

§ 8. — Grand Juries for Special Terms

Subject to statutory limitations, if any, a court authorized to hold a special term has power to convene a grand jury for such term.

Library References

Grand Jury §=1.

A court authorized to hold a special term has power to convene a grand jury for such term⁵³ under express statutory authority⁵⁴ or in the absence of a statutory limitation.⁵⁵

However, the court is bound by any statutory limitation on its power to call a grand jury to serve at a special term.⁵⁶

§ 9. De Facto Grand Jury or Juror

Authorities differ as to whether there can be a de facto grand jury.

Library References

Grand Jury §=1.

There is no such thing as a de facto grand jury in a federal court.⁵⁷

Likewise, some state courts assert that there is no such thing as a de facto grand jury;⁵⁸ but other state courts take a view to the contrary.⁵⁹ It has been held that the acts of a de facto grand jury are valid in the absence of fraud or prejudice.⁶⁰

There cannot be a grand jury de facto when there is a grand jury de jure.⁶¹

It has been held that the de facto officer doctrine applies to an improperly appointed grand juror.⁶²

§ 10. Improper Purpose

It is improper to use grand jury proceedings merely to elicit evidence for use in a civil case or to prepare a pending indictment for trial.

Research Note

Improper purpose for subpoena is treated infra § 137.

Library References

Grand Jury §=1, 24-26.

Use of grand jury proceedings merely to elicit evidence for use in a civil case is improper per se.⁶³ Government attorneys may not use a grand jury proceeding to gain advantages in a civil case which they are not entitled to.⁶⁴

It is improper to use a grand jury for the primary purpose of strengthening the government's case on a pending indictment or as a substitute for discovery.⁶⁵ The government may not utilize a grand jury for the sole or primary purpose of gathering evidence for use in a pending trial,⁶⁶ or of preparing a pending indictment for trial,⁶⁷ or of securing additional, postindictment evidence to be used at trial.⁶⁸ However, there appears to be some authority to the contrary.⁶⁹ Where no further in-