

By Mr. Morrissey of Boston, petition of Foster Furcolo for legislation to safeguard the rights of individuals in grand jury proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Six.

AN ACT SAFEGUARDING RIGHTS OF INDIVIDUALS IN GRAND JURY PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 277 of the General Laws is hereby amended by in-
2 serting after section 5 the following section:—

3 *Section 5A.* Protection of individual rights. At the com-
4 mencement of each term of a grand jury impanelled pursuant
5 to this chapter, the judge of the superior court presiding there-
6 over shall designate one or more members of the bar from that
7 county to act as observer during all proceedings before the
8 grand jury with the exception of its deliberations and votes.
9 The observer shall advise the grand jurors upon the legality
10 and admissibility of evidence sought to be introduced. He shall
11 advise the grand jurors on the propriety of questions asked and
12 the form of questions put to any witness. He shall not permit
13 any witness to be threatened or intimidated or deceived about
14 his rights by anyone representing the prosecution. He will in-
15 form the court of the validity of the refusal of any witness
16 to answer questions that would clearly be inadmissible in any
17 trial. He shall define the material elements of alleged crimes
18 to the grand jurors and answer any questions of law asked by
19 the grand jurors.

20 He shall observe the continuity of evidence introduced of a
21 particular offense or offenses alleged involving one or more
22 accused persons and shall report to the court if the introduc-
23 tion of said evidence is unduly delayed or interrupted by the
24 presentation of evidence involving other persons or crimes.

25 He shall use every precaution to insure that the prosecution
26 will not be permitted to deceive or mislead the grand jurors

27 by withholding vital evidence from them or making false and
28 misleading statements to them. If within a period of two
29 months before an election, the prosecution seeks an indictment
30 that will obviously have an important effect upon such elec-
31 tion, the observer may report such fact to the superior court
32 with a recommendation that such indictment be sealed and im-
33 pounded until after the election.

34 Once a witness has begun his testimony before the grand
35 jury, the observer shall inform the grand jurors and the supe-
36 rior court if the testimony of such witness is interrupted or con-
37 tinued by the prosecution in order to coach or threaten or other-
38 wise interview such witness before the testimony of that wit-
39 ness has been completed.

40 The observer shall advise the grand jury to vote on whether
41 or not to return a true bill before hearing evidence involving
42 other persons or crimes. While he shall not participate in the
43 deliberations or voting by the grand jurors, he shall advise
44 the grand jurors whether or not in his opinion the evidence is
45 sufficient upon which to base an indictment, and such opinion
46 shall be made an official part of the records of the grand jury.
47 In the event that the observer expresses the opinion that the
48 evidence is insufficient for even an indictment, then the pre-
49 siding judge of the superior court will pass upon the sufficiency
50 of the evidence before accepting any indictment.

51 In the event that a dispute arises between the observer and
52 the prosecuting official concerning the exercise of any of the
53 observer's duties enumerated above, such dispute shall be forth-
54 with referred by them to the justice of the superior court then
55 presiding at the term of the grand jury, who shall resolve such
56 dispute. The decision of such justice shall not be subject to
57 exception, appeal or review.

58 No person shall serve as observer longer than six months
59 or be appointed observer more often than once in any five-year
60 period. He merely observes, advises, informs and recommends
61 but neither the grand jury nor the court is bound to follow his
62 suggestions.