

Grand Jury Resistance

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Overview of presentation

- Grand Juries: Basics
- Strategic considerations
- Resistance in the courts
- Grand Jury appearance
- Contempt proceedings

Grand Juries: What are They?

- Secretive
- Tool controlled by the Government
 - U.S. Attorney's Office
 - FBI & other federal law enforcement agencies
- Purposes: Investigate / Intimidate / Indict
- Broad investigative power
 - The grand jury “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.”
U.S. v. R. Enterprises, Inc., 498 U.S. 292 (1991).

Grand Juries: What are They?

- Tool to target activists
 - see: Green is the New Red / Green Scare
 - Environmental activists
 - Animal rights activists
 - SHAC 7 / Stop Huntington Animal Cruelty
 - Animal Enterprise Protection/Terrorism Act
 - Locally

Grand Juries: Basics

- Term of the grand jury / F.R.Cr.P. 6(g); 18 U.S.C. § 3331
 - Regular grand jury: 18 mos., plus 6-month extensions
 - Special grand jury: 18 mos., plus 3 extensions of 6 mos.

Strategic Considerations: Initial consultation(s)

- What are the client's/movement's priorities/goals?
- How do GJ issues align with political issues/goals?
- Individual vs. Group approach
- Options
 - Acquiesce
 - Negotiate
 - Resist!

Strategic Considerations: Resistance!

- Political
- Public
- In the courts

Resistance in the Courts: Early information

- Information is power
- “Witness” vs. “Subject” vs. “Target”
- U.S. Attorneys’ Manual (“USAM”)
 - “It is the policy of the Department of Justice to advise a grand jury witness of his or her rights if such witness is a ‘target’ or ‘subject’ of a grand jury investigation.”
 - USAM 9-11.151

Resistance in the Courts: Early information

- USAM 9-11.151 – Advice of “Rights” of GJ Witnesses
 - Subject: “...a person whose conduct is within the scope of the grand jury’s investigation.”
 - Target: “... a person as to whom the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant.”

Resistance in the Courts: Motions

- Motion to disclose ministerial GJ records
- Motion to quash subpoena
- Motion for open hearings and filings
- Motion to have GJ instructed
- Motion for disclosure of informants, agents, etc.
- Challenges to extension of GJ term
- Motion for disclosure of electronic surveillance (ELSUR)

Resource for grand jurors

[http://www.ndd.uscourts.gov/jury/jury_
handbook_grand_jurors.pdf](http://www.ndd.uscourts.gov/jury/jury_handbook_grand_jurors.pdf)

**HANDBOOK
FOR
FEDERAL GRAND JURORS**



Prepared for the use of grand jurors serving in the United States district courts under the supervision of the Judicial Conference of the United States. Published by the Administrative Office of the United States Courts, Washington, D.C. 20544.

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pp. 6-7: “Practical Suggestions for Grand Jurors”

- “Each grand juror should be on time for each meeting so that others are not kept waiting.”
- “Witnesses should be treated courteously when they appear before the grand jury.”
- “Each grand juror has an equal voice in determining whether or not an indictment should be returned.”
- “Each juror has equal duties and responsibilities, and each is entitled to be satisfied with the evidence before being called upon to vote.”
- “[T]he grand jurors may always seek the advice of the judge.”

Grand Jury Appearance

- Issues:
 - Preparation
 - Immunity?
 - Tactics at GJ appearance

Grand Jury Appearance: Preparation

- Individualized vs. Coordination
- Support:
 - Community
 - Media

Grand Jury Appearance: Immunity

- Prosecutor controls
- Prosecutor can force immunity on witness
- Can lead to contempt proceedings

Grand Jury Appearance: Testimony

- Counsel's presence (outside GJ room)
- Tactics:
 - Witness writing down each question
 - Consultation with counsel after each question: Why?
 - Ensure understanding of question
 - Strategize with advice of counsel
 - Influence dynamic in GJ room

Contempt Proceedings

- Civil contempt
 - Purpose: force witness to testify
- Criminal contempt
 - Purpose: punish witness for declining to testify

Civil Contempt Proceedings

- Procedural requirements
- Result: confinement
- Length of confinement:
 - Life of GJ or 18 months (whichever is shorter)
 - (but note: *Grumbles* motion(s))
 - Strategic key: Learn the term of the GJ
 - (but beware 6-month extension(s), and then new GJ)

Civil Contempt Proceedings: *Grumbles* motion(s)

- Rationale: If witness will not be coerced to testify by his/her continued incarceration, then incarceration becomes punitive and witness is entitled to release
- Standard: Whether there is realistic possibility that continued confinement might cause witness to testify

Civil Contempt Proceedings: *Grumbles* motion(s)

- Factors for Court to consider:
 - Length of time already served
 - Time remaining to serve
 - Relationship between witness and GJ's investigation
 - Availability of alternative means to secure evidence
 - Reasons for witness's refusal to testify – Avowed intention to never testify may be sufficient

Sanchez v. U.S., 759 F.2d 29 (2d. Cir. 1984)

“There is power in unity and there is power in numbers.”

Martin Luther King Jr.

“Power in defense of freedom is greater than power in behalf of tyranny and oppression.”

Malcolm X