

# Constitutional Gatekeepers: The History and Role of Grand Juries

How grand juries serve as a vital shield  
against retaliatory prosecutions.

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<b>Executive Summary</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>A Brief History of the Grand Jury in America</b>	<b>7</b>
A grand jury is a panel of citizens that decides whether to charge federal felonies	7
The grand jury is a centerpiece of the Bill of Rights	8
<b>Grand Jurors' Powers and Responsibilities</b>	<b>10</b>
Grand jurors are responsible for ensuring the government meets the probable cause standard	10
Grand jurors should rigorously scrutinize all evidence	11
Grand jurors have the power to request additional witnesses and original documents	11
Grand jurors are entitled to question witnesses and seek legal clarification	12
Grand jurors can hold prosecutors to their role as advisors and report any overreach to the court	12
<b>The Consequences of Indictments</b>	<b>14</b>
Indictments carry significant costs	14
Grand jury indictments are rarely set aside	14
<b>Conclusion</b>	<b>15</b>

# Executive Summary

In a healthy democracy, the people must check the government's power to prosecute. As the executive branch increasingly tests the limits of its authority, the federal grand jury—a body of 16–23 everyday citizens—serves as a constitutional guardrail against abuses of power.

## The role: A constitutional shield

The grand jury is a centerpiece of the Bill of Rights, designed by the Founders as an independent buffer between the state and the people. Grand juries have three key powers:

- **They have independent authority:** A grand jury belongs to no branch of government. It is a randomly selected panel of laypeople, not politicians or legal professionals.
- **They function as "gatekeepers":** Under the Fifth Amendment, no federal felony charge can proceed without a grand jury's consent. If a grand jury says "no," a prosecution stops in its tracks.
- **They play a high stakes role in the justice system:** Because an indictment can destroy a reputation or career, and because a grand jury's decision is virtually unreviewable, the grand juror's role is one of the most consequential in our democracy.

## A grand juror's five essential powers

To be an effective gatekeeper, a grand juror has the mandate to move from a passive observer to an active investigator:

1. **Enforce "probable cause":** Jurors must ensure the government has "reasonably trustworthy information"—not just bare suspicion—to believe a crime was committed.
2. **Scrutinize evidence:** Jurors are not on the prosecution's team. They must rigorously judge if the evidence is sufficient and credible before approving an indictment.
3. **Request more evidence:** Jurors do not have to accept "hearsay" or summaries. They have the power to request direct witnesses and original documents.
4. **Question witnesses:** Jurors are the exclusive judges of credibility. They have the right to question any witness and seek legal clarification from prosecutors.
5. **Report misconduct:** Prosecutors are advisors, not bosses. If they mislead or express personal opinions on guilt, jurors can report them directly to a supervising judge.

**The "rubber stamp" era is over. Recent "no-bills" in high-profile and protest-related cases prove that when everyday citizens exercise their independent judgment, they successfully prevent the law from being weaponized against the people.**

# Introduction

In our constitutional system of separated powers and checks and balances, what happens when the single most powerful constitutional officer – the president – uses the government's law enforcement powers as a tool to punish his perceived enemies and quash dissent? Doing so is unquestionably [illegal](#) under the First Amendment and Fifth Amendment's Due Process Clause among other laws, and an abject abuse of power. But as we have recently seen, it is not so easy for [Congress](#) and the [courts](#) to stop a president who doesn't feel constrained by laws and court orders.

Yet there is at least one part of the criminal justice system that the president and his subordinates cannot fully ignore or control – the grand juries that decide whether felony criminal charges can be brought and the trial juries that decide whether a person accused of a crime is guilty. Grand jurors, in particular, are constitutional gatekeepers that can stop a wrongful prosecution in its tracks<sup>1</sup> – a critical function given the harm (reputational damage, the cost of mounting a defense, personal distress, and more) a criminal investigation can cause even in cases where the subject is ultimately acquitted or charges are dropped.

Over the past few months, grand juries have refused federal prosecutors' requests to approve criminal charges (a process known as returning a bill of indictment) in a series of notable cases, many of which involved protest activity against or political opponents of the current administration. This is big news because grand jury rejections of proposed indictments (an act called a "no-bill") have historically been rare and run against the idea that a "[a grand jury would indict a ham sandwich](#)" if asked to do so by a prosecutor.

While statistics on grand juries are not widely available for the immediate past, the data that does exist underscores the point. In Fiscal Year 2010, for example, [11 out of the 162,000 proposed indictments](#) in federal courts throughout the country resulted in no-bills. In Fiscal Year 2013, the number was [5 out of more than 165,000](#).

The striking series of recent cases resulting in no-bills includes those against [former FBI Director James Comey](#) and [current New York Attorney General Letitia James](#), both of whom have been targeted by a retribution campaign [openly instigated and celebrated](#) by President Trump. Grand jurors rejected the most serious charge tendered against Comey, while indicting him on two others. And James was initially indicted on mortgage fraud charges. After a judge dismissed the indictments against Comey and James because of the unlawful appointment of United States Attorney Lindsey Halligan, the Department of Justice ("DOJ") attempted and failed twice to reindict James.

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<sup>1</sup> Federal prosecutors are permitted to re-present indictments that grand juries have rejected. The Justice Manual [requires](#) "approval of the responsible United States Attorney" before such a submission, but there is otherwise no *per se* limit on the number of times an indictment may be re-presented. However, prosecutions are often abandoned or significantly curbed following a no-bill.

In addition to the charges against these high-profile political actors and named presidential targets, grand juries have rejected charges in multiple cases involving ordinary Americans exercising their First Amendment rights. A sampling of these includes:

<b>Sean Dunn (aka "Sandwich Guy")</b>	Grand jurors <a href="#">rejected felony charges</a> against this former DOJ paralegal who threw a sub-style sandwich at a federal agent on patrol in Washington, DC. He was subsequently charged with misdemeanor assault of a law enforcement officer and <a href="#">acquitted</a> after a jury trial.
<b>Alvin Summers</b>	Grand jurors <a href="#">no-billed</a> a felony assault charge against Mr. Summers, who allegedly grabbed a Park Police officer after fleeing from her, after which the charges were dismissed.
<b>Nathalie Rose Jones</b>	Grand jurors <a href="#">refused to indict</a> Ms. Jones on a felony charge of threatening President Trump. Ms. Jones was arrested after attending an August protest outside the White House based on social media posts in which she called the president a Nazi and said she wanted to disembowel him. Ms. Jones has been described by friends as mentally ill and prosecutors did not attempt to charge her until after she attended the protest, even though her posts were known to federal law enforcement and they had interviewed her.
<b>Edward Alexander-Dana</b>	Grand jurors <a href="#">rejected threat charges</a> against Mr. Dana, who described himself as a "person with intellectual disabilities" and allegedly threatened the president while drunk – and babbling incoherently — at the police station.
<b>Sidney Lori Reid</b>	DOJ prosecutors <a href="#">failed on three occasions</a> to indict Ms. Reid, whom they attempted to charge with felony assault of an FBI agent during a protest against immigration officials. Prosecutors alleged Reid "forcefully pushed" an agent after she was herself pushed against a wall. Prior to that, Reid allegedly tried to place herself between agents making an arrest while also videotaping the arrest. DOJ subsequently reduced the charge to a misdemeanor and Reid was later <a href="#">acquitted</a> following a jury trial and less than two hours of deliberation by the jury.

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**Ray Collins and  
Jocelyne Robledo**

Grand jurors [refused to indict](#) Mr. Collins and Ms. Robledo on charges of assaulting law enforcement agents during a protest at a Chicago ICE facility. Agents had alleged that Robledo “pushed back” against them during a crowd control maneuver. Collins was accused of injuring the thumb of an agent when he moved toward his wife and told agents to get away from her.

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**Cases arising out of  
protest activity in Los  
Angeles**

The [Los Angeles Times has reported](#) that federal prosecutors have obtained indictments in only a handful of the cases they have attempted to charge as felonies related to anti-ICE demonstrations in Los Angeles. In at least one case, bystanders overheard the United States Attorney (who was later held to have been unlawfully appointed) tell line prosecutors on a call following a grand jury’s refusal to indict a protester to ignore the [Justice Manual](#) (which contains the DOJ’s official policies and guidelines for federal prosecutors).

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These acts of rejection by grand jurors do not appear to be [jury nullification](#), which is a refusal by grand jurors to enforce the law either because they disagree with the law itself or believe it should not be applied in a particular case. Rather, they are a sign that grand jurors are rigorously requiring prosecutors to follow the law and present sufficient credible evidence amounting to “probable cause” of felony criminal conduct. And that is precisely the role the framers of our constitution wanted them to play.

This paper is offered to serve as a resource to explain the constitutional role of grand jurors and the tools they can use to carry it out. In short, grand jurors further a fundamental vision of our country’s founders – that the people should stand as a bulwark between the government and deprivations of liberty. They believed it vital to prevent the government from becoming too powerful and too much like the monarchical tyranny decried in the Declaration of Independence. In performing this democratic function, grand jurors have the power – and the duty — to demand that the government present adequate evidence to justify criminal charges and to say no when the government fails to do so.

What follows is a short explanation of what a grand jury is, its historical underpinnings, and the place it occupies in the Bill of Rights. It also includes a summary of the nuts-and-bolts assignment of grand jurors, the legal standards they follow, and the prerogatives they have to assist them in making their bottomline decision: whether the government should be permitted to charge a person with a federal felony.

# A Brief History of the Grand Jury in America

Grand Juries occupy a central role in our system of democratic self-governance. They have two defining features:

1. They are made up of laypeople who stand between government power and deprivations of people's liberty and property.
2. Their role is mandated in the Bill of Rights.

## A grand jury is a panel of citizens that decides whether to charge federal felonies

In the federal system, a grand jury is a randomly selected group of [between 16 and 23 citizens](#). Its [function](#) is to investigate felony criminal cases, approve charges upon a finding of probable cause to believe a crime has been committed, and reject charges upon a finding that probable cause is lacking.

Grand Jury proceedings differ from trials in two key respects. First, grand juries do not decide ultimate guilt "beyond a reasonable doubt"; rather, they decide only whether there is enough evidence to bring charges under the lower "probable cause" standard. Second, grand jury proceedings are not public and adversarial – meaning that the prosecutor presents evidence behind closed doors without cross-examination or presentation of evidence by the defendant (although targets of grand jury investigations are permitted to testify if they wish to do so). Indeed, defense attorneys cannot be present for and do not participate in the proceedings. In short, grand jury proceedings are not trials; their purpose is to decide whether there is enough evidence to warrant a trial at all.

[16 jurors must be present to constitute a quorum](#) and 12 votes are required to approve an indictment, although the vote of the jurors present need not be unanimous – another difference from a trial. The typical term of a federal grand jury is [18 months](#), with the possibility for extension by the district court in the venue where the grand jury is convened.

Grand jurors take an oath, administered by the Clerk of Court that [requires them](#) to "inquire diligently and objectively into all federal crimes" presented to them "and to conduct such inquiry without malice, fear, hatred or other emotion." The grand jury is supervised by the court and the matters it hears are largely controlled by DOJ prosecutors. However, the grand jury is not considered to be part of [either](#) the [executive or judicial branches](#).

Finally, grand jury proceedings are required by law [to be kept secret](#), meaning that no one, including grand jurors, attorneys for the government, and court reporters, may disclose a



“matter occurring before the grand jury” except in accordance with limited exceptions contained in [Federal Rule of Criminal Procedure 6\(e\)](#). This rule of secrecy also applies to the identities of the grand jurors. While a court or the government sometimes announces when charges have been declined, detailed information about what occurred inside a grand jury is legally permitted to be disclosed only by the target, witnesses, or court order.

## The grand jury is a centerpiece of the Bill of Rights

The first line of the Constitution’s [Fifth Amendment](#) provides that “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.” An [“infamous”](#) crime is a felony, which is an offense punishable by a prison sentence of more than one year. In the federal system, then, someone can be charged with a felony only after a grand jury has indicted them, unless they have waived their Fifth Amendment right.

“ No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

The right to indictment by a grand jury holds a central place in the overall structure of the U.S. Constitution, which the framers designed to keep government power – and especially executive power – from becoming, in their words, [tyrannical](#). James Madison, the principal author of the Bill of Rights, viewed the grand jury as a means of interposing the American people — not lawyers, legal professionals, or politicians, but laypeople — as a guardrail between the government’s law enforcement powers and the liberty of persons accused of crimes. He based this on experience, as grand juries were among the most democratic elements of British monarchical government, as well as a feature of Colonial governments. The denial of jury trial rights was [among the grievances against the king](#) listed in the Declaration of Independence. It is thus no surprise that Madison [included the grand jury right](#) in his first draft of the Bill of Rights presented to Congress in 1789, where it was accepted without debate or opposition.

The Supreme Court has since ratified the grand jury’s function as a check on prosecutorial power and bulwark against invasions of liberty. Justice James Wilson, of the first Supreme Court (and another of our constitutional founders), described the grand jury as the “great

channel of communication between those who make and administer the laws, and those for whom the laws are made and administered.”<sup>2</sup> And Justice Joseph Story deemed it “a great security to the citizens against vindictive prosecutions.”<sup>3</sup>

Over time, the Court has repeatedly validated that vision. As the Court has explained, “[The grand jury’s] 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.”<sup>4</sup> “In fact,” the Court wrote, “the whole theory of [the grand jury’s] function is that it belongs to no branch of the institutional Government, serving as a kind of buffer or referee between the Government and the people.”<sup>5</sup>

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<sup>2</sup> See 2 The Works of James Wilson 537 (Robert Green McCloskey ed., 1967).

<sup>3</sup> See 3 Joseph Story, Commentaries on the Constitution of the United States § 1779 (1833). *United States v. Filer*, 762 F. Supp. 3d 730, 742 (N.D. Ill. 2025).

<sup>4</sup> *United States v. Mandujano*, 425 U.S. 564, 571 (1976).

<sup>5</sup> *United States v. Williams*, 504 U.S. 36, 47 (1992).

# Grand Jurors' Powers and Responsibilities

Grand jurors have one overarching mandate and several accompanying powers and responsibilities:

- Grand jurors decide whether or not there is sufficient evidence — known as probable cause — to charge a felony criminal case.
- They assess the evidence the prosecutors present them and can accept or reject it as sufficient to make a decision.
- They can ask for more evidence if they feel they need it.
- They can question witnesses themselves.
- They can watch for and report potential prosecutorial misconduct.

## Grand jurors are responsible for ensuring the government meets the probable cause standard

In spite of the grand jury's constitutional and historical status as an independent body, it has been criticized as working in practice as an appendage of prosecutors, who present cases to grand juries with little to no outside supervision in a nonadversarial setting. This is the origin of the joke that a grand jury would "indict a ham sandwich" if asked to do so by prosecutors. And in a fully functional system where federal prosecutors strictly adhere to the standards in the DOJ's [Principles of Federal Prosecution](#), and therefore do not typically seek charges without sufficient evidence to do so, it makes sense that grand juries would approve most indictments.

But grand jurors are not members of the prosecution team and the legal standard they apply is not a mere formality.

As courts have made plain, "A grand jury cannot be all-in for the government, or all-in for the defendant."<sup>6</sup> "The purpose of a grand jury is to serve as a shield against unjust prosecutions, not as a sword to rubber-stamp criminal charges."<sup>7</sup> At the same time, grand jurors are not meant to serve as an obstacle to legitimate law enforcement. "The grand jury is designed to protect against *unjust* prosecutions" and "must do the work of returning an indictment when warranted. At the end of the day, a grand jury exists 'to provide a fair method for instituting criminal proceedings against persons believed to have committed crimes.'"<sup>8</sup>

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<sup>6</sup> *United States v. Filer*, 762 F. Supp. 3d 730, 743 (N.D. Ill. 2025).

<sup>7</sup> *Id.* at 742.

<sup>8</sup> *Id.* (quoting *Costello v. United States*, 350 U.S. 359, 362 (1956)) (emphasis in original).

The standard grand juries apply — probable cause — is derived from the Fourth Amendment’s [requirement](#) that “no warrants shall issue, but upon probable cause,” which has been extended by the Supreme Court to arrests and grand juries. And while certainly lower than the proof beyond a reasonable doubt required for a conviction at trial, the probable cause standard is an actual barrier to indicting a case that grand jurors should rigorously apply.

As the Court has defined it, “probable cause is a reasonable ground for belief of guilt.” This “means less than evidence which would justify condemnation or conviction” but “more than bare suspicion.” In sum, “[p]robable cause exists where the facts and circumstances” presented to the jurors based on “reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been” committed.<sup>9</sup>

## Grand jurors should rigorously scrutinize all evidence

As will be explained more fully below, a grand jury’s probable cause determination is almost always final. A grand jury’s decision not to charge a case cannot be reviewed by a court. And a grand jury’s determination that the evidence is sufficient to indict is only rarely reviewed.

Given the finality of grand jury determinations, grand jurors should take great care in scrutinizing the cases the government presents, which can be based on a wider range of evidence than a trial jury is allowed to hear. For example, unlike at a trial, the federal government is broadly permitted [to present hearsay evidence to a grand jury](#) rather than first-hand accounts. The way this usually works is through the testimony of a case agent (an FBI agent or other federal law enforcement officer), who summarizes evidence the government has gathered in its investigation, including statements from key witnesses.

## Grand jurors have the power to request additional witnesses and original documents

Grand jurors may but are not required to accept hearsay evidence or give automatic deference to a government summary witness. Indeed, grand jurors [have broad power](#) to ask the government to subpoena witnesses or other information and to present directly to the grand jury the evidence it has gathered. If the government declines to bring requested evidence before the grand jury, the grand jury is permitted to reject any charges presented, just as it is also permitted to vote to indict based on the evidence the government does present. The bottom line is that the grand jury is empowered to decide whether the evidence it has been presented is sufficient to indict and can ask the government for whatever evidence it feels is necessary to make a decision.

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<sup>9</sup> *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (footnote and internal quotations omitted).

## Grand jurors are empowered to question witnesses and evaluate the credibility of all testimony

Grand jurors are also [permitted to question](#) witnesses and prosecutors. As the grand jury's legal advisers and in accordance with their obligations to adhere to legal rules and standards, prosecutors may screen questions for such things as relevance to the investigation and to prevent witnesses from being exposed to information subject to secrecy requirements. They must also take care to protect privileged information. But grand jurors should not hesitate to seek clarification about factual information or the law as part of their mandate to find facts and apply them to the governing law.

Jurors have the exclusive role of determining the credibility of witnesses.<sup>10</sup> This applies to all witnesses the government calls to testify in a grand jury, including those who are employed by the government. While grand jurors have a duty to give fair consideration to cases the government brings before them, they are also required to decide whether the evidence the government presents – and the government's own testifying agents – withstands scrutiny.

In doing so, jurors [can assess](#) how well a given witness could see or hear the things they are describing, how well their testimony matches other objective evidence, such as video or audio recordings, their level of knowledge about matters on which they are offering testimony, the consistency of other statements they have made, and any biases they might have.

## Grand jurors can hold prosecutors to their role as advisors and report any overreach to the court

Jurors should also be aware of the role and responsibilities of the prosecutors and be prepared to speak up if prosecutors appear to be stepping outside their assigned boundary. Prosecutors are permitted to [present evidence](#) to the grand jury, but they [are not permitted](#) to express their own opinions about the evidence or the credibility of witnesses. They are also not permitted to testify about or discuss [specific facts](#) that have not been brought before the grand jury in the form of evidence, and are not permitted to listen to [or engage with jurors' deliberations](#).

Prosecutors are permitted to answer grand jurors' legal questions and instruct the grand jury on the law, as well as to summarize evidence that the jury has heard in relation to the legal elements the jury is considering. However, they are not permitted to [express](#) their own belief about the guilt or innocence of the subject or the strength of the evidence. Prosecutors are also [not permitted](#) to ask grand jurors to use a defendant's assertion of his or her privilege against self-incrimination against them. In other words, if a defendant decides not to testify, the grand jury cannot hold that decision against them in assessing the case and, indeed, prosecutors

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<sup>10</sup> See, e.g., *United States v. Scheffer*, 523 U.S. 303, 313 (1998) ("Determining the weight and credibility of witness testimony . . . has long been held to be the 'part of every case [that] belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men.'" (quoting *Aetna Life Ins. Co. v. Ward*, 140 U.S. 76, 88 (1891))).

should expressly instruct the grand jury that it cannot do so. Finally, prosecutors should [not mislead](#) the grand jury about the law or the evidence.

Grand jurors can report misconduct – whether it be by prosecutors, other grand jurors, or someone else – to the grand jury’s supervising judge via the foreperson while remaining mindful of the obligation to maintain grand jury secrecy. Grand jurors can also report directly to the supervisory judge in the unlikely event the foreperson is unable or unwilling to do so.

# The Consequences of Indictments

While grand jurors do not decide on a subject's ultimate guilt, an indictment carries serious consequences. This is so in spite of every defendant's right to a jury trial and the exacting prosecution burden to prove its case beyond a reasonable doubt.

## Indictments carry significant costs

Even if a defendant is acquitted following trial – or the case is dismissed in some other fashion – there are significant costs to those who are indicted. Defending against a criminal charge can be financially burdensome, cost the defendant their employment, damage their personal reputation, and create personal and family stress. Depending on the case, an indictment can be broadly chilling to entire classes of people, causing them to refrain from doing or saying things they are otherwise entitled to do and say. It is for this reason that former Attorney General Robert Jackson [once opined](#) on the grave dangers to democracy posed by prosecutors who abuse the government's law enforcement powers.

## Grand Jury indictments are rarely set aside

Because of the deference the law affords a grand jury's probable cause determination, it is extremely rare for criminal defendants to win pre-trial motions to dismiss an indictment outright. Courts generally view an "indictment 'fair upon its face,' and returned by a 'properly constituted grand jury,'" to be a conclusive determination of probable cause.<sup>11</sup> This means that courts almost never inquire into anything that occurs before a grand jury or the substance of its decisions. As the Supreme Court recently reiterated, "[t]he grand jury gets to say—without any review, oversight, or second-guessing—whether probable cause exists to think that a person committed a crime."<sup>12</sup>

Although the government's burden of proof to convince a trial jury to convict (beyond a reasonable doubt) is substantially higher than its burden before a grand jury (probable cause), the attendant harms of an innocent defendant going to trial in the hopes of either getting the case dismissed for error or persuading the jury that the government has not met its burden of proof are serious and substantial. Moreover, the legal standards for getting an indictment dismissed on the grounds the prosecutors acted out of vindictiveness or unconstitutional bias are extremely high.

For these reasons, it is imperative that grand jurors take their independence and their responsibility to be a check on government overreach seriously.

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<sup>11</sup> *Gerstein v. Pugh*, 420 U.S. 103, 117, n. 19 (1975) (quoting *Ex parte United States*, 287 U.S. 241, 250 (1932)).

<sup>12</sup> *Kaley v. United States*, 571 U.S. 320, 328 (2014).

# Conclusion

Serving on a grand jury and diligently carrying out the duties of a grand juror is one of the most important roles everyday citizens can play in enforcing the United States Constitution and safeguarding our democratic form of government. At a time when the executive branch is making a point of aggressively using its law enforcement powers against perceived political opponents and critics, this role is more important than ever. Indeed, holding the government to its obligation to charge cases only when the evidence supports doing so by closely scrutinizing evidence and the nature of the charges presented, as well as asking for more evidence when warranted, is nothing less than an enactment of the vision of the people who overthrew a king and founded our republic.





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