

# ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY  
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July 14, 2010

## **Grand Jury Investigations: Ham Sandwiches Beware!**

Receipt of a target letter means that you are the subject of a felony criminal investigation. More specifically, it means that your case and your charges have been set for a grand jury investigation. The target letter will provide all the particulars regarding the alleged crimes, the statutes, the time and location of the grand jury proceedings. What the target letter does not provide is an explanation of the process or your rights in the process.

In the past, it was said that the grand jury would indict a ham sandwich. The truth of this adage led the New Mexico Supreme in *Jones v. Murdoch* to set forth an accused procedural rights for introducing exculpatory evidence at grand jury. In addition to what has turned out to be a very limited right to present exculpatory evidence, the accused has a right to testify on his or her own behalf at grand jury. In the past, most attorneys would rarely if ever allow a client to testify at grand jury. There is a small trend toward allowing clients to testify. Some research has indicated that jurors are more balanced in their judgment than the ham sandwiches would have you believe.

On the other hand, the risks are great. Any testimony and/or admissions given at grand jury is under oath and may later be used at trial in the case of indictment. Worse yet, the attorney for the accused is allowed only minimal participation. The attorney may not present evidence, examine state witnesses or even question his or her own client. Essentially the attorney is limited to whispering in the client's ear for guidance. Clearly, this is not looked upon favorably by jurors as few like seeing a lawyer whispering into the ear of an alleged felon. As a result, the attorney will typically simply sit and observe fingers crossed hoping the client does tank the defense so early in the game.

Despite the studies showing that grand jurors might be more open minded than thought in the past, favorable outcomes are quite rare while damage to the defense and the client are more the norm. And in the end, the grand jury remains a rubber stamp except in rare and exceptional cases. Energy is arguably better spent working on a defense or possible favorable dispositions than fighting the grand jury. Any risk of harming the defense before felony charges have even been filed seems ill advised for ham sandwiches, soups and salads alike.

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