

How New York State Grand Juries Work... By Prof. Brenner



Although at one point in time, it could be said the grand jury system was a rubber stamp of the DA [Judge Sol Wachtler, the former Chief Judge of the State, was quoted as saying, "A grand jury would indict a ham sandwich," (See People v. Carter, 77 N.Y. 2d 95, 107 & n.1 (1990) (Titone, J., dissenting); In re Grand Jury Subpoena, 144 Misc. 2D 1012, 1016 n.1 (Sup. Ct. N.Y. County 1989)], that has not been true for many years, at least not in Kings County. Changes to the composition of the pool from which grand jurors are chosen are largely responsible for this phenomenon...



The grand juries who were "passive bodies . . . utterly dependent upon the prosecutors" no longer exist in this county and perhaps not elsewhere in New York City, but yes, some do exist elsewhere in the State. What type is in Cattaraugus? Is it a truly independent here in the county, or is it tainted which would require a another county, state level, or federal level grand jury?

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Important Notice to individuals who are being 'investigated/indicted' by the DA/grand jury;

CPL 190.50(5)(a) provides that the District Attorney must notify the defendant or his or her attorney of a pending Grand Jury proceeding in such manner as to afford the defendant reasonable time to exercise his or

her right to appear as a witness therein.

If the prosecutor does not provide notice of grand jury presentation when s/he is required to, this is a denial of your due process rights. Defendants can then file a “five day motion” to properly challenge the failure, and throw out the indictment and give you the chance to be heard before the grand jury, [so they can hear your side of the story and call your witnesses before they render their decision](#).

Further a 'five day' motion it is not considered a “pretrial motion” (see CPL §§ 210.35 [4], 255.10), and therefore the timing is not governed by the forty-five day period specified in CPL § 255.20. **This motion must be made within five days after arraignment or it is waived (see CPL § 190.50[5(c)]).** See also **Commentary, N.Y. Crim. Proc. Law § 190.50 (McKinney).**

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