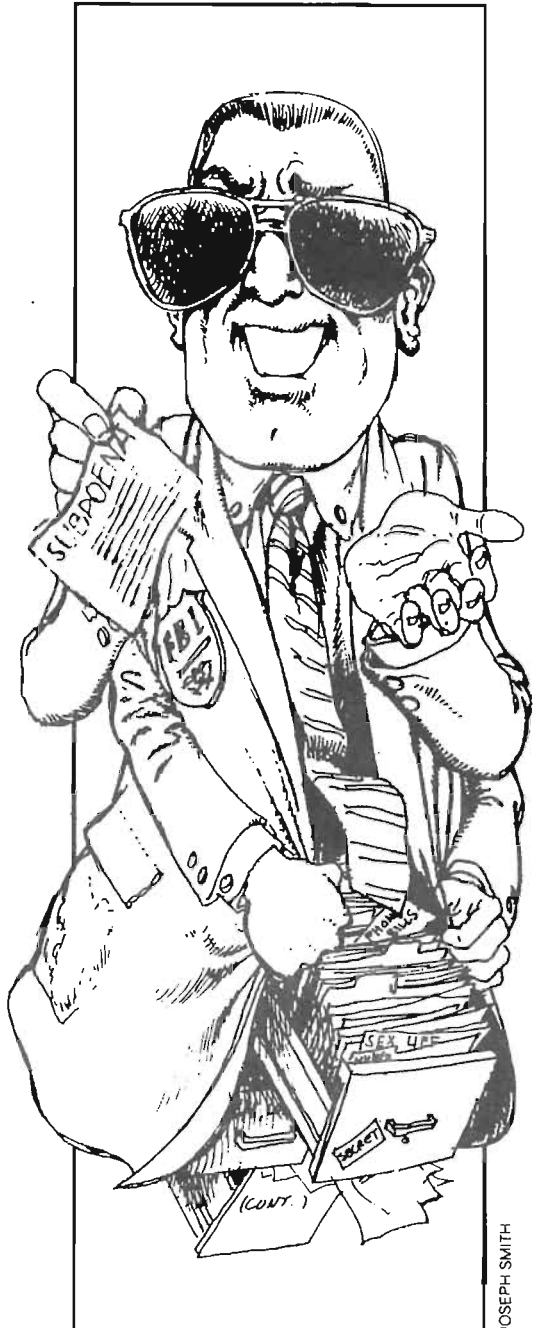


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YOUR RIGHTS AND THE GRAND JURY



JOSEPH SMITH

INTRODUCTION

The American grand jury system was developed as a protection against the abuse of power by corrupt and arbitrary government officials. Proceedings were secret to protect witnesses and potential defendants from the effects of unproven testimony and allegations. Before 1776, grand juries regularly prevented the British from prosecuting dissident colonists. It is this tradition that was preserved by the Bill of Rights provision that no one may be tried for a serious crime without a grand jury indictment.

Today the concept of the grand jury as a safeguard for the people has been all but discarded. Now it is the prosecutor (government) who orders the grand jury convened. He calls the witnesses, asks the questions and tells the jurors who to indict (Richard Nixon was not indicted because the grand jurors were told not to do so by special prosecutor Leon Jaworski). The secrecy of the proceedings, once a safeguard against abuse, now enables the government to cover up its disregard for basic fundamental rights.

For the past five years grand juries have been used by the government to get information it could not get in other ways. As more and more people realize that they do not have to talk to the FBI, the FBI has started to work closely with the prosecutors who control the federal grand jury system. People who exercise their rights and refuse to talk to the FBI are threatened with subpoenas compelling their appearance before the grand jury. Historically a grand jury was to determine if enough evidence existed to indict someone for a crime. Today they are used to obtain information for FBI files, track down fugitives and to gather evidence after an indictment has been returned.

Anyone can be called as a witness before a grand jury. It does not require that you have a connection to a crime. You could be called if you have ever joined a demonstration or a picket line; spoken out against the Vietnam War or the conditions under which poor and working Americans are forced to live; or are connected with any of the progressive movements that are growing in America today. People have been called to testify just because another witness mentioned his/her name.

Being forced to testify in front of a grand jury about yourself, family or friends, can be a terrifying experience. Indeed it is the hope of the government that this will intimidate you into cooperating. However, adequate preparation can temper these feelings of confusion and isolation; it will also help you know what to expect and how to react. **IT IS FOR THIS PURPOSE THIS BOOKLET HAS BEEN PREPARED. IT IS NO SUBSTITUTE FOR A LAWYERS ADVICE SHOULD YOU BE SUBPEONAED!!!** Even lawyers who are subpoenaed are represented and supported by other lawyers. There are many decisions to be made when facing a grand jury. You will need both legal and non legal support.

YOUR RIGHTS WITH THE FBI

- You do not have to talk to FBI agents (or any investigators).
- If they do not have a search warrant you do not have to let them in.
- *Anything* you say may be used against you or anyone else.
- Giving the FBI information may mean that you will be required to testify at a trial or before a grand jury giving the same information.
- Lying to the FBI is a federal crime.

POINTS TO REMEMBER

- FBI agents have a job to do, GET INFORMATION and they are highly skilled. You can't outwit them so don't try.
- They may pose as a census investigator or a friend of an old friend, or they may dress just like the rest of the people in your community.
- They may try to threaten or intimidate you by pretending to have information about you, "We know what you have been doing, but if you cooperate it will be all right". If you are concerned about this tell them you will talk to them with your lawyer present; then get a lawyer! It is very likely however that they don't have anything against you.
- They may threaten you with a grand jury subpoena if you don't give them information, but you may get one anyway (and even if you get one you might be able to fight it).

THE GRAND JURY TODAY

There are two types of grand juries, standing and special. A standing grand jury exists in federal courts for eighteen months. It is always available to approve or reject any indictments. A special grand jury is convened to investigate a particular area of alleged criminal activity and sits for 18 months. It can, however, have its term extended for another 18 months. Both function in the same way, and progressive people have been called to testify before both.

As a witness, your rights are limited. Even though you may face perjury, contempt or criminal charges, you are not entitled to know the nature of the investigation, or whether you are being investigated. You may have an attorney outside the room and you may consult with her/him after each question. You are not permitted to have an attorney in the jury room. Prosecutors often take advantage of this to belittle and badger witnesses in front of the grand jury and to try and intimidate them into talking. Such

what to do when **THE FBI** COMES

TALK, PUNK, OR
ELSE WE KNOW
YOU'RE GUILTY!



THEY MAY COME
ON TOUGH...

LNS

WE'RE HERE TO MAKE
SURE YOU'RE NOT
INVOLVED, OLD BUDDY.



THEY MAY COME
ON FRIENDLY...

HOW'S THAT CORN ON
YOUR LEFT BIG
TOE DOING, NICK?



OR AS IF THEY ALL
READY KNOW A LOT

THEY MAY PLAY
DUMB AND TEMPT
YOU TO TRY TO
OUTSMART THEM...



IT IS A FEDERAL
CRIME TO LIE TO THEM!

THERE IS ONLY
ONE SAFE, LEGAL
RESPONSE YOU
SHOULD MAKE:



GO AWAY- I
HAVE NOTHING
TO SAY TO YOU!

HAS BEEN MAKING VISITS
TO MANY PEOPLE'S HOMES.
THESE VISITS ARE AS
MUCH FOR GENERAL
PURPOSES OF INFORMA-
TION GATHERING AS
THEY ARE FOR APPRE-
HENDING THE FUGI-
TIVES. TALKING TO
THEM NOW WILL
ONLY MAKE THEIR
JOB OF INTIMIDATION +
REPRESSION EASIER IN
THE FUTURE!

☆NOTE☆

THEY MAY TELL
YOU TO CALL YOUR
LAWYER- THIS IS A
TRICK- IGNORE THEM!
DO NOT LET THEM
IN YOUR HOUSE IF
THEY DON'T HAVE A
WARRENT. THEY
MAY REMAIN ON
YOUR DOORSTEP OR
FOUND ON YOUR
WINDOWS... IGNORE
THEM. THEY HAVE
MORE TRICKS THAT
AREN'T LISTED HERE-
FOLLOW THE ONE
BASIC RULE:

DON'T TALK
TO THE
F.B.I. !!

remarks are often removed from the record if a record is kept at all. Since there are no guidelines as to what a prosecutor can or cannot ask, and there is no judge or defense attorney to object to irrelevant questions the prosecutors are free to ask personal questions which delve into your personal and political life.

From the information obtained from witnesses, the government attorney will give leads to investigative agents and feed it into the data banks of the interdivisional intelligence unit of the Justice Department. A secrecy rule is imposed on everyone in the grand jury room except the witness, however in the past the government attorneys have leaked information to the press about grand jury testimony.

BEING SUBPEONAED

If called before a grand jury you will be served with a subpoena, which is a court order telling when and where to appear. There is no minimum notice necessary so you might be ordered to appear the same day you receive the subpoena. You might also be served with a subpoena duces tecum which would require you to bring certain named documents or objects with you.

You must be handed the subpoena personally by a government employee. Once you are aware of its existence it is a federal crime to cross state lines to avoid service of a subpoena. The government must prove you knew of the subpoena when you left. You may not ignore the subpoena, if you do a warrant will probably be issued for your arrest.

The government also has the power to subpoena you to another city away from your family, friends and job, however the government must pay your expenses and a per diem.

Once subpoenaed, the best thing to do is contact a lawyer through the National Lawyers Guild, ACLU or through a progressive group in your community. A lawyer can help you make strategic decisions as well as determine the focus and scope of the grand jury. Other progressive organizations may also be able to provide personal and/or financial help. Both of these will prove useful if not essential in facing a grand jury.

FIGHTING THE SUBPEONA

The legal strategy generally used by progressive or movement groups against grand juries is to assert as forcefully as possible, every legal right the witness has. In the short run, such resistance may cause the government to dismiss the subpoena as being too much trouble. Sometimes the court may dismiss it in the face of legal arguments. In the long run, resistance on the parts of large numbers of people, who consistently raise the issue of repressiveness of the grand jury system, may encourage courageous judges

to rule against the government.

The first challenge to be made is a motion to quash (throw out) the subpoena, on such grounds as, improper issuance of the subpoena, lack of jurisdiction of the court over the person or the records subpoenaed, illegal electronic surveillance, and abuse of the grand jury power through its issuance.

In the case of a subpoena duces tecum, you may also raise the issues that the documents or objects are not accurately described, the demand is unreasonable, you are not the actual or proper custodian of the things demanded, or the articles were previously taken or discovered by illegal means and then returned.

A motion to quash must be made before you testify. If you do not have much time, discuss strategic possibilities with a lawyer. If you cannot find a lawyer before you testify, appear and refuse to answer any questions until you speak to one.



PREPARING FOR THE GRAND JURY

It is wise to prepare yourself for an unpleasant experience. Once you begin asserting your rights, you will most likely meet with some hostility from the prosecutor. Your lawyer should attempt to find out ahead of time if you are a potential defendant. If, by chance you do find you are, you and your lawyer should try to have you released from testifying on the grounds that taking the fifth will make you look guilty in the eyes of the jurors.

Take a pen and paper with you so that you can write down everything that happens, as that will be your only record. You should write down each question so that you can go out and discuss it with your lawyer before answering. This is very important, since answering one question no matter

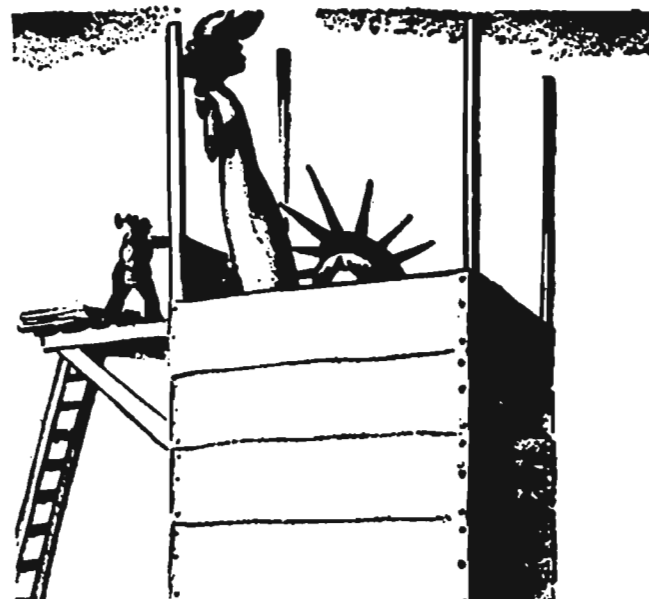
how innocuous sounding, means that you cannot refuse to answer any other question that develops from that one. The prosecutor will probably harass you when you ask to speak to your lawyer, but be firm and don't let him/her intimidate you. Also, write down everything she/he says to you.

REFUSING TO TESTIFY—FIFTH AMENDMENT

One of the most common grounds for refusing to testify is the fifth amendment right not to implicate yourself in possible criminal activity by your own testimony. You probably will not be told of this right, so the best tactic is to refuse to testify early, generally after stating only your name, address and age. You must refuse after each question asked and it is best to state your legal reason(s) for refusing.

The prosecutor may challenge your right, or ask what you have to hide. It does no good to argue. Attempting to further explain why you don't want to answer may result in you waiving (giving up) your right. Stay calm and say nothing more.

You may lose your right to refuse to testify if you are granted immunity. The type of immunity which is given now is called "use" immunity, which means the government may not use your testimony or leads from it against you in a criminal prosecution but may use evidence obtained independently. Thus your fifth amendment privilege is effectively denied, as you can be forced to testify and still be prosecuted.



Fitzpatrick in the St. Louis Post-Dispatch
All in the name of security

OTHER GROUND FOR REFUSING TO TESTIFY

There are other constitutional grounds for refusing to testify but it is rare that a judge will listen to a defendant's argument based on these.

CONSTITUTIONAL "GUARANTEE" GRAND JURY PROCEDURE

First Amendment—freedom of speech, association and press.

Sample Question—"Name every meeting you've attended in the past year, state who was there and what was discussed."

Fourth Amendment—protection against illegal search and seizure.

Illegally seized evidence which would be inadmissible in a court is admissible in a grand jury proceeding. Grand jury testimony about this illegal evidence may later be introduced into a trial.

Sixth Amendment—right to counsel.

Sample Questions—"Mr. Popkin, was this answer prepared by your lawyer? Why do you need to see your lawyer?"

Ninth Amendment—any rights not enumerated in the other amendments, notably privacy.

See above.

In addition to the above constitutional grounds, you may be able to refuse to answer certain questions:

- because they go beyond the scope and jurisdiction of the grand jury investigation. This is not likely to succeed as judges have been reluctant to limit the scope of grand juries.
- because of the composition of the grand jury (who jurors are and how they are selected).
- because they probe into relationships that enjoy legal protection, such as attorney-client privilege, wife-husband privilege (sexist), priest-penitent privilege, physician-patient privilege.

Court challenges to grand jury proceedings are plentiful, rulings are being handed down all the time and vary among federal districts. It is essential to have the assistance of a lawyer knowledgeable in the specific field of grand jury law.

WHAT HAPPENS WHEN YOU REFUSE TO TESTIFY?

If you refuse to testify on legal grounds, you will be brought before a judge for a hearing on the legal validity of your objections. If the judge rules against you, you will have no grounds for refusing to testify and she/he will order you to testify or go to jail for contempt of court. You will be taken before the grand jury again and if you still refuse to testify then a contempt hearing will be held. After you lose at the contempt hearing your lawyer should inform the court that you intend to appeal and ask that you be granted bail pending a final decision.

If the appeal is denied, you then have no right to refuse to testify and you cannot put off your decision any longer. If you decide not to testify and to spend time in jail your sentence will be for the life of the grand jury (up to 18 months). It is possible that when the grand jury's term expires you will be subpoenaed again and the whole process will begin again.

TO TESTIFY OR NOT TO TESTIFY

When you are faced with the reality of testifying or going to jail you may want to consider whether or not you will testify. When making this decision the following should be kept in mind.

- You may lose your fifth amendment rights by answering simple questions;
- answering simple questions can give the government far more information than you think it will (for example saying that you saw someone at a particular place can be incriminating);
- you may do serious harm to friends and other good people;
- your testimony doesn't necessarily mean that you won't ultimately be indicted anyway.



- by answering the questions asked of you, you may be aiding the prosecutor in his abuse of the grand jury system.

Do not try to solve your dilemma by giving false information. Perjury is a felony punishable by up to five years in prison.

The practice of non-collaboration with grand juries is often necessary to combat increasing political repression in this country. Many people investigated these days are not very radical but oppose the government in power and desire such things as civil rights, peace, and a decent standard of living for everyone. If people follow a policy of submission to grand jury inquisitions, their use will spread to ever larger segments of the population. Individual action alone however will not stop this form of repression, but mass non-collaboration will help and that begins with individuals.

Jail is painful and difficult, but the choice is not necessarily jail or liberty. It may be jail now or later. Many of those who have refused to collaborate in the past have had a great deal of support, legal and non-legal, from people in the community.

The writers of this booklet do not purport to lay down hard and fast rules about how to deal with a grand jury that is focusing on political matters. Some investigations may be narrow in scope, examining only a particular matter. Prosecutors vary in how they conduct their grand juries and in their personal integrity. We are not making any advance judgments about any individuals who may choose to cooperate rather than face extended imprisonment. Moreover, we know that at times the goal of the government is to jail people who could not be convicted at trial.

The point of this booklet, is, however, to allow you to understand the frightening, unregulated, open ended nature of the contemporary grand jury. What we have presented is based on years of experience with political grand juries (over 100 were used by the Internal Security Division of the Nixon Department of Justice) and the FBI. Our role is to help you learn from the experience of others, and to help you face yours with the best possible legal and political support you can get.

MOUNTING AN OFFENSIVE CAMPAIGN . . .

The action of courageous citizens in refusing to collaborate with grand jury inquisitions, will not by itself permanently terminate the use of grand juries by the government as political weapons. Many people thought that the coming of Watergate would put an end to the political grand juries of the early 1970's—since the politics of the Nixon-Mitchell (Attorney General)-Maridan (Asst. Attorney General in charge of the Internal Security Division) gang had been exposed, and the culprits driven from power.

But as the crisis of Watergate receded, widespread misuse of the grand jury has returned—all over the country. As a Federal prosecutor recently stated, "virtually the only restraint imposed on the prosecutor's use of the

grand jury are those which he imposes on himself as a matter of his personal and professional morality or which are imposed on him as a matter of policy by his superiors."

In the grand jury, the government has a powerful weapon made increasingly powerful by the Courts. As this same prosecutor cited above notes, "The Supreme Court, in an almost unbroken line of decisions, tells us that the powers of the federal grand jury are practically limitless, and concomitantly without limit are the powers of the federal prosecutor." **THERE IS EVERY REASON TO EXPECT THAT AS LONG AS THE GOVERNMENT CAN MISUSE THE GRAND JURY, IT WILL DO SO.**

The Coalition to End Grand Jury Abuse understands this, and it is our mission to mount a national campaign of education and organizing to return the federal grand jury to its intended role as protector of individual rights. Founded in the Spring of 1973, the Coalition now consists of eleven national civil liberties, legal, religious and other organizations, our work is based on the assumption that only when the American people *demand* an end to grand jury inquisitions and *demand* that reforms be enacted will that institution, created to serve the people, be reclaimed.

This booklet is being printed in the summer of 1975. To date, four grand jury reform bills have been introduced in the 94th Congress, all in the House of Representatives. The most far reaching of which, H.R.2986 was introduced by Rep. John Conyers, Jr. and 24 co-sponsors. Senators and Representatives must be pressured to support this and other legislation aimed at returning the grand jury to its intended role. In addition, various proposed Constitutional amendments that would tamper with the Bill of Rights (a dangerous precedent) and still allow grand jury inquisitions to continue, must be firmly opposed.

Please do write to your own representatives in Washington and to the Coalition for up-to-date legislative information and other materials, and keep us informed of grand jury developments in your area.

We cannot stress enough that just as it is important for local communities to unite internally against political grand juries, so must people across the country link up and make sure that the 94th Congress institutes the basic reforms that would prevent future frightening, sometimes devastating grand jury attacks on people working for change. **WITHOUT YOUR PRESSURE, THE CONGRESS WILL NOT ACT.**

For more information, contact:

Coalition to End Grand Jury Abuse

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MEMBER ORGANIZATIONS

- American Civil Liberties Union
- American Friends Service Committee
- Church of the Brethren
- Jesuit Ministries Conference
- National Conference of Black Lawyers
- National Emergency Civil Liberties Committee
- National Lawyers Guild
- National Student Association
- Southern Christian Leadership Conference
- Unitarian Universalist Association
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- Womens Division, United Methodists Board of Global Ministries
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