

Mandatory Recording of Federal Grand Juries

The Federal Rules of Criminal Procedure, Rule 6, pertains to the grand jury. Amendments to Rule 6 added in 1979 mandated recording of federal grand juries, “by a court reporter or by a suitable recording device.”

According to the Notes of the Advisory Committee on Rules — 1979 Amendment: “The assumption underlying the proposal is that the cost of such recording is justified by the contribution made to the improved administration of criminal justice. See *United States v. Gramolini*, 301 F.Supp. 39 (D.R.I. 1969): ‘Nor can it be claimed that the cost of recordation is prohibitive; in an electronic age, the cost of recordation must be categorized as miniscule.’”

In regard to secrecy of grand jury proceedings, the committee emphasized that “in no way” does recordation “expand the circumstances in which disclosure of the grand jury proceedings is permitted or required.” It quotes wording from a ruling: “Secrecy of grand jury proceedings is not jeopardized by recordation. The making of a record cannot be equated with disclosure of its contents, and disclosure is controlled by other means.” *United States v. Price*, 474 F.2d 1223 (9th Cir. 1973).

Rule 6 also specifies: “Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter’s notes and any transcript prepared from those notes.”

The committee spelled out four benefits of recordation, stating that it:

- Ensures that the defendant may impeach a prosecution witness on the basis of his or her prior inconsistent statements before the grand jury. The Supreme Court stated in *Dennis v. United States*, 384 U.S. 855 (1966): “In our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecu-

tion to have exclusive access to a storehouse of relevant facts.”

- Ensures that the testimony received by the grand jury is trustworthy. In *United States v. Cramer*, 447 F.2d 210 (2d Cir. 1971), Oakes, J., observed: “The recording of testimony is in a very real sense a circumstantial guaranty of trustworthiness. Without the restraint of being subject to prosecution for perjury — a restraint which is wholly meaningless or nonexistent if the testimony is unrecorded — a witness may make baseless accusations founded on hearsay or false accusations, all resulting in the indictment of a fellow citizen for a crime.”
- Restrains prosecutorial abuses before the grand jury. As noted in *United States v. Gramolini*, *supra*: “In no way does recordation inhibit the grand jury’s investigation. True, recordation restrains certain prosecutorial practices which might, in its absence be used, but that is no reason not to record. Indeed, a sophisticated prosecutor must acknowledge that there develops between a grand jury and the prosecutor with whom the jury is closeted a rapport — a dependency relationship — which can easily be turned into an instrument of influence on grand jury deliberations. Recordation is the most effective restraint upon such potential abuses.”
- Supports the case made by the prosecution at trial. Oakes, J., observed in *United States v. Cramer*: “The benefits of having grand jury testimony recorded do not all inure to the defense.”