



# Federal Grand Jury Litigation

**in fifteen minutes**

Secret

Non-adversarial

No defense attorney

No judge

COMPULSORY

# THE FRONTLINE IS EVERYWHERE

From pipelines to courtrooms to prisons: building strong movement defense





## Misconception:

Because a subpoena represents compulsory process I cannot ethically advise a client not to cooperate with the grand jury.

- **NOT SO! FIRST, YOU MUST GATHER EVIDENCE:**
  - **Examine the Subpoena!**
    - Who issued it?
    - How can they be reached?
    - In what court is it returnable?
    - Must the witness bring any documents?
    - What is the Grand Jury number? Do we know anything about that grand jury?
    - Is it signed? Who served it?
    - **WHEN MUST THE WITNESS APPEAR?**



# Preliminary Client Meeting

- Privileged AND secure
- Do you know why you were served?
- Advise on public statements (don't make any)
- Reassure that there are ways to challenge a subpoena
  - But also that there can be negative consequences of resisting
    - But also negative consequences of complying!

# CALL THE PROSECUTOR

- Is client a witness or a target?
- Have you sought or do you intend to seek a compulsion order/immunity order?
- What is your intended line of questioning?
- We need more time to prepare! (sixth amendment)
- Who impaneled the grand jury?
- How long has it been sitting?
- How often does it meet and for how many days at a time?

Second Client  
Meeting:  
All the downsides

## CLIENT IS INCLINED TO COOPERATE

- May give the government information they aren't entitled to
- Potential perjury trap
- Incriminate yourself or others
- Social consequences
- Political consequences

## CLIENT IS NOT INCLINED TO COOPERATE

- Advise on litigation process:
  - Stressful! Court appearances! Motions! Media!
- Advise on consequences on non-compliance:
  - Up to 18 months in federal custody! Fines maybe?
  - Possibly more, if prosecutor opts for criminal contempt.

# THE GIFT OF THE DEFENSE COMMITTEE

Good legal and political strategy supplement each other.



**§ 1:36 —A word about defense and support committees**

Grand jury proceedings are anomalies in the legal system; they operate swiftly and in secret and according to few of the rules familiar to either trained lawyers or the lay public. This is one area of the law in which strictly legal victories are indeed rare. Attorneys who have represented witnesses in the context of grand juries investigating political activists or political communities have found grand jury defense and support committees extremely valuable. Grand jury cases

are often won or lost on the strength of community support for witnesses rather than the excellence of argument or even the legal merit of the attorney's position.

Defense committees do not always save a witness from jail. But they can often accomplish a number of things that lawyers, armed with nothing but precedent, cannot accomplish. Judges are noticeably more reluctant to jail witnesses before a courtroom crowded with spectators, family members, and press. Moreover, supporters reduce a witness's sense of isolation and provide that much-needed assistance which can enable a witness to remain strong throughout court appearances and, in some cases, many months in jail.

# Defense Committee Work

## ■ DEMYSTIFY THE GRAND JURY

- Explain court filings in plain language
- Do public education about the grand jury
- Be aggressively transparent about
  - The existence of the subpoena
  - The identity of the witness
  - Their plans to cooperate or not
  - Any information gleaned about the investigation

## ■ PROVIDE SOCIAL SUPPORT

- Raise money to support the witness and their family
- Raise money for legal costs, fees, fines, commissary

## ■ MEDIA/EDUCATIONAL STRATEGY

- Broadcast personal and political narrative
- Refocus messaging back to movement
- Rally public support for the witness and their movement
- Make educational materials about the problems with this grand jury
- Make educational materials about broader problems with grand juries in general

# Nuts and Bolts of Litigation

Even without a favorable judgment, litigating, especially with community support, can induce a prosecutor to withdraw a subpoena.

GET THIS BOOK



Representation of Witnesses Before Federal Grand Juries

**(extremely worth it)**

<https://store.legal.thomsonreuters.com/law-products/Treatises/Representation-of-Witnesses-Before-Federal-Grand-Juries-4th/p/100027679>

**Quash Motion &  
Hearing:**

**SHOW JUST CAUSE  
FOR NONCOMPLIANCE**

- **Draft and File Motion to Quash** (This can be done up to the return date)
- **Preliminary Motion to Unseal the Courtroom and motion papers**, which are not “matters occurring before the grand jury” and are therefore not subject to the secrecy of Rule 6(e).
- **Argue the Substantive Motions, commonly:**
  - Fifth Amendment
  - Relevance
  - First Amendment
  - abuse/improper motive
  - Unlawful Electronic Surveillance
  - Perjury Trap

(See written materials for Quash Motion and transcript of Quash Hearing)

# Prepare the Witness

to understand and invoke the grounds on which they object to the legitimacy of the subpoena.

Work with the witness to **develop a script** they can use to communicate their invocation of rights and the grounds on which they are refusing to comply.

- Make sure it includes **legally effective language**, and **accurate information** about the client's rights to **take notes** and **consult with counsel**

You are entitled to time to prepare for a contempt hearing, usually 2-5 days, and should vigorously request it.

Once a recalcitrant witness invokes their grounds for noncompliance, making clear their refusal to answer any questions, a prosecutor will often go immediately before the judge to move for **contempt.**

# The Contempt Hearing | Governing law

- 28 USC §1826, The Recalcitrant Witness Statute
  - Must be an order from a judge
  - Witness must persist in their refusal to comply with it
  - Refusal must be without JUST CAUSE
- NB: Contempt hearings must be PUBLIC per In Re: Oliver
  - They often are only partially unsealed but argue it!

# The Contempt Hearing | Showing Just Cause, Part Two

Argue same or similar grounds as quash motion, supported by evidence derived from the substance of questions asked

- Is a question based on something the government could not have known in the absence of electronic surveillance? Renew §3504 motion
- Is questioning related to belief or association, and not a federal offense? First Amendment/abuse
- Questions repetitious, or intended to elicit contradictory testimony? Perjury trap
- Questions would elicit incriminating information? Fifth Amendment
- Legal opinion? (“Aren’t you breaking the law by refusing to answer questions?”)
- Prejudicial? (“Why do you hate America?”)
- Repetitious questions indicating a perjury trap

(Again, the Grand Jury book is critical for guidance)



# Sanctions Arguments upon a Finding of Civil Contempt

- Move for Bail Pending Appeal
- Ask for confinement at a “suitable place” per §1826 that is NOT jail or prison
- Argue that civil sanctions will never serve their sole permissible purpose of coercion and cannot be imposed without violating due process

# Ethics of Advising a Committed Resister



- advise of the likely consequences
- take all lawful action to support them
  - Defend at Contempt Hearing
  - Appeal Finding of Contempt
  - File Motion for Release (Grumbles Motion)

# Pro Tip on Appeals Under §1826(b)

They're **EXPEDITED!**

Thirty Days start to finish!

Get a draft done ***before*** you file the notice of appeal!

# Grand Jury End Game

**The Grumbles Motion**

# The Grumbles Argument

- The **sole permissible purpose** of civil confinement is to **coerce** the witness to give testimony before the grand jury.
- Civil confinement, imposed in the absence of criminal due process, **may not be punitive**.
- A sanction that is not exerting a coercive effect upon a witness has necessarily and impermissibly trespassed into the realm of the punitive and **must be terminated**.

*See written materials including Grumbles Motion and Exhibits, Articles, and Judicial Order*

# FREE MADDY



**"WHAT THE VULTURES CANNOT UNDERSTAND  
IS THAT ANY ATTEMPTS TO REPRESS THIS  
STRUGGLE WILL ONLY  
EMBOLDEN IT"** -MADDY

**MATTHEW "MADDY" PFEIFFER** WRITE TO MADDY:

*"The official reason the state gives for imprisoning those who refuse to cooperate is to coerce testimony. If they know anything about me or my friends, they know that this will never work. Some have said that this Grand Jury is about trying to repress people's political opinions and free speech. No doubt this is true. My subpoena states that I am being asked to testify about events that took place on May 1st. The state is trying to use broken windows as a reason to ruin people's lives. This is absurd, and I will oppose it to the fullest. This life-ruining system which they call "justice" is organized to defend property and capitalism. This system is against everything I believe in."*

**MATTHEW PFEIFFER**  
# 42421-086  
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P.O.Box 13900  
Seattle, WA 98198

FULL STATEMENTS & MORE INFO: [SAYNOTHING.INFO](http://SAYNOTHING.INFO), [SUPPORTRESIST.NET](http://SUPPORTRESIST.NET) & [NOPOLITICALREPRESSION.WORDPRESS.COM](http://NOPOLITICALREPRESSION.WORDPRESS.COM)

## Marshall EVIDENCE of the witness's MORAL CONVICTIONS



Chelsea Manning Speaks Out  
on the Courthouse Steps





# Factors and Evidence

- length of confinement
- the witness's connection with the activity under investigation and continued need for the witness's unique evidence (the record)
- the articulated moral basis for the refusal (Declarations and prior public statements)
- the witness's perception of community support (Letters, Media, Petitions, Cultural Artifacts)
- the witness's conduct and demeanor (Evidence of prior conduct, conduct while in prison, and psych report)





# The Final Danger:

Criminal Contempt

# Criminal Contempt: A note on sentencing

- No statutory max
- Treated as either a felony or a misdemeanor
- Sentences analogized to similar offenses
  - Perjury
  - Obstruction
  - Failure to Appear as Material Witness
- Guidelines, assuming no or low criminal history tend to be under 10 years
  - Except if the government really hates you



# Grand Jury Resisters Survive AND THRIVE



And so do our movements

