



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

September 16, 2026

Submitted to RulesCommittee_Secretary@ao.uscourts.gov.

The Honorable Michael W. Mosman
Chair, Advisory Committee on Criminal Rules

Re: Recommending a uniform rule on transparency for no bills

Dear Judge Mosman:

Citizens for Responsibility and Ethics in Washington (CREW) writes to request that the Advisory Committee on Criminal Rules consider a potential amendment to Federal Rule of Criminal Procedure 6 (The Grand Jury). CREW is a nonpartisan nonprofit organization committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, monitoring and informing the public about significant issues related to government conduct and ensuring transparency, ethics and integrity in government. To enhance fairness to the accused and prosecutorial accountability during and after grand jury proceedings, and in light of reported abuses of this one-sided, largely secret process, we urge the Committee to consider a uniform rule to provide notice when a grand jury refuses to indict by returning a “no bill.”¹

The grand jury serves a critical role in our criminal justice system.

The grand jury is a constitutionally enshrined body that holds a “high place . . . as an instrument of justice.”² The Fifth Amendment of the Constitution guarantees that, except in certain circumstances, “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.”³ Because many defendants plead guilty rather than proceeding to trial, the grand jury serves “as the main avenue to community involvement in the justice system.”⁴

The grand jury’s primary functions have been aptly described as that of a sword and a shield. As a “sword,” the grand jury investigates and determines whether there is probable cause to believe that an individual committed a crime. As a “shield,” the grand jury protects

¹ Wright & Miller, Finding and Return of the Indictment, 1 Fed. Prac. & Proc. Crim. § 112 (5th ed.).

² *Costello v. United States*, 350 U.S. 359, 362 (1956).

³ U.S. Const. amend. V.

⁴ *Restoring Legitimacy: The Grand Jury as the Prosecutor’s Administrative Agency*, 130 Harv. L. Rev. 1205, 1208 (2017).

individuals accused of crimes against unfounded or unjust criminal prosecutions.⁵ As the Supreme Court explained in *Wood v. Georgia*:

Historically, [the grand jury] has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will.⁶

In fulfilling this role as a shield grand juries can—and have—refused to indict even when probable cause exists.⁷

Despite the constitutional independence of grand juries, prosecutors exercise significant discretion in these largely secret proceedings.

The grand jury constitutionally “belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the government and the people.”⁸ The Justice Manual instructs federal prosecutors, in engaging with grand juries, to “ensure that justice is done and that guilt shall not escape nor innocence suffer,” “recognize that the grand jury is an independent body,” “be scrupulously fair to all witnesses” and “do nothing to inflame or otherwise improperly influence the grand jurors.”⁹

The grand jury nonetheless has long been criticized as a tool of the prosecutor.¹⁰ The prosecutor exercises significant control over the entire process, presenting evidence to the grand jury,¹¹ serving as its legal adviser,¹² advising who to call as a witness or what

⁵ *Branzburg v. Hayes*, 408 U.S. 665, 686–87 (1972); *United States v. Cox*, 342 F.2d 167, 186 n.1 (5th Cir. 1965) (Wisdom, J., concurring) (quoting American Bar Association, Federal Grand Jury Handbook 8 (1959)); U.S. Dep’t of Just., Just. Manual §§ 9-11.010, 9-11.101 (Justice Manual).

⁶ 370 U.S. 375, 390 (1962).

⁷ *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986) (“[T]he grand jury is not bound to indict in every case where a conviction can be obtained.” (quoting *United States v. Ciambrone*, 601 F.2d 616, 629 (2d Cir. 1979) (Friendly, J., dissenting))).

⁸ *United States v. Williams*, 504 U.S. 36, 47 (1992) (internal quotation marks and citations omitted); see also *United States v. Chanen*, 549 F.2d 1306, 1312 (9th Cir. 1977) (explaining that “the functions of the grand jury are intimately related to the functions of court and prosecutor,” but that the grand jury nonetheless “is not and should not be captive to any of the three branches”).

⁹ Justice Manual § 9-11.010.

¹⁰ See, e.g., Nat’l Ass. of Criminal Defense Lawyers, *Federal Grand Jury Reform Report & ‘Bill of Rights’*, at 1 (May 18, 2000),

<https://www.nacdl.org/getattachment/0aebc59b-b21b-49ea-b7f9-7d3b1ea60255/federal-grand-jury-reform-report-and-bill-of-rights.pdf>; Gregory T. Fouts, *Reading the Jurors Their Rights: The Continuing Question of Grand Jury Independence*, 79 Ind. L. J. 323, 327–30 (2004) (describing the prosecutors’ increasing influence over the grand jury); *Restoring Legitimacy*, *supra* note 4, at 1208.

¹¹ *Restoring Legitimacy*, *supra* note 4, at 1206, 1208–09.

¹² Justice Manual § 9-11.010.

documents to subpoena¹³ and preparing the formal written indictment.¹⁴ Few checks exist on this one-sided arrangement: grand jury targets do not enjoy the same constitutional protections prior to indictment,¹⁵ the accused has no right to testify,¹⁶ prosecutors are not required to present exculpatory evidence,¹⁷ prosecutors may resubmit the same information to the same or a second grand jury if the grand jury declines to indict¹⁸ and grand jury proceedings occur largely behind closed doors.¹⁹

The secrecy of grand jury proceedings, in particular, presents a double-edged sword. The Supreme Court has illuminated several important reasons for this secrecy, including:

(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammelled disclosures by persons who have information with respect to the commission of crimes; (5) to protect the innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.²⁰

The disclosure of grand jury information can result in serious harm, including the identification of grand jury targets before their indictment, damage to the reputations of individuals who were accused but never indicted and even the murder or disappearance of grand jury witnesses.²¹ Indeed, studies show that the psychological impact and the external and internal stigma of being wrongfully accused of a crime can be both “extreme” and

¹³ Peter F. Vaira, *Role of the Prosecutor Inside the Grand Jury Room: Where is the Foul Line*, 75 J. of Crim. L. & Criminology 1129, 1131 (1984); U.S. Courts, *Handbook for Federal Grand Jurors*, at 8, <https://www.uscourts.gov/file/grand-handbookpdf>.

¹⁴ Peter J. Henning, *Prosecutorial Misconduct in Grand Jury Investigations*, 51 S. C. L. Rev. 1, 4 (1999).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Charles Doyle, *The Federal Grand Jury*, Cong. Rsch. Serv., at 36 (July 2025), https://www.congress.gov/crs_external_products/RL/PDF/95-1135/95-1135.12.pdf; see *United States v. Williams*, 504 U.S. 36, 49 (1992) (“The Double Jeopardy Clause of the Fifth Amendment does not bar a grand jury from returning an indictment when a prior grand jury has refused to do so.”); see also *United States v. Thompson*, 251 U.S. 407, 413 (1920) (explaining that a grand jury’s power is “continuous” and not affected by a decision not to indict or a failure to act).

¹⁹ Wright & Miller, *Finding and Return of the Indictment*, 1 Fed. Prac. & Proc. Crim. § 107 (5th ed.).

²⁰ *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 n. 6 (1958) (quoting *United States v. Rose*, 215 F.2d 617, 628 (3rd Cir. 1954)).

²¹ U.S. Gov’t Accountability Off., *More Guidance And Supervision Needed Over Federal Grand Jury Proceedings*, GGD-81-18, at 6 (Oct. 1980), <https://www.gao.gov/assets/ggd-81-18.pdf>.

“long-lasting.”²² In other words, there are sound reasons to maintain discretion in grand jury matters. But the near-total secrecy of these proceedings also exacerbates concerns about the limited oversight of prosecutors in this process, and the lack of accountability for prosecutors’ conduct. The potential for abuse has been highlighted in recent months as grand juries have declined to indict suspects in at least 18 publicly reported federal cases.²³

Federal judges have warned of “unprecedented prosecutorial action.”

Grand juries typically are viewed as a rubber stamp.²⁴ Only 12 members of the 16- to 23-person grand jury need to determine that probable cause exists to indict,²⁵ a requirement designed to ensure that “there will be no gross errors” but that otherwise presents a relatively low bar.²⁶ The Department of Justice (DOJ) Justice Manual, however, articulates a higher standard for DOJ attorneys determining whether to initiate a criminal case: while a lack of probable cause “is an absolute bar to initiating a federal prosecution,”²⁷ the manual also provides that the government should not begin a prosecution unless “the admissible evidence will probably be sufficient” to meet the higher beyond a reasonable doubt requirement for obtaining a conviction.²⁸ Unsurprisingly, prior DOJ data reflect a historically high indictment rate: of all suspects in criminal matters concluded in fiscal years 2013 through 2016, only 0.006% ended with the grand jury declining to indict the target.²⁹

Over the past year and a half, however, federal grand juries have declined to indict suspects in at least 18 cases, a likely underestimate that accounts only for publicly reported instances

²² Samantha K. Brooks & Neil Greenberg, *Psychological impact of being wrongfully accused of criminal offences: A systematic literature review*, 61 *Medicine, Sci. & the L.* 47 (Jan. 2021), <https://journals.sagepub.com/doi/epub/10.1177/0025802420949069>.

²³ Dani Schulkin, Ryan Goodman, & Huzaiifa Khan, “Zero Evidence”: *How Judges and Grand Juries Have Rejected Trump Administration Efforts to Investigate and Prosecute*, Just Security (July 20, 2026), <https://www.justsecurity.org/146665/courts-grand-juries-reject-trump-investigations/>.

²⁴ See *In re Grand Jury Subpoena of Stewart*, 545 N.Y.S.2d 974, 977 n. 1 (N.Y. App. Div. 1989), modified by 548 N.Y.S.2d 679 (1989) (explaining that skepticism about the grand jury is “best summarized” by the statement that a grand jury “would indict a ‘ham sandwich’”).

²⁵ Fed. R. Crim. P. 6(f); 18 U.S.C. § 3321.

²⁶ Kevin K. Washburn, *Restoring the Grand Jury*, 76 *Fordham L. Rev.* 2333, 2359 (2008).

²⁷ Justice Manual § 9-27.200 comment.

²⁸ *Id.*; see also *id.* § 9-27.220; see also *id.* § 9-27.300 comment (explaining that the attorney for the government should not “recommend in an indictment . . . charges that he/she cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient and admissible evidence at trial”).

²⁹ The Federal Justice Statistical tables for fiscal years 2013 through 2016 detailed the reasons that U.S. attorneys declined to prosecute suspects in criminal matters, including “no bills.” Mark Motivans, *Federal Justice Statistics, 2016 – Statistical Tables*, DOJ, at 12–13 (Dec. 2020), <https://bjs.ojp.gov/content/pub/pdf/fjs16st.pdf> (155,615 concluded criminal matters and six no bills); Mark Motivans, *Federal Justice Statistics, 2015 – Statistical Tables*, DOJ, at 11-12 (Dec. 2020), <https://bjs.ojp.gov/content/pub/pdf/fjs15st.pdf> (163,005 concluded criminal matters and 19 no bills); Mark Motivans, *Federal Justice Statistics, 2014 – Statistical Tables*, DOJ, at 11-12 (Mar. 2017), <https://bjs.ojp.gov/content/pub/pdf/fjs14st.pdf> (170,161 concluded criminal matters and 14 no bills); Mark Motivans, *Federal Justice Statistics, 2013 – Statistical Tables*, DOJ, at 11-12 (Mar. 2017), <https://bjs.ojp.gov/content/pub/pdf/fjs13st.pdf> (196,969 concluded criminal matters and five no bills).

of no bills.³⁰ And even when prosecutors failed to secure a grand jury indictment, in some cases prosecutors have simply downgraded to a misdemeanor charge that does not require a grand jury to weigh in. In one example, federal prosecutors failed three times to secure a grand jury indictment against a suspect they accused of assaulting, impeding or interfering with federal agents, and ultimately charged the suspect with a lesser crime that did not require a grand jury indictment.³¹ Prosecutors used this same tactic to charge the individual who threw a sandwich at a federal agent, and who a jury found not guilty after a three-day trial.³² In the words of former prosecutors, “[w]hen cases struggle before a grand jury, where prosecutors need only establish probable cause, that should be a serious warning sign that cases should not result in indictments, unless and until additional evidence is obtained.”³³

Judges in the District of Columbia have outlined other examples of “unprecedented prosecutorial action,” highlighting instances in which prosecutors have: charged cases before proper investigations, causing the detention of the suspect, only to dismiss the charges in early hearings; pursued charges even after a grand jury declined to indict a suspect; and charged cases despite apparent constitutional violations.³⁴ More than 100 former prosecutors also have warned that, in their view, “once-forbidden political considerations are infecting prosecutorial decisions.”³⁵

These trends unfortunately reflect only part of the story, as DOJ attorneys face political pressure to bring charges—in some cases repeatedly—against particular individuals,³⁶ and federal judges continue to express concerns about the standard presumption of deference

³⁰ See “Zero Evidence,” *supra* note 23. Cf. also Bruce Swartz et al., *Sword of the People: The Power of Grand Juries to Investigate Administration Corruption*, Just Security (Aug. 24, 2026), <https://www.justsecurity.org/154392/regular-special-grand-jury-powers/> (outlining examples of recent prosecutorial misconduct).

³¹ Alan Feuer & Minh Kim, *Prosecutors Fail 3 Times to Charge Woman With Felony Assault of F.B.I. Agent in D.C.*, N.Y. Times (Aug. 25, 2025), <https://www.nytimes.com/2025/08/25/us/politics/fbi-agent-assault-dc.html>.

³² Beatrice Peterson, *DC sandwich thrower found not guilty in misdemeanor assault case, speaks out after acquittal*, ABC News (Nov. 6, 2025), <https://abcnews.com/US/dc-sandwich-throwers-misdemeanor-assault-case-nears-closing/story?id=127227869>.

³³ Open Letter, Former Northern District of Illinois AUSAs, at 3 (June 8, 2026), https://news.wttw.com/sites/default/files/article/file-attachments/FAUSA%20statement%20FINAL%2006_08_26.pdf.

³⁴ *United States v. Butler*, No. 1:25-CR-0256 (ZMF), 2025 WL 2835678, at *1 (D.D.C. Oct. 3, 2025).

³⁵ See Open Letter, *supra* note 33, at 1.

³⁶ See, e.g., Kyle Cheney, Erica Orden, & Hassan Ali Kanu, *How Trump’s message to ‘Pam’ got exactly the results he wanted*, Politico (Oct. 10, 2025), <https://www.politico.com/news/2025/10/10/trump-doj-prosecutions-comey-james-00601838>; Kayla Epstein, ‘Very weak’: Lawyers sceptical of charges against James Comey over seashell post, BBC (Apr. 29, 2026), <https://www.bbc.com/news/articles/clyp70l1egeo>.

to the government.³⁷ Courts have myriad tools for addressing abuses of the criminal process,³⁸ including conducting in camera review of grand jury materials,³⁹ requiring that those materials be disclosed to the defense⁴⁰ or the public,⁴¹ quashing grand jury subpoenas,⁴² referring attorneys for misconduct proceedings,⁴³ referring violations of DOJ policy to DOJ's Office of Professional Responsibility⁴⁴ or referring attorney misconduct to state bar associations.⁴⁵

But even if a court takes these actions, a victim of a vindictive or baseless prosecution may suffer significant and potentially irreparable financial, reputational or emotional harms even if their case is dismissed, and even if the prosecutor faces consequences. To mitigate or prevent such results, the Committee may wish to consider developing—either as amendments to the rules or a proposal to Congress, as appropriate—reforms to grand jury procedures to help ensure grand jury independence and to prevent or facilitate oversight of prosecutorial misconduct.⁴⁶

³⁷ Ryan Goodman, Siven Watt, Audrey Balliet, Margaret Lin, Michael Pusic, & Jeremy Venook, *The "Presumption of Regularity" in Trump Administration Litigation* (4th edition), Just Security (Mar. 19, 2026),

<https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/>; see *Sword of the People*, *supra* note 30 (explaining that “federal courts are increasingly questioning whether the presumption of regularity should apply to the government’s conduct in grand jury proceedings”); Jon Seidel, *What to know about the 'Broadview Six' scandal rocking Chicago's federal courthouse*, Chicago Sun Times (June 27, 2026),

<https://chicago.suntimes.com/crime/2026/06/27/broadview-six-boutros-chicago> (federal judge’s statement that, despite their long belief in the presumption of regularity, “[t]hat trust has been broken”).

³⁸ See *Sword of the People*, *supra* note 30 (outlining the courts’ existing power to affirm the independence of grand juries).

³⁹ See *United States v. Armstrong*, No. 26-CR-25 (LMP/DLM), 2026 WL 2415384, at *1 (D. Minn. Aug. 18, 2026).

⁴⁰ Fed. R. Crim. P. 6(e)(3)(E)(ii); see *United States v. Comey*, 809 F. Supp. 3d 396, 414 (E.D. Va. 2025).

⁴¹ See, e.g., Notification of Docket Entry, *United States v. Rabbitt*, No. 1:25-cr-00693 (N.D. Ill. June 9, 2026), Dkt. 218 (authorizing the release of certain redacted grand jury transcripts).

⁴² Kyle Cheney, *Judges grow skeptical about DOJ's use of grand juries*, Politico (July 14, 2026), <https://www.politico.com/news/2026/07/14/judges-grow-skeptical-about-doj-s-use-of-grand-juries>.

⁴³ See, e.g., Text Order, *In re: Motion to Quash Administrative Subpoena to Rhode Island Hospital*, No. 1:26-mc-00007 (D.R.I. June 5, 2026); Sarah N. Lynch & Melissa Quinn, *Rhode Island judge refers DOJ lawyers for possible discipline over handling of transgender care investigation*, CBS News (June 5, 2026), <https://www.cbsnews.com/news/rhode-island-judge-justice-department-transgender-care-investigation/>.

⁴⁴ See, e.g., *Jefferson v. Reno*, 123 F. Supp. 2d 1, 6 (D.D.C. 2000) (referring DOJ attorney to OPR “to investigate whether he violated the law or engaged in professional misconduct”); Justice Manual § 9-11.233 (explicitly describing OPR referral as a potential consequence of failing to follow DOJ policy of disclosing certain exculpatory evidence to the grand jury).

⁴⁵ See *Trump v. IRS*, No. 26-20609-CV, 2026 WL 2015525, at *21 (S.D. Fla. July 13, 2026).

⁴⁶ See, e.g., Nathan Reilly, *Trust, But Verify: Three Grand Jury Reforms to Hold the Government Accountable*, Just Security (July 21, 2026), <https://www.justsecurity.org/146230/trust-but-verify-three-grand-jury-reforms-to-hold-the-government-accountable/>; *Federal Grand Jury Reform Report*, *supra* note 10, at 5, 10–15.

This Committee should consider developing a uniform rule on transparency for no bills.

We recommend the Committee immediately consider a uniform rule to provide notice when a grand jury declines to indict a suspect. This modest yet important reform has already been undertaken by some courts,⁴⁷ as multiple district courts have implemented versions of this important transparency measure in their local rules. Here are some examples:

- In March 2026, the United States District Court for the District of Columbia issued a standing order requiring that, when a grand jury does not concur in an indictment in an “original” investigation, the foreperson must report—promptly and in writing—the lack of concurrence to the duty magistrate judge under seal.⁴⁸ On July 17, 2026, the court proposed a version of this requirement as a new local rule.⁴⁹
- In May 2026, the United States District Court for the Northern District of Illinois adopted a local rule to require that, if a complaint or information is pending against a defendant and the grand jury does not concur in the indictment, then the foreperson must report the lack of concurrence to the duty magistrate judge, and the Clerk of Court must file a redacted copy of the report—unsealed—in the docket of the complaint or information.⁵⁰
- In July 2026, the United States District Court for the District of Massachusetts proposed a similar amendment to the local rules, which would require the government to give a defendant “notice of any instance in which a grand jury did not concur in an indictment charging the same defendant for conduct arising from the same scheme, transaction, or occurrence as any count in the indictment or information.”⁵¹

Each of these proposals represents a step in the right direction for prosecutorial accountability. However, the details of the proposals differ, and most district courts have not implemented similar measures. This patchwork of rules leaves districts with a range of notice requirements, and may lead prosecutors to focus their efforts on jurisdictions with more lenient procedures.

⁴⁷ “If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment,” Federal Rule of Criminal Procedure 6(f) requires the foreperson to “promptly and in writing report the lack of concurrence to the magistrate judge.” This requirement serves two important purposes: (1) creating an official record of the no bill; and (2) ensuring the prompt release of a defendant in custody or the discharge of their bail. Wright & Miller, *Finding and Return of the Indictment*, 1 Fed. Prac. & Proc. Crim. § 112 (5th ed.). This rule is limited, however, in that it applies only if a complaint or information is pending and does not require public notice of the no-bill.

⁴⁸ Standing Order No. 25-09, *In re Report of Lack of Concurrence of Grand Jury* (D.D.C. Mar. 4, 2026).

⁴⁹ Notice of Proposed New Local Rule and Opportunity to Comment, *Grand Jury No Bills* (D.D.C. July 17, 2026) (proposed amendment to Local Criminal Rule 6.2).

⁵⁰ General Order No. 26-0011 (N.D. Ill. May 4, 2026) (amendment to Local Criminal Rule 6.2).

⁵¹ Public Notice: Proposed Amendments to Local Rule 116.2, Disclosure of Exculpatory Evidence (D. Mass. July 8, 2026) (proposed amendment to Local Rule 116.2).

In light of the increased need for accountability and the benefits of a uniform standard, we respectfully urge the Committee to study this issue and develop a rule that balances the need for privacy for unindicted individuals against the risks of secret, largely unchecked prosecutorial control over the grand jury process. The Committee may wish to consider (1) who must provide the notice (the foreperson, the Clerk, or the government); (2) when, and in what circumstances, the notice must be provided (for example, any time the grand jury declines to indict, when a complaint or information against that same individual is pending, or when there is a criminal case based on the same facts); (3) to whom the notice must be provided (for example, the duty magistrate judge, the defendant, or the public); and (4) whether any of the information should be redacted. A robust version of this notice requirement would facilitate fairness for an individual who may otherwise unknowingly be the subject of repeated grand jury investigations.

We also respectfully urge the Committee to consider broader reporting on grand jury data across districts. Aggregating and sharing anonymized information about no bills returned will assist in oversight, including by the DOJ inspector general and members of Congress, to better understand and address trends in criminal cases.⁵²

Thank you for your consideration.

Respectfully submitted,



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cc: The Honorable Chief Justice John G. Roberts
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⁵² United States magistrate judge Zia Faruqui, for example, asked the D.C. District Court's clerk's office to collect information on every motion to dismiss the government filed in cases charged by complaint over a ten-year period. *Butler*, No. 1:25-CR-0256 (ZMF), 2025 WL 2835678, at *2. That information helpfully showed that, between 2014 and 2024, the government moved to dismiss less than 0.5% of cases charged by complaint, and that, by comparison, in the eight weeks preceding Judge Faruqui's decision the government had moved to dismiss approximately 21% of such cases. *See id.*

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