



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE

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Earlier this week, Gov. Jerry Brown signed a bill that prohibits district attorneys from utilizing the criminal grand jury process in cases involving use of deadly force by police officers. No doubt, this was motivated in part by the national spotlight on high-profile cases where grand juries refused to indict police officers. The cases such as Ferguson, Mo., and Staten Island, N.Y., certainly have contributed to the notion that the grand jury system is flawed. Additionally, this sentiment is being fueled by one-sided articles such as a recent piece in the Los Angeles Daily Journal entitled “Grand Juries vs. Bad Cops; Mischief is the natural result of secret proceedings.”

This is yet another notch in the belt of those loudly launching attack after attack on American law enforcement and our justice system in general. It is important to know how your Tulare County criminal grand jury system works, when and why it is used, and the reverence in which every prosecutor in my office holds it.

Much like regular jury service, a prospective criminal grand jury member receives a jury summons and reports to the courthouse where they may be selected to serve. Once a criminal grand jury is seated, it will hear a case before it has been filed. If the grand jury feels there is enough evidence to indict, the case proceeds through the justice system like any other criminal felony case. Once the indictment is filed with the court, it is subject to the same judicial scrutiny given any other case. The role of the grand jury is not to determine guilt or innocence, it simply determines if there is sufficient evidence to justify criminal charges.

The criminal grand jury system was not designed to be transparent – just the opposite. In fact, there are some national headlines where a state attorney general is being prosecuted for disclosing information related to a grand jury proceeding.

Instead, the criminal grand jury provides a venue where witnesses can come forward with the protection of confidentiality.

Ironically, it will also protect the accused. If the grand jury does not find there is enough evidence to indict, this individual remains confidential as well. That is not the case in a preliminary hearing. A cloud of scrutiny could remain on the defendant even if he or she was not bound over at preliminary hearing.

In California, if an indictment is returned there are provisions for the transcript to be released. However, the law prevents the transcript from being released if there is no indictment.

Yet, some would advocate that this constitutional secrecy is prone to misuse. I was particularly incensed to read the Daily Journal article criticizing the grand jury in favor of the “normal” process of a preliminary hearing because, it said, as an open proceeding the preliminary hearing afforded public scrutiny of the evidence presented. The author suggested that charges should be filed by criminal complaint, and then afforded judicial scrutiny in the preliminary hearing.

This is misleading and I believe completely bereft of our ethical responsibilities as a prosecutor. To file criminal charges is a serious consideration and one made only after there is sufficient evidence presented which would sustain a conviction in a criminal court. We do not abrogate our ethical responsibility, file criminal charges regardless of evidence and use the preliminary hearing process to weed out those where charges were never warranted.

Some of the reasons why a prosecutor may choose to use a grand jury are because the case may be very complex, such as fraud cases or white-collar crimes, instances where a victim or witness may be reluctant to come forward or, as stated by the California District Attorney’s Association in its opposition to this bill, “... they are a useful tool in cases where evidence is unclear, subject to conflicting accounts ... and provides input from the members of the community.”

By presenting the case in front of 12 impartial members of the community, there are other several sets of eyes examining the same facts, weighing the credibility of a witness’s testimony, and coming to a conclusion. Since any accused is not represented by counsel during a criminal grand jury, it might be surprising to some to learn that the California prosecutor, unlike others across the nation, has an ethical responsibility to proffer any and all evidence to the grand jury that might reflect on innocence. In fact, failure to do so could result in any indictment returned being subsequently dismissed by a Criminal Court judge. It is not the desire of a prosecutor to sway the ultimate finding of the grand jury by offering evidence favorable to the accused. Instead, it is an ethical mandate.

The decision to file criminal charges is a serious undertaking. We do not go about it casually or because of political pressures. We make our decisions based on whether there is sufficient evidence to convince a jury of guilt. In cases where it simply not abundantly clear, the criminal grand jury is a vehicle to provide community fairness to this process. As prosecutors, we are bound by the same ethical obligations, the same responsibilities in a grand jury case as we are in any other proceedings. In fact, our obligations are even stricter when dealing with grand juries.

In Tulare County, we utilize the criminal grand jury process sparingly, yet we have great reverence to the process. We have seen time and time again how it can be beneficial to our community. Though I’m sure the national focus on police officer use of force will

continue, based on Gov. Brown's actions this week, no longer can a criminal grand jury be utilized as an option in these decisions. The impact in California will be interesting to watch.

I believe it is important to keep an open and active dialogue about officer-involved shootings. We need to move past rhetoric and have meaningful conversations that lead to solutions.

Since I appreciate the community's input in such matters, how do you feel about the elimination of Criminal Grand Juries in officer involved shootings that result in death? Let me know at DAmail@co.tulare.ca.us

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