



## Spurned Juror Loses in Court, but His Efforts Lead to New D.C. Court Rule

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A former juror in Washington, D.C., recently lost a District Court ruling stemming from his dismissal from a grand jury panel in 2001, but his case appears to have brought about needed change in the jury system there.

Peter Atherton, a nuclear engineer, was scheduled to serve on the grand jury for 25 days, beginning April 9, 2001. Concerned that his fellow jurors were voting on cases without fully understanding the law, Atherton regularly questioned prosecutors during the grand jury process. After only two days on the grand jury, supervising Assistant U.S. Attorney Daniel Zachem entered the jury room where the jurors were deliberating, confiscated Atherton's notes, and told him to leave the room. Atherton claims that Zachem removed him from the grand jury without legal authority. Zachem responds that the removal was proper because Atherton was being disruptive to the proceedings.

Atherton brought suit in 2004 against Zachem and Suzanne Bailey-Jones, the official in the court's juror office who finalized Atherton's removal from the grand jury. Atherton claimed that they should have consulted with a judge before removing him from the panel and that only a judge has the power to end his term as a grand juror.

In dismissing his claim, U.S. District Judge Henry Kennedy, Jr. said that Atherton had not overcome the defendants' defense based on the doctrine of qualified immunity. To overcome an immunity defense, a plaintiff must show "that the defendant violated 'clearly established statutory or constitutional rights of which a reasonable person would have known,'" the judge wrote. Judge Kennedy said that serving on a grand jury is not a clearly established statutory or constitutional right, and even if it was, Atherton could not show that it was a right "of which a reasonable person would have known" since there were no policies or procedures in place at the time that set forth the procedure for removing a juror.

In response to Atherton's complaint, the court has revised its rules to require the chief judge to be consulted before any grand juror is removed from a panel. This rule strikes the appropriate balance between ensuring that the grand jury operates efficiently without undue disruption, and ensuring that grand jurors who voice legitimate concerns are not dismissed arbitrarily by a prosecutor trying to obtain an indictment. Although Atherton did not prevail in this instance, his efforts brought about the positive change he sought.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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