

# Responding to a Grand Jury Subpoena

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by [Adriana Gardella](#) Federal prosecutors use the grand jury, which consists of 16 to 23 jurors who operate in secrecy, to decide whether to charge someone with a serious crime. To further its investigation, the grand jury issues subpoenas—at first, typically for documents, but also for testimony from witnesses, subjects, or targets. A grand jury subpoena for testimony requires extensive client preparation that is beyond the scope of this article. “It’s important to treat the grand jury subpoena as the critical legal event that it is until your lawyers tell you otherwise,” says Carlton Fields shareholder [Ed Page](#), who practices in the area of white collar crime and government investigations. But the best way to respond to a grand jury subpoena is far from obvious—especially for subpoena recipients and their civil attorneys, who lack experience with criminal matters. In the following conversation, which has been edited and condensed, Mr. Page offers tips for both these individuals and their civil attorneys. **Q:** *What mistakes do people make upon receiving grand jury subpoenas?* **Mr. Page:** They make the big, and very common, mistake of speaking with the government. Do not speak with any agent who comes out to personally serve you—often before you leave for work or when you’ve just gotten home. The agent who serves the subpoena and talks to you won’t include a Miranda warning, so it’s easy to conclude that what you say might not be used against you. But it could. Just accept the subpoena politely. Do not return phone calls from the agent whose name appears at the bottom of the subpoena. Do not engage with the prosecutor. Doing so allows the government to squeeze information from you. **Q:** *What should a person do upon receiving a grand jury subpoena from the government?* **Mr. Page:** Contact a knowledgeable white collar lawyer. Don’t try to interact with the government on your own. The best response to a subpoena could be very different depending on whether you are a subject, target, or witness in connection with the investigation. **Q:** *How do you define ‘subject,’ ‘target,’ and ‘witness?’* **Mr. Page:** A subject is someone whose conduct is within the scope of a grand jury’s investigation. Using a bank robbery investigation as an example, let’s say the FBI agents learned that a bank teller was related to the bank robber. That teller might be a subject because the FBI might think they tipped off their relative—perhaps telling him the best day of the week to enter and rob the bank. The other tellers would be pure fact witnesses who could testify about what they saw, heard, or did. Finally, a target is defined as a putative defendant—the government has substantial evidence linking them to the commission of a federal felony. In layman’s terms, the government is aiming at you. **Q:** *Can the recipient of a subpoena*

*know whether the government views them as a subject, target, or witness?* **Mr. Page:** No. While an agent may say that you are a witness, you may actually be a subject—it's not always clear-cut. To accurately determine your role in the government's investigation, your lawyer will have to conduct fact-finding on your behalf. **Q:** *Are there other reasons why it's important to contact a white collar lawyer if you receive a subpoena?* **Mr. Page:** Yes. When it comes to complying with the subpoena, it's often possible for the lawyer to negotiate with the FBI or prosecutor involved. The lawyer may be able to reduce the scope of the subpoena, enabling the client to produce fewer documents, or even pulling some requested items off the table. The lawyer may be able to negotiate a 'rolling production,' which means the client can make its document production in installments, instead of all at once. **Q:** *Many people who receive grand jury subpoenas will first turn to their civil lawyers. What should those lawyers know about responding to a grand jury subpoena?* **Mr. Page:** First, they should know that there is virtually no Fifth Amendment right to remain silent when it comes to document production. The Fifth Amendment only applies to testimony from the client's mouth. So, the client has to produce documents. Second, when collecting documents to produce, make sure you do your due diligence. This is especially important given the prevalence of electronically stored information—on iPods, smart phones, laptops, desktops, flash drives, and on and on. You really need to create a data map to determine what information is available and where it resides. **Q:** *Why give the government so much help?* **Mr. Page:** Because there's a crime called obstruction of justice. You don't want to run afoul of the government because your production was half-hearted. And you can't simply claim that producing the documents would have cost too much. It's better to be upfront with the government—explain the high cost. See if you can comply by, for example, producing samples of certain types of documents instead of all of them. **Q:** *How common are prosecutions for obstruction of justice?* **Mr. Page:** Extremely common. For example, a BP engineer was recently indicted for deleting texts related to the 2010 oil spill in the Gulf of Mexico. So, as soon as you have reason to believe the government is investigating you, you should take steps to preserve documents, particularly those that are stored electronically. A lot of people might inadvertently destroy this sort of information. Let's say you trade in your laptop so your son can use it, and, in the process, delete everything that was on it. You've got to maintain the status quo once you get a subpoena. **Q:** *Is there anything else the civil attorney should know?* **Mr. Page:** While it should be common sense, they must understand the importance of keeping a record of what they produce to the government. Make copies of what you've produced and number every document page. You can't have intelligent discussions with the government otherwise. It's well worth the copying costs. **Q:** *Aside from an attorney, is there anyone else the subpoena recipient should talk to?* **Mr. Page:** Don't talk to anyone, including others who are or may be witnesses, subjects, or targets. You could later be accused by the government of trying to align your stories. If you must speak with someone who is involved, or potentially involved, in the government's investigation, be sure to have a witness present to protect yourself against accusations that you tried to match up your stories. When you get a subpoena, you know an investigation is underway, which means you could be under surveillance by the government.

# Related Practices

## White Collar Crime & Government Investigations

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