DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 7 OF 16

FOLDER 15

GRAND JURIES IMMINITY

GRAND JURY MATERIALS

The following materials are available from the Meiklejohn Library, 1715 Francisco Street, Berkeley, Calif. 94703, or from the Center for Constitutional Rights, 588 9th Ave., N. Y., 10036. Also from each of the National Lawyers Guild offices in Los Angeles, San Francisco, Detroit, Philadelphia, and New York.

These materials were put together in an attempt to provide one complete set of the work being done these past few months on grand juries, immunity, etc. Hopefully, duplication has been avoided.

1. A general outline from Jack Levine on how to proceed from time of subpoena to contempt. Attached to this is a short memorandum which has two points not covered anywhere else.

2. JUDITH CLAVIR, et al, v. JOHN M. MITCHELL, et al.

   This is the civil suit in NY and seems to be the most complete single set of papers thus far. Please note that duplicates of Exhibits were reproduced the first time they were used, so if exhibit blank is missing, it's a prior item in the packet.

3. IN THE MATTER OF THE INVESTIGATION OF LESLIE BACON -

   Only the order to show cause and the memorandum in support of motion to quash are included here. This is the criminal action in NY which resulted from an unfavorable decision on the case in item #2. Again, the other papers are not in the packet as they're duplicates of other items in this collection.

4. IN RE GRAND JURY PROCEEDINGS, Harrisburg, Pa., IN THE MATTER OF JOGUES EGAN.

   The original 3 judge decision, the brief on re-hearing, and the final en banc decision. Contains the wiretapping issue as raised by subponee.

5. IN THE MATTER OF THE GRAND JURY TESTIMONY OF JOANNE KINOY.

   The brief and the decision from Constance Baker Motley. Deals with the 1970 Organized Crime Bill and immunity statute therein.

6. LESLIE BACON (In re: Grand Jury Proceedings - Seattle)

   Two briefs-71-1825 relates to the grand jury and contempt and 71-1826 deals with the illegality of her position as a material witness. The two cases were consolidated. A brief on reply for both cases. Also, a petition for stay and release pending appeal motion for bail pending appeal, and the decision.

7. IN RE CAROL VERICKER (Brooklyn)

   The brief on appeal and the 3 judge court decision dated July 23. Brief covers several points but decision only deals with scope of immunity. Favorable decision.

8. IN RE CAROL EVANS, (Washington DC)

   Favorable decision - deals with wiretapping issue, scope. etc.

This library has been put together with the help of several people for NON-COLLABORATION, and in emergencies copies can be obtained from the Center for Constitutional Rights (212-265-2500) but otherwise please request them from the Meiklejohn Library. Our hope is that this type of cooperation will assist us in fighting the current mis-use of the grand jury process.

THE GRAND JURY:

ANOTHER TOOL OF STATE POWER

by Brian Glick and Cathy Doudin
from Liberation News Service

It wasn't the Justice Department or the FBI or Daley, Johnson or Nixon who decided that leaders of last summer's Chicago actions should be tried for a federal crime. Not technically, that is. Officially the Grand Jury did it.

The Grand Jury. Part of the Bill of Rights. A bulwark of American justice, serving three vital functions.

As the "conscience of the community," the Grand Jury is supposed to protect people against unfair prosecution. Until it finds that the government has substantial evidence, no person can be tried for a serious crime in federal court or in the courts of nearly half the states. (In the other states a judge makes this decision in a preliminary hearing.)

As "the people's big stick," the Grand Jury investigates official misconduct. In many states it can issue a muck-raking report even when it decides no crime has been committed.

Finally, the Grand Jury provides opportunities for citizen participation in government. To the president of New York's Grand Jury Association it represents democracy in action.

> Effective government can function - and our communities can maintain their vitality - only so long as the ordinary citizen can and will participate in determining the circumstances under which he lives his life. Even before our country achieved its independence, Grand Juries were a means by which ordinary citizens have had a direct and powerful voice in the conduct of community affairs.

This is the conventional wisdom of the civics class. We've heard similiar rhetoric befor -- about America's benevolent foreign policy about her schools and universities, about urban renewal and the war on poverty. We have reason to suspect what the same people tell us about their legal system.

A close look at the reality of the adminstration of justice in American confirms these suspicions. In fact, the Grand Jury does not involve "ordinary citizens" and does not itself exercise significant power. It is controlled by prosecutor, who uses it as a powerful weapon against the very people it is supposed to protect.

"We have reason to suspect what people tell us about the legal system."

Extraordinary Citizens

Who sits on Grand Juries is a question of first importance. If Grand Jurors are drawn from only certain groups in the society, we can expect them to use what power they have to further the interests of those groups.

The Grand Jury originated in the 13th century in England as a corps of knights assigned to help the Crown identify and prosecute criminals. This limitation of the Grand Jury to "blue ribbon" aristocrats has survived into our time.

From 1938-43 the federal court for the southern district of New York (Manhattan, Bronx, and Westchester) -- the court which tried the Rosenbergs and the major Smith Act defendants -- drew jurors primarily from Who's Who in New York, Who's Who in Engineering, and Social Register, the alumni directories of Harvard, Yale, Princeton and Dartmouth, Poor's Register of Executives and Directory of Directors. the court agreed that this procedure systematically excluded black people and workers. But it still upheld the procedure as an efficient way to find jurors who were properly "qualified." Today many states use only slightly more subtle methods to select similarly elite juries. The grand juries which indicted Huey Newton and Oakland Seven, for instance, were picked only from names provided by Alameda County Superior Court judges. Twenty-six company president, 31 bankers, 5 utility executives, and any number of realtors and other business officals were among the 261 jurors selected by the same method in San Francisco from 1950 to 1968. Non-whites, over one-third the San Francisco population, provided only five percent of the jurors.

The New York County grand juries which have indicted Bill Epton, Columbia strike leaders, and Black Panthers are not much different. According to an analysis prepared for a recent court challenge, the New York grand jurors who sat in 1964 were 1.64 per-cent black, .003 per-cent Puerto Rican and slightly over 1 per-cent blue collar. None were under 35. Most lived in census districts with a median income of over $10,000 per year.

These jurors were chosen from names supplied by judges and other grand jurors, plus anyone who applied in person at the jury clerk's office. Over nine-tenths of the panel from which New York juries are now picked qualified at a time when a grand juror was required by law to own at least $250 worth of property. The chief jury clerk admits that his office still rejects any applicant under 35 unless he is recommended by a judge. The clerks also exclude anyone on welfare, anyone who has a lien or judgement outstanding against him. As the New York Times recently put it, "credit unions screen out fly-by-nights and unreliables."

Recent civil rights legislation gives federal defendants the right to a jury "selected at random from a fair cross-section of the community." The new law also prohibits exclusion from federal grand juries "on account of race, color, religion, sex, national origin or economic status."

The real effect of this reform is to open the federal Grand Jury to the salaried middle classes. Jurors' names are drawn only from lists of voters or persons registered to vote, despite the well-known fact that disproportionately large numbers of blacks, Puerto Ricans , and poor people take no part in the electoral process. Jury clerks continue to exercise vast discretion - remaining free, for example, to treat misspelling on the required written application as proof of disqualifying illiteracy. Finally, the clerks excuse from jury duty any wage earner who claims financial hardship because he might lose his job as a result of a month's absence or because be can't support his family on the juror's fee. (Most states pay only a few dollars a day. The new law raised the federal fee from $10 to $20 per day, still only half what the U.S. Labor Department estimates that a city family of four needs to live decently.)

Whose Big Stick?

Given the difficulty young people, poor and working people, and members of minority groups have in getting on grand juries, plus the economic hardships of serving, grand jurors are sure to remain mainly white middle-aged and e-derly representatives of the propertied and managerail classes. Since these are the people who run the country anyway, the Grand Jury contributes nothing to participatory democracy.

It's also hardly surprising that in their "big stick" or watch-dog function, grand juries mad us of such people do little to upset the status quo. The reports issued by San Francisco grand juries during 1968 condemned "welfare chislers" and drug use, while supporting freeways and downtown redevelopment and giving "special recognition" to the police departmant's tactical squad.

"Today the Grand Jury has become notorious as a rubber stamp for the prosecutor

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The elite make-up of the Grand Jury also helps to undermine its third function, protecting the people against unjust prosecution. In revolutionary America a famous grand jury refused to indict the "agitator" Peter Zenger. Today, however, the Grand Jury has become notorious as a rubber stamp for the prosecutor.

In any case, the jury's impotence is structured into the criminal process. Most grand jurors are mystified by the technicalities of the law. They serve only one month every two or three years. They have no staff except for the prosecutor's office, and they are not allowed to hire outside experts.

If one grand jury refused to issue an indictment, the prosecutor is free to try another jury and yet another until he persuades one to go along. If a grand jury decides to indict someone he doesn't want convicted, the prosecutor can always find a way to let the case die. In some states he has the legal right to dismiss an indictment.

Though the grand jury is useless to defendants, it can help the prosecutor in several important ways.

Confronted with public pressure to bring to trial someone the jury wants to protect, the prosecutor can have the case killed by a jury of "ordinary citizens." The Brooklyn D. A. used this tactic with great success when a police officer shot a black youth in 1965. The grand jury issued a report exonerating the cop. D. A. Koota said there was nothing more he could do, and the courts rejected CORE'S petition demanding further inquiry.

Though a grand jury report - one which names names -- the D. A. may be able to prosecute in the mass media opponents against whom he could prove no case in court. Black militants in Cleveland were harrassed in just this manner after that city's most recent "riots." In the early Fifties a new York grand jury report accused officials of the United Electrical Workers Union of membership in the Communist Party, which was not a crime even then, and recommended that the National Labor Relations Board decertify the union.

The prosecutor's third possible use of the grand jury is to deprive a defendant of the tactical advantages of a judicial preliminary hearing. At a preliminary a defendant need not take the stand or present any part of his case. The defendant's attorney can discover the state case and cross-examine its witnesses; if the witnesses change their testimony at trial he can quote from the transcript of the hearing to cast doubt on their honesty. Since court dockets are almost always crowded, defendants can use preliminary hearings to gain time before they have to stand trial. Attorneys for the Columbia strikers used preliminary hearings to delay almost all trials until the fall, when a new University administration withdrew changes against most of the students. Since the grand jury serves the same procedural functions as the preliminary hearing -- both are supposed to protect against unjust prosecution and both in fact rubber stamp the D. A. -- the defendant is not entitled to both a preliminary hearing and a grand jury. In trials for the minor crimes (misdeameanors) that most people are charged with, the D. A. decides which one of the defendant gets. The New York D. A. learned his lesson from Columbia trials and has submitted political cases to the grand jury since then.

Finally, the D. A. can use the grand jury to force adverse witnesses, like movement activists, to talk with him outside of court and to turn books and papers over to him before trial. The presecutor needs this power to prepare for trial.

He can also use the transcript of the grand jury Proceedings at trial to contradict and adverse witness into lying to the Grand Jury and then convict the witness of perjury, even if he doesn't have enough evidence to try the witness for any substantial crime.

The prosecutor has this power only through the grand jury. Ordinarily we are no more required to talk with a D. A. than with the FBI or the police. We can refuse to talk with any of them without fear of being jailed for contempt of court. (A person who lies to such officials can, however, be prosecuted for willful misrepresentation. In the Fifties political activists frequently were trapped into petty lies and then forced to inform to avoid several years in jail.)

A defendant can gain nothing from grand jury proceedings. He and his attorney are excluded from the jury room. They cannot cross-examine the state's witnesses or object to questions put to defense witnesses. In many states the defendant cannot appear before the grand jury even if he does discover that it is discussing him, and in the other states he can testify (and then leave) only if he agrees to allow the D. A. to use anything he says against him at trial. Although the prosecutor automatically receives the transcript of the jury proceedings, the defendant can see a copy only under special circumstances and with a court order.

The Grand Jury and the Movement

The power to compel testimony through the grand jury gives the D. A. even more than significant technical advantages. It provides him, and the government generally, with a powerful weapon for terroizing people active in movements for social change.

The grand jury meets in secret and is surrounded by an aura of myster. Not only are the prospective defendants, the media and the public excluded, but a witness cannot even bring his own lawyer into the grand jury room. His attorney can be in the hall. and the witness can be excused to consult him, but this is a far cry from his having counsel at his side throughout the proceeding. The D. A. may well be able to pressur him into answering questions he shouldn't answer and to embarrass him so he will leave to talk with his lawyer only rarely.

The grand jur proceeding is the only situation in which a person can legally be forced to talk to the authorities entirely alone, with no lawyer or friends to advise and support him. The prospect of such an experience can terrify even the strongest and most experienced of activists. The government tries to intensify these fears by calling witnesses separtely, or only a couple at a time, and encouraging them to respond as isolated individuals.

"Cooperation with the Grand Jury reinforces its legitimacy."

The U. S. Constitution prohibits federal or state officials from forcing anyone to give any information which might tend to incriminate him. Although technically there is no constitutional right to refuse to give information because it might incriminate someone else, in practice the courts are forced to accept almost all claims of possible self-incrimination since no one can prove his testimony might incriminate him without in the process incriminating himself.

The only legal obstacle to using the Fifth Amendment is the grand jury's power, in some courts and in some kinds of cases, to offer a witness immunity from prosecution on the basis of his testimony and then to have him held in contempt if he still refuses to talk. The Chicago witnesses who took the Fifth were not offered immunity, possibly because federal immunity laws may not cover the supposed crimes which the grand jury was investigating.

CURRENT USE OF GRAND JURIES

We are in an era of increasing political repression;political prosecutions are becoming a way of life. We must, therefore, investigate every possible avenue of redress from these acts of repression and oppression.One area that is worthy of greater attention than we have given it in recent years is the pre-indictment stage of the criminal proceeding.That stage is important because it provides the basis not for winning a political trial(after an incalculable investment of client and attorney time and effort),but for aborting such a trial at its inception. Particularly at the federal level, the most important part of the entire criminal process with respect to political prosecutions may well be the grand jury proceeding.

Historically the grant jury was intended to be a buffer between the individual and the state. See Wood v. Georgia,370,U.S.375,390 (1962).[1] Before the grand jury came into existence it was the executive branch(the Crown) that had the power to institute a criminal prosecution against an individual.The grand jury was supposed to take over for itself the making of this judgement,and thus preclude the initiation by the state of a prosecution directed at a political enemy of the state.Although the grand jury was thus intended to operate as a body wholly independent of the executive branch, it has not evolved in that manner. We have allowed a fundamental distortion and co-option of the function of the grand jury. Today the grand jury acts, not independantly of the prosecutor,but as an arm of the prosecutor.

A grand jury may operate in either of two ways.It may conduct its own investigation of a possible criminal violation. If a grand jury believes there may have been a violation it need not wait for a prosecutor to decide to bring evidence before it. Affirmatively, it can subpoena witnesses to look at the evidence.It can do this without the prodding or indeed without the participation of a prosecutor.[2]

This type of investigation is practically extinct. It is a rare grand jury that sets out upon its own motion to look into possible violations of the criminal law. Instead, virtually all grand jury investigations are conducted at the behest of the United States Attorney and the Justice Dept.The grand jury investigation is really commenced by the U.S. Attorney who is seeking indictments. Rather than actively seeking evidence on its own, the grand jury sits passively while the prosecutor tries to present it with enough evidence to get it to indict.

There is,however, a critical distinction to be made between the types of grand jury investigations that are instituted by the prosecutor.When a witness is subpoenaed to appear before the grand jury,does the prosecution seek to elicit from the witness evidence that it already has in its possession,by virtue of the investigative work of the FBI or other agencies?If so,arguably the subpoena

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1. United States v. Smith,104F.Supp.283(N.D.Cal., 1952),is an opinion rich in discussion and documentation of the history of the grand jury as an institution.
2.A criminal charge that is the product of such an investigation is called a "presemtment."

is valid. But this is not often the case. What usually occurs is that a witness is forced to appear before a grand jury under compulsion of subpoena and submit himself to a fishing expedition by the prosecutor. The latter asks questions designed not to present to the grand jury evidence which the prosecutor already has, but to discover that evidence for the first time.Continued cuse of the grand jury by the Justice Dept. in this second way has cloaked this technique in the guise of legality and we have come to accept such a procedure as a matter of course. But we must recognize that this technique represents a perversion of the function of the grand jury proceeding and an attempt by the Justice Department to get around the denial to it by Congress of the United States of its own subpoena power.

The efforts by the FBI to obtain a subpoena power to be used in its investigations have been consistantly rejected by the Congress. Today no one can be directly compelled to answer questions posed by FBI agents or produce other evidence for them. Thwarted at this end, the Justice Department has sought to evade this limitation by using the subpoena power of the grand jury as if it were its own. If a citizen is approached by the FBI but refuses to answer questions he is then usually subpoenaed before a grand jury and asked the same questions by the U.S. Attorney. At this point, the U.S. Attorney is using the subpoena for dual purposes: not only is he trying to present evidence to the grand jury, he is trying to discover it. The subpoena power of the grand jury is thus being used to perform a function that the grand jury does not have; i.e., the investigative function of the FBI.This is one practice to which we can and must turn our attention. See United States v. Minker,350 U.S. 179,190-2(concurring opinion of Black,J.);Durbin v. United States, 221 F. 2d 520 (.D.C. Cir., 1954): United States v. O'Connor, 188 F. Supp. 248 (D. Mass., 1953): United States v. Pack, 150 F. Supp. 262(D.Delaware, 1957); United States v. Proctor & Gamble Co., 356 U.S. 677,683-4(1957); United States v. Proctor & Gamble Co., 187 F. Supp. 55 (D.N.J., 1960); United Electrical, Radio & Machine Workers of America v. Herzog, 110 F. Supp. 220 (D.D.C., 1953).

Eric wanted me to keep this short so perhaps the questions of immunity and the First Amendment as they relate to testimony before a grand jury are netter left for Atlanta.

Jim Reif

Not for publication

HOW DO WE TALK WITH THE ENEMY?
A DISCUSSION OF TESTIFYING AND GRANTS OF IMMUNITY BEFORE FEDERAL GRAND JURIES

A number of Los Angeles movement people have been jailed on charges of civil contept in Tucson, Arizona. They were held in contept for refusing to answer questions asked them by a federal grand jury. The movement people decided that the correct political decision, at least for the moment, was to refuse answering any questions. This paper is an attempt to lay out the reasoning behind that decision, and encourage collective thinking on what approaches can be taken with grand juries in the future.

The Los Angeles people did not talk because they were concerned that testifying under grants of immunity from prosecution(which they were given) could sow some bitter seeds of distrust. They felt a danger existed for there was no time to have an open and careful discussion among movement people in Los Angeles about what ought to be done. Without a discussion that educated and satisfied people, it seemed that testifying under immunity before a secret proceeding of the grand jury could further divide a movement that has not yet gotten together.

Discussion of a limited sort about the question of testifying has begun between some of the people who were directly menioned as objects of investigation. This discussion must be broadened immediately to include other people and groups. It is necessary to build shared understandings so that when other people are called before grand juries we can be flexible in our approach to the questions of testifying and going to jail for not testifying.

Who should share in the discussion? It seems clear that everyone who cares about organizing the people and dealing with repression should discuss this matter --- that is, every serious section of the movement. It also seems clear that this does not only include the aboveground people. Since those who are underground are a part of the movement, and since those underground are often the targets of grand jury investigations, it is necessary for the underground, wherever possible, to be part of the discussions and analysis. We need to build trust and understanding both between groups aboveground and between those above and those under.

Why are grand juries being used at this time? We should understand what the Justice Department is trying to do as we consider our decision about whether to testify or not.

It would appear that the prosecutor in Tucson is using a dragnet to gather information about people in the L.A. movement. He has asked sweeping questions, extending to many different people and groups. For example: "Please describe fully every contact you (the witness) have had with (such and such movement person) in the year 1970. Please describe every conversation you had, where you were when the conversation took place, what was discussed and when did it take place." and, Please describe every riot, disorder, or demonstration you attended in the year 1970. Who was present. Describe fully your activity & theirs."

Such questions could lay the foundation for broad conspiracy charges. The Justice Department had admitted that it is now investigating possible conspiracies including violations of the Federal Anti-Riot Act(used in the Chicago Conspiracy and the Seattle 7 Case). This goes far beyond the originally stated purpose of the Tucson grand jury, viz, an inquiry into the alleged purchase & interstate transportation of some dynamite.

Who are the targets of this investigation? Other grand jury investigations would appear to indicate that the Justice Dept. may have its eye on many different people. In Chicago, following the 1968 Convention, a cross section of the national movement at that time was charged (including two relatively

unknown figures,to make clear that any mass political activity could lead to conspiracy charges whether or not you were 'known' and whether or not the co-defendants ever knew or had worked with each other.) In New Haven, New York, and San Francisco, grand jury investigations have focused on Panthers. In Detroit and Chicago, grand juries have returned indictments against Weather-people. And, in Seattle, the grand jury indicted a cross section of the local white radical movement. The current investigation in Tucson would appear to be an up-dated version of the Seattle approach combined with what happened in Detroit: that is, the target appears to be some people who are underground, and a number of people who are actively working aboveground.

When the target is broad the Justice Dept. can make things tough, at least for a time. There is the possibility some one group under investigation may be politically isolated, or at political odds with other groups under investigation. Some people might testify out of sectarian antagonisms. There is the possibility some individuals may be antagonistic to other individuals. The broader the target, the more difficult it might be for the movement to resist the effects of this repressive tactic; or, it may be that the reverse could be true, i.e. the broader the target, the more it forces the movement to work together.

What does it mean that grand jury hearings are held "in secret."? A prosecutor is there from the Justice Dept. The grand jury itself, composed of prominent citizens , is there. Witnesses will be called one by one to appear in front of the grand jury and the prosecutor. If a witness has a lawyer, the witness must still appear alone. The lawyer must remain outside in the hallway. Each time a witness wishes to consult with a lawyer, she or he must ask to be excused to go out to the hall. Of course, there is no one from the 'public' allowed in.

What is this grant of immunity from prosecution? As a witness refuses to answer a question, any or all questions, the prosecutor can petition immediately a federal court for a grant of immunity for the witness. This means that the witness will not be prosecuted for any offense coming out of this invesitgation, and therefore cannot assert her or his privilege against self-incrimination and right to remain silent. If the witness is not going to be charged with a crime, there is no way the witness can be said to incriminate herself or himself, and there is no supposed valid reason for remaining silent --- according to the present state of the law.

Once the grant of immunity from prosecution is given by the federal court to the witness, the witness is rbought back immediately to the grand jury and re-asked the earlier question or questions. If the witness till continues to refuse to answer, then she or he is brought back again to the federal court and found to be in contempt for refusing to obey an order of the court, i.e. to testify under the grant of immunity. This is a form of what is called "civil contempt' and the jail term or punishment can last as long as the witness refuses to obey the order of the court. This means that a witness could stay in jail until the grand jury stops meeting and disbands. The legal term of a grand jury can be extended to 18 months. Even after the grand jury is over and the sentence for civil contempts must be over, it is still possible for the Justice Dept. to bring the witness in front of the federal court again and prosecute her or him on a charge of criminal contempt. Criminal contempt carries a jail sentence of definite duration.

This tactic of sentencing witnesses to jail for contempt has provided the government with an effective mechanism for jailing movement people who refuse to testify. If the Justice Dept. thought that the movement's position was uniformly to refuse to testify under any circumstances, it might be inspired to begin nation-wide investigations, issue wholesale subpoenas to everyone,grant immunity, and jail everybody who refused to talk. Such a technique for repression would have the following advantages for the gov't:(1) taking people out of work and organizing activities with a minimum of state procedure;(2)repressing the revolutionary movement without the expense and time of trials;(3)moving against people with less publicity than in trials. It must further be pointed out that the charge of civil contempt is not determined by ajury, and it is much more difficult for us ever to win on appeal in this situation.

What should we do when called to testify and given immunity?What factors should affect a decision to testify? For the purposes of this discussion, let us assume that we aim to develope a flexible approach which will take into account a whole range of relevant factors.

A preliminary consideration should always be to assess what information the witness called actually knows. The less one knows or the more general one's knowledge is, the greater the possibility of testifying without harming anyone. Another consideration is whether the question or questions can be answered without giving any information or much information. In legal terms, a line might be tried between perjury (lying in some way or not being able to remember) and contempt (not talking). These considerations indicate how tricky the problem is, and how much risk and speculation is involved in any decision.

What about lying and risking perjury charges?What if you decide that you have information that is damaging and cannot be given, and what if you decide that you cannot hedge your answer without lying?This is a relevant question when there is some chance you will be found out. Should you lie and run the risk of perjury, or should you be silent and run the risk of contempt? In balancing the alternatives, it is important to know that perjury is often difficult to prove. Also, a perjury charge involves a criminal proceeding with a jury trial(unlike civil contempt), and an opportunity for appeal.

Another way to approach the balancing problem is to weigh people doing time for contempt off against the possibility of causing other people to be indicted and convicted based on testimony given. A trial may take a long time. This can be good or bad, depending on whether someone is out on bond or not.A jury trial gives us achance, at least the chance to have enough error committed in the trial to give us something to appeal oh.It is clear that there is generally a better chance to beating a criminal charge than beating a contempt.However, a criminal charge may be much more serious and involve the possibility of much more jail time.

Also, we should probably consider the government's track record.Can the Justice Dept. get an indictment from the grand jury without the information from the witness called? Is the Justice Dept. always successful at prosecuting contempts? at prosecuting criminal charges?

Another legal point of interest is that a witness' testimony before a grand jury cannot be used in a trial, unless the witness testifies at the trial and then testifies to facts differently than in the previous grand jury testimony. Legally, the grand jury testimony is used to get the indictment, but it cannot be used to prove the charge at trial, although it can be used to impeach(call into question) the credibility of a witness by showing that the witness testified one way in front of the grand jury and another way at trial, Is this a consideration?

It is important for us to think as clearly as we can about just whothe gov't is after.If the object of the investigation is safely underground questions might be answered which under other circumstances should be dangerous to answer.Maybe the only risky questions regarding underground people are questions relating to their past or present locations.Also,what if the person about whom the questions are being asked has already been indicted?What if she or he already has a number of other heavy indictments?

Also, it is imporant to have some idea, if that is possible,what the info.will be used for. It may not always be the case that the information sought is to be the basis for an indictment. It may be that the information is part of a general fact hunt, or that the information will be used to intimidate employers or neighbors of certain individuals, or their families.

Finally, who really ought to make the decision about testifying?Perhaps a preliminary discussion be had with many people. A final decision ought then be made with those most closely involved: the witness and her or his lawyer;perhaps,her or his political comrades and those who appear to be the real objects of the investigation. We feel that it is of great importance to the movement that [illegible] quickly and well.

TITLE 18, U.S.C., SECTION 2514
IMMUNITY OF WITNESSES

[Immunity section of 'Rap Brown" Act]

Whenever in the judgement of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter or any of the offenses enumerated in section 2516, or any conspiracy to violate this chapter or any of the offenses enumerated in section 2516 is necessary to the public interest, such United States attorney, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forteiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except in a proceeding described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

SOME THOUGHTS ON GRAND JURIES

Talking, maybe even shouting; but we're not singing
Advantages of testifying before a grand jury; particularly at Tucson.

Some assumptions: the question of testifying before a grand jury only involves the question of immunity. When we are called to testify we should refuse to answer any questions, period. (In Tucson the grounds for refusing to testify ranged from: 4th,5th & 9th amendments.) Usually the process stops there: we have nothing more to do with the grand jury. However, in the case of the Tucson grand jury, the government then granted immunity from prosecution, to the people subpoaened. When they still refused to answer, they were ripped off. The jail sentence is twofold: civil contempt for the duration of the grand jury --- supposedly a coercive as opposed to a punitive measure, the government is waiting until the defendants talk; and possible criminal contempt which would involve regular criminal proceedings after the grand jury has terminated. Criminal contempt proceedings include the right to bail, jury trial etc.; civil contempt doesn't even involve these bourgeois rights.

Conclusion: the question of testifying concerns only people who've been granted immunity.

Assumption #2: the government is involved in a political affair; so are we. Legal and moral questions are secondary. However, legal and moral matters shouldn't be disregarded. What we decide, when dealing with testifying or not, is a tactical question that fits into the way we want to handle ourselves politically, who we are, what the government wants to do politically, etc. We have to keep that political framework at all times.

To testify or not raises a whole host of issues, emotions, historical memories, and a general uneasiness. Part of the problem is the sense of powerlessness we feel. What questions will they ask, what information do they want, who are they after? This, in a context of secret proceedings, no right to cross-examine, no counsel in the same room, and a general atmosphere of intimidation --- definitely not our own turf. Also, whar are people going to think; it was just 15 years ago that testifying meant knuckling under, ratting on past associates, embracing anti-communism. Finally, if the government is using immunity in a new way, simply to rip off movement people, then that gives all the more reason to fight the grand jury system. And if we want to fight the grand jury, and the people are granted immunity, what are people in the country going to think if we testify, or if we refuse?

These are some of the key areas of confusion which must be cleared up in a political way before effective decisions can be made; they can be broken down into: (A) Information, or what is the government after (b) Suspicion within and without the movement, or what are people going to think (c) Purpose of immunity/grand jury, or how do we best fight the government's tactics and make it clear who we are and what we want.

A) INFORMATION: There are three possible areas in which the government wants information: 1) to be used as the basis for indictments against other movement people 2) to be used for intelligence purposes 3) to be used against the person testifying.

1) the nature of the grand jury system is most simply an expkicit tool of the government to give legitimacy to prosecutions they want to undertake. In most of the recent conspiracy trials against us --- Santa Barbara, Seattle, the Panther 21 --- there have been no subpoaenas issued to movement people and of course the government got their indictments. When movement people have been subpoaned and talked with or without immunity being granted, it also seems clear that that testimony was far from instrumental in getting the indictments.

The grand jury is an incredibly select body which almost always includes a majority of uppper-middle class whites. It is structured so that its interests most nearly coincide with the government's. (See the Boudin, Glick pamphlet on the grand jury, printed by the New England Free Press.) Let's make it clear: our political demand is not a more representative grand jury, but the abolition of the grand jury itself.

A lot of our fears center around questions like: were you with such and such a person at such and such a time, and if we say yes, zippo an indictment against our best friend. But the reality of the situation is that even if we don't answer, government says to grand jury that that happened and grand jury stamps approval. Also, if the government is going to introduce that information in the trial itself, then, either: we have given it information that we're not afraid of announcing to the world in any case --- yes I did meet such and such a person and we talked about the genocide against the people in Vietnam, or yes we talked about having a demonstration concerning the suppression of the Black Panther Party which is doing .....; or, we have information that is concerning an 'illegal' situation which is so clearly 'illegal" that, of course, we wouldn't testify. But all the conspiracy trials, and apparently, also in Tucson, don't involve "legal' or illegal' matters but political questions, matters which we will not hide but will affirm and keep on affirming (though the way we do that is a whole other question.)

Conclusion: with very rare occasions most of the questions which we think might lead to indictments against other people can fairly successfully be answered. The exceptions must be taken into account and clearly the choice could be to not testify, but the exceptions seem to be few and far between.

2) Intelligence: most intelligence is gathered by bodies like the CIA, FBI, Naval Intelligence, etc. Therefore, it seems likely that questions for intelligence sake are for the purposes of confirmation. However, exceptions do seem to exist. The larger point is what kind of information are they after and how do we handle that. Most of the movement operates in a clear and open manner organizationally. A lot of information concerning our activity is open to people in any case and can be found in things like the big Movement anthology, or registry of movement organizations, etc. Questions concerning small group collectives are somewhat different but can be dealt with by

simply sidestepping questions concerning political operations --- yes we all live together, and we talk about how oppressive this society is ..... as opposed to, yes we live together and are planning to do organizing in the hospital system ..... Finally, if the government wants to call our slippery tongue, perjury, they have to go through an open trial where their chances of conviction are slimmer than just locking us in the slam for civil contempt without trial etc.etc. Slippery tongueness is a tricky thing, and we have to be prepared to fight perjury charges or to stop our testimony at any moment. But, at this point we have no political experience to form that judgement. Caution (which largely means not testifying) should and must be applied, but too much caution sometimes creates a political unreality. Back to the original point: most likely the intelligence is already gathered. That's the political context.

3) Using testimony against ourselves: this question was particuarly relevant in the 50's where political association could be used against you in your job, school, etc. However, when they call us up to testify, and grant immunity, then rest assured they know we're political. About the job: most of us are open about our politics at our jobs. Exceptions to this case are in a predicament; even if they don't testify, that type of intelligence is easily gathered and used. The only security is support for who you are politically. Again there can be exceptions which can lead to not testifying.

B) SUSPICION: Again three possible areas of concern: 1) within the above-ground movement 2) relations between an above-ground and an underground 3) people outside the movement.

In each of these questions we are operating with a basic assumption: that we will publicize the questions if we don't testify; and publicize the questions and answers if we do. Here we have an advantage over the state; witnesses are not legally bound to secrecy, only the government, bailiffs, judge, etc. There is an area where we have the initiative outside the grand jury.

1) Within the aboveground: the way to deal with suspicion is to make our political motives and strategy absolutely clear in either case. Exchanging information and political knowledge is crucial and is the only way to deal with suspicion and develop any kind of political unity. Anything but being open and clear is fatal to us no matter what the decision about testifying.

2) Above ground/underground: the most recent conspiracy trials have brought up the question of Weatherman, whether in using it as the focus of the government's political attack, or indicting one or more "alleged or 'real" Weatherpeople along with aboveground movement people -- as seems to be the case with Tucson. We should operate under two assumptions in relation to Weatherman. First, that the function of the underground is to take care of its own and protect them, and to answer politically for its own actions. Second, that the purpose of the aboveground movement is not to service an underground (we are talking about here and now) but to build a movement in this country involving massive numbers of people in a diversity of communities. We have our own purpose and identity, and it's that which the govern= ment fears and wishes to destroy before the potential for a mass movement

becomes actual. This does not mean we Weatherbait: the real question in any political trial is what we stand for and what the ruling class stands for, & making that choice clear and available. This politics has to be made clear. And, if one testifies; then the suspicion of seeling out the underground must be shown to what it is: bullshit. Our cirteria as regards information about our movement comrades are the same. And our political attitude towards the underground must also be made clear for the whole movement to think about, help change, disagree with, or say right on. Again our political message is that Weatherman is not the point --- what this country does and what we want is.

3) People outside the movement: two things can be said, we are not afraid of say who we are, and the grand jury must be shown for what it is. The problem with this debate about testifying in the 50's was that it did not involve the explanation of who the subpoaened were. That just allows anti-communism to wreck havoc. Part of winning a struggle is being able to set the terms and content of the struggle. The issue is the war, capitalism, imperialism, sexism, racism, etc. & how the grand jury functions to support those systems.

C) Purpose: two important problems: 1) is the government out to use immunity as a whole new independent tactic or repression and2) whether that's so or not, how do we fight, what are our priorities in choosing the arena of struggle.

1) The Tucson case has some new particulars. For the first time, 5 people have been granted immunity and thrown in the slam for refusing to testify. The first round of questions (name and describe all the conversations you had with person x in the year 1969,1970; name and describe all the riots, demonstrations, and/or disorders you participated in, in the years 1969,1970) show that the government is fishing and they're going to harass/repress with immunity; something new from the other conspiracy/grand jury trials. More subpoaenas might be coming. Our analysis of the government strategy at this point is still vague. However, a couple of things can be gleamed: in a fairly sloppy way they're tyring to bring conspiracy against some white L.A. people, and being somewhat unsure they've started playing with immunity as an exploratory tactic to harass/destroy us. Therefore, the grand jury takes on more importance as a political target. Up to now, almost all organizing has focussed around a trial, not the grand jury. To testify or not in this case takes on a new dimension ....

2) Our strategy/priorities are still basically the same -- to demonstrate the court system for what it is, to win by any means possible, to use the courts as an opportunity when and where possible to articulate our own politics and indict the ruling class.

If we don't testify, we must --- if we consider the grand jury an important target --- organize around its system and structure and explain to people that we want to fight/destroy the grand jury.

If we do testify --- taking into account the circumstances and limitations of INFORMATION and SUSPICION --- then equally we must struggle about the grand jury to make it very clear that our tlaking is an attack against it. (By publicizing the questions and answers, etc.) The political framework in both cases is open clear politics: our values, vision and critique of the

ruling class vs. the ruling class actions.

SUMMARY

The position here is that with qualifications we should explore the possibility of testifying. The advantages are that (a) we effectively eliminate immunity as a tactic against us (and gain immunity for some sisters and brothers) and b) we can turn the tables around by tackling the suspicions, 50's memories, and hostile environment, by demonstrating through the immunity questions what the government is about and the kind of shit they're after in conspiracy trials and who we are and how we answer.

The qualifications are important: legal options to quash immunity and slow down the court system should be exhausted before testifying; the decision to testify should in some sense be movement wide, that is, we have to share our information and political criteria and hash them out.

Finally, the ultimate choice concerning security should be made by the individuals or possibly her or his collective, partly because we have no experience and in many many ways the cards are stacked against us when we enter the grand jury room. But we are a political movement that can begin to make choices that place our struggle on a new and very different level.