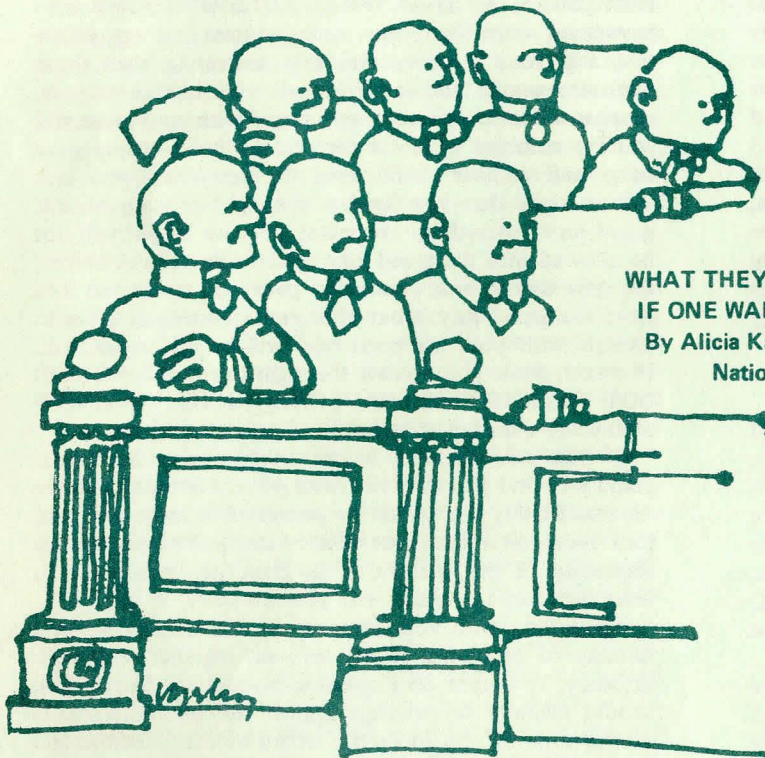


# Radical's Guide to Grand Juries



WHAT THEY ARE AND WHAT TO DO  
IF ONE WANTS TO SPEAK TO YOU

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As they originally evolved, grand juries were to protect Englishmen against the Monarch. But just as lots of things have changed since then, so too have grand juries. Today, the grand jury is an arm of the DA's office and a "star chamber." No matter what the purpose of the investigation, even the killing of two black students at Jackson State or four students at Kent State, it is not a friendly grouping of people whose only purpose is to find the truth and thereby determine whether any laws were broken. Often, a grand jury will be empaneled in an attempt to find or augment information which state or federal agents have been unable to learn. While it may very well be that you really don't know anything or *think* you don't know anything—that's very rarely the case. Grand juries can be on fishing expeditions, with a subpoena as the "bait" and whatever you tell them is the "catch." Actions which you may view as totally innocent, or more often, *irrelevant* may—when pieced together—provide just the necessary evidence needed to prosecute you, a brother or sister.

## Types of grand juries

Grand juries exist on both the state and federal levels. Federal grand juries can investigate to determine whether

any federal laws have been broken—for example conspiracy to cross state lines to incite riot. Similarly, state grand juries investigate to find infractions of state laws such as possession of marijuana. On both levels, grand juries are chosen on a regular basis to consider whatever business the government has to put before them. (For instance, in New York anyone charged with a felony must be indicted by a grand jury after they have considered the evidence against the person(s) accused.) On the federal level, special grand juries may be appointed, over and above the regular federal grand juries, to look into violations of specific laws. There are other differences and they will be pointed out later.

## Who serves on grand juries

Although there have recently been some challenges to the composition of grand juries (state and federal) they are still generally composed of white, wealthy America. On both the New York State and federal level, grand jurors are usually picked from voter registration lists. However, law suits that have challenged the grand jury selection system have shown that the poor, the young, women and the third world population are systematically excluded from serving. On the federal level, service is compulsory. On the New



York State level, service is voluntary. To give you an idea of how grand jurors are chosen—this is how it's done in New York. From the voter registration list, the county clerk selects those he will write to, asking them to serve on the grand jury. So far, he generally only invites those over thirty-five. If a person receiving such a letter decides to volunteer to serve, she/he is then asked to a personal interview. After the interview a credit check is run on the individual. The county clerk then decides whether or not to accept the volunteer. Other pools of volunteers for service come either from recommendations of former grand jurors or from large corporations (e.g., Con Edison, etc.) who regularly ask their junior executives to volunteer for service. Legally, anyone who is a resident of New York, over 21 years of age and competent may volunteer to serve on a New York State grand jury. To volunteer one only need to go to the jury room, main floor of 60 Centre Street and tell the clerk that they wish to volunteer for grand jury service.

### Subpoenas

You are summoned before either a federal or state grand jury by a subpoena. These subpoenas come in two varieties. Usually a subpoena will compel only your presence before the grand jury at a specific time and place, but some subpoenas (*subpoena duces tecum*) will compel your presence along with certain records (financial books, minutes, letters, etc.). **YOU MUST BE SERVED PERSONALLY** with either type of subpoena. It can't be left with a friend, relative or spouse to pass on.

If you are personally served with a subpoena the *very first thing to do* is to **CONTACT A LAWYER**. Although you do not have a great many options open to you once served, there are some and these should be calmly and carefully discussed.

### Challenging a subpoena

After discussion you and your attorney may decide to challenge the issuance of the subpoena, or in legal jargon, make a motion to quash. There are very few effective grounds upon which you may challenge a subpoena. The most important one, however, is lack of proper service, or in the case of subpoena duces tecum, that the papers requested are either not in existence or not in your possession or control. The judge hearing the motion will decide whether or not to grant it. If he rules in your favor, you won't have to appear. If he doesn't grant your motion, you'll have to appear.

### Your general rights

Once before the grand jury, your basic right is your fifth amendment privilege against self-incrimination. Under both federal and state law you cannot be compelled to be a witness against yourself—to give evidence that incriminates or tends to incriminate you. There is a great body of law built up around the use and misuse of the "privilege." In some instances you might legitimately claim your privilege when asked the very first question—specifically, your name. When to invoke the privilege and when not to is complicated. It is complicated by the fact that you may, by answering a certain question, even though the answer to that particular question does not incriminate or tend to incriminate you, waive your right to claim the privilege on

other questions in the same general area because by answering you have "opened the door" to that line of questioning. For instance, you may be asked if you know John Doe. If you answer and the answer is yes, you may then be asked when you saw him last. Suppose the answer to that second question is the night he bought some grass from you. A **GOOD GENERAL RULE OF THUMB** is to answer *no more* than your name, address and age, unless you and your attorney feel that answering even those questions would tend to incriminate you. In this instance, suppose a homicide victim were found with your name and address scribbled in blood next to the body—giving your name and address would tend to incriminate you. A second right that you have is the right of counsel—but grand jury proceedings are secret, so your lawyer will not be allowed into the grand jury room with you. Therefore, the only way to avail yourself of your right to counsel is to leave the grand jury room after each question in order to consult with your attorney, who will be out in the hall. However, while you do have this right to counsel, **YOU DO NOT DEFINITELY HAVE THE RIGHT TO LEAVE** after every question. (Catch-22.)

If you are appearing before either a state or federal grand jury and you have *not been granted immunity* (to be discussed later) you *should* be permitted to leave the grand jury room after each question is asked. You do this by requesting of the foreman of the grand jury permission to leave the room to consult with your attorney.

Consulting with your attorney in this fashion serves a number of functions. It enables you, together with your attorney, to decide on a question-by-question basis if you should claim your privilege against self-incrimination. It enables both of you to keep a record of the questions and your answers. (It is only under very unusual circumstances that transcripts will be supplied.) And, the break will probably be a welcome breather. As indicated before, though, the government's attorney may try to intimidate you by attempting to dissuade you from leaving after every question and since the right to counsel between every question is vague, you and your attorney will have to decide whether you should be the one to test the law.

Once immunity is granted, things change somewhat if you are before a federal grand jury. For in this case you will be provided with the exact questions before entering the grand jury room so there is usually no need to consult with your attorney between questions. The questions you are to be asked will be annexed to the government's papers requesting immunity. (This was the procedure before the passage of the Organized Crime Control Act of October 15, 1970. It may be changed and your attorney will be able to check it out.)

In New York State proceedings, a grant of immunity does not change the need to consult between questions, for neither you nor your attorney will be given the opportunity to see the questions beforehand. Once immunity is granted, you will need more than ever to come out and confer between questions and answers. But again, this is not a right that has been definitively established.

### Invoking your privilege

Invoking your fifth amendment privilege is a fairly simple matter. All you need do is simply say: "I refuse to answer that question and invoke my privilege against



self-incrimination under the fifth amendment in that the answer may incriminate or tend to incriminate or degrade me." (It's a good idea to bring in a piece of paper on which that sentence is written.) BE CAREFUL, THOUGH—an astute government attorney's next question will be, "Why do you think answering that would incriminate you?" DON'T EXPLAIN. Just simply repeat the same sentence. Attempting to explain why you feel the question is incriminating will result in the waiving of your right to the privilege. No matter how sophisticated we may think we are, government attorneys are much more at home in the grand jury setting and have much more experience. Trying to "outfox" them will most likely result in having the tables turned on you. Ego trips aren't worth the price.

### Challenge to the privilege

There is a possibility that your use of the privilege will be challenged by the foreman of the grand jury. He may challenge you on the following grounds. The privilege was improperly or ambiguously invoked. The answer to the question could not possibly incriminate you. You waived your privilege by already having answered a question on the same subject. If this happens, you will then be taken before a judge. (Grand juries meet in rooms of court houses, but

T in official courtrooms. Judges do not sit in grand jury ms.) The judge hearing the motion will decide whether or not you misused your privilege. If he feels that you have, you will be ordered by the court to return to the grand jury room and respond to the question. You can still refuse to answer the question, but this refusal will result in your being brought back before the judge who will order you to answer the question in front of him. Or when the judge first rules against you, he may order you to answer the question in the open court room, and not order you back to the grand jury room. In either case, failure to respond will result in your being cited for contempt. What happens next will be discussed under the section entitled contempt.

### Immunity

Sometimes the government may feel that the knowledge you possess is, in the long run, worth more than a prosecution against you and may try to grant you immunity. ALL THAT IMMUNITY MEANS, generally, is that once immunity is conferred on you, the testimony you give cannot be used in a prosecution against you. This *does not mean* that you can't be prosecuted—all it means is that the evidence used against you cannot include the testimony you gave to the grand jury while under immunity. Immunity works differently from state to state and between state and federal inquiries.

In New York State, immunity cannot be granted until you have first claimed your privilege. Once you have claimed your privilege, though, the foreman of the grand jury may grant you immunity. He is authorized to do so by a general immunity statute which lists those crimes for which immunity may be granted. (Your lawyer will be able to tell you if the grand jury foreman could legally be able to grant you immunity.)

Federal immunity also could not be granted until you have first gone before a grand jury and claimed your privilege. However, the new Organized Crime Control Act contains a new general immunity statute and it is unclear under this new law whether you must first claim your

privilege before a grand jury, or whether an application for a grant of immunity may be made when the government feels it is "likely" that you will refuse to testify or provide other information on the basis of your privilege. In any event, federal immunity must be granted by a federal district judge upon a written application from a U.S. Attorney bearing the written approval of the Attorney General of the United States and under the old procedure, the questions you were asked and claimed your privilege to must be annexed.

You may be granted either one of two types of immunity—use or transactional. New York State immunity is transactional. So, let's say you bribed a cop and at the time you passed the bribe a third person saw you. If you were called before a New York State grand jury *that granted you immunity and in responding to a question*, admitted bribing a cop, you could not be prosecuted for bribery.

Federal immunity, under the new immunity law (contained in the Organized Crime Control Act), provides for use immunity. That means *under the same circumstances* described above, you *could be prosecuted* for bribery, because although they could not use your testimony, the third person who oversaw the act could be brought into court to testify against you. It is important to note, that in some instances, federal immunity may be transactional. (That is, like New York State.) The immunity portion of what we commonly refer to as the Rap Brown law (crossing state lines to incite riot) provides for transactional immunity and that portion of the law will not be repealed until October 15, 1974.

### Contempt

Grand juries do not have the power to punish; only courts (judges) have. As you have probably gathered by now, contempt is the power of punishment the court has over you for refusing to play their ball game. Failure to: (1) respond to a question, (2) produce records in response to a subpoena duces tecum, (3) answer a question after losing a challenge to your privilege or (4) answer a question after having been granted immunity, will all produce this result.

Before being cited for contempt—you will be directed by a judge to either produce whatever material you have failed to, or answer whatever question you were asked and refused to answer. When you fail to respond to the judge's direct order, the judge may then find your conduct contemptuous. If he does find that your conduct is contemptuous, he can hold you either in civil or criminal contempt. There is a very fine legal line between the two. Civil contempt tries to coerce you into cooperating, while criminal contempt is solely for the purpose of punishment.

If you are found to be in civil contempt, you can be held in jail either until (a) you purge your contemptuous conduct—that means cooperate and answer the question you have previously refused to, or (b) until the term of the grand jury before which you stood mute ends. Grand jury terms vary from state to state and between state and federal jurisdictions, but they can sit for as long as 18 months and perhaps under certain circumstances longer.

If you are held in criminal contempt, you will receive a fixed sentence from which there is no recourse other than appeal to a higher court. In other words, in civil contempt, you hold the keys to your release—all you need to do is



talk. Criminal contempt offers no such alternative. Criminal contempt sentences differ, depending upon whether you refuse to talk before or after immunity is granted and whether you are before, once again, a state or federal grand jury. It can be anywhere from a *few* days to, in New York, four years.

#### **Besides contempt**

There are two other crimes surrounding grand jury appearances that you can be tried and jailed for. One of them is perjury—that is, giving false testimony. Perjury sentences also differ between state and federal jurisdictions, but they can be as high as seven years in the case of New York.

The other crime, recently enacted by the new Organized Crime Control Act, makes crossing state lines to “knowingly” avoid service of a state grand jury subpoena

or to avoid contempt proceedings a federal crime punishable by a maximum of five years and/or \$5000.

#### **General approach**

Intelligence is a big business in the United States and sometimes those of us in the movement can inadvertently aid the effort. One good way for this to happen is to testify before grand juries. An initial approach to such an appearance should *always* be to say as little as possible and claim the fifth amendment privilege as often as possible. Of course, once your privilege has been challenged or a grant of immunity has been given (neither one need happen in any given case), and the threat of jail is imminent, decisions become harder. It is then up to you, your movement lawyers and perhaps other brothers and sisters you are close to, to evaluate the political-legal situation and come up with what you know to be the correct way to handle the problem. If all of us are serious about protecting each other against our enemies, you’ll no doubt make the right decision.

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