

# THE GRAND JURY IN FLORIDA

## (Extra Territorial Implications for Jamaicans or What To Do If You Get A Grand Jury Subpoena! )

by

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The Federal Grand Jury is the closest to the Medieval Star Chamber that has stood the test of time and is still operating. It is an institution that can issue subpoenas, compel attendance and indict individuals.

Witnesses testifying before it do not have the right to counsel while actually appearing before the Grand Jury. The Federal Grand Jury has sweeping power to compel the production of documents and all forms of testimony without needing to justify its investigative activities or ever having to prove to anybody that a crime has occurred. The Grand Jury is empowered to operate purely on the suspicion that a violation of the law has occurred or simply to ensure that a crime has not been committed. See United States v. Morton Salt Company 338 US 632. A Grand Jury may act based on “tips, rumors, evidence or the personal knowledge of the Grand Jurors themselves”. See Costello v. United States 350 US 359. Even in modern times, the Grand Juries investigative scope has been described as a “Grand Inquest” not to be limited by questions “of proprietary or forecast of the probable result”. See United States v. Calanbra 414 US 338.

Many Jamaicans travel between the United States and Jamaica with great frequency. Their general conduct, business affairs and investments have an impact upon American life and American Law Enforcement. Jamaicans are now receiving Grand Jury Subpoenas, which in some situations mature into criminal indictments. Jamaicans must now worry about the Grand Jury and what it can do. As a practical matter, the Grand Jury is the investigative arm of the United States Attorney’s Office. The United States Prosecutor selects the matters to be investigated, the witnesses to be subpoenaed and conducts the formal questioning. The conduct of U.S. Prosecutors in presenting cases to the Grand Jury is not readily susceptible to scrutiny. In fact, the Federal Prosecutor obtains subpoenas issued in blank by the Court and have the witnesses served usually by an investigative agent without prior authorization from the Grand Jury.

There are many indications that the Grand Jury is becoming an instrument of foreign policy of the United States in the Caribbean. Grand Jury indictments in the last 6 months of 2 senior Haitian police officers confirm this point of view. The police officers were indicted shortly after the United States formally withdrew its political/diplomatic support from Jean Bertrand Aristide. The Bush Administration's designation of two Jamaicans (Nembhard and Ramcharran) as "Drug Kingpins" is an indication of the direction in which the Department of Justice is moving with respect to Jamaicans.

If a major Jamaican politician is indicted by U.S. Grand Jury, that politician's career would essentially be over. Despite the fact that no Jamaican law had been broken, the Jamaican Government will be obligated to arrest the individual and hold him or her without bond. The individual would essentially have two major trials – a Probable Cause Hearing in Jamaica and a Federal Trial in the United States.

The question is frequently asked whether or not a Jamaican National should have to worry about Laws of a country in which he does not reside, and should a Jamaican have to concern himself or herself with United States Federal Law. Should the Jamaican police be agents for police of another country to enforce that second country's Laws against its own domestic citizens? Should Jamaica exchange information with the United States? What are the pros and cons?

Under the Fifth Amendment of the American Constitution, American Citizens have the right to "plead the Fifth" and that means that the Government cannot force an individual to engage in self-incrimination. Frequently, the United States Attorney's office gets around this restriction by offering "immunity" to certain potential witnesses in criminal cases. The Immunity Statute provides that under an Immunity Order, any information obtained directly or indirectly from a witness may not be used against that witness. See Kastigar v. United States 406 US 441. Despite the Fifth Amendment, if an individual is issued with a Grand Jury Subpoena, that individual must obey the subpoena or be held in Contempt of Court. See FRCrimP 17(g). Under Zadvydas v. United States, Jamaicans who are subpoenaed but who do not reside in the United States should be able to plead the Fifth effectively also.

If a Jamaican residing in Jamaica but who has a non-immigrant Visa or a Green Card receives a Grand Jury Subpoena in Jamaica to appear for Grand Jury proceedings in the United States, they will need to appear at the Grand Jury proceedings or face arrest at the airport for Criminal Contempt of Court. The

writers have not been able to determine if the U.S. Marshall's office in Jamaica have been asked to serve U.S. Subpoenas in Jamaica.

The treaty obligations of the Jamaican Government under the U.S-Jamaica extradition treaty will lead to individuals who receive subpoenas being extradited to the United States see [The Extradition Act 1971](#).

There is precedent for the use of the Grand Jury Subpoena in Jamaica; therefore, Jamaican politicians and businessmen should immediately consider whether their conduct is likely to bring them within the scope of a Grand Jury's enquiry and how to prepare for the same.

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