

Grand Jury Resistance Project

A Few Facts About Grand Juries

What is a Grand Jury?

In the federal legal system, the grand jury is used to decide whether someone should be charged (“indicted”) for a serious crime. The grand jury hears evidence presented by the prosecutor: the U.S. Attorney. The grand jury uses subpoenas to gather this evidence. It can subpoena documents, physical evidence, and witnesses to testify. The “special” federal grand jury, created in 1970, can be used to investigate “possible” organized criminal activity rather than a specific crime.

How is a Grand Jury Different Than a Trial Jury?

Unlike the “petit” jury, which is used to determine guilt in a trial, a grand jury consists of 16 to 23 jurors who are not screened for bias. The purpose of the grand jury is not to determine guilt or innocence, but to decide whether there is probable cause to prosecute someone for a felony crime. The grand jury operates in secrecy and the normal rules of evidence do not apply. The prosecutor runs the proceedings and no judge is present. Defense lawyers are not allowed to be present in the grand jury room and cannot present evidence, but may be available outside the room to consult with witnesses. The prosecutor and the grand jury members may not reveal what occurred in the grand jury room and witnesses cannot obtain a transcript of their testimony.

How Has the Grand Jury Been Misused?

Because of their broad subpoena powers and secretive nature, grand juries have been used by the government to gather information on political movements and to disrupt those movements by causing fear and mistrust.

The grand jury lends itself to being used for improper political investigation due in part to the prosecutor’s ability to question witnesses without regard for rules that prohibit irrelevant, unreliable or unlawfully obtained evidence. Those called before the grand jury may be compelled to answer any question, even those relating to lawful personal and political activities. That information has been used by the government as a basis to conduct further surveillance and disruption of political dissent.

When used against political movements, the grand jury causes fear and mistrust because persons who refuse to answer questions about their First Amendment political activities, friends and associates may be jailed for the life of the grand jury: up to 18 months. If a witness asserts her Fifth Amendment right to remain silent, she may be forced to accept immunity or go to jail for contempt. Even a witness who attempts to cooperate can be jailed if minor inconsistencies are found in her testimony. Such a perjury charge may stand even when the grand jury fails to hand down any indictment for what it was ostensibly investigating.