



Hugh's News

COMMENTARY & OPINION ON HISTORY & POLITICS

Jury duty: time to bring back the runaway grand jury

by Hugh Turley

The Roman poet Juvenal asked, "Quis custodiet ipso custodes?" or, "Who will guard the guards themselves?" Historically, the grand jury served to protect the public, but today it's an institution that remains a mystery to many.

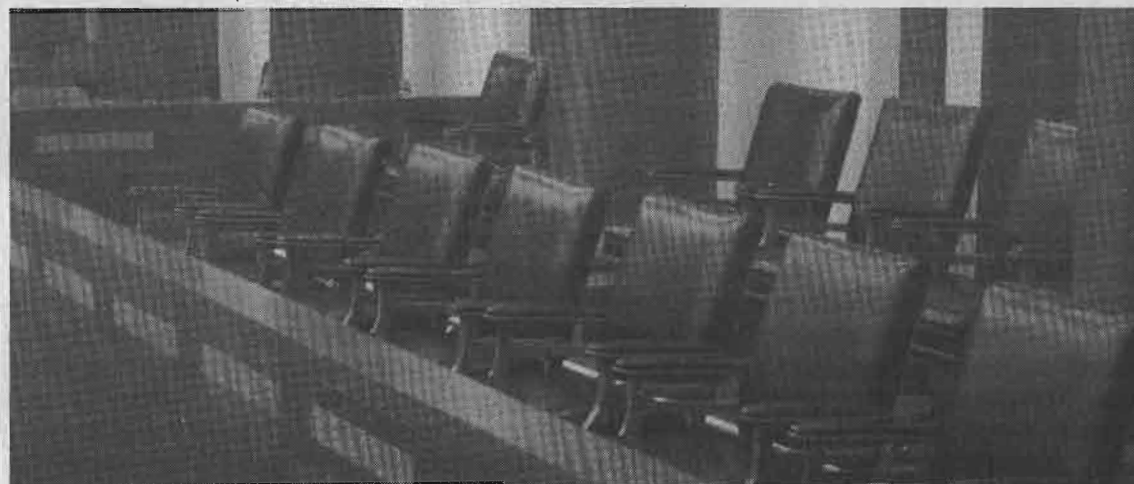
We should educate ourselves about its history and purpose; a runaway grand jury may be necessary if the American people are to reclaim their rights.

Unlike a petit jury, which considers evidence of both guilt and innocence during a trial, the grand jury considers only accusatory evidence to determine whether there is enough evidence for a trial.

The Fifth Amendment of the U.S. Constitution states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

A presentment was a communication to the public of the grand jury's investigation and was a means to present grievances against the government. Presentments could lead to an indictment or exoneration.

The grand jury, which dates



back to the 12th century, came to the American colonies from England, where it served as an accusatory body primarily targeting government corruption. It was originally a body of 12, and later 23, men who served as accusers who presented indictments at the request of not only the king's prosecutor, but also individual citizens. They met in secret; the king's prosecutor, lest he interfere, was not present.

A grand jury had powerful oversight over the government. Ordinary citizens were allowed to pass information to a grand jury, meaning that every citizen could act as an attorney general. The grand jury served the public

in two ways: by limiting government's power to prosecute and by issuing presentments about its activity.

In 1735, when the king's prosecutors sought to indict newspaper editor John Zenger for libel, the grand jury refused to issue the indictment. In 1769, at the beginning of the American Revolution, a Boston grand jury indicted British soldiers for alleged crimes of breaking and entering the private homes of citizens.

From the ratification of the Bill

of Rights in 1789 until the codification of the Federal Rules of Criminal Procedure in 1946, the grand jury was not regulated by statute.

Gradually the prosecutor began to enter the grand jury room and lead the grand jury proceedings. Federal Rules took away the grand jury power of presentment by requiring the approval of a judge or prosecutor to go public.

Hundreds of years of grand jury power was improperly overturned in 1946, and the federal

courts upheld the new Federal Rules. The public has lost sight of its historic adversarial role with the prosecutors. Now, only the prosecutor can pass information of criminal activity to a grand jury.

Grand jurors are mostly unaware they still have the power to investigate any criminal activity they know of and that they can issue subpoenas. They can also refuse to indict persons the district attorney wishes to prosecute.

When citizens take charge of the direction of a grand jury investigation, it is called a "runaway grand jury." But it's a grand jury acting like a *real* grand jury, consistent with the long history of common law.

A runaway grand jury is running away from the prosecutor and the Federal Rules, in the same way Harriet Tubman was a runaway slave running away from a corrupt institution.

Imagine a whole grand jury of Harriet Tubmans. What administration officials might get indicted, and for what?

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