

Grand Jury Training

60 minutes

Materials: Handouts, FBI caps, cop sunglasses, clip-on tie for prosecutor, butcher paper, masking tape, and markers.

1. Intro – 2 minutes

- (Trainers introduce themselves.)
- This training was written by the Grand Jury Resistance Project and Midnight Special.
- We also made some handouts that will be available after the training, so don't feel like you have to take notes.
- This training works when everyone participates. Please feel free to answer questions, even if you're not sure if you have the exact right answer. And if you're the kind of person who participates a lot, please take a step back.
- This training uses role plays to give you the experience of being harassed by the FBI without actually getting subpoenaed.
- We're going to start this training with a role play. Who wants to volunteer? [give out role play card]

2. Role Play #1: FBI Home Visit – 2 minutes

Let's start with a role play. The FBI is going to visit the home of [person who got the role play card]. Let's see what happens. *[The participant does everything wrong and goes along with what the FBI asks of them.]*

- *The FBI knocks on the participant's door to ask them some questions.*
- *FBI: "Are you Pat Smith? We need you to answer some questions."*
- *"Do you know Mary Jensen? How about Jake Harris, Tom Bradley and Chris Jones?"*
- *"Oh, and can I look around your house, just to see if everything's ok?"*

3. Discussion – 10 minutes

- What went wrong?
- Lesson: Don't trust cops – Local police, FBI, Highway Patrol, Secret Service, etc.
- You don't have to talk to them
- Practice the magic words:
 - "I am going to remain silent. I want to see a lawyer" and "I do not consent to a search."
 - We say them this way so there's no ambiguity for you, the cop, or any witnesses.
 - You can say "I do not consent to a search" whenever the cops search *anything*: your house, your car, your person, your tent, your garage, anything.
 - You can also not open the door and talk to the cops through the door.
 - It might not stop them from searching, but there's a chance whatever they find will be thrown out later.
 - If they have to break down the door, it's proof you didn't give consent!

4. Role Play #2: FBI Home Visit (again) – 3 minutes

- We're going to do the role play again. This time, the participant does whatever they'd do in real life. *[The participant is supposed to say "I'm going to remain silent, I want to see a lawyer," and "I do not consent to a search.]*
- *Again, the FBI knocks on the participant's door to ask them some questions.*
- *FBI asks all the same things as above, but (hopefully) doesn't get any cooperation.*
- *FBI: "If you don't cooperate, we're going to come back with a subpoena for a grand jury." The FBI then leaves.*
- [After the role play] So what was different that time?
 - Person didn't sell out their friends and they didn't get searched
 - The FBI often uses the threat of a grand jury. Not many people are actually subpoenaed.
 - A subpoena is a legal order to appear at a court hearing and/or give up documents (papers, emails, etc.)

5. Vignette: Welcome to the Jurydrome – 15 minutes

- Let's start by watching a Grand Jury in action.
- [Trainer #1] is the Prosecutor and [Trainer #2] is Pat Smith, a witness. You're all the members of the Grand Jury.

Prosecutor: Good morning, ladies and gentlemen of the jury. Today's witness is Pat Smith.

(Mr./Ms.) Smith, how long have you known Mary Jensen?

Witness: Um, about 5 years?

Prosecutor: Please be specific, (Mr./Ms.) Smith. Lying to a grand jury is a felony. *Exactly* how long have you known Ms. Jensen?

Witness: Five and a half years.

Prosecutor: And you know Ms. Jensen to have been an environmental activist, is that correct?

Witness: Yes.

Prosecutor: Was Ms. Jensen ever frustrated that political change was happening too slowly?

Witness: That doesn't mean she was a -

Prosecutor: Just answer the question.

Witness: Yes.

Prosecutor: Did Ms. Jensen ever state that the government would never enact the environmental change she felt was needed?

Witness: Well, yes, but -

Prosecutor: Did Ms. Jensen fear that there might be catastrophic environmental collapse if extreme action wasn't taken soon?

Witness: Yes...

Prosecutor: Did she have friends with similar opinions?

Witness: Do I have to answer these questions?

Prosecutor: Yes, you must answer these questions. Now, did she have friends with similar opinions?

Witness: Yes.

Prosecutor: Who were these friends?

Witness: Well, there was Jake Harris, and Tom Bradley, and Chris Jones.

Prosecutor: Thank you Ms. Smith, you're free to go.

Witness leaves

Prosecutor: Smith's testimony has shown that Mary Jensen is part of a conspiracy to engage in numerous, violent eco-terrorist attacks. Next week we'll question Jake Harris, Tom Bradley and Chris Jones.

Brainstorm

- What did you see?
- Who's in the room during a Grand Jury? Who isn't?
 - There's no defense attorney, no judge, and no public.
- How is it the same as a regular jury or trial? How is it different?
 - When you go before a grand jury, you're not (yet) a defendant in a criminal trial. This is in some ways a bad thing.
 - Defendants have important protections that you don't get in a Grand Jury.

Short Lecture

Grand Juries are impaneled for two purposes:

- Indictment (of dissent): 99% of cases result in indictment (a "rubber stamp" for the prosecutor), an often-necessary step to go to criminal prosecution.
- Investigation: The Prosecutor uses the Grand Jury as a fishing expeditions to collect information, intimidate activists and create distrust within the movement.
- There are 16-23 jurors. They're not screened for bias, so they're usually rich, white, retired men. They can ask questions, too.
- Grand Juries can last up to 18 months
 - They usually meet weekly or monthly
 - Their terms can be extended, but most finish in less than 18 months
- This is done in complete secrecy.

Witnesses are often subpoenaed for their political beliefs.

- They don't have to tell you why you were called up.
- ANYONE can be asked about ANYTHING.

Two major constitutional rights are denied:

- Your 5th Amendment right to remaining silent. You have to talk or face contempt charges. (More on that later)
- Your 6th Amendment right to counsel. The Prosecutor can call up prosecution-friendly witnesses to make the people getting investigated look guilty, and there's no one to cross-examine them.
- You're not entitled to a defense attorney, because this isn't a trial.
- No defense attorney is allowed in the room. However, you can have one outside, and go outside to consult with them before answering any questions.
- The normal rules of evidence do not apply; for example, hearsay evidence is allowed.
- There is no double jeopardy protection – you can be re-subpoenaed for the same issue again after the Grand Jury's term expires.

6. Resisting Grand Juries – 13 minutes

Brainstorm: How can we resist Grand Juries?

- Don't be around to get subpoenaed. You have to be physically served in the US to be subpoenaed.
- Don't show up for the Grand Jury.
- Have a press conference outside the Grand Jury to publicize it.
- Show up and read a pre-written statement to the jury.
- Lying? This is often a bad idea. We're going to talk about this in a second.

Be wary of lying.

- A lot of people have been found not guilty of whatever they were originally charged with, but found guilty of perjury for lying to a grand jury.
- Perjury – lying under oath – is a felony.
- We can't tell you what to do, but you can be a lot safer by just not talking.

The prosecutor will offer “use immunity.”

- This is where they promise not to use what you say against you.
- We call this “use-less” immunity, because they can use what you tell them to dig up more dirt on you and your friends.
- The Prosecutor can also use what you tell them to scare your friends into saying stuff about you, because your friends think you sold them out when you really just gave the Prosecutor a little information.

If you don't fully cooperate, you might get charged with **civil** contempt.

- You're more likely to get charged with civil contempt. That's when the prosecutor puts you in jail to coerce you into cooperating.
- You can be in jail for two weeks to two months or longer – possibly for the length of Grand Jury, but that's pretty rare.
- Your lawyer can help shorten this time – we'll talk about that in a minute.
- The basic idea is that as soon as it's clear you're not going to talk no matter what, the judge has to let you out. They can't keep you in jail to punish you – just to coerce you into cooperating.

You might also get charged with **criminal** contempt.

- This is rare.
- It's actually better in some ways. Since it's a criminal charge, you get all the legal protections of someone facing criminal charges.
- By the time this is resolved, there's a good chance the Grand Jury will be over.
- You could, however, get convicted and spend time in jail.
- There's also a chance you won't get charged at all for not cooperating.

What are the advantages (& quick disadvantages) of resisting?

- One big advantage to resisting is that you're much less likely to be called before another Grand Jury. If they know you're going to resist they're less likely to subpoena you. It's also more difficult for them to put you in jail for civil contempt.
 - The earlier you start resisting, the better!

Basically, resisting actually makes it safer and easier for you in the long run.

- If you cooperate, you may have to testify against your friends many times, and you might get prosecuted for perjury if you leave anything out.
- If you resist consistently, you may get charged with contempt, but you don't ever have to worry about getting a perjury charge, and you're much less likely to ever have to testify before a Grand Jury again. You protect yourself, your friends and the movement you're a part of.
- During the days of the Weather Underground, a Grand Jury began investigating them in the Bay Area. Every witness read a short statement to the jury, telling them that they wouldn't cooperate, and why. The Grand Jury had to be canceled as a result!

We know it's easy to be caught up in a Grand Jury. If anyone here has been caught up in one, talk to us after the training. It's never too late to start resisting.

7. Lawyers and Other Resources – 10 minutes

- If you're subpoenaed for a Grand Jury, please contact us.
- Also call the National Lawyers Guild (NLG) Grand Jury hotline at 415-285-1055. (That number is also on our handouts.)
- There are resources out there for learning about Grand Juries.
 - Check out our materials – including a great glossary of legal language.

Lawyers are an important part of a lot of people's legal strategy.

- The NLG will help you find a cool lawyer almost anywhere in the US.
- But be careful, because some lawyers may give you terrible advice:
 - Lawyers are trained to give their individual client the best defense, often at the expense of everyone else involved.
 - Even political lawyers might not understand your goal is to defend the movement and your friends as well as yourself.
 - If your lawyer tells you to A) Cooperate with the grand jury, B) Testify against your friends, or C) Cut off all contact with your friends and the movement, you need to change lawyers ASAP.
 - We'll be happy to help you find another lawyer, no matter where you are.

8. Evaluation – 5 minutes

- You'll probably never be questioned by the FBI. And if you are, you still probably won't be subpoenaed by a Grand Jury.
- The main point of this training is to show how bad Grand Juries are, and how important it is to resist them. By doing so, we protect ourselves and each other.
- [Make sure you answered the questions people had at the beginning of the training.]
- Go 'round: What's one thing you got out of this training?
- [Write down] What did people like about the training? What should we change for next time?

Role Play Card

FBI agents show up at your door. Helpfully answer all their questions. Tell them you know all the people they ask about. After that, let them into your house.