



Court Requires Self-Incrimination Warning for Some Grand Jury Witnesses

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The Supreme Judicial Court recently issued an important ruling concerning the rights of individuals testifying before a grand jury. In *Commonwealth v. Woods*, 466 Mass. 707 (2014), the court announced a prospective rule requiring self-incrimination warnings to be given to all grand jury witnesses who, at the time of their testimony are, or are likely to become, a target of that grand jury investigation. A person is considered a target if “the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime” and if the witness is, in the judgment of the prosecutor, a potential defendant.

Requirement to appear necessitates change

The court reasoned that this duty to give a self-incrimination warning was appropriate due to the involuntary nature of a summons requiring an individual to testify. An individual who receives a grand jury summons is legally required to appear before the grand jury for questioning. Before testifying, witnesses must swear an oath to tell the truth before the grand jury. The witness’s testimony is recorded and may be used as evidence against that witness in the future, as a witness’s responses could potentially open him up to future criminal liability. The self-incrimination warning is important because it reinforces to witnesses, the seriousness of their testimony and informs them of important constitutional rights. The self-incrimination warning consists of an instruction to the witnesses that: 1) they have a right to refuse to answer any question if a truthful answer would tend to incriminate them and 2) anything that they say may be used against them in a later legal proceeding.

Miranda-like warning new to Massachusetts

This self-incrimination warning is similar to the *Miranda* warning that is given to individuals when they are interrogated by police officers. Before the decision in *Commonwealth v. Woods*, prosecutors were not required to give a self-incrimination warning nor did they even classify a witness as a “target” of the investigation even though this practice is routinely followed in federal criminal investigations. Now state prosecutors will be required to follow this procedure.

The SJC’s ruling in *Woods* makes it clear that Massachusetts grand jury witnesses who are targets or are likely to become targets are entitled to this *Miranda*-like warning. Will the ruling encourage prosecutors to make more accurate determinations regarding a witness’s criminal exposure? Will the new ruling result in prosecutors giving a self-incrimination warning to all witnesses regardless of their status as a target? It will be interesting to see how prosecutors interpret this decision at the grand jury stage of a criminal investigation.

In the Field

Law Day 2014 takes on freedom of speech

Attorneys from the Massachusetts Bar Association will celebrate Law Day during the month of May by looking at our rights to freedom of speech. Lawyers and judges volunteer their time to meet with students in communities around the state to consider questions such as: Can you wear an American flag printed on your shirt or as a pin? Can you criticize President Obama on Facebook? Do free speech rights extend to clothing? Is a label considered promoting an artist or is it freedom of expression?

The program is designed to engage students with legal professionals on free speech and on the difference between their rights and their responsibilities as a citizen. Laredo & Smith Partner Marc Laredo is once again co-chairing the MBA’s Law Day task force.

BBA hosts government corruption and fraud seminar

The Boston Bar Association held its annual seminar on “The FCPA, Public Corruption and Government Prosecutions” on April 3. Program co-chair and moderator Mark D. Smith helped lead a panel on government trends in high profile public corruption prosecutions, trends in False Claims Act cases and the impact of recent ethics reform laws.