

# **Resist the Grand Juries**

**Fight the Green Scare**

Twin Cities Eco-Prisoner Support Committee

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## The Green Scare and Grand Juries

In the last few years, Grand Juries have been used more frequently to seek indictments for unsolved acts of property destruction against targets that were chosen for their negative environmental impact. Since federal investigators have little evidence to bring anyone to trial, Grand Juries became a tool to hunt for suspects by subpoenaing individuals in the environmental movement. They hope to turn their “guesswork into possible evidence” by subpoenaing vulnerable people like single mothers who cannot risk being taken from their children. Grand Juries can also be used as a form of harassment as in the case of former Earth Liberation Front spokesperson Craig Rosebraugh who has been subpoenaed eight times to Grand Juries since 1997.

From May through November of 2006, Jeff Hogg was detained in prison for refusing to cooperate with a federal Grand Jury probably relating to the FBI’s Operation Backfire. The Grand Jury was originally set to expire on September 30, 2006, but a motion for his release was denied and a motion to extend the grand jury until March was passed. He was released soon after several Operation Backfire defendants who turned police informant negotiated plea agreements with federal prosecutors.

No one currently knows how many grand juries are open and how many people have been subpoenaed to appear, but there were at least four grand juries open on the west coast in the last few months. One which includes Jeff Hogg and at least five other individuals relating to Operation Backfire. A second in San Francisco where 10 people, ranging from animal and environmental activists to independent media members and progressives, were served in late-spring, 2005, with subpoenas to appear before a federal grand jury. This grand jury is viewed by these activists as an attempt to frighten activists and disable the animal rights and other movements.

Outside of the environmental and animal rights movements, two other grand juries were called in an effort to indict Ed Rosenthal on medicinal marijuana charges and one including Josh Wolf, who was jailed on August 1 when he refused to testify or turn over unpublished video out-takes to a federal grand jury investigating a July, 2005 anti-G8 demonstration.

More recently on August 20<sup>th</sup>, 2007, at least two individuals have been subpoenaed to a grand jury in Minneapolis relating to a Midwest Green Scare investigation. Anthony Wong was served a subpoena in Seattle, WA, and Brandon was served a subpoena in Chicago, IL.

The subpoenas were served by an FBI agent and a University of Minnesota “police officer” named Erik Swanson. For at least a year prior to the subpoenas, Erik Swanson and the FBI had been active visiting several local community members. While it appears that the two individuals who were subpoenaed are not cooperating, the same cannot be said of the snitch Ian Wallace, who is known to be cooperating with federal authorities.

Grand juries are the first step in sending down indictments — you are not allowed to have a lawyer present inside the room at a grand jury, and can be kept in jail for months at a time for refusing to testify.

**If you know ANYONE who has been subpoenaed**, or have heard anything about the situation, please share that information. There is nothing to be gained by keeping quiet, and a lot of people’s safety, comfort and freedom are on the line.

**If you are approached by authorities**, know that you DO NOT have to say anything, and that there are people and lawyers ready to support you. Even the most seemingly- innocuous statements can have negative effects and answering questions only opens you up to further harassment.

## Grand Jury 101

Grand juries were originally formed to create a filter to stop unjustified felony cases at an early stage. Unlike a trial jury, which decides whether a suspect is guilty, a grand jury merely decides whether there's probable cause to prosecute. Unfortunately, somewhere along the way, it all went very wrong.

Grand juries actually function as modern-day inquisitions, and can include the following: detention and interrogation without probable cause; suspension of 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> (through forced immunity), and 6<sup>th</sup> amendments of the Bill of Rights; a defense attorney's presence is forbidden; no judge is present; and the jury is not screened for bias. Those subpoenaed to testify are pressured under threat of imprisonment for the duration of the grand jury (usually a maximum of 18 months) if they decline. Any line of questioning can be pursued — regardless of its relevance to the indictment. Grand juries are used by prosecutors to cast a wide net into an entire community — gathering names, contact information, associations, personal history, romantic interests — in short, anything that can be used against activists and their community.

A common association with the word “indictment” is “guilty”. The *Oxford American Dictionary*'s two definitions explain why: “Indictment (n)—(1) a formal charge or accusation of a serious crime; (2) something which illustrates that a system or situation is bad and deserves to be condemned.” Thus, a contradiction exists within the word itself — one who is indicted is both “accused” and “guilty”. Thus, the vilification of a grand jury indictment, in effect, denies the accused their right to a presumption of innocence until a trial.

## So what happens in a Grand Jury?

The process begins with the service of a subpoena. It must be handed to you or, if you refuse to accept it, placed near you. A *subpoena duces tecum* directs you to appear and produce a physical object.

If you fail to appear as directed, you can be arrested and held until your testimony. Whether you actually get arrested will depend on how badly they want you, and how easy you are to find.

If served with a *subpoena duces tecum*, file a written motion to quash the subpoena, especially where it directs you to produce privileged material or is unduly burdensome or harassing.

When it is a regular subpoena, unless you are asked to travel, it may be best not to file a motion to quash, since at least one federal circuit court has decided that any objections not litigated in the motion to quash are waived. Besides, most, if not all, objections you have to testifying cannot be dealt with except on a question-by-question basis.

If you appear, you will be taken into the grand jury room, which will have one or more prosecutors, a court reporter, and 16–23 grand jurors. Do not be intimidated. Grand jurors are simply citizens who have been selected for (grand) jury duty.

Begin writing down every question. You will be given an oath and first asked your name and address. Thereafter, if you have an attorney, most courts follow the rule that you may consult with your attorney after every question (though a couple courts have said after every few questions), although the prosecutor or grand jury may try to scare you into believing otherwise. Beginning with the first question, and every question thereafter, state, “I invoke my Fifth Amendment privilege.” And while there is no court decision stating that any other objections not raised are waived,

it may be a good idea to add, "...and reserve all other objections, privileges, and immunities." You don't want to be the first victim of a conservative judge bent on setting a precedent on the issue.

After raising your Fifth Amendment privilege a few times, the prosecutor will probably ask you if you intend to invoke your Fifth Amendment privilege to all questions. You can either say, "yes," or you can say that you cannot know if you will answer a question until you hear it.

At this stage, you may be excused. Or, the prosecutor may seek to give you immunity, which must be approved by a judge. (Immunity could have been granted before you even got to court.) You will be taken before a judge for an immunity hearing, and the judge will likely rubber-stamp the request.

Thereafter, you cannot invoke your Fifth Amendment privilege because it will be moot. Except, when they start asking about other people you know, try asserting your Fifth Amendment privilege on the basis that the granting of immunity cannot protect you, because if such persons are charged with some sort of conspiracy in another case, admitting you know those persons could lead to your getting named as a defendant in such case.

Other bases for either objecting and/or refusing to answer any individual question, despite having been given immunity, include but are not limited to the following:

- The question violates your First Amendment right to privacy of association and belief.
- The purpose of the question is to harass you on the basis of your protected political and moral beliefs.
- The question violates your constitutional right to privacy.
- The purpose of the question is to gather intelligence, not to investigate or indict a potential crime.
- You cannot answer the question because the question is ambiguous, complex and/or confusing, and any answer you give would tend to be confusing or misleading.
- You cannot answer the question, as the question makes assumptions that might appear to be admitted no matter how you answer the question.
- The question was derived from an illegal wiretap.

**You can refuse to answer on the ground that the purpose of the proceedings is not to investigate or indict a potential crime, but to gather intelligence, to harass you, and to terrorize and fragment the environmental rights community.**

You might also add: "I request that the grand jury be instructed that they have the power to dismiss the subpoena, and that they do so." Check the prosecutor's reaction to that one.

If the prosecutor wants to compel an answer, he or she will first have to take you before a judge for a hearing. Argue initially that you need more time and/or you want to brief the issue. Assuming that request is denied and your objections are overruled, the judge will order you to answer the question(s), and you will be taken back to the grand jury room.

At this point you have to decide whether to answer. Failure to answer will result in contempt, and you can be held until the end of the grand jury's term (up to 18 mos., depending on when they started; a "special" grand jury can get up to three 6-mo. extensions). Periodically thereafter, you

can file a Grumbles motion (named after a court case), arguing that you will never answer their questions, and therefore your incarceration has become punitive and you should be released.

If you decide to answer questions, you may become so stressed and rattled that you may suffer stress-induced amnesia, such that your answer to most, if not all, questions will be, “I don’t know” or “I can’t remember.” You might even ask to see a doctor. Don’t be alarmed. This condition should pass after you leave the grand jury room.

## **Resist the Grand Jury: It works!**

In a September 2004 law enforcement analysis, authors Randy Borum of the University of South Florida and Chuck Tilby of the Eugene, OR Police Department admit: “Although Grand Jury investigations are routinely successful against criminals, they have been less successful against activists and ‘true believers.’ The criminal is generally motivated solely by his or her own self-interest, whereas activists are often more concerned with their beliefs and the effects their actions may have on others and on the movement more generally.”

Former Black Panthers Ray Boudreaux, John Bowman, Richard Brown, Hank Jones, and Harold Taylor, were subpoenaed to the SF Grand Jury in October 2005, but refused to cooperate. In an attempt to coerce testimony, the government then imprisoned the five in Bay Area jails for the life of the Grand Jury. However, they all remained strong, resistant, and non-cooperative throughout, and all were released the next month.

**The best tactic to take when facing a grand jury is to refuse to answer any and all questions about yourself or others in the movement.** Any answers you do give a grand jury will be used to harass and subpoena other activists. Make your position clear to others in the activist community and to the media (to draw attention to the unjust system that Grand Jury proceedings represent).

Be aware, if you do refuse to testify at a Grand Jury, you can expect jail time (especially if they grant you immunity at the proceedings). Given the current climate, jail time for those refusing to participate in these proceedings has actually been relatively short (3–6 weeks). This is a small price to pay to protect yourself and your fellow activists from further prosecution.

## **What to do if the FBI Knocks on Your Door...**

**...to “just ask a few questions”**

- Remember the magic words: “I am going to remain silent. I would like to see a lawyer”. If your memory is prone to failure, attorney and anti-nuclear activist, Katya Komisaruk, recommends tattooing this mantra on a visible body part.
- Take notes: time & date of visit; any information you have (name; physical descriptions; car make, model, color, license plate); anything about how the conversation went. Ask for name and number of the agents who visit you.
- Immediately contact your local support group or the National Lawyers Guild: (212) 679–5100,

### **...with a Subpeona**

- You are not required to open your door for anyone. The server is legally required to hand it to you, or can throw it at your feet if you are in the same room.
- If you are served with a subpoena, you should immediately call the National Lawyers Guild
- Tell your friends and movement groups about the subpoena and discuss how to respond to it. Do not try to deal with this alone.

### **...if they ask to search your home, car or belongings**

- Ask for a Search Warrant and ensure it explicitly matches their search. If they do not have a warrant or there is a mistake on it, say: "I do not consent to a search."
- If they have a legitimate Search Warrant, you are required to cooperate, but still have the right to remain silent (remember the tattoo).

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