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## Model Grand Jury Charge

*Approved by the Judicial Conference of the United States, March 2005*

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Ladies and Gentlemen:

1. Now that you have been empaneled and sworn as a Grand Jury, it is the Court's responsibility to instruct you as to the law which should govern your actions and your deliberations as Grand Jurors.
2. The framers of our Federal Constitution deemed the Grand Jury so important for the administration of justice, they included it in the Bill of Rights. The Fifth Amendment to the United States Constitution provides in part that no person shall be held to answer for a capital or otherwise infamous crime without action by a Grand Jury. An infamous crime is a serious crime which may be punished by imprisonment for more than one year. The purpose of the Grand Jury is to determine whether there is sufficient evidence to justify a formal accusation against a person—that is, to determine if there is “probable cause” to believe the person committed a crime. If law enforcement officials were not required to submit to an impartial grand jury proof of guilt as to a proposed charge against a person suspected of having committed a crime, they would be free to arrest a suspect and bring that suspect to trial no matter how little evidence existed to support the charge.
3. The Grand Jury is an independent body and does not belong to any branch of the government. As members of the Grand Jury, you, in a very real sense, stand between the government and the person being investigated by the government. A federal grand jury must never be made an instrument of private prejudice, vengeance, or malice. It is your duty to see to it that indictments are returned only against those who you find probable cause to believe are guilty and to see to it that the innocent are not compelled to go to trial.
4. A member of the Grand Jury who is related by blood or marriage to a person under investigation, or who knows that person well enough to have a biased state of mind as to that person, or is biased for any reason, should not participate in the investigation of that person or in the return of the indictment. This does not mean that if you have an opinion you should not participate in the investigation. However, it does mean that if you have a fixed opinion before you hear any evidence, either on a basis of friendship or ill will or some other similar motivation, you should not participate in that investigation and in voting on the indictment.
5. Sixteen of the twenty-three members of the Grand Jury constitute a quorum and must be present for the transaction of any business. If fewer than this number are present, even for a moment, the proceedings of the Grand Jury must stop.

### Limitation on the Power of the Grand Jury

6. Although as Grand Jurors you have extensive powers, they are limited in several important respects.
7. You can only investigate conduct which violates federal criminal laws. Criminal activity which violates state law is outside your inquiry. Sometimes, though, the same conduct violates both federal and state law, and this you may properly consider.

8. There is also a geographic limitation on the scope of your inquiries in the exercise of your power. You may inquire only to federal offenses committed in this district.
9. You cannot judge the wisdom of the criminal laws enacted by Congress, that is, whether or not there should or should not be a federal law designating certain activity as criminal. That is to be determined by Congress and not by you.
10. Furthermore, when deciding whether or not to indict, you should not consider punishment in the event of conviction.

### The Grand Jury Procedures

11. The cases which you will hear will come before you in various ways. Frequently, suspects are arrested during or shortly after the commission of an alleged crime, and they are taken before a Magistrate Judge, who then holds a preliminary hearing to determine whether there is probable cause to believe that the person has committed a crime. If the Magistrate Judge finds such probable cause, he or she will direct that the person be held for the action of the Grand Jury so that you can independently consider whether there should be an indictment.
12. Other cases will be brought before you by a government attorney—the U.S. Attorney or an Assistant U.S. Attorney before an arrest but after an investigation has been conducted by a governmental agency such as the Federal Bureau of Investigation, the Treasury Department, the Drug Enforcement Administration, Postal Authorities, or other federal law enforcement officials.
13. Since the government attorney has the duty of prosecuting persons charged with the commission of federal crimes, the government attorney will present the matters which the government desires to have you consider. The government will point out to you the laws which it believes have been violated, and will subpoena for testimony before you such witnesses as the government attorney may consider important and necessary and also any other witnesses that you may request or direct be called before you.
14. If during the course of your hearings, a different crime other than the one you are investigating surfaces, you have the right to pursue this new crime. Although you can subpoena new witnesses and documents, you have no power to employ investigators or to expend federal funds for investigative purposes. If the government attorney refuses to assist you or if you believe he or she is not acting impartially, you may take it up with me or any Judge of this Court. You may use this power even over the active opposition of the government's attorneys, if you believe it is necessary to do so in the interest of justice.

### Evidence

15. The evidence you will consider will normally consist of oral testimony of witnesses and written documents. Each witness will appear before you separately. When the witness first appears before you, the Grand Jury foreperson will administer the witness an oath or affirmation, to testify truthfully. After this has been accomplished, the witness may be questioned. Ordinarily, the government attorney questions the witness first. Next, the foreperson may question the witness, and then any other members of the Grand Jury may ask questions. In the event a witness does not speak or understand the English language, an interpreter may be brought into the Grand Jury room to assist in the questioning.
16. Witnesses should be treated courteously and questions put to them in an orderly fashion. If you have any doubt whether it is proper to ask a particular question, ask the government attorney for advice. If necessary, a ruling may be obtained from the court.
17. You alone decide how many witnesses you want to hear. You can subpoena witnesses from anywhere in the country, directing the government attorney to issue necessary subpoenas. However, persons should not ordinarily be subjected to disruption of their daily lives, harassed, annoyed, or inconvenienced, nor should public funds be expended to bring in witnesses unless you believe they can provide meaningful evidence which will assist you in your investigation.
18. Every witness has certain rights when appearing before a Grand Jury. Witnesses have the right to refuse to answer any question if the answer would tend to incriminate them and the right to know that anything they say may be used against them. The Grand Jury

- should hold no prejudice against a witness who exercises the right against compulsory self-incrimination, and this can play no part in the return of any indictment.
19. Although witnesses are not permitted to have a lawyer present with them in the Grand Jury room, the law permits witnesses to confer with their lawyer outside of the Grand Jury room. Since an appearance before a Grand Jury may present complex legal problems requiring the assistance of a lawyer, you also can not hold it against a witness if a witness chooses to exercise this right and leaves the Grand Jury room to confer with an attorney.
  20. Ordinarily, neither the person being investigated by the government nor any witnesses on behalf of that person will testify before the Grand Jury. Upon his or her request, preferably in writing, you may afford that person an opportunity to appear before you. Because the appearance of the person being investigated before you may raise complicated legal problems, you should seek the government attorney's advice and, if necessary, the Court's ruling before his or her appearance is permitted. Before that person testifies, he or she must be advised of his or her rights and required to sign a formal waiver. You should be completely satisfied that the person being investigated understands what he or she is doing. You are not required to summon witnesses which that person may wish to have examined unless probable cause for an indictment may be explained away by their testimony.
  21. The determination of whether a witness is telling the truth is something that you must decide. Neither the Court nor the prosecutors or any officers of the Court may make this determination for you.  
As you listen to witnesses presented to you in the Grand Jury room and hear their testimony, remember that you are the judge of each witness's credibility. You may believe the witness's testimony, or you may not believe it, in whole or in part. Determining the credibility of a witness involves a question of fact, not a question of law. It is for you to decide whether you believe the person's testimony. You may consider in that regard whether the witnesses are personally interested in the outcome of the investigation, whether their testimony has been corroborated or supported by other witnesses or circumstances, what opportunity they have had for observing or acquiring knowledge concerning the matters about which they testify, the reasonableness or probability of the testimony they relate to you, and their manner and demeanor in testifying before you.
  22. Hearsay is testimony as to facts not known by the witness of the witness' own personal knowledge but which have been told or related to the witness by persons other than the person being investigated. Hearsay testimony, if deemed by you to be persuasive, may in itself provide a basis for returning an indictment. You must be satisfied only that there is evidence against the accused showing probable cause, even if such evidence is composed of hearsay testimony that might or might not be admissible in evidence at a trial.
  23. Frequently, charges are made against more than one person. It will be your duty to examine the evidence as it relates to each person, and to make your finding as to each person. In other words, where charges are made against more than one person, you may indict all of the persons or only those persons who you believe properly deserve indictment.

#### **Deliberation and Vote**

24. After you have heard all the evidence you wish to hear in a particular matter, you will then proceed to deliberate as to whether the person being investigated should be indicted. No one other than your own members or an interpreter necessary to assist a juror who is hearing or speech impaired is to be present while you are deliberating or voting.
25. To return an indictment charging an individual with an offense, it is not necessary that you find that individual guilty beyond a reasonable doubt. You are not a trial jury and your task is not to decide the guilt or innocence of the person charged. Your task is to determine whether the government's evidence as presented to you is sufficient to cause you to conclude that there is probable cause to believe that the person being investigated committed the offense charged. To put it another way, you should vote to indict where the evidence presented to you is sufficiently strong to warrant a reasonable person's

- belief that the person being investigated is probably guilty of the offense charged.
26. Each juror has the right to express his or her view of the matter under consideration. Only after all Grand Jurors have been given full opportunity to be heard will a vote be taken. You may decide after deliberation among yourselves that further evidence should be considered before a vote is taken. In such case you may direct to subpoena the additional documents or witnesses you desire to consider.
  27. When you have decided to vote, the foreperson shall designate a juror as secretary who will keep a record of the vote, which shall be filed with the Clerk of Court. The record does not include the names of the jurors but only the number of those voting for the indictment. Remember, at least sixteen jurors must be present at all times, and at least twelve members must vote in favor of an indictment before one may be returned.
  28. If twelve or more members of the Grand Jury, after deliberation, believe that an indictment is warranted, then you will request the government attorney to prepare the formal written indictment if one has not already been prepared and presented to you. The indictment will set forth the date and place of the alleged offense, will assert the circumstances making the alleged conduct criminal, and will identify the criminal statute violated. The foreperson will sign the indictment as a true bill, in the space followed by the word "foreperson." It is the duty of the foreperson to sign every indictment, whether the foreperson voted for or against. If less than twelve members of the Grand Jury vote in favor of an indictment which has been submitted to you for your consideration, the foreperson will endorse the indictment "Not a True Bill" and return it to the Court and the Court will impound it.
  29. Indictments which have been signed as a true bill will be presented to a Judge [or a Magistrate Judge] in open court by your foreperson at the conclusion of each deliberative session of the Grand Jury. In the absence of the foreperson, a deputy foreperson may act in place of the foreperson and perform all functions and duties of the foreperson.

#### **Independence of the Grand Jury**

30. It is extremely important for you to realize that under the United States Constitution, the Grand Jury is independent of the United States Attorney and is not an arm or agent of the Federal Bureau of Investigation, the Drug Enforcement Administration, the Internal Revenue Service, or any governmental agency charged with prosecuting a crime. Simply put, as I have already told you, the Grand Jury is an independent body and does not belong to any branch of the government.
31. However, as a practical matter you must work closely with the government attorneys. They will provide you with important service in helping you to find your way when confronted with complex legal matters. It is entirely proper that you should receive this assistance. If past experience is any indication of what to expect in the future, then you can expect candor, honesty and good faith in matters presented by the government attorneys. However, ultimately, you must depend on your own independent judgment, never becoming an arm of the United States Attorney's office. The government attorneys are prosecutors. You are not. If the facts suggest that you should not indict, then you should not do so, even in the face of the opposition or statements of the government attorney. You would violate your oath if you merely "rubber-stamped" indictments brought before you by the government representatives.
32. Just as you must maintain your independence in your dealings with the government attorneys, so should your dealings with the Court be on a formal basis. If you should have a question for the Court or desire to make a presentment or return an indictment to the Court, you will assemble in the courtroom for these purposes. Moreover, each juror is directed to report immediately to the Court any attempt by any person who under any pretense whatsoever addresses or contacts him or her for the purpose of or with the intent to gain any information of any kind concerning the proceedings of the Grand Jury, or to influence a juror in any manner or for any purpose.

#### **The Obligation of Secrecy**

33. Your proceedings are secret and must remain secret permanently unless and until the Court decrees otherwise. You cannot relate to your family, to the news or television reporters, or to anyone that which transpired in the Grand Jury room. There are several

important reasons for this requirement. A premature disclosure of Grand Jury action may frustrate the ends of justice by giving an opportunity to the person being investigated to escape and become a fugitive or to destroy evidence. Also, if the testimony of a witness is disclosed, the witness may be subject to intimidation, retaliation, bodily injury, or other tampering before testifying at trial. Thirdly, the requirement of secrecy protects an innocent person who may have come under investigation but has been cleared by the actions of the Grand Jury. In the eyes of some, investigation by a Grand Jury alone carries with it a suggestion of guilt. Thus great injury can be done to a person's good name even though the person is not indicted. And fourth, the secrecy requirement helps to protect the members of the grand jury themselves from improper contacts by those under investigation. For all these reasons, therefore, the secrecy requirement is of the utmost importance and must be regarded by you as an absolute duty. If you violate your oath of secrecy, you may be subject to punishment.

34. To insure the secrecy of Grand Jury proceedings, the law provides that only authorized persons may be in the Grand Jury room while evidence is being presented. Only the members of the Grand Jury, the government attorney, the witness under examination, the court reporter, and an interpreter, if required, may be present.
35. If an indictment should ultimately be voted, the presence of unauthorized persons in the Grand Jury room could invalidate it. Particularly remember that no person other than the Grand Jury members themselves or an interpreter necessary to assist a juror who is hearing or speech impaired may be present in the Grand Jury room while the jurors are deliberating and voting. Although you may disclose matters which occur before the Grand Jury to attorneys for the government for use by such attorneys in the performance of their duties, you may not disclose the contents of your deliberations and the vote of any juror even to government attorneys.

#### Conclusion

36. The importance of the service you will perform is demonstrated by the very comprehensive and important oath which you took a short while ago. It is an oath rooted in history and thousands of your forebears have taken similar oaths. Therefore, as good citizens, you should be proud to have been selected to assist in the administration of the American system of justice.
37. The government attorney will now accompany you and will assist you in getting organized, after which you may proceed with the business to come before you.
38. The United States Marshal and Deputy United States Marshals will attend you and be subject to your appropriate orders.
39. You may now retire.

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