such information as they deemed satisfactory. Despite its broad power to institute criminal proceedings the grand jury grew in popular favor with the years. It acquired an independence in England free from control by the Crown or judges. Its adoption in our Constitution as the sole method for preferring charges in serious criminal cases shows the high place it held as an instrument of justice. And in this country as in England of old the grand jury has convened as a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor."[3]

The prescribed constitutional function of grand juries in federal courts[4] is to return criminal indictments, but the juries serve a considerably broader series of purposes as well. Principal among these is the investigative function, which is served through the fact that grand juries may summon witnesses by process and compel testimony and the production of evidence generally. Operating in secret, under the direction but not control of a prosecutor, not bound by many evidentiary and constitutional restrictions, such juries may examine witnesses in the absence of their counsel and without informing them of the object of the investigation or the place of the witnesses in it.[5] The exclusionary rule is inapplicable in grand jury

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[3] Costello v. United States, 350 U.S. 359, 362 (1956). "The grand jury is an integral part of our constitutional heritage which was brought to this country with the common law. The Framers, most of them trained in the English law and traditions, accepted the grand jury as a basic guarantee of individual liberty; notwithstanding periodic criticism, much of which is superficial, overlooking relevant history, the grand jury continues to function as a barrier to reckless or unfounded charges . . . . Its historic office has been to provide a shield against arbitrary or oppressive action, by insuring that serious criminal accusations will be brought only upon the considered judgment of a representative body of citizens acting under oath and under judicial instruction and guidance." United States v. Mandujano, 425 U.S. 564, 571 (1976) (plurality opinion). *See* id. at 589–91 (Justice Brennan concurring).

[4] This provision applies only in federal courts and is not applicable to the states, either as an element of due process or as a direct command of the Fourteenth Amendment. Hurtado v. California, 110 U.S. 516 (1884); Palko v. Connecticut, 302 U.S. 319, 323 (1937); Alexander v. Louisiana, 405 U.S. 625, 633 (1972).

[5] Witnesses are not entitled to have counsel present in the room. FED. R. CIV. P. 6(d). The validity of this restriction was asserted in dictum in *In re* Groban, 352 U.S. 330, 333 (1957), and inferentially accepted by the dissent in that case. Id. at 346–47 (Justice Black, distinguishing grand juries from the investigative entity before the Court). The decision in Coleman v. Alabama, 399 U.S. 1 (1970), deeming the preliminary hearing a "critical stage of the prosecution" at which counsel must be provided, called this rule in question, inasmuch as the preliminary hearing and the grand jury both determine whether there is probable cause with regard to a suspect. *See* id. at 25 (Chief Justice Burger dissenting). In United States v. Mandujano, 425 U.S. 564, 581 (1976) (plurality opinion), Chief Justice Burger wrote: "Respondent was also informed that if he desired he could have the assistance of counsel, but that counsel could not be inside the grand jury room. That statement was plainly a correct recital of the law. No criminal proceedings had been instituted against respondent, hence the Sixth Amendment right to counsel had not come into play." By