

By Kevin Gosztola

From OpEdNews.com | Original article



The grand jury investigation into WikiLeaks has widened. A subpoena has been issued to David House, co-founder of the Bradley Manning Support Network. Manning's ex-boyfriend, Tyler Watkins, who recently appeared in PBS Frontline's "WikiSecrets" documentary, and Nadia Heninger, who has done work with WikiLeaks volunteer Jacob Appelbaum (someone whose Twitter user data has been subpoenaed by the government), have each been served with a subpoena.

The new subpoenas come [just over a month](#) after the grand jury began meeting in Alexandria, Virginia on May 11 this year. Then, it was known at least one individual from Cambridge was issued a subpoena seeking to compel him to testify before a Grand Jury. And, Carrie Johnson of NPR, in one of the few articles published on the investigation by a US media organization, suggested "national security experts" could not "remember a time when the Justice Department has pursued so many criminal cases based on leaks of government secrets."

Glenn Greenwald, who has been following the Grand Jury investigation since its inception, [calls attention](#) to the potential for witnesses to refuse to cooperate in this "pernicious investigation."

One witness who has appeared before the Grand Jury has already refused to answer any questions beyond the most basic biographical ones (name and address), invoking the Fifth Amendment right against self-incrimination to do so, and other witnesses are highly likely to follow suit.

Greenwald illuminates what could happen in the event that a witness refuse to answer questions and suggests that if this happens the federal prosecutor could offer immunity. The offer would then mean anything said could not be used against the witness. But, then the witness would still be compelled to answer questions and, if the witness refused to answer questions, the witness could be found in contempt of court.

An attorney with the National Lawyers Guild, Jim Fennerty, who is representing anti-war and international solidarity activists subpoenaed to appear before a grand jury empanelled in Chicago, described this [on the "This Week in WikiLeaks" podcast](#) weeks ago.

"If you're called for a grand jury, you're usually given a subpoena to be there. My advice is if you get a subpoena you should call a lawyer immediately and get some legal advice. But, if you go to the grand jury, you then are called into the grand jury to answer questions. You cannot take a lawyer in there to answer questions with you. Your lawyer waits out in the hallway or adjacent room. What you can do then is, before you answer questions, you can say I am going to go back and consult with my attorney before answering"

You can refuse to answer the questions and invoke the Fifth Amendment. But then a witness called to appear must understand:

...If you go to a grand jury and they do say they are going to offer immunity but it's not total immunity, it's called use immunity, which means that if you say something they can't use that against you to prosecute you if they uncover other evidence around the situation. They [can't] use that evidence to come back and use it to prosecute you or indict you.

If you're offered immunity, you have to decide if you will speak to the grand jury or not.

If you are given immunity and refuse to speak, then you will be taken before a judge at some time, that day or maybe couple weeks later, and you'll be presented these questions again by a judge and the judge will order you to answer those questions. If you then refuse to answer those questions, you can then be held in civil contempt of the grand jury. And you can then be incarcerated for the life of the grand jury. People have spent months and months in jail just on civil contempt.

Greenwald notes that one witness is considering going to jail as an act of "civil disobedience" because the witness views "the attempt to criminalize WikiLeaks as such a profound assault on basic freedoms, including press freedoms.

During the podcast interview, Fennerty says the grand jury typically "rubberstamps what the government wants." The prosecutor is part of the grand jury, the grand jurors get to hear one side of the story and they don't get information from the other side.

If one considers the government's war on those linked to WikiLeaks as part of the larger war on whistleblowing, which the Obama Administration is waging, then the use of the grand jury should be especially disturbing because grand juries have a history of being used as a tool of political repression. That this new McCarthyism could strike a blow to freedom of the press in America is even more troubling.

In the event that witnesses refuse to testify and participate in what some characterize as a fishing expedition, federal prosecutors involved in grand juries will typically try to peel off one individual by exploiting their fears or weaknesses. So, for example, someone like Manning's ex-boyfriend could be considered a "weak link" and be exploited by the grand jury to crack and provide information to the grand jury.

In the case of the twenty-three activists Fennerty is representing, the activists have bound together in solidarity. They have held press conferences, rallies and participated in public speaking events describing the work they do to make the case in the court of public opinion that they are being persecuted for their work.

Fennerty finds this to be the right thing to do because those ensnared in grand juries cannot win in the courts. Those subpoenaed have to work to keep their side of the story in the news so the official story the grand jury tries to craft might be considered suspicious or disingenuous by the public.

Therefore, those subpoenaed might want to start a political support committee and take cues from the [Committee to Stop FBI Repression](#) , which is a group that has formed to support the activists Fennerty is representing.

It will be up to those subpoenaed to decide how public they want to be about the investigation. The attorneys they have represent them will suggest they keep certain details secret but much of the government's claims about them should be shared because the less mystery, the better chance the activists have of discrediting the government's decision to issue subpoenas and launch an investigation into their activities in the first place.

Moreover, a support committee could truly open up a conversation about whether it is a crime to be connected to an organization like WikiLeaks and whether American citizens want to live in a society that criminalizes people who organize or work with this pro-transparency organization that, if one examines the evidence in media coverage and statements from US government officials, is not proven to have committed one single crime.

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