State judges should slow indictment train
The grand jury no longer stands guard over the constitutional rights of the accused

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The Greenville News story and editorial about the Greenville County grand jury failed to mention that the constitutional right to a fair grand jury presentment has vanished in Greenville County.

More than 12,000 "true bills" of indictment were returned by the grand jury in 2006. During that same period, the grand jury rejected, that is returned a "no bill," in only one case.

The 18 members of the Greenville County Grand Jury can't read 1,000 indictments in eight hours, let alone discuss the evidence in each case. Although grand jury "deliberations" are secret, common sense tells us that these numbers are too high. It is doubtful that a grand jury can seriously consider whether probable cause has been demonstrated in 100 cases a day.

How can these jurors distinguish between a simple assault and battery and assault and battery of a high and aggravated nature, or between simple possession of drugs and the intent to sell them with the pressure to churn out such high numbers of indictments? They can't, and they should not be asked to do it.

The practical consequence of allowing the grand jury to become the "prosecutor's plaything" as the South Carolina Supreme Court has warned us, is that defendants can be indicted on weak evidence or for the wrong offense. It is common for the more serious offense to appear in the indictment. This practice assists the state's plea bargaining efforts. Also, indictments are not expunged from a defendant's court record, even when they are later "dismissed" or a plea is entered to a lesser offense.

Add to these incredible numbers the usual procedure of having police officers who frequently appear before the grand jury with no firsthand information about individual cases as the sole grand jury witnesses, the grand jury's "historic function as a shield between the accused and abuse of the prosecutorial power of the State" has become a sham.

Prosecutors, not grand jurors, prepare the indictments and choose which witnesses should testify. Police officers, not firsthand witnesses, summarize the cases. Some officers couldn't answer a question about the case if grand jury members had time to ask one. And the indictments just keep on coming. Neither defendants nor their attorneys are present to intervene.

Grand jury indictments are not even necessary for the 90 percent of cases that end up as guilty pleas or dismissals. An indictment is only required for a trial, which in 2006 happened in about 135 cases. A grand jury presentment, like other constitutional rights (e.g. to challenging an unlawful search or confession) can be waived for a defendant to enter a guilty plea.

The large number of cases presented to the grand jury is a strategic decision by the prosecutor, not a constitutional mandate. As a result, there is a huge flood of presentments, and the cases that need thorough consideration receive a rubber stamp review.

The current grand jury procedure is not what the constitution envisioned. Everyone at the courthouse knows this. And although the state Supreme Court held in a Greenville grand jury case that "the length of time spent

deliberating a matter, even if it could be established, does not control the effectiveness of the deliberation," there were only 160 indictments being presented per session at that time (1980). Today the numbers are totally out of hand, and certainly the state Supreme Court would take a different view. In 1981, Chief Justice Lewis wrote, "It is our duty to give this constitutional provision meaning."

It is up to the circuit judges to start dismissing indictments and forcing prosecutors to slow down the indictment train. There currently is no incentive for a prosecutor to submit fewer cases. There are a lot of warrants out there to process.

In Greenville County, we have given up the grand jury's time-honored role as the protector of the accused. If fewer cases were presented to the grand jury for consideration, grand jurors would not feel as time pressured and could ask questions about the cases and do what the constitution requires. Their role as guardian would be preserved.

If the grand jury is outdated as some may argue, get rid of it. Replace it, for example, with a meaningful preliminary hearing procedure and give magistrates the power to end cases. But we should stop pretending that someone is standing guard over the accused when the grand jury is "considering" whether to send a defendant to trial at the rate of two indictments per minute.

In practical effect if someone is arrested, then the only step between that defendant and trial is the prosecutor's discretion. Our constitution entitles us to more protection than this.
