

## Common Law Grand Jury Presentment

In common law, a grand jury presentment is **an accusatory document issued by a grand jury that is not an indictment**. At common law, grand juries could charge a person with a crime by "indictment" or "presentment." The distinction between "indictment" and "presentment" hinged on *who initiated* the charges. *If the prosecutor (BAR MEMBER) drew up charges and submitted them to the grand jury*, then the charging instrument returned by the jurors would be called a "true bill of indictment." However, if the grand jury accused an individual of a crime on its own initiative, based on facts the jurors learned during their investigation, the charging instrument would be a **presentment**.

The term "presentment" has evolved alongside the changing functions of the grand jury. Initially, the grand jury both accused and tried suspects, but these functions were later separated (*in the maritime, by BAR members*). Presentments can also refer to the grand jury's ability to issue reports or recommendations based on their investigations, although this practice has declined over time, especially at the federal level.

In Georgia, the (BAR/Maritime) grand jury statute recognizes two discrete types of presentments: special presentments and general presentments. Special presentments are initiated by the grand jury itself, while general presentments are more formal and can lead to criminal charges.

The Fifth Amendment of the United States Constitution requires that no person shall be charged with a capital or infamous crime except by presentment or indictment of a Grand Jury, emphasizing the importance of the grand jury presentment in the legal process.

[https://constitution.congress.gov/browse/essay/amdt5-2-1/ALDE\\_00000854/](https://constitution.congress.gov/browse/essay/amdt5-2-1/ALDE_00000854/)

## Fifth Amendment:

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

The history of the grand jury is rooted in the common and civil law, extending back to Athens, pre-Norman England, and the Assize of Clarendon promulgated by Henry II.<sup>1</sup> The right seems to have been first mentioned in the colonies in the Charter of Liberties and Privileges of 1683, which was passed by the first assembly permitted to be elected in the colony of New York.<sup>2</sup> Included from the first in James Madison's introduced draft of the Bill of Rights, the provision elicited no recorded debate and no opposition. The grand jury is an English institution, brought to this country by the early colonists and incorporated in the Constitution by the Founders. There is every reason to believe that our constitutional grand jury was intended to operate substantially like its English progenitor. The basic purpose of the English grand jury was to provide a fair method for instituting criminal proceedings against persons believed to have committed crimes. Grand jurors were selected from the body of the people and their work was not hampered by rigid procedural or evidential rules. In fact, grand jurors could act on their

own knowledge and were free to make their presentments or indictments on such information as they deemed satisfactory. Despite its broad power to institute criminal proceedings the grand jury grew in popular favor with the years. It acquired an independence in England free from control by the Crown or judges. Its adoption in our Constitution as the sole method for preferring charges in serious criminal cases shows the high place it held as an instrument of justice. And in this country as in England of old the grand jury has convened as a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor.<sup>3</sup>

## Topics

- [Exclusionary Rule](#)
- [Grand Jury](#)
- [Juries](#)
- [Military](#)
- [Privacy](#)
- [War](#)

## Footnotes

1. [Jump to essay-1](#) Wayne L. Morse, *A Survey of the Grand Jury System*, 10 Ore. L. Rev. 101 (1931).
2. [Jump to essay-2](#) Bernard Schwartz, *The Bill of Rights: A Documentary History* 162, 166 (1971). The provision read: That in all Cases Capital or Criminal there shall be a grand Inquest who shall first present the offence. . . .
3. [Jump to essay-3](#) *Costello v. United States*, 350 U.S. 359, 362 (1956). The grand jury is an integral part of our constitutional heritage which was brought to this country with the common law. The Framers, most of them trained in the English law and traditions, accepted the grand jury as a basic guarantee of individual liberty; notwithstanding periodic criticism, much of which is superficial, overlooking relevant history, the grand jury continues to function as a barrier to reckless or unfounded charges . . . . Its historic office has been to provide a shield against arbitrary or oppressive action, by insuring that serious criminal accusations will be brought only upon the considered judgment of a representative body of citizens acting under oath and under judicial instruction and guidance. *United States v. Mandujano*, 425 U.S. 564, 571 (1976) (plurality opinion). See *id.* at 589–91 (Brennan, J., concurring).