



# THE LEGAL BRIEF



## Grand Juries

by John D. Whitaker

Well, the results are in. This year's scariest Halloween costume winner was Special Counsel Patrick Fitzgerald when he showed up at the White House with a trick bag full of indictments. Mr. Fitzgerald has been conducting a grand jury investigation to determine who leaked the name of a covert CIA agent to the news media. Vice President Cheney's Chief of Staff Scooter Libby has now been indicted by the grand jury for perjury and obstruction of justice. Grand juries can be pretty spooky, and I thought that Halloween is a perfect time to take a look at how they work.

Grand juries were originally created by King Henry II of England in the 12<sup>th</sup> Century to investigate and bring charges in criminal cases. Historically, when the king wanted to charge someone with a crime he just did so, and there was no check on his authority. Grand juries were created to require the consent of the community before a person was charged with a crime. The goal of introducing community standards in making this decision was thought to be a way to insure a more just judicial system. The grand jury concept was considered so important by the framers of our Constitution that it was incorporated in the Bill of Rights.

Present day grand juries have been criticized because the prosecutors who conduct these proceedings have so much power in how the evidence is presented. New York State Chief Judge Sol Wachtler once famously said that a good prosecutor could get a grand jury to "indict a ham sandwich."

When a grand jury is convened, a group of citizens are selected to hear the evidence of a crime. The evidence is presented by a prosecutor. The focus is to decide whether there is probable cause to believe that some person has committed a crime. These juries do not decide the ultimate question of innocence or guilt beyond a reasonable doubt like regular juries in criminal cases, they just have to find that a defendant probably committed a crime.

Grand jury proceedings are conducted in complete secrecy, and the prosecutors decide what witnesses and evidence will be



presented. Generally, a judge is not in the grand jury room when witnesses are testifying. The judge only comes in if there is a question about whether a witness who claims a privilege should be forced to testify. Witnesses who testify are not entitled to have lawyers with them in the grand jury room. The target defendant is not entitled as a matter of right to present evidence which tends to show that he is innocent of the alleged crime. The grand jury only sees what the prosecutor wants them to see.

Grand juries are frequently used in large drug or conspiracy cases because the prosecutor can issue subpoenas to force witnesses to testify under oath. If the witness refuses to testify he can be held in contempt of court. Prosecutors also have the ability to provide immunity to some witnesses in order to compel testimony about others. If the witness testifies falsely he can be charged with perjury or obstruction of justice. The grand jury is a very powerful tool for investigating cases where there are a number of people who may have knowledge about a potential crime, and it allows the prosecutor to compel testimony where the witness does not want to cooperate.

After the presentation of evidence, the grand jury must decide whether to approve an indictment which is written by the prosecutor. An indictment is a formal, written document that accuses a person of a crime. It is important to remember that an indictment is merely a charge of wrongdoing; it is not proof of anything.

In Mr. Libby's case, the indictment alleges that he lied about his involvement in disclosing the CIA agent's identity. Now he has been formally indicted for perjury and obstruction of justice. This is just the beginning of the process. Mr. Libby is entitled to a jury trial where Mr. Fitzgerald must prove beyond a reasonable doubt that he violated the law. This trial will probably occur sometime next year, unless he makes a plea bargain with the government. A plea bargain could presumably include an agreement that his testimony will be used to implicate others at the White House. If I worked at the White House, I would not want to put away my Halloween costume just yet, because there may be more indictments showing up at the door.

**The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.**