirm" is substituted for the word "swear", and the words "so help you God" are eliminated from the oath. Sample oaths are listed below.

Oath of Witness

Do you solemnly swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A.B., shall be the truth, the whole truth, and nothing but the truth; so help you God.

Oath of Interpreter

Do you solemnly swear (or affirm) that as an interpreter in this proceeding you will impersonally, truthfully, accurately, and literally, and without any additions and deletions, and without adding any remarks of your own, translate and repeat to the witness every question propounded to him or her, and that you will impersonally, truthfully, accurately, and literally, and without any additions or deletions, and without adding any remarks of your own, translate and repeat to the Grand Jury every answer of the witness to such question and every statement made by the witness in response to such question, and that you will keep secret all matters coming before this grand jury in your knowledge, so help you God?

Oath of Law Enforcement Officer Having Custody of Witness

Do you solemnly swear (or affirm) that you will keep secret all matters coming before this grand jury in your knowledge, so help you God?

JAIL INSPECTION CHECKLIST

(This is an optional aid for grand juries when inspecting jails, prison facilities, and other confinement facilities.)

1. Facility employees

- a. Attitude: Did management and supervisory personnel receive you courteously, or did they seem to resent your visit?
- b. Did personnel appear alert and knowledgeable of their duties?
- c. Did they appear well groomed with clean, neat, appropriate clothes or uniforms?
- d. Did they appear to deal with inmates in a professional, impartial, but courteous manner?

2. Inmates

- a. Did prisoners appear clean in their person and clothing?
- b. Did they appear properly cared for?
- c. Did there seem to be an excessive number of complaints, especially about the same thing? (There will almost always be some complaints from jail inmates).

3. Cells and Dormitories

- a. Were they clean, orderly and free of unpleasant odors?
- b. Were commodes and wash basins in cells clean and in working order?
- c. Were there adequate light and ventilation?

- d. Were prisoners adequately shielded from excessive direct light and heat from the sun?
4. *Wash and toilet facilities for group use*
 - a. Were showers, wash basins and commodes clean and in working order?
 - b. Was the area free of unpleasant odors?
5. *Kitchen*
 - a. Did food service personnel appear personally clean?
Example: Well groomed, clean hands and finger nails, no open sores on hands.
 - b. Were their uniforms and aprons clean and neat?
 - c. Were they wearing approved head coverings (caps or hair nets)?
 - d. Were floors, walls, windows, ceilings, fixtures and utensils clean?
 - e. Did the food being prepared look appealing and palatable?
 - f. Was work proceeding in an orderly, well supervised manner?
 - g. Was prepared food properly stored until served?
(covered, kept hot or cold as required)
 - h. Was kitchen free of flies and signs of other insects and rodents?
 - i. Were there adequate lighting and ventilation?

6. *Food storage (pantry, refrigeration)*

- a. Was storage room clean, dry and adequately ventilated?
- b. Were containers clean, covered and placed on low pallets an inch or two above a concrete floor to ensure dryness and ventilation?
- c. Were frozen foods or foods requiring refrigeration properly stored?
- d. Were freezers and refrigerators clean and in working order?
- e. Were there signs of roaches and other insects and rodents?

7. *Dining area*

- a. Were floors, walls, windows and ceiling clean?
- b. Were tables and chairs in good repair, clean and free of old food particles?
- c. Were serving facilities (steam tables, salad counters, etc.) clean and in working order?
- d. Were plates, dishes, glasses, knives and forks, etc. clean and stored in clean shelves or other containers?
- e. Were lighting and ventilation adequate?

8. *Safety*

- a. Were fire fighting devices in place and, where required, bearing current inspection certification?

b. Did there appear to be any other safety hazards?

9. *Security*

a. Did you observe any action or inaction by personnel which might jeopardize security?

b. Did physical facilities seem sufficient to contain and control prisoners?

10. *Recreation facilities*

a. Were there any indoor or outdoor recreation facilities provided?

b. If so, did they appear to be adequate?

c. If not, what would you recommend?

11. *Grounds*

a. Were the grounds clean and well kept?