

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

THE GRAND JURY

Featuring...

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and

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Program description

The grand jury's purpose is to examine the validity of an accusation before trial. Join career prosecutor, Matthew Regulski, and Robert Ramsey, career defender, as they discuss the nuts and bolts of the grand jury. This 1.5 credit CLE will cover the parties, process and procedures that make up a grand jury.

I. Introduction

- **Matthew Regulski, Career Prosecutor**
- **Grand jury – Supreme Court of the US has never made presentation to the GJ on the state level required**
- **States have imposed a screening mechanism before cases go to trial**
- **NJ 1947 Constitution – Article 1, Rights and Privileges**
- **Several states have not adopted GJ**
- **In NJ we have procedure of indictment when local authority/ township brings formal charge of sufficient severity it is presented to the GJ – goes through the prosecution process – able to identify appropriate charges to present**
- **Presentment means a presentation to the GJ to decide whether they want to investigate a certain issue – does not require the prosecutor to bring the charge – GJ has power to investigate**
- **Accusation: by-pass the GJ, have right to GJ but can waive and agree to plead to an accusation which is formalization of charges pre-indictment**
- **Requirement for GJ intervention is in NJ Constitution**
- **As prosecutor – limited resources to do the job – must exercise discretion in how going to handle cases coming in**
- **Some cases should be dismissed outright**
- **Some cases should be returned to municipal court because conduct is more appropriate for municipal court and quicker for the defendant – “downgrade”**
- **Some cases are serious enough that they need to go to GJ process**
- **Screening process – process by which cases are sorted and decisions are made how they will continue to be prosecuted**
- **Not concerned about “jury appeal” until evaluating value of the case in order to fashion plea offer or decide whether to go to trial**
- **Need to assess case based on using resources for more serious crimes**
- **Certain types of crimes always go to GJ – 1st and 2nd degree crimes; 3rd and 4th degree are more likely to be downgraded or diverted from GJ process or resolve pre-indictment even though they can go to the GJ**
- **“jury appeal” should equate to what is important to the community**

II. GJ Functions

A. Accusatory function:

- **Horizontal v. vertical prosecution model**
 - **Vertical: police complaint comes in and would be screened; screening prosecutor would determine appropriate charges; screening prosecutor brings to GJ and then to trial – requires a large staff of prosecutors and investigators to facilitate those cases – detrimental to young prosecutors who should learn each step in the process not soup to nuts of a case right away – advantageous to have a case from the outset; necessary in homicides and sex assaults – so few of these cases so able to properly staff vertical prosecution; need to shift investigative staff to pre-trial**
 - **Horizontal prosecution – different prosecutor at each stage of the process; sometimes stuck with poorly indicted cases for trial**
- **Responsible use of resources of the prosecutor is most important**
- **Prosecutors have discretion – county prosecutors v. attorney general's office**

B. Investigative function

III. GJ Process

A. Assembling the GJ

- **Chosen from a pool**
- **Statutorily defined as coming through driver's licenses, voter registration**
- **Pool of people appear before the presiding judge or assignment judge and judge instructs the GJ on behavior and difference between GJ and petit jury**
- **As long as not exempted, then sit for GJ**
- **23 people on each GJ and hear cases over the course of their term**
- **In 1 session, typically can present 20-25 cases per day to each GJ – depending on complexity of case and how long the jury is sitting**
- **1st day of GJ sitting – must read law to the jury; huge learning curve so new GJs have a great deal to learn about the law at first which can slow the process**

B. Instructing GJ

- **Ultimately responsibility falls on the prosecutor presenting the case**
- **Must instruct on legal concepts**
- **Instructing is most challenging**
- **What jurors know from movies and TV is usually inaccurate in a real courtroom and in a real case**
- **Must give elements of each relevant offense**
- **Try not to reinstruct on identical charges**
- **Record is kept of what terms have been defined for each jury so no need to reinstruct – but must ask whether it is necessary to reinstruct**
- **Indictment merely mimics language of the statute**
- **Concepts are repeated frequently in presentations**
- **Read the statute to the jury to instruct them**
- **Prosecutor does not leave the room during deliberations but does not participate in deliberations**
- **Deliberations are not on the record but if there is an issue during deliberations then prosecutor must go on the record and correct the record and reinstruct the jurors**
- **RPC 3.8 – prosecutor must do justice and not seek convictions/ indictment**
- **Jury may confuse deliberations with questions to the prosecutor – questions to the prosecutor must be on the record**
- **Prosecutor cannot remind GJ of the testimony but can invite witness to return**
- **Jury only needs probable cause to return an indictment – low burden of proof – does not take a great deal of evidence to find probable cause – not determining guilt**
- **Prosecutor's required to present “clearly exculpatory” evidence during GJ presentation**

C. Presenting evidence to the GJ

- **“ham sandwich”**
- **GJs are intelligent and demanding – depends on the case**
- **Defendant testifying**
 - **Does defendant have right to testify? – no right**
 - **If defendant has evidence to give which is significant for the case then right to testify?**
 - **Defendant does not have attorney in room with him – no invoking 5th amendment – unlikely to be prepped for**

testimony and subject to examination by the prosecutor and all grand jurors

- **Defense attorney writes to prosecutor's office requesting client to testify at GJ**
- **Attorney stays outside GJ room while client testifies**
- **Client signs waiver that he is waiving right to remain silent and that everything said at GJ can be used against him including at trial**
- **Client will be permitted to leave GJ room to ask questions of his attorney but then must return to GJ room without counsel to continue testifying**
- **May be client's only chance to tell story to GJ – must be properly prepped**
- **Must assess whether client won't get flustered easily with a non-complex case**
- **Defense attorney should assess who the assistant prosecutor will be for the GJ presentation – is the prosecutor going to severely cross-examine the client? Need a fair prosecutor who will allow the client to just tell his story**
- **GJs want to know as much as they can during their investigation or the presentation of evidence – different from petit/trial jury**
- **GJ is looking for exploratory situation**
- **Grand jurors should ask: "should we put this person in jeopardy"**
- **Petit jurors are more toward jeopardy and want different level of evidence**
- **If attorney is strongly believes that client is innocent and the case is not complex and questions are easily answered by the client and is able to handle cross examine and willing and able to testify at trial, then have client testify at GJ – if client cannot testify at trial because of long record, then don't bother – must know prosecutor handling the case**
 - **Explain to prosecutor in advance what expect client to testify to**
- **Always discuss bona fide defenses with the prosecutor in advance – don't wait until trial**
- **Criminal justice process should be viewed as collaborative and not adversarial**
- **Attorneys should realistically look at the file**
- **Prosecutor's job is not win or lose**

D. Quality of evidence at the GJ

- **No rules of evidence**
- **Jury hears as much evidence as necessary for indictment**
- **How much hearsay can prosecutor rely upon?**
- **2 competing App Div cases: one says cannot rely entirely on hearsay and other says that you can**
- **Must have something there – need evidence presented by personal knowledge of what happened**
- **Job at GJ is to present the truth**
- **Provide enough evidence to get an indictment – it is not practical to put in more evidence than necessary – cannot bring in every witness**

IV. GJ Investigative Function

- **Investigations do not have to be solely based on criminal conduct**
- **Power to determine whether there is misconduct/misuse by governmental agency**
- **Presentment is not a criminal charge but is findings and report of misconduct – no mechanism in NJ to vindicate yourself if a presentment comes down**
- **When there are criminal charges from the GJ by way of indictment, there is a means for vindication by trial**
- **Re: presentment – can go to Assignment Judge for relief**
- **GJ has tremendous subpoena power – subpoena must be returnable on a date when GJ is sitting**
- **There are formal instructions for handling a witness who is the target of the investigation**

V. Accusations

- **Right to waive indictment but still need mechanism to bring case to court – aside from the complaint**
- **Accusation is waiver of right to GJ; shortcut to bringing case to court**
- **Accusations used for pre-indictment plea negotiations, mechanism for getting into PTI**
- **Can tailor accusation to any particular behavior**

VI. Advice to young lawyers

- **Know your case – review your case – allocate resources responsibly**

- **Earlier you get involved with a case – the more likely you are to get a benefit for your client – the less resources used by the state the better off the defendant will be**