The Infoshop.org Guide To Federal Grand Jury Investigations

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This Guide presents a summary description of what a federal grand jury is, what to do if you get served with a grand jury subpoena, the Fifth Amendment right not to testify against oneself and how the government can compel you to testify by granting you immunity, what happens when you testify, and what a joint defense agreement is and how it can be useful to people who are being investigated. Many political activists have read "Know Your Rights" and "What To Do If The FBI Shows Up" pamphlets distributed by the National Lawyers Guild, the ACLU, and/or radical legal collectives, but most folks are not very familiar with the grand jury process. So, this Guide is designed to demystify that process a bit, and to offer some thoughts about how to protect your rights if you get drawn into a grand jury investigation.

This Guide is just a summary overview. A thorough discussion of grand jury investigations and related issues would fill up a tome the size of the New York City phone book. If you want to read more about grand juries than is presented in this Guide, there are countless law review articles and treatises and other materials available in well-stocked law libraries which go into a lot of detail about these issues. And, if you are under investigation then there's really no substitute for hiring a good attorney who has experience in dealing with federal grand juries.

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What Is A Grand Jury?

A federal grand jury is a group of between 16 and 23 citizens (not including alternate jurors) who are selected by a court in much the same way that jurors are selected for a trial jury (a trial jury is also known as a "petit jury"). However, unlike the jury in a criminal trial, a grand jury does not decide whether someone is guilty—instead, the grand jury's role in a criminal matter[1] is to investigate whether there is probable cause to find that a crime has been committed and if so, who probably committed it. If the grand jury finds probable cause that a person committed a federal crime, then the grand jury will return an indictment (in a nutshell, an indictment is the criminal charge that gets the trial process started and tells the defendant what crime or crimes she or he is accused of having committed).

In theory, a grand jury protects people against arbitrary or malicious prosecution by having other citizens, not just the government, decide whether to indict someone. In practice, however, only very rarely does a grand jury refuse to return an indictment of someone whom the prosecutor wants the grand jury to indict. Grand juries are really just a way for the government to go about conducting investigations and getting criminal cases underway.

A grand jury is, in effect, run not by the jury's foreperson but by the prosecutor, who is usually a government lawyer called an Assistant United States Attorney ("AUSA"). In some cases, the AUSA will work with a partner from the U.S. Attorney's Office, and/or from the Criminal Division of the Department of Justice (or "Main Justice"). If you get subpoenaed by a grand jury, you will know who is the AUSA in charge of the case and can contact him or her to discuss logistical issues because his or her name and phone number will be typed on the subpoena.

An AUSA in charge of a grand jury investigation often works with agents from other federal agencies such as the Federal Bureau of Investigation ("FBI"), who may conduct aspects of the overall investigation which don't involve the grand jury (such as surveilling people, tapping their telephones, digging through their garbage for evidence, and so forth). The FBI agents may testify before the grand jury about what they learned during their investigation. In addition to testimony from FBI agents and other witnesses, the grand jury may also receive other evidence presented by the AUSA, such as paper documents, videotapes, photographs, and so forth. All proceedings before a grand jury are recorded by a court reporter or a stenographer, and with a few exceptions, the grand jurors and the court reporter and the AUSA are supposed to keep all the evidence and the proceedings secret. See Federal Rules of Criminal Procedure, Rule 6(e). Witnesses, however, are not bound by this rule of

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[1] Federal grand juries investigate crimes and suspected crimes, not civil matters. Some state grand juries, such as those in California, may investigate civil matters. This Guide is only about federal grand juries.

secrecy and they can tell others about the questions that were asked of them.

A federal grand jury meets in a room in the federal courthouse, typically once per week. It is not very common for a federal grand jury to last for more than about 18 months, but sometimes their duration will be extended, and anyway an investigation can last a lot longer than that because the prosecutor can just continue the same investigation with a new grand jury.

What Should I Do About A Grand Jury Subpoena?

One of the ways a grand jury goes about conducting an investigation is by issuing subpoenas for evidence. A grand jury can issue a subpoena ***ad testificandum*** (*i.e.*, an order commanding that a witness appear before the grand jury to testify), or a subpoena ***duces tecum*** (i.e., an order commanding that a person give the grand jury the papers or objects described in the subpoena), or a subpoena can be both—an order commanding that a person both testify and produce documents or objects. To be effective, a subpoena must be served upon the person it's for, which is usually done by a marshal or an FBI agent.

Grand juries have an enormous amount of latitude in what they can demand with a subpoena. Forget about privacy—the general rule is that whatever a grand jury asks for, it can get (remember Monica Lewinsky's mom being forced to testify about her daughter's sexual activities?). There are some exceptions—for example, if some of the documents responsive to the subpoena are confidential correspondence between you and your lawyer, you can probably refuse to produce those documents by asserting a claim of attorney-client privilege, and generally you can't be forced to testify against your current spouse and your former spouse can insist that you not testify about anything that she or he told you confidentially when you were married (these are usually called "spousal" or "marital privileges")—but for the most part, the grand jury gets what it wants . . . or, more precisely, since the grand jury is basically a tool of the government, the government gets what it wants.[2] Sometimes people can successfully file motions to "quash" (or invalidate) a subpoena with the judge who nominally oversees the grand jury, but those motions are not granted very often. If you were served with a subpoena that you think is too vague in specifying what evidence is being demanded, rather than trying to get the subpoena quashed you might have your lawyer (if you have one) call the AUSA and ask for a more specific description of the documents or items being subpoenaed (and then to put that new, narrower description in writing in a latter to the AUSA to confirm your understanding of the scope of the subpoena). Usually if there's no urgent emergency, a subpoena will give you a few days or a week or more to gather and produce responsive documents and prepare for testifying. If it doesn't, the judge might quash the subpoena for being too unreasonable (Federal Rules of Criminal Procedure, Rule 17(c) allows the court to quash subpoenas which are excessively "burdensome or oppressive").

If you get a subpoena ***duces tecum*** and you have documents that are responsive to the subpoena, you should "Bates stamp" them for identification purposes and make a photocopied set before producing the originals to the grand jury. "Bates stamping" means attaching little stickers to each page (usually in a corner of the page where it doesn't cover up any text) and consecutively numbering them. That way, if the AUSA shows you about a particular document and asks you about it when you're testifying before the grand jury, you can make a note to yourself of the Bates number of the page that interests the AUSA so later on you'll know for sure which document it was. That can be very useful to other witnesses in preparing for their grand jury appearances, because you can give them copies of the documents so they'll be less likely to be surprised or caught with their pants down when they're being questioned. Also, if you withhold any responsive documents from the grand jury on ground of attorney-client or other legal privilege, the AUSA will want you to create a "privilege log" which identifies all the documents you withheld by author, date, subject matter (to the extent you can reveal that without waiving privilege), and the Bates number range of pages of the document.

It is important to comply with a subpoena ***duces tecum***. If you have evidence that it responsive to a subpoena and you try to throw it away or alter it or destroy it (or even if you just withhold it from the grand jury without a legitimate claim of legal privilege), you can end up getting convicted for obstruction of justice. Often, obstruction of justice has more serious consequences than the crime people were trying to cover up! However, you are perfectly within your rights to withhold evidence that is not described by a subpoena—if the grand jury didn't ask for it, you don't have to give it up. Sometimes it can be tricky to decide whether a particular document is responsive to a subpoena, but it's usually a good idea to err a bit on the side of being over-inclusive (especially if they're not incriminating papers) because you don't want a judge or a jury in an obstruction of justice trial second-guessing whether a document fits within the scope of the subpoena. If you can afford a lawyer, you should let her or him make any tough decisions as to whether a particular document is covered by the subpoena.

It is also important to comply with a subpoena ***ad testificandum***. When a subpoena says to show up at the grand jury at 11:00 a.m. next Tuesday, you need to be there Tuesday morning! However, if you're worried that the government might try to get you indicted, it is usually lawful to show up on Tuesday and then when the AUSA starts asking you questions, to tell the grand jury that you are asserting your Fifth Amendment right to be silent and not incriminate yourself (although it is better to notify the AUSA that you'll be "taking the Fifth" *before* your scheduled grand jury appearance). More about Fifth Amendment issues follows below.

What About The Fifth Amendment And Immunity?

If you get subpoenaed to testify before a grand jury, you should consider whether to invoke your Fifth Amendment right not to incriminate yourself. The Fifth Amendment to the U.S. Constitution is a very useful part of the Bill of Rights. It says, in

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[2] The Fifth Amendment right not to incriminate yourself has almost no relevance to your private papers, except perhaps for papers which the government compelled you to create. In rare circumstances, you might be able to rely on the Fifth Amendment where the very act of turning the papers over to the government would incriminate you, for example, by revealing the existence and authenticity of documents under your control. ***United States v. Doe***, 465 U.S. 605 (1984). That "***Doe*** immunity," however, is very limited in scope.

relevant part, that "No person . . . shall be compelled in any criminal case to be a witness against himself . . ." or herself. That's the "you have the right to remain silent" stuff that the cops are always saying on TV when they arrest people.[3]

It is important to keep in mind that you can say stuff that incriminates yourself even if you didn't commit any crime—prosecutors and FBI agents are very skilled at taking innocent statements and twisting their meanings all out of context, and otherwise misinterpreting seemingly harmless statements in ways that make you look guilty. There are countless people behind bars—some of whom are probably guilty, and some of whom are probably innocent—because they thought they could explain things to the cops in a way that would show them to be innocent, only to have their own words used against them in ways they never expected. Don't try to outsmart cops, FBI agents, or the prosecutor—they are trained to get incriminating statements out of people, and they are usually very good at it once they've got a person talking. Also, don't fall into the very common psychological trap of thinking that you should talk because you "have nothing to hide." If you decide to talk, it would be smart to do so only after thinking very hard about things, and only on the advice of your lawyer.

One important factor in your decision whether to talk or whether to "take the Fifth" is your status in the investigation. If you are a "target" (which means that the AUSA expects to probably ask the grand jury to indict you) or a "subject" (which means that the AUSA is thinking about asking the grand jury to indict you, but might not have enough evidence yet), in my opinion it would usually be foolish not to invoke your Fifth Amendment rights, although in some cases it might be a good idea. Even if your status is that of a mere witness, your status might change later on and you could regret having testified. The AUSA will usually (but not always) let you know your status if you ask. If not, assume you're a target or a subject.

You can't invoke your Fifth Amendment right by just not showing up in court as the subpoena orders you to do. Instead, you need to show up on time, appear before the grand jury, and then tell the grand jury that you're asserting your Fifth Amendment right not to incriminate yourself—or, even better yet, you should try to avoid making the AUSA angry at you by contacting the AUSA well in advance of your scheduled grand jury appearance and telling him or her that you'll be taking the Fifth, and then the prosecutor may excuse you from appearing before the grand jury (even if you call the prosecutor ahead of time, and she or he says not to waste the grand jury's time invoking your rights, you'll need to confirm that conversation in a written letter to the AUSA so that you won't get in trouble for not showing up before the grand jury . . . as surprising as it may be, some government agents have been known to be less than completely honest).

Even if you take the Fifth, the government can still compel you to testify. They get around the Fifth Amendment and compel you to talk by "immunizing" your testimony—that is, they guarantee you in writing that they won't use your testimony against you so that you no longer have any legal grounds for staying silent.

Just because you've been immunized, there is no guarantee that you won't get indicted anyway. The grant of immunity only means that they won't use your testimony against you—if, before you testified, the government already had enough evidence to get the grand jury to indict you, then you can get indicted on the basis of that other evidence. That's why this is called "use immunity"—you're only immunized against the government using your own testimony against you.[4] However, as a practical matter, it can often be difficult for the government to prove that all the evidence used in getting you indicted (and all the evidence used in getting you convicted at trial) came from sources other than your own testimony. That's the reason why Oliver North's Iran-Contra Scandal conviction was overturned—the prosecutors couldn't prove that his immunized testimony had nothing to do with his conviction.[5] So, usually folks who get immunized are safe—in that particular case, at least.

There is no constitutional right or other privilege not to incriminate your friends and comrades, so if you still refuse to testify after you've been granted immunity, they'll probably hit you with a hefty fine and/or throw you in jail for contempt of court. They can keep you in jail until you agree to talk, or for the rest of the grand jury's existence.[6] You might recall that during the "Whitewater" investigation, Susan McDougal refused to testify against her friend Bill Clinton, and she did 18 months in jail for contempt. When considering whether you are willing to go to jail for contempt to protect your friends and comrades, you might consider not just the moral and political implications of telling what you know, but also whether your testimony is likely to put your friends and comrades at risk—if it's exceedingly unlikely that the government can get any charges against anyone to "stick," then your friends and comrades will probably have no objection if you want to go ahead and testify rather than going to jail. On the other hand, if your friend or comrade is facing the prospect of doing a lot of years behind bars, then a year or so in jail for contempt might be what you need to do to show solidarity and basic human decency. One of the best

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[3] The so-called "right to remain silent" is not absolute: in some states, there are laws on the books which require you to either produce an identification card (such as a driver's license) or to state your name if the cops ask (some state laws also require that you state your address and explain what you're doing or where you're going). The U.S. Supreme Court recently held that the requirement to identify oneself does not violate the Fifth Amendment. ***Hiibel v. Sixth Judicial Court of Nevada***, 124 S. Ct. 2451 (2004). That might be one factor to keep in mind if you get arrested at a protest or something and you're considering jail solidarity tactics, because doing jail solidarity tactics might give the government an opportunity to add another misdemeanor charge to your case if you don't have any ID and you refuse to tell the cops your name.

[4] There is another type of immunity called "transactional immunity." If you're granted transactional immunity, you're protected from being prosecuted for any matter about which you testify, even if the government has other evidence apart from your testimony that it could use against you. However, because transactional immunity lets people go scot-free, prosecutors rarely give people transactional immunity unless the person has also agreed to a guilty plea. If the government wants you to testify before a grand jury and hasn't negotiated a plea deal of some sort, you're most likely to get use immunity.

[5] The key precedent on this issue is ***Kastigar v. United States***, 406 U.S. 441 (1972). Your lawyer should be knowledgeable about the ***Kastigar*** case, the Oliver North case, and other stuff that's relevant to immunity.

[6] Section 9-11.160 of the United States Attorneys' Manual says "While the Supreme Court in ***Shillitani v. United States***, 384 U.S. 364, 371 n. 8 (1963), appears to approve the reimposition of civil contempt sanctions in successive grand juries, it is the policy of the Department of Justice generally not to resubpoena a contumacious witness before successive grand juries for the purpose of instituting further contempt proceedings. Resubpoenaing a contumacious witness may be justified in certain circumstances, however …"

ways to get a pretty good idea of whether or not your testimony is likely to be damaging to other people is to enter into a "joint defense agreement" with other folks being investigated, so that you can all share information with each other and with each other's lawyers under a legal privilege (usually either attorney-client privilege and/or the privilege provided by the work product doctrine . . . your attorney can tell you about those privileges in detail) so that the government can't discover your communications about the case. More about joint defense agreements follows below.

You should remember that a grant of immunity is not a license to lie on the witness stand. The government can, and probably will, charge you with perjury and related offenses if they catch you in a lie. Also, prosecutors usually insist upon having in the immunity agreement some language along the lines of "your immunity depends upon your full and complete cooperation," so it's a good idea not to say anything which, although you think it "technically" not a lie, is going to be misleading.

What Happens When I Go To Testify Before The Grand Jury?

Often the AUSA running the investigation will want to conduct a non-testimonial interview with a witness a few hours before questioning you before the grand jury. The interview lets the AUSA figure out what your testimony is going to be, so that she or he isn't wasting the grand jury's time asking useless questions which won't further the investigation. There's probably not much reason to refuse an interview if you're going to testify anyway, and the interview will let you know most of the questions the prosecutor will ask you in your grand jury appearance so that you don't get flustered when a question surprises you. (However, sometimes a prosecutor will save a few questions to surprise you with during your sworn testimony.) In any event, you should take the interview seriously, for at least two reasons. One reason is that if your testimony before the grand jury doesn't match what you said during the interview, the AUSA will probably jump down your throat and accuse you of lying and will demand to know why you've changed your tune. Another, more important reason is that even when you're not under oath, it is a felony to make a factually false statement to someone whom you know is working for the federal government, or to falsely or trickily conceal a fact from such a person. See 18 U.S.C. § 1001. You can (and should) have your attorney with you for the interview. If the AUSA gets rude or hostile, your attorney can step up and insist that the prosecutor back off and treat you with respect.

When it's time for your grand jury appearance, you'll be on your own—your lawyer can be outside the room in the hall, but can't be there inside the room when you testify. Whenever you think you might need to seek your attorney's advice—for example, about how to best phrase your answer to a sensitive question, or about whether a question asks for information that is legally privileged such as an attorney-client communication or testimony about your spouse—you are allowed to leave the courtroom and speak with your lawyer in the hall. The prosecutor might complain that you're taking up too much of the grand jury's time, or insinuate that you're not being truthful and are using your lawyer to try to hide things from the grand jury, but don't let the AUSA intimidate you into giving up your rights. It might be a good idea to explain to the grand jurors that you are being honest but that you want to get your money's worth out of your expensive lawyer, and that you're intimidated by the whole grand jury process and you don't want to accidentally make a nervous mistake. Another benefit of leaving the room to talk to your lawyer is that it helps to break up the prosecutor's momentum. Some of them are pretty skilled at peppering witnesses with questions in a rhythm and in a tone of voice that makes witnesses feel intimidated and makes them vulnerable to answering questions without carefully choosing their words, and getting witnesses to agree that something is "maybe" when in fact the witness doesn't really think so. Prosecutors like to try to make witnesses feel guilty and feel like the prosecutor doesn't believe what they're saying (the AUSA might say in a sarcastic or threatening tone of voice "you know that you can be convicted of perjury for lying, don't you?"). Going out into the hall to talk to your lawyer can help you to minimize those psychological pressures and help to throw off the prosecutor's momentum.

One of the most important pieces of advice that your attorney will give you is "don't volunteer any information." What that means is that you shouldn't say anything that would give away any information that you weren't specifically asked about. Why should you do the government's investigation for the government?! Make the prosecutor ask for the information specifically. That sounds easy, but often it's not. After all, in normal conversation we naturally tend to try to be helpfully informative to the folks we're talking with, and we usually have a pretty good idea of what they're trying to "get at" with a question and we answer what we think they meant to ask, even if they didn't articulately and specifically ask for the info they want. But the normal rules of conversation don't apply when the government is trying to find a way to lock you and your comrades up. So, for example, if the AUSA asks you "were you at the Smash The State Collective house the night of Tuesday, July 27, 2004?" don't say "no, I left there in the afternoon." All you need to say is "no." Telling the government that you were there in the afternoon is volunteering information, because the AUSA only asked you about nighttime. Placing yourself at the house that afternoon could get you and/or your friends in the Smash The State Collective in a lot of unnecessary trouble! Your attorney will help you practice answering questions without volunteering any information.

It is very important that you take detailed notes about what goes on during your grand jury appearance. Your notes will be really valuable to you, your attorney, and other folks who are also under investigation—they will help all of you to analyze what specific types of stuff the government is interested in, what the government seems to think happened, and what information you gave to the government. Also, sometimes witnesses get flustered or confused during their testimony and accidentally say something that they later realize isn't 100% accurate; if you take good notes, then you can spot your mistakes later on, and if necessary you can contact the AUSA and explain that you need to clarify part of your testimony a little bit. Don't rely upon your memory—take detailed notes! Bring a notebook or a legal pad and a few pens, and write down—precisely, word-for-word—everything that is said to you and everything that you say. The AUSA will ask almost all of the questions, but one or more of the grand jurors may ask questions too. Make a note beside their questions indicating that it was a grand juror, not the prosecutor, who asked those particular questions . . . the grand jurors' questions might reveal stuff the AUSA didn't want to reveal about other evidence that's been presented to the grand jury, or about the government's suspicions or theory of the case. If you are shown documents that you or another person produced in response to a subpoena, jot down the Bates numbers on the documents and the specific words (if any) in the document that the AUSA asks you about. If you are shown

documents without Bates numbers, jot down as complete a description of the documents as you can manage—likewise for photographs or any other evidence you are shown. The prosecutor might complain that you are taking too much time writing everything down, and might ask you questions rapidly to try to make you take incomplete notes—but don't let that intimidate you; just keep taking as complete a set of notes as you can. If it feels appropriate, you might make a little joke to the grand jurors that you're taking notes to give to your lawyer to analyze and because as much as those greedy lawyers cost, you want the notes to be as detailed as possible to be sure you're getting your money's worth. Everyone likes to make fun of lawyers, so a little joke here and there at your attorney's expense can be a good way to lower the tension level in the courtroom.

What Is A Joint Defense Agreement, And Why Might I Want One?

A joint defense agreement is a device which allows for you and your lawyer to communicate confidentially with other folks being investigated and their lawyers, without waiving privilege. That means that folks who are "on the same side" can cooperate.

Generally, when you and your lawyer communicate confidentially for the purpose of having you get legal advice (which includes the majority of what you and your lawyer will discuss together), the courts won't let the government force you or your lawyer to reveal those communications—they are protected by the attorney-client privilege. The protection provided by that privilege furthers the policy of encouraging clients to be candid and open with their lawyers so that their lawyers can do a well-informed job of advising or representing them, without either the lawyer or the client having to worry that the government will discover what was said. However, the courts will only uphold the privilege to the extent that you keep the stuff confidential—if you go blabbing to your friends about what you told your lawyer and what your lawyer said in response, then the courts will let the government know the same stuff you told your friends. That's called "waiving" the privilege. Waiving attorney-client privilege (or marital privilege, or the work product doctrine privilege) is usually not a very smart thing to do.

With a joint defense agreement, you and other folks who are also being investigated can join together to cooperate in defending yourselves, and you can share sensitive information without waiving privilege. In a nutshell, a joint defense agreement says that you and the other folks and your lawyers all agree that you're at least partly "on the same team," and that for the team to work together for common goals such as not getting anyone indicted you all agree that sharing information or evidence with each other doesn't waive privilege, and you agree not to disclose to anyone the stuff that others share with you under the agreement. **Warning:** if you or another member of the joint defense team doesn't have a lawyer, sharing confidential information could be risky, especially if you don't have a formal joint defense agreement in writing.[7] So, even if you can't afford an attorney to represent you for the whole investigation, you should try to at least scrounge up a few hundred bucks to pay a lawyer to advise you about whether you should enter into a joint defense agreement with other folks.

Some lawyers, following local custom or just not wanting to leave a paper trail, will enter into a joint defense agreement with other folks' lawyers based only on an oral agreement and a handshake. Other lawyers will want to have very lengthy and detailed written agreements. If you hire an experienced criminal defense lawyer, he or she is likely to know what sort of agreement is appropriate for the jurisdiction where the investigation is taking place.

With a joint defense agreement in place, you and other folks can exchange copies of the documents you produced to the grand jury, copies of the notes that you took during your testimony before the grand jury, and any other information your attorneys think is appropriate to share. That stuff can be extremely helpful to you and your lawyers as you try to figure out exactly what the government is looking into, and it can be very helpful as you and other folks prepare for your grand jury appearances. The AUSA will know what all the grand jury witnesses have said in their testimony and what all the other evidence is, but if your lawyer only knows a fraction of the evidence that the government has, those big gaps in your knowledge puts you at a real disadvantage. You can never know for certain exactly what the government knows, but with a joint defense agreement at least you can find out what other important folks on your side have to say, and that can really help you and your lawyer figure out what's the best strategy for how to proceed. Another benefit of having a joint defense agreement is that the lawyers involved can share resources and divide up the workload . . . for example, Tom's attorney can do most of the legal work on the alleged liberation of the minks from the fur industry farm, and Maria's attorney can do the bulk of the work on the alleged torching of the SUVs at the dealership, and that will free up more of your lawyer's time to focus upon the alleged smashing up of the Starbucks during the protest.

There are potential downsides of a joint defense agreement. For one thing, you can't defend yourself by using the really juicy information that was revealed to you under the agreement, even if you might have later learned that information on your own—because you agreed not to disclose anything that the other folks shared with you under the terms of the agreement. Another downside is that joint defense agreements can give you and your lawyer a false sense of confidence that you know most of what you need to know. In fact, it is common for folks to withhold some information from other members of the joint defense team—information that could end up blindsiding you later on, especially if another defendant makes a deal with the government. And there are other potential drawbacks of joint defense agreements which your lawyer can explain to you . . . but most criminal defense attorneys will usually advise you that the benefits of a joint defense agreement outweigh the risks.

Concluding Remarks

Grand jury investigations can be really intimidating—even downright scary as hell. It is natural to feel a bit worn down by the stress and strain caused by a grand jury investigation. One of the best things you can do to get through the process is to remember that many grand jury investigations are just "fishing expeditions" which never uncover any crimes and never result in any indictments. Try to keep your spirits high, and remind yourself that if your political activism has attracted the attention of The Powers That Be, then you're probably doing something right!

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[7] Some courts have ruled that communications between joint defendants in the absence of a formal agreement and without the knowledge of their legal counsel are not privileged. ***See, e.g., United States v. Gotti***, 771 F. Supp. 535 (E.D.N.Y. 1991).