

GRAND JURIES



CIVIL LIBERTIES DEFENSE CENTER



Civil Liberties Defense Center

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What is the purpose of a federal grand jury?

- Only a grand jury can charge a person with a federal felony by issuing an *indictment*.**
- The purpose of the grand jury is not to determine guilt or innocence, but to decide whether *probable cause* exists to prosecute someone for a felony crime.**
- Grand juries may also investigate fugitives.**

Grand Jury Secrecy

Grand jury proceedings are secret. Historically, courts enforced secrecy to protect the reputation of the accused. However, in recent decades government has used grand jury secrecy to conceal information gathering on dissident communities.

An important check to this secrecy is that a subpoenaed witness is completely free to disclose any information that he or she wishes about the investigation or questioning that took place.

Grand Jurors

- A grand jury is composed of 16 to 23 citizens selected at random from DMV, voting, property tax, and county registrar records of non-felon citizens.**
- Though a grand jury requires 16 citizen jurors for impanelment, a grand jury needs only 12 jurors to issue an indictment.**
- Grand jurors may ask the witness questions.**

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Regular Grand Juries

- **Regular grand juries are impaneled to investigate specific crimes (e.g. an arson) that occurred in the past.**
- **These grand juries are convened for 18 months with the possibility of an additional 6-month extension.**

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“Special” Grand Juries

- **“Special” grand juries are impaneled to investigate organized crime and its *possible* criminal activity.**
- **Only special grand juries can investigate future criminal activity.**
- **A federal judge can convene a special grand jury for 18 months, but may extend it for another 18 months.**

Subpoenas

- ***subpoena duces tecum***
 - **Compels the production of physical evidence to the grand jury (e.g. hair, fingerprint or handwriting samples, documents, photos, test results, video)**
- ***subpoena ad testificandum***
 - **Compels the testimony of a witness before the grand jury**

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Grand Jury Subpoena Walk Through

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#1: Being Served

- **The subpoena must be “served” upon the witness by an FBI agent or US Marshall.**
- **The subpoena must be delivered to the witness *in person*.**
- **Contact a lawyer immediately after service.**
- **A subpoena is NOT a warrant; a federal agent cannot enter your residence with a subpoena and without your consent. YOU NEVER EVER HAVE TO TALK TO LAW ENFORCEMENT.**

#2: Your Attorney

An attorney for a witness subpoenaed to a grand jury:

- Will help you understand your rights and privileges in the grand jury context, so that you can maximize them during questioning.**
- Will review your subpoena for defects like missing names, dates, and/or signatures.**
- May file to postpone your appearance date.**
- May file Motions to Quash the subpoena.**
- May request from the Court Clerk to divulge most importantly when the grand jury was impaneled and thus when it will likely terminate, and whether you as a witness are a target (i.e. suspect).**

THE SUBPOENA MUST CONTAIN:

- 1) The signature of the district court judge and the seal of the court,**
- 2) the name of the court and the title of the proceeding if any,**
- 3) the name of the person subpoenaed,**
- 4) the place and date the witness is to appear,**
- 5) and whether the subpoena is for testimony or physical evidence.**

#3: Motion to Quash

- ***Motion to Quash:***
 - **Your attorney asks the court to throw out the subpoena, so you do not have to appear.**
 - **To win a Motion to Quash you must convince the court (1) that a privilege exists, (2) the purpose of the grand jury is unlawful, *or* (3) that the subpoena is “unreasonable or oppressive.”**
 - **Grand juries may not hear evidence based on illegally intercepted electronic communications.**

#4: Appearance

- If the grand jury takes place out of town, then the Feds must pay for your transportation, food and lodgings.**
- The day of your appearance bring a pen and a notebook to take notes on the proceedings.**
- Your defense lawyer will not be allowed inside the grand jury room. Only you, the prosecutor, the court recorder and the jurors are allowed inside.**
- First you will be asked to state your name.**
- If you wish to assert your 5th Amendment right against self incrimination, you may only do so after you have given your name.**

#5: Questioning

- **You CANNOT pick and choose which questions you will and will not answer.**
- **The questioning will likely start with personal questions. “How old are you?” / “Are you employed?”**
- **If you answer any questions beyond your name, including the personal questions, you may waive your right to assert your constitutional rights not to answer questions.**
- **You should not answer questions regarding privileged relationships (e.g. attorney-client, husband-wife, doctor- patient, religious advisor-religious adherent).**

Questioning, Con't

You have the right to consult with your attorney, who sits outside the grand jury room, for each question and may do so as often as you wish. Consult with your attorney before answering a question; you cannot retract or strike an answer.

- 1) Tell the prosecutor “I need to speak with my attorney.”**
- 2) Write on your notebook “Attorney-Client Privileged.”**
- 3) Write down the question & leave to consult.**
- 4) Write down your potential answer, even if it is “I take the 5th,” in the presence of your attorney.**
- 5) Answer by reading directly from your notebook.**

#6: Constitutional Protections

A judge will need to determine if the question or subpoena infringes on your civil liberties.

- A grand jury cannot subpoena you for membership records or budgets of organizations under the 1st Amendment.**
- Witnesses cannot object to being questioned about evidence seized in violation of the 4th Amendment, which protects against unreasonable search and seizure.**
- The 5th Amendment does not apply to the compelled production of physical evidence.**
- The 5th Amendment does not cover business or other public documents created PRIOR to the subpoena.**
- The 6th Amendment only attaches during criminal proceedings. This right allows you to take notes during the proceeding, however, this right may be abrogated by a grant of immunity.**

#7: Immunity

- **After you assert your 5th Amendment right, the prosecutor will likely counter by offering you immunity.**
- ***Grant of Immunity:***
 - **Anything you say in front of the grand jury cannot be used against you in a criminal proceeding *regarding that matter*.**
 - **Does not include perjury.**
- **The prosecutor may call an *immunity hearing*, in which you and your attorney appear before a judge. **ASK FOR A PUBLIC DEFENDER IF YOU DON'T HAVE A LAWYER.** At the hearing the judge will order you to answer the questions and you will return to the grand jury room.**

#8: Contempt of Court Hearing

If you assert your 5th Amendment right with immunity or fail to comply with the subpoena, the prosecutor will again take you before a judge for a contempt of court hearing.

The judge will again order you to comply with the subpoena. If you refuse, the judge may place you in civil contempt of court, or charge you with criminal contempt, or both.

#9 Civil Contempt

If you refuse to comply with the subpoena, then the judge may penalize you in an attempt to *coerce you to comply*. The penalty may come in the form of incarceration or a fine.

- **A financial penalty would vary and be within the judge's discretion.**
- **If jailed In civil contempt, you will remain in jail until:**
 - **You *purge* your testimony (answer the questions),**
 - **The grand jury expires (not longer than 18-24 months), or**
 - **You win a *Grumbles* Motion.**

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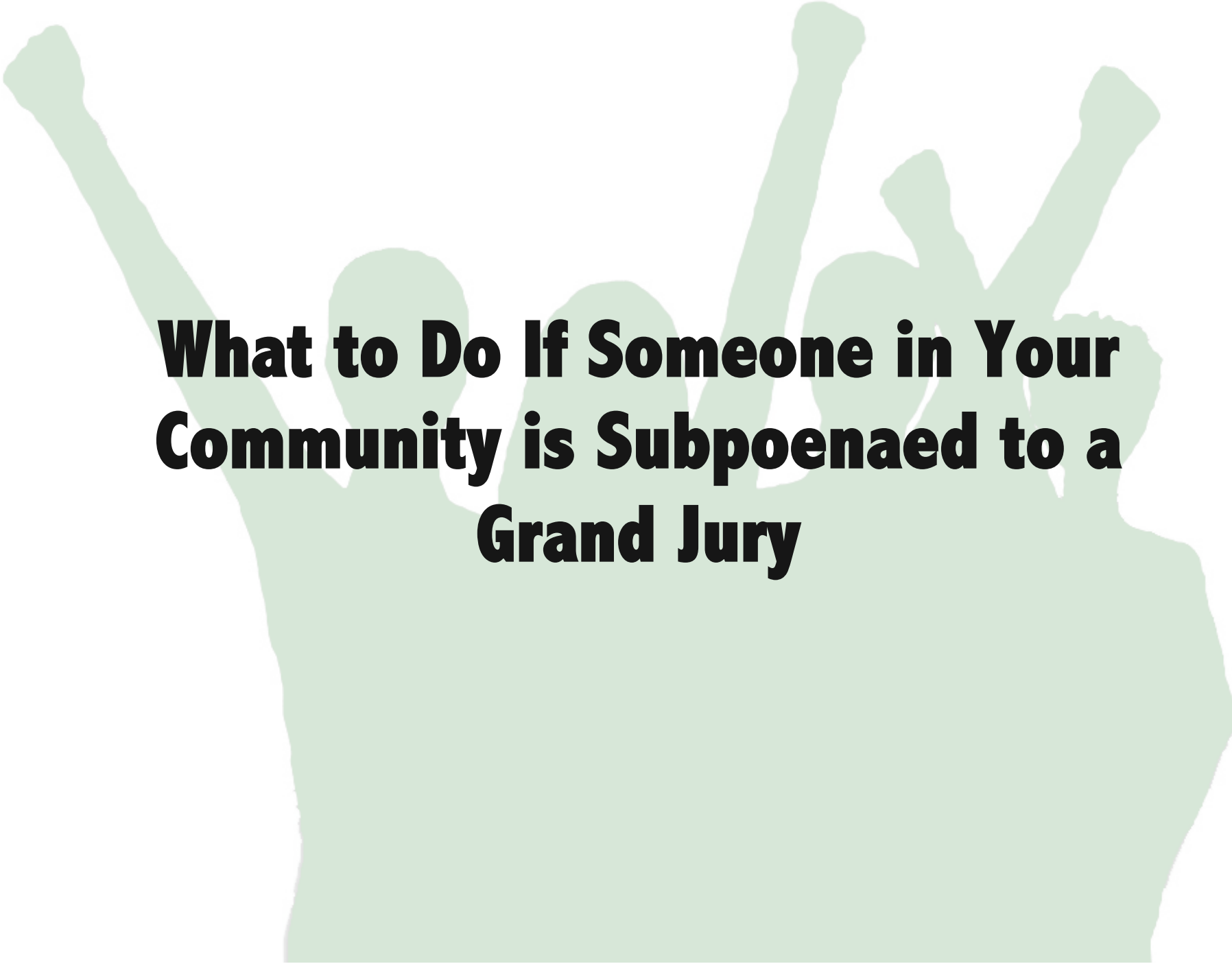
#10: *Grumbles*

- ***Grumbles* motion:**
 - a motion to vacate the civil contempt order before the expiration of the grand jury term.
- With this motion, you and your attorney argue that the incarceration has become *punitive* – rather than coercive – and as a result the witness is entitled to release necessarily.
- You must prove to the judge that there is no “realistic possibility that continued confinement might cause the contemnor (you) to testify.”
- Generally courts have refused to release political dissident-witnesses based on these motions.

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#11: Criminal Contempt

- **If the prosecutor charges you with criminal contempt, you are entitled to:**
 - **a trial by jury *and***
 - **a court-appointed lawyer.**
- **Criminal contempt has no maximum sentence.**
- **You may be charged with criminal contempt concurrently with civil contempt or consecutively (after your release from civil contempt).**

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What to Do If Someone in Your Community is Subpoenaed to a Grand Jury

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(A) FOIA Request

- **Information to Request:**
 - **When the grand jury was impaneled and**
 - **Where the grand jury is taking place.**
- **Information that May Be Revealed:**
 - **Whether the subpoenaee is a target**
 - **What crime the grand jury is investigating.**
- **Attorneys are not the only ones who can request information from the Court Clerk.**

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(B) Support for Recalcitrant Witnesses

- **Demonstrations during hearings & appearance dates.**
- **Preparing for Jail & While in Jail:**
 - **Retain attorney**
 - **Raise money for legal expenses**
 - **Raise Rent Money**
 - **Care for children & animal companions**
 - **Take care of personal responsibilities**

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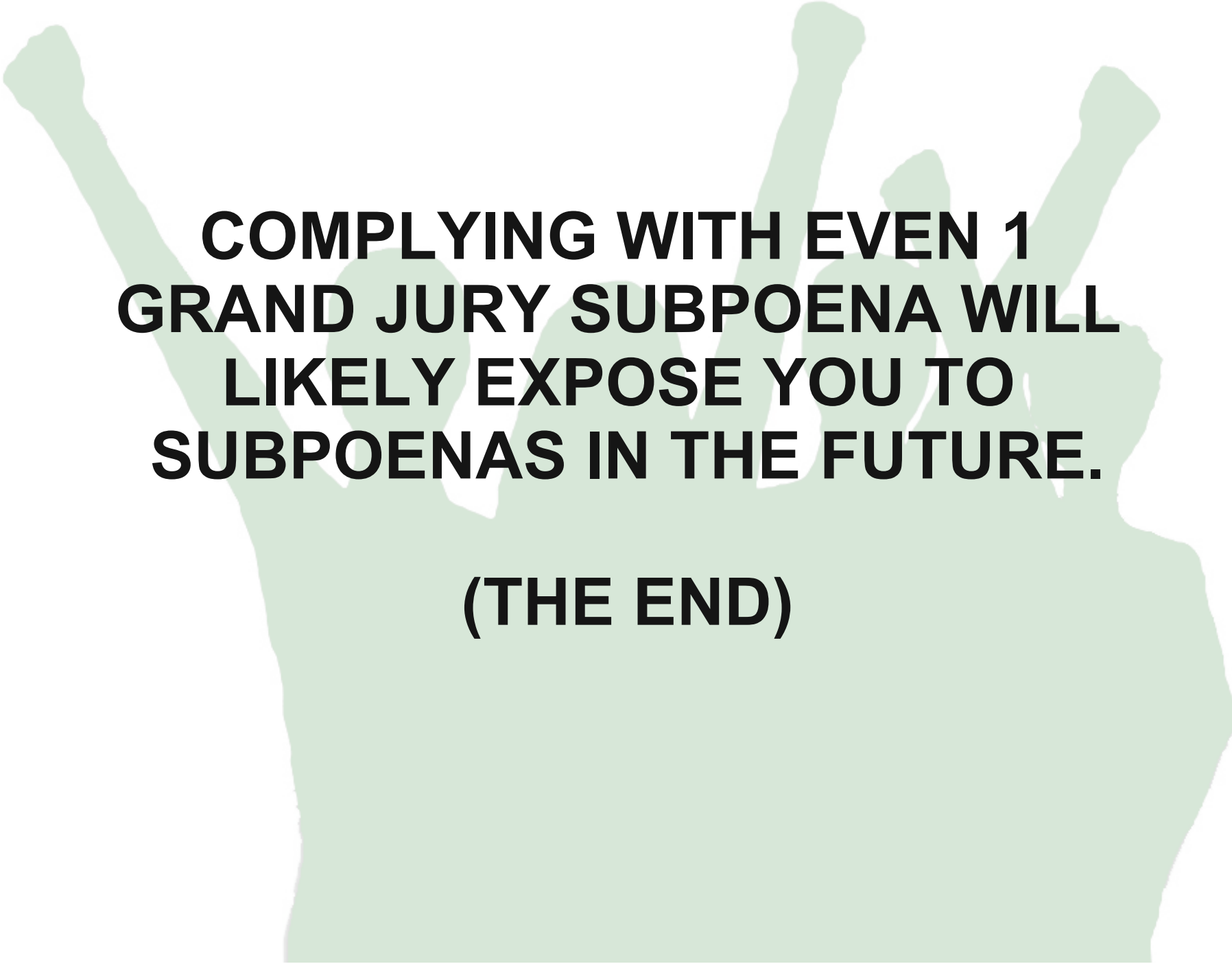
(C) *Grumbles* Support

- **The witness will need to compile a convincing amount of evidence to prove to the judge that they will never comply with the subpoena.**
- **Witness testimony and physical evidence can be gathered by a supportive community.**

(D) Writing

Beyond the writing to the resistor, a political prisoner, encouraging other people in your local and wider communities to write to the resistor is important for their morale.

- Write regularly yourself.**
- Prepare stamped envelopes addressed to the resistor's jail address with a flier on first-time writing to political prisoners to distribute at events.**
- Prepare and distribute handbills with the resistor or a resistor's statement challenging grand juries & the resistor's jail address.**



**COMPLYING WITH EVEN 1
GRAND JURY SUBPOENA WILL
LIKELY EXPOSE YOU TO
SUBPOENAS IN THE FUTURE.**

(THE END)