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SCALIA ON 'A GRAND JURY BY US' (IT IS NOT ONLY FOR MUELLER OR COURTS TO MAKE)

US Supreme Court, United States v. Williams, 504 U.S. 36 at 48 (1992) ^ | 1992 | Justice Antonin Scalia

Posted on 8/6/2017, 7:23:52 AM by [Hestage](#)

Rooted in long centuries of Anglo-American history, the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. It 'is a constitutional fixture in its own right.' In fact, the whole theory of its function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people. Although the grand jury normally operates, in the courthouse and under judicial auspices, its institutional relationship with the Judicial Branch has traditionally been, so to speak, at arm's length. Judges' direct involvement in the functioning of the grand jury has generally been confined to the constitutive one of calling the grand jurors together and administering their oaths of office.

The grand jury's functional independence from the Judicial Branch is evident both in the scope of its power to investigate criminal wrongdoing and in the manner in which that power is exercised. Unlike a court, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not. It need not identify the offender it suspects, or even "the precise nature of the offense" it is investigating. The grand jury requires no authorization from its constituting court to initiate an investigation, nor does the prosecutor require leave of court to seek a grand jury indictment. And in its day-to-day functioning, the grand jury generally operates without the interference of a presiding judge. It swears in its own witnesses, Fed.Rule Crim.Proc. 6(c), and deliberates in total secrecy ...

True, the grand jury cannot compel the appearance of witnesses and the production of evidence, and must appeal to the court when such compulsion is required. And the court will refuse to lend its assistance when the compulsion the grand jury seeks would override rights accorded by the Constitution, (grand jury subpoena effectively qualified by order limiting questioning so as to preserve Speech or Debate Clause immunity), or even testimonial privileges recognized by the common law, (same with respect to privilege for confidential marital communications). Even in this setting, however, we have insisted that the grand jury remain "free to pursue its investigations unhindered by external influence or supervision so long as it does not trench upon the legitimate rights of any witness called before it." Recognizing this tradition of independence, we have said that the Fifth Amendment's "constitutional guarantee presupposes an investigative body `acting independently of either prosecuting attorney or judge."

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(Edits and references in above taken out to improve layman readability)

A layman's summary and commentary might be made thus:

Focus Point: A grand jury convened and impaneled by WE THE PEOPLE: A federal grand jury can be impaneled by a self-organizing group of concerned citizens who are careful to develop procedures that lead to an