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Time Is Now For Federal Grand Jury Reform

By [Paul Rosenzweig](#)

Imagine you own a company that sells televisions imported from Japan.

A federal prosecutor is trying to convince a grand jury to charge you with misrepresenting what you paid for your TVs to avoid dumping accusations. He calls the CEO of one of your competitors to the stand and lets him wax poetic about the quality of American workmanship and your distinct lack of patriotism. He mysteriously fails to present evidence that favors you. Naturally, the grand jury indicts.

Or imagine you sell some oil leases improperly. You discover and report your own infractions, and the government says it won't prosecute you if you pay back everyone you defrauded. You repay the investors, and the prosecutor uses the information you volunteered to win an indictment.

Can't happen? In fact, both cases are real. In too many cases, prosecutors have gone from using federal grand juries for their original purposes-to sift out weak cases and to protect the accused from overaggressive police and prosecutors-to manipulating them by presenting misleading and/or inadmissible evidence and withholding evidence that favors defendants.

In an effort to curb this increased propensity for cutting corners to win indictments, the National Association of Criminal Defense Lawyers' Commission to Reform the Federal Grand Jury has developed a Federal Grand Jury Bill of Rights. The commission, which included such law luminaries as Anton Valukas, a U.S. Attorney during the Reagan administration, and Larry D. Thompson, now the No. 2 man in the Justice Department, recommended 10 reforms designed to return the federal grand jury to its proper role. Not all are workable, but many would help the system operate more efficiently by exposing-and dismissing-weak cases.

Among the reforms:

No prosecutor shall knowingly fail to disclose to the federal grand jury evidence that exonerates the target or subject of the offense

In other words, if evidence suggests the subject is innocent, move on.

The prosecutor shall not present to the federal grand jury evidence that he or she knows to be constitutionally inadmissible at trial

Although illegally seized evidence is admissible to the grand jury, why should a prosecutor try to use such evidence to win an indictment when he knows he can't use it to convict at trial?

A target or subject of a grand jury investigation should have the right to testify before the grand jury

If the targets of a grand jury investigation want to explain their actions, prosecutors should let them. The explanation may end the prosecution ... or expedite it.

Federal grand juries shall no longer name unindicted co-conspirators in a criminal conspiracy

If prosecutors can't hope to convict someone, why disparage him? Why not simply mention the name during the trial, if necessary?

All subjects or targets who don't receive immunity for their testimony before a grand jury should be given Miranda warnings before being questioned

Prosecutors routinely tell witnesses that they are not a target of an investigation to get them to answer questions, only to later use their answers to charge them.

All subpoenas for witnesses called before the federal grand jury shall be issued at least 72 hours before the appearance, not to include weekends and holidays, except for emergencies

These 11th-hour subpoenas, which help prosecutors essentially mug unprepared witnesses, don't constitute fair play.

Federal grand jurors shall receive meaningful jury instructions, and defendants should have the right to copies of the instructions after indictment

If people are guilty, tricks aren't necessary; they're shortcuts that shouldn't be taken.

The commission also suggested witnesses be allowed to bring their attorneys and obtain transcripts of their testimony. While these sound like good ideas, they can be dangerous, especially with Mafia and other gang defendants. Often, in these cases, the attorney is there to make sure the witness doesn't give up gang secrets, which has, of course, a chilling effect on testimony. Same goes for transcripts. Witnesses sometimes need some deniability about their testimony.

Running the justice system is more challenging than ever, thanks to Sept. 11 and the ongoing terrorist threat. That's why it's more-not less-important now than ever before that the grand jury function properly.

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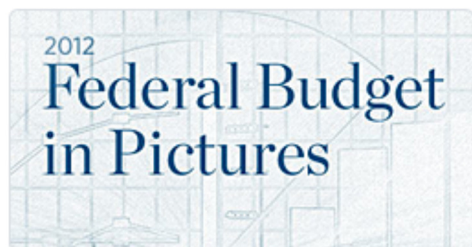
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