

ply with a subpoena³⁰ and a reasonable time to prepare a defense.³¹ However, a grand jury investigation generally must not be frustrated or impeded by a requirement of minitrials or preliminary showings.³²

A mere assertion by a witness does not necessitate further proceedings.³³ If the witness makes a preliminary showing of impropriety, the court may grant appropriate relief and may require further proceedings.³⁴

Some authorities hold that, where a person moves to quash a grand jury subpoena as being unreasonable, the party who caused the subpoena to issue has the initial burden of going forward with evidence.³⁵ It has also been held that a prosecutor who seeks judicial enforcement of a grand jury directive for a lineup must make a preliminary showing.³⁶ In the case of a federal grand jury, a court may be justified in a case where unreasonableness is alleged in requiring the government to reveal the general subject of the grand jury's investigation before requiring the challenging party to carry its burden of persuasion.³⁷

A full evidentiary hearing is not necessarily required on a motion to quash a subpoena.³⁸ The court need not necessarily hold an evidentiary hearing on the grand jury's request for an order directing a person to appear at a lineup, and may decide the issue solely on the basis of evidence presented to the grand jury.³⁹

The court may in some circumstances conduct the hearing on a motion to quash a subpoena in camera, without participation by the movant.⁴⁰ Though in camera submissions of affidavits are not to be routinely accepted in seeking enforcement of a subpoena, an exception may be made where there is an ongoing interest in grand jury secrecy.⁴¹ In the case of a federal grand jury, the court may require that the government reveal the subject of the investigation to the court in camera, so that the court may determine whether the motion to quash has a reasonable prospect for success before it discloses the subject matter to the challenging party.⁴²

Forum.

A motion to quash or modify a subpoena should be made in the court which empaneled the grand jury.⁴³

Time for proceedings.

A motion to quash or modify a subpoena duces tecum should be made promptly,⁴⁴ and, in any case, prior to the return date of the subpoena.⁴⁵

Waiver of defenses.

In responding to a motion to compel testimony, a witness must present all available defenses, and any defense omitted is lost.⁴⁶

§ 130. Presumption of Validity of Process

A grand jury subpoena is presumptively valid, and the burden is on the unwilling witness to show that the subpoena should be quashed.

30. U.S.—*Matter of Pelt*, C.A.N.Y., 672 F.2d 279, on remand 358 F.Supp. 50.

31. U.S.—*Matter of Pelt*, C.A.N.Y., 672 F.2d 279, on remand 358 F.Supp. 50.

32. Ariz.—*Manton's, Inc. v. Strand*, 560 P.2d 778, 114 Ariz. 260.

33. U.S.—*Matter of Wood*, D.C.N.Y., 400 F.Supp. 61.

34. Ariz.—*Manton's, Inc. v. Strand*, 560 P.2d 778, 114 Ariz. 260.

35. Ga.—*Morris v. State*, 272 S.E.2d 254, 246 Ga. 510.

36. *Minimal factual showing.*

To assert that prosecutor and grand jury are acting in good faith and not arbitrarily or to harass potential defendants, under inherent supervisory power of Court of Appeals over superior court, prosecutor seeking judicial enforcement of grand jury directive for individual who is neither under arrest nor charged with crime to appear in lineup must, by affidavit of law enforcement officer or formal representation of assistant United States attorney, make a minimal factual showing sufficient to permit judge to conclude that there is reason for lineup which is consistent with legitimate function of grand jury.

D.C.—*Matter of Kelley*, App., 433 A.2d 704.

37. U.S.—*U.S. v. R. Enterprises, Inc., Va.*, 111 S.Ct. 722, 498 U.S. 292, 112 L.Ed.2d 795, on remand in re Grand Jury 87-3 Subpoena Duces Tecum, 955 F.2d 229.

In re FBI, Inc., W.D.Ky., 790 F.Supp. 1310.

38. D.C.—*Bowles v. U.S.*, App., 448 A.2d 253.

39. Mass.—*Commonwealth v. Doe*, 363 N.E.2d 1349, 408 Mass. 764.

40. N.Y.—*Hynes v. Lerner*, 376 N.E.2d 1294, 44 N.Y.2d 329, 405 N.Y.S.2d 649, reargument denied 380 N.E.2d 350, 44 N.Y.2d 958, 408 N.Y.S.2d 1037, certiorari denied 99 S.Ct. 243, 439 U.S. 888, 58 L.Ed.2d 234.

41. U.S.—*Matter of Marc Rich & Co., A.G., C.A.N.Y.*, 707 F.2d 663, certiorari denied *Marc Rich & Co., A.G. v. U.S.*, 503 S.Ct. 3555, 463 U.S. 1215, 77 L.Ed.2d 1400.

42. U.S.—*U.S. v. R. Enterprises, Inc., Va.*, 111 S.Ct. 722, 498 U.S. 292, 112 L.Ed.2d 795, on remand in re Grand Jury 87-3 Subpoena Duces Tecum, 955 F.2d 229.

43. N.Y.—*Matter of Onondaga County Grand Jury Investigation*, 452 N.Y.S.2d 826, 114 Misc.2d 923.

44. N.Y.—*Hynes v. Doe*, 420 N.Y.S.2d 978, 101 Misc.2d 350.

Federal grand jury

A motion to quash or modify a federal grand jury subpoena on the ground that compliance would be unreasonable or oppressive must be made promptly.

Fed.Rules Cr.Proc., Rule 17(c), 18 U.S.C.A.

45. N.Y.—*Hynes v. Doe*, 420 N.Y.S.2d 978, 101 Misc.2d 350.

46. U.S.—*Matter of Schmidt*, C.A.N.Y., 773 F.2d 822.

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