By the Government,
For the Government,
Against the People

A BOOKLET FOR PROSPECTIVE
GRAND JURY WITNESSES

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You needn't have the remotest connection to any "crime" to be a grand jury witness. Any or all of us may be called. In fact, a government tactic is to avoid movement leaders and to subpoena instead those on the fringe of the movement. The government hopes that these people will be more vulnerable to coercion and more likely to talk.

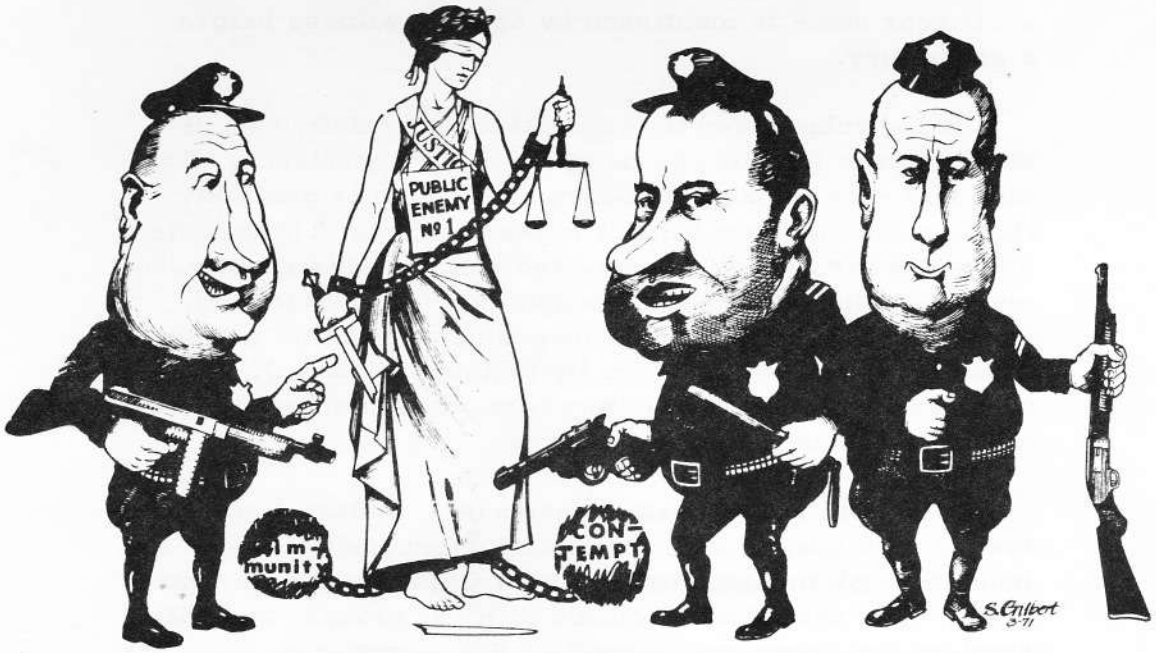
You are a potential witness...
...If you have ever marched in a demonstration or joined a picket line.
...If you have ever spoken out against the slaughter of the Vietnamese and against the living conditions of poor and working Americans.
...If you have ever associated with persons engaged in movement activities.
...If your name is mentioned by another witness before a grand jury.

Being subpoenaed to testify about your activities or those of your friends can be a terrifying experience. You may feel very isolated and confused, which is precisely the response the government hopes to create. Through its corporate structure, racism, and sexism, this society has made a business of keeping people divided and isolated. In similar fashion the grand jury subpoenas us as individuals, questions us individually (without a lawyer), and when we refuse to answer imprisons us individually. We must not succomb to this tactic.

If you are served with a subpoena , contact a movement lawyer or a lawyer with grand jury experience (one can be found through the National Lawyers Guild chapter in your area). You should also consult political groups, and call straight and underground media. The government does not act in isolation and neither should we.

This booklet is intended to acquaint potential witnesses with the most important legal and political issues surrounding

the government's grand jury offensive against the movement. IT IS IN NO WAY A SUBSTITUTE FOR A LAWYER' S ADVICE SHOULD YOU BE SUBPOENAED. Rather, it will attempt to analyze and explain what has been learned during the past three years in the fight against the abuse of grand juries. The booklet will suggest possible strategies for future collective action in our struggle to protect ourselves from these repressive grand juries and expose them to the people of the United States.



WHY IS THE GOVERNMENT WAGING A GRAND JURY OFFENSIVE AGAINST THE MOVEMENT?

The U.S. government faces a desperate situation. It is being threatened on all sides, not only by Vietnamese offensives, but by an increasingly more effective resistance movement at home, by GI revolts, by massive demonstrations, and by workers' strikes. Moreover, the government is discovering that the traditional methods of using the law for repression are failing to curb the movement. The tactic of using conspiracy charges to pick off radical leaders has backfired. Conspiracy charges haven't been sticking and people have mobilized around the trials. Political trials of movement leaders have resulted in defeats for the government, first in Boston and Chicago, then in Oakland and Los Angeles, and later in New Haven, New York, San Francisco, New Orleans, and many other cities. As of this writing, a recent people's victory was the freeing of Angela Davis.

Moreover the government has been unsuccessful in investigating movement groups. The FBI is finding it increasingly difficult to gain information and infiltrate the movement. More and more people, realizing they have a right to remain silent, refuse to talk to FBI agents. The FBI's "ten most wanted" list has expanded to 16, more than half of whom are radicals. Continued bombings of ROTC buildings, banks, government offices, and other symbols of the capitalist establishment lengthen the list of unsolved political crimes. No wonder in November 1970, FBI director J. Edgar Hoover pleaded with Congress for $14.15 million to hire 1,000 additional agents; but the extra agents didn't help when the FBI office in Media, Pa. was raided and its files stolen and published.

Realizing the ineffectiveness of FBI investigations and conspiracy trials, the government is now resorting to

another repressive measure--a nationwide grand jury network to coerce information from movement people under threat of jail. In the past three years, increasing numbers of political people ranging from Daniel Ellsberg to Weatherpeople have become targets of federal grand jury investigations. Overt acts of destruction are not the only objects of the government inquisitions. One of the primary objectives of the grand juries is to stifle dissent and intimidate people involved in movement organizing by calling and interrogating students, draft counselors, reporters, clergymen, lawyers, professors, GIs, and anti-war protesters. We need not and should not be intimidated.

WHAT IS A GRAND JURY?

Grand juries in the United States grew up as a protection against the abuse of judicial power by corrupt and arbitrary government. Although there were problems with the grand juries being made up of members of propertied classes, nonetheless it generally acted as an independent body called together to investigate crimes. Grand jury proceedings were conducted in secret to enable the jurors to gather evidence while protecting witnesses and potential defendants from the damaging effects of the evidence presented.

Before 1776, grand jurors regularly stymied British efforts to indict radical colonists and newsmen. It is in this tradition that the Bill of Rights provides that no person may be tried for a serious federal crime unless a grand jury decides that the evidence against her is sufficient to warrant a charge. This tradition has been put aside. Today grand jury investigations are run by the government, for the government, and against the people. The government prosecutor orders the convening of the grand jury, calls all the witnesses, asks all the questions, hears all the testimony, and indicates to the jurors which persons to charge with what crimes. The grand jury has become the

tool of the prosecutor and in many cases the arm of the FBI. The FBI has no subpoena power by itself to force people to give information. However witnesses have sometimes been subpoenaed before the grand jury after the FBI has unsuccessfully tried to get them to talk.

A few of the grand juries convened to snoop into movement activities have been state grand juries, ostensibly investigating violations of state law. However, most "political" grand juries have been federal.

There are two kinds of federal grand juries--standing (regular) and special. A "standing" grand jury sits in each federal court district for an 18-month term and is always available to approve or reject indictments brought to it by the U.S. attorney (the federal prosecutor). When the 18-month term expires, a new panel of jurors is convened immediately.

A "special" grand jury is convened to investigate a specific area of criminal activity. Its term can also be up to 18 months, but it can be extended for 18 months more. Generally both types of grand juries function in the same way and radicals have been called to testify before both types. Jurors are supposed to be chosen from amongst the voters of the federal court district. In practice the panels are usually made up of middle and upper class, middle aged and older people, nearly all of whom are white.

A grand jury witness has extremely limited rights. Although she faces possible perjury and contempt charges as well as indictments, she is not entitled to the protections accorded to a defendant in a criminal trial because she has not been charged with a crime. The witness need not be told the purpose of the investigation or even if she is a possible target of the investigation. She cannot have a lawyer with her inside the hearing room, although the prosecutor

can subject her to unlimited questioning. The witness has been allowed to leave the grand jury room to consult with her lawyers, although in some cases the prosecutor has tried to limit this right. No judge is in the room to rule on the legality of the proceedings. All those present in the grand jury room except the witness are sworn to secrecy--but under an exception written into the federal rules the prosecutor is allowed to feed information to the government memory banks and the FBI.

The grand jury is no longer a body of independent citizens standing as a buffer between witnesses and potential defendants on one side, the government and its prosecuting forces on the other. The power of the grand jury has been seized by the government and it is now another weapon in the government's arsenal of repressive weapons.

The grand jury has been turned on its head.

HOW WILL I BE CALLED BEFORE THE GRAND JURY?

You are called to testify by being served with a legal document called a subpoena. A subpoena is a court order that tells you to appear before a court, or, in this case, a grand jury at a particular place and time. Grand jury subpoenas say that you are called to testify in such and such a case as a witness for the government. There are no "defense" witnesses.

There are two kinds of subpoenas. The most common simply orders you to come and testify; the other kind, called a subpoena duces tecum, commands you to produce documentary evidence and objects before the grand jury. Among the types of documents typically sought are financial records, membership lists, and personal papers.

The subpoena will be given to you personally by someone called a "process server." It cannot be mailed or left with someone else for you to pick up.

DO I NEED HELP?

Absolutely. If you're subpoenad, you should immediately get both legal and political help. DO NOT ACT ALONE. Without legal advice and political support you will be even more vulnerable to the intimidation and coercion the grand jury will exert.

You should contact a lawyer immediately after receiving a subpoena. The local chapter of the National Lawyers Guild or the National Lawyers Guild Grand Jury Defense Office (2588 Mission St., Room 207, San Francisco, 94110--415-285-9206) can refer you to a lawyer in your area with grand jury experience. The necessity of having a lawyer cannot be overemphasized. A subpoena is as serious as an arrest. You may find yourself facing perjury and contempt charges, as well as indictments, all of which could send you to jail. You need a lawyer for several reasons:

1) Decisions about when and how you should claim your rights depend on the facts of your particular case. A lawyer can evaluate these facts in terms of their legal consequences.

2) Grand jury proceedings are legally technical and vary among the federal districts. This booklet attempts to make the proceedings comprehensible but necessarily contains many generalizations and simplifications. YOU CANNOT RELY SOLELY ON THIS BOOKLET. You will need a lawyer familiar with the specific district and with the complexities of grand jury law.

3) There are many unresolved legal issues surrounding grand juries. The law is continually changing. You will want to consult with a lawyer about the most recent developments.

4) A lawyer may be able to find out a good deal more about the grand jury investigation than the subpoena alone reveals. First, she can contact the prosecutor and ask about the scope of the investigation. Second, she can locate witnesses who have already appeared. Through these contacts you may be able to piece together the real objectives of the investigation.

5) Contacting a lawyer as soon as possible after receiving a subpoena allows you the greatest amount of time to challenge the subpoena and prepare for your appearance.

SHOULD I FORM A DEFENSE COMMITTEE AND/OR A DEFENSE COLLECTIVE?

Both the legal and political fight against the grand jury inquisition requires a high level of solidarity and collective action. In order to pool information and plan strategy, you and your lawyer should bring together people affected by the grand jury investigation. In doing this, it is very important to keep two concepts separate-- a defense committee and a defense collective.

A defense committee should always be formed. It should consist of the witnesses, their lawyers, and legal workers. The committee should discuss general issues such as whether or not to call press conferences and hold demonstrations and what legal motions to file. At these meetings the specific facts of each witness' possible testimony should not be discussed, nor should any other sensitive issues be raised. The purpose of the defense committee is simply to provide broad support, and to coordinate what can often be a hectic series of legal motions.

In addition, the committee provides an opportunity for the witnesses to meet each other if they haven't already met. The witnesses and lawyers can discuss in a general

way the pros and cons of testifying. Some people on the defense committee should undertake, with others outside the committee, to form a publicity committee (this is best done with outside people who have press or media contacts, plus friends and supporters of the witnesses); the publicity committee would then call press conferences, plan demonstrations, and handle other publicity areas.

Because the defense committee involves the legal defense team and discusses overall legal strategy, its discussions come within the attorney-client privilege and cannot be revealed over the objection of any witness (this is why outside people, such as friends and supporters, should be on separate committees, such as a publicity committee-- discussions with those people present may not come within the attorney-client privilege). Although the discussions of the committee are privileged, because it is so broad it should operate on a need-to-know basis, and should not get into specifics of the witnesses' information.

The lawyers on the defense committee will want to discuss general strategy, and will probably want to provide each other with basic information about the scope of the investigation. Thus, the defense committee might discuss what the FBI or Justice Department attorneys told witnesses the investigation was about. Also, once the witnesses are questioned initially by the grand jury the questions asked should be circulated among the defense committee. The committee would decide whether or not to make the questions public. The committee should also discuss whether to contact above-ground people mentioned in the questions asked by the grand jury. Presumably, if a witness is asked about a friend she would want to talk to the friend to let the friend know she was being asked about. However, the decision as to who to contact and how probably should be discussed by the defense committee.

A defense committee therefore is vitally important in preventing you from becoming isolated, and in allowing you and your lawyer to take part in an overall defense strategy. There is no reason to go it alone; always form a defense committee.

A defense collective is a very different thing. The purpose of the defense collective is to discuss collectively the information you know, and make collectively the decision whether or not to testify. The composition of the defense collective can vary-- it could be all witnesses and all legal people (thus being the same as the defense committee), or some witnesses and some legal people, or it can include non-legal people as well (though in this case discussions should be had very carefully, since they may not be privileged by the attorney-client relationship). The main, in fact the sole, consideration in forming a collective is trust. You should be extremely conscious of the security hazards involved in forming this collective and in discussing specific facts and legal strategy.

First, any information you get increases the knowledge you have about things you may prefer to be ignorant of. Conversely, any information you reveal about yourself increases your own vulnerability. Discussion within the collective should operate on the strictest need-to-know basis: information should be disclosed only to those who show specifically why they need to know it. This should include information given to your lawyer-- you should be satisfied that your lawyer really needs the information before you give it.

The advantage of a defense collective is that the ultimate decision, whether to testify (and if so, how) or to go to jail, can be made jointly, presumably by the people who, along with you, will be affected by the testimony. This will insure a fuller evaluation of the consequences of testifying, and will also solidify your own political sense of the response to grand

juries.

On the other hand, you should be aware that defense collectives have been targets of the government. Lawyers and members of the defense collective, in one case, are being threatened with perjury and conspiracy to commit perjury charges involving discussions within the defense collective (of course, these kinds of charges can be made about a defense committee as well, but since more people are present there, and since the discussions of the defense committee will not usually concern sensitive matters, it is less likely that such a charge could stick; in a defense collective, however, the sensitive nature of the matters discussed make it a more likely target for perjury charges, however unfounded, especially if a member of the collective turns informer).

Thus, in forming a defense collective you should choose very carefully who its members are. Maybe only some witnesses should participate with you. In some cases the risks of informers and other security considerations may make a defense collective unfeasible altogether, and you will have to make the decision about testifying alone, or just with your lawyer.

When you get subpoenad, you should immediately start setting up a defense committee, and you should begin thinking about forming a defense collective. Whatever form these take, remember that the government's tactic is to isolate you.

WHAT POLITICAL STEPS CAN I TAKE?

When repression and panic strike, there is a strong tendency to get caught up in legalities. Yet politics must be primary. Legal maneuvers alone will not be able to

protect you or stop the grand jury investigation. The government recognizes that the movement's strength lies in being able to mobilize large numbers of people and we should realize that strength too. When the government uses the grand jury network against us, we should respond by utilizing the movement network. Even if you are subpoenaed to appear hundreds of miles from your home, there will undoubtedly be movement groups in that city willing to support you. You should seek their help and call them together to form a defense committee. This defense committee will be invaluable in doing publicity and mobilizing mass support.

The effectiveness of mass actions is clearly shown by the successful campaign waged against the House Unamerican Activities Committee (HUAC). During the 1950's, attacks against HUAC were primarily verbal. Witnesses cited for contempt of Congress read eloquent statements about the need to resist fascism as they were taken to jail. Their feelings were echoed by liberal organizations. However public outrage did not explode until May 1960 when thousands of students converged on the HUAC hearings in San Francisco which were investigating communism in the high schools. Although the hearings were supposedly open to the public, the students were not allowed inside because all the seats were reserved for right wing groups. When the students returned the next day, they were again refused admittance but this time they responded by blocking doorways. The resulting police confrontation was the most brutal San Francisco had seen in ten years. The police used fire hoses on the demonstrators; demonstrators were badly beaten and were dragged down long flights of stairs and through broken glass. In the surging sentiment against HUAC, mass demonstrations continued as well as Yippie actions within the hearing room. Spectators and witnesses gave Nazi salutes to the Congressmen; they sang the Star Spangled Banner, they came dressed in American flags-- all of which was covered live on TV. By the late 1960's HUAC was dead.

The history of resistance to grand juries has also included Yippie actions. In Detroit and New York where grand juries investigated the Capitol bombing, witnesses not only refused to testify but launched a publicity offensive as well which led to the dismissal of their subpoenas. In Detroit friends of witnesses tried "reverse harassment" by dogging chief inquisitor Guy Goodwin wherever he went in the courthouse-- riding which him in elevators, making fun of his mannerisms. In New York Stew Alpert burned his subpoena. Then he and Judy Gumbo, also subpoenad, "regretfully" denied any role in the bombing of the Capitol. In other grand juries, an attorney attempted to enter the jury room with the witness. The prosecutor was forced to boot the lawyer out in front of the jurors thereby dramatizing the fact that the witness is denied legal advice within the hearing room.

In combatting grand juries which are the successor to the HUAC witch-hunts, it is essential to devise tactics that publicize the repressive nature of the grand juries. Individuals, by taking exemplary actions and by mobilizing mass resistance to the grand juries can play an important role in influencing public sentiment. Mass demonstrations are a way to dramatize and expose the abuses of the grand jury process. They also show solidarity with the witnesses. Planning for all actions should be a cooperative effort of the defense committee. There are laws prohibiting the obstruction of the grand jury process, so it is important to weigh collectively both the political and legal consequences of actions.

WHAT IS THE LEGAL STRATEGY AGAINST GRAND JURIES?

Our strategy in dealing with grand juries is based on the understanding that the government's purpose in perverting the grand jury process is to suppress dissent. The history of Nazi Germany and the McCarthy era in this country has taught us that unless we vigorously assert our rights now, while they are being threatened, the government may ultimate-

ly succeed in depriving us of those rights. There is no way to "appease" a government witch-hunt; only through determined resistance can such repression be stopped.

The general legal strategy against grand juries is to assert as forcefully as possible every constitutional right which the witness has. Not only is this crucial in the long-term struggle against repression, but it can also have an immediate effect on the witness' case. In the face of stiff resistance the government may dismiss your subpoena if you have little information and if they feel it is not worth a long fight to force you to testify. Also, some courts, faced with challenges to the abuse of grand juries, have held that various aspects of the procedures do violate the witness' rights, and have dismissed subpoenas accordingly.

In some cases raising constitutional challenges can be time-consuming. You should use the time you gain to mobilize political groups around the grand jury and to make political decisions within the defense committee and defense collective. By the time all legal remedies have been exhausted and you must choose between testifying and being jailed for contempt, you will feel prepared to make that choice. Further, the punishment for contempt is usually imprisonment until the grand jury's 18 month term expires, and by asserting your legal rights,thereby possibly postponing the time before you are found in contempt, you can reduce the amount of jail time you face.

You must realize that in most cases you will not win your motions, but even unsuccessful challenges play an important role. Each time you force a hearing in open court, you chip away at the secrecy of the grand jury proceedings and expose their repressive nature. Further, as more and more cases repeatedly point out the ways in which grand juries are stifling constitutional rights, some of the more courageous judges will be encouraged to finally rule against the repressive grand juries.

HOW CAN I CHALLENGE MY SUBPOENA?

The first challenge that can be made is a motion to the court to "quash" (throw out) your subpoena. Although there are several grounds on which to base this motion, it is unlikely that your challenges will be effective in releasing you from your obligation to appear before the grand jury.

Among the possible grounds are: improper issuance of the subpoena, improper service of process, lack of jurisdiction of the court over the person or records subpoenad, illegal electronic surveillance leading to the subpoena, abuse of the grand jury process through the use of the subpoena.

If you are served with a subpoena duces tecum you have additional grounds on which to resist the subpoena. The documents or objects to be produced must be accurately described and the demand for production must be a reasonable one. You may wish to claim that you are not the actual or proper custodian of the records demanded. You may be able to quash the subpoena where the grand jury is attempting to recover articles that previously were taken or discovered by unlawful means and then returned to you. Do not testify about or surrender documents or materials until you first talk to a lawyer.

If a motion to quash is made, it should be made prior to the time you testify. If your motion to quash is denied, you still will have achieved something important. The motion to quash will serve as a court record of your objections and will be useful in appeals. However, a motion to quash is not necessary. A court record of your objections can be made at other stages of the proceedings. If the period of time between the service of the subpoena and your appearance is very short, it may be more useful to spend that time discussing the facts of the case and whether or not to testify.

It is often helpful to know beforehand whether you will be appearing before the grand jury strictly as a witness or as a

potential defendant. This may be difficult to find out, but it is worth a try. Your attorney may want to send off a letter to the prosecutor (usually the U.S. attorney in your area) stating that if you are a potential defendant, you should be released from your obligation to appear before the grand jury. The logic is that a potential defendant should not be forced to appear before the grand jury and assert her Fifth Amendment right against self-incrimination since her refusal to testify may prejudice the grand jurors against her. The jurors may consider her constitutionally protected silence an admission of guilt and vote to indict her. It is not clear that the court would accept this argument, but it doesn't hurt to have your lawyer ask the U.S. attorney if you are a potential defendant.

WHAT DOES A GRAND JURY ROOM LOOK LIKE?

Here is one person's account:

"Five days after being served a subpoena by two gleeful FBI agents, I appeared with my attorney and two friends in Harrisurg. My friends were told to get off the elevator on the floor below the grand jury room.

"Once on the ninth floor, the lawyer and I were met by a guard who had to see the subpoena and my identification before we were allowed to proceed down the corridor past the rope barricades.

"The grand jury convened at 10 a.m., a half hour after the subpoena had 'hereby commanded.' Any conversation among the witnesses was discouraged, as the lawyers were afraid other conspiracy charges might be brought against us--all the witnesses that day had decided not to cooperate. So there we sat-- or stood-- or paced.

"When the federal Marshall finally called my name, I

left my lawyer and entered the grand jury room. The witness' seat was in front of the room at the middle of a table five feet long. There was a court reporter to one side, and two tape recorders on the table along with their piles of paper. And there were 18 members of the grand jury present, sitting at school desks. None were introduced and there were no name plates. One was knitting, another reading a magazine. I was ordered to identify myself.

"All the questions were put to me by the government prosecutors."

In this case the witness gave his name and refused to answer other questions on constitutional grounds. His subpoena was dismissed.

HOW CAN I PREPARE FOR MY APPEARANCE?

Your experience with the grand jury may be upsetting and demoralizing. The U.S. attorney will probably hassle you and attempt to frighten you into cooperating with his witch-hunt. In the face of his threats and nastiness, it is often difficult to remain self-confident and remember that you have strong movement support outside the walls of the grand jury room. It is helpful to run through a mock hearing with your lawyer beforehand to familiarize yourself with the proceedings and prepare for contingencies. This also lessens the emotional stress of the appearance.

On the day of your appearance you will enter the room alone. (Your lawyer will be outside in the hallway.) You will be asked your name and address. Then the prosecutor will begin asking you a series of questions. You should take pen and paper into the grand jury room. If the prosecutor should try to take them away, don't be intimidated. Explain to the prosecutor and the jurors that your lawyer has advised you

to take notes and that it is necessary for her to know the questions in order to advise you properly.

After copying down the question or committing it to memory, request to leave the hearing room to consult with your lawyer. The prosecutor may hassle you but be persistent. Here is how a prosecutor attempted, unsuccessfully, to harass professor Popkin during his appearance before a grand jury:

Q (by prosecutor): Mr. Popkin, was your answer read from a prepared statement? Mr. Popkin, was this answer prepared by your lawyers?
A (by Popkin): I wrote this answer during the time I was out of the room.
Q: Mr Popkin, we would like to ask you the names of individuals referred to in the last answer who you believe possessed this study (Pentagon Papers) in this state prior to June 13, 1971?
A: Ask for permission to leave the room.
Q: This is nothing but the specifics of your last answer, why do you need to see your lawyer?
A: I request permission again to see my lawyer.
Q: Mr. Popkin, you have taken many visits, your last visit was more than five minutes, this is nothing but specifics within your last question.
A: I request permission to see my lawyer, why are we hassling about this?
Q: Okay, Mr. Popkin, you may see your lawyer. Mr. Foreman, I think this would be a good time for a break.
Mr. Foreman: There will be a 20 minute break.

. . . . .

Q: Mr. Popkin, do you recall an immediate reaction that was formed in your mind upon hearing about original stories in the New York Times about who may have been the source?
A: I request permission to see my counsel.
Q: Mr. Popkin, how can your counsel be of use in this case? We're asking you about your immediate reaction.

A: I request permission to see my counsel.
Q: Mr. Popkin, you are being asked about your immediate opinion, how can your counsel be relevant?
A: I request permission to see my counsel.
Q: Mr. Popkin you are stretching things for this grand jury. Your exits from the room have been ranging about five minutes. This is being an inconvenience for the grand jury.
A: Mr. Prosecutor, this has been going on for me as long as it has for them. I am sincerely sorry about the trouble and time I'm taking from these good people. I assure you that I am just as anxious as they are to get this over with.

. . . . .

Q: When did you first learn of the existence of the Pentagon Papers?
A: I request permission to see my counsel.
Q: Mr. Popkin why could you possibly want to see your counsel? This is a straightforward question of fact.
A: Mr. Berry, every time I have been here since July or August when a question which is actually very complicated is asked I am always told it is very simple and I shouldn't want to leave the room. I request permission to see my lawyer.

. . . . .

Q: Mr. Popkin, am I correct in observing that you are making a copy of the question. Why, Mr. Popkin?
A: I want to be able to accurately reflect the question posed to me when I consult with my counsel.
Q: Mr. Popkin, why do you request to see your lawyer. We are asking a question where it is not clear as to why you need to see your counsel.
A: I request to see my lawyer.

In each instance Popkin was allowed to leave the room.

Asserting your right to confer with your lawyer between each question is important. It allows you the opportunity to get both support from your friends and lawyer and legal advice on answering the questions.

When you confer with your lawyer, she will advise you how to respond. If you are refusing to testify, ask her to give you a written statement presenting the grounds for refusal you are asserting; you can read that statement to the grand jury. If you have decided to testify, you and your lawyer will discuss the answer to the question and will write it down. You will then go back into the hearing room and read your response to the question. The process will be repeated with each question.

WHAT KIND OF QUESTIONS WILL I BE ASKED?

The U. S. Attorney can ask you virtually anything in the guise of investigating conspiracy. In addition to dealing with specific illegal actions, the questions can deal with opinions you've expressed, articles you've written, organizations you belong to, your political activities, and the activities of your friends.

Here is a sampling of questions asked witnesses:

--Did you make the statement that you were going to Cuba to gain experience in building the revolution?

--Have you made any contribution in any form, financial or otherwise, to any kind of newspapers which publish radical political beliefs in the state of Nebraska?

--Have you ever been or are you a member of any collective or commune in the Venice area?

--I want you to tell the Grand Jury what period of time during the years 1969 and 1970 you resided at (certain address), who resided there at the time you lived there, identifying all persons you have seen in or about the premises at that address, and tell the Grand Jury all of the conversations that were held by you or others in your presence during the time that you were at that address.

--I would like to ask at this time if you have ever been a member of any of the following organizations, and if so, to tell the Grand Jury during what period of time you belonged to any of these organizations, what activities you engaged in and what meetings you attended, giving the Grand Jury the dates and the conversations which occurred.

--Who instructed you to go to Ottawa, Canada to the Chinese Embassy at the Savoy Hotel?

--Have you participated in any demonstrations or riots in the year 1970, and if so, would you describe your activities therein?

CAN I GET A RECORD OF MY TESTIMONY?

No. Therefore it is essential to write everything down. Everyone inside the grand jury room is sworn to secrecy except you, the witness. The only record you will have will be your notes and your memory. Exit immediately after every question. Do not wait. You do not want to forget anything. Be thorough. Write down who said what to you, in what order, and how you answered.

Your notes will be useful in several ways. The questions will help you determine the scope of the investigation. They will help in preparing other witnesses called before the same grand jury. Your notes will also provide factual material to give to supporters and news media to publicize the inquisitorial nature of the investigation.

Sometimes a prosecutor will tell you that because of the secrecy of the grand jury you are not allowed to reveal the questions you were asked. This is wrong. A witness is specifically excluded from the list of persons who are bound to secrecy.

WILL THE JUDGE ALLOW ME TO REFUSE TO TESTIFY ONCE I AM BEFORE THE GRAND JURY?

Possibly. Refusal to testify can be legally justified on the grounds that to be forced to answer particular questions would violate your constitutional rights.

First Amendment--freedom of speech, association, and press;
Fourth Amendment--protection from illegal search and seizure, including wiretaps;
Fifth Amendment--right against self-incrimination;

Sixth Amendment--right to counsel;

Ninth Amendment--any rights not enumerated in the other amendments, notably privacy.

It is unlikely that a court will uphold your refusal on any but Fifth Amendment grounds. However, it is important to assert all possible grounds for your refusal to answer a particular question and to do so at the same time. Your lawyer will know which grounds apply to each question and will prepare written statements of these grounds for you to read inside the grand jury room.

WHAT IS THE FIFTH AMENDMENT?

The Fifth Amendment is your right against self-incrimination. No person can be forced to expose herself to the possibility of a criminal charge or to in any way link herself with a criminal act on the basis of her own testimony. This privilege is personal. You must claim that your testimony will tend to incriminate YOU. You cannot claim the privilege on the ground that your testimony may incriminate someone else.

WHEN DO I TAKE THE FIFTH AMENDMENT?

You will probably not be told of your right to claim your Fifth Amendment privilege. The best approach is to REFUSE TO TESTIFY ON FIFTH AMENDMENT GROUNDS EARLY AND OFTEN.

Early--since the grand jury witness is not told the purpose of the investigation, you never know what answers will be incriminating or whether certain information you offer will open up a more dangerous area of questioning. Once you've identified yourself, TAKE THE FIFTH. If the government wants you to talk, they will probably give you immunity. If it is too much trouble or your testimony is not significant or your challenges may embarrass the government, your subpoena may be postponed or dismissed. In any case, you will gain time (from minutes to months) to prepare your case, you will have the opportunity to raise your objections, and you will get a public hearing and a record of the questions asked.

The Fifth Amendment offers protection for the witness who doesn't talk. Once you begin testifying, it is very easy to waive (give up) that protection without realizing it. You may believe that answering a certain question will not incriminate you, so you answer it. The prosecutor uses this information as a springboard for delving into your past associations, activities, and areas you do not want to testify about. You try to claim your Fifth Amendment privilege, and you are told that it is too late. You waived your right to refuse by answering the first question which "opened the door" to the whole line of questioning. WATCH OUT. You can never be sure at what point you have waived your right to refuse to testify. It will be up to a judge to decide the law. A GOOD RULE OF THUMB IS TO ANSWER NO MORE THAN YOUR NAME, ADDRESS, AND AGE. And in special cases, you and your attorney may decide that even those questions will tend to incriminate you.

Often--You must claim your Fifth Amendment privilege after each question you are asked. It is not enough to make a blanket refusal to answer all questions put to you. The best way to claim the privilege is to say to the grand jury after each question, "I decline to answer that question on the ground that it may incriminate or tend to incriminate me. I specifically invoke the Fifth Amendment to the United States Constitution (and any similar state provision)."

Read the sentence from the paper you and your lawyer prepared in advance and then read statements of additional grounds for refusal (e.g. First, Fourth Amendments). YOU SHOULD SAY NOTHING MORE. You should not answer such questions as: "Why would a truthful answer incriminate you?" Attempting to explain why you feel the question is incriminating may result in the waiving of your right to claim the privilege.

If your claim of privilege is challenged by the prosecutor or jurors, continue to claim it. You cannot be punished for this. Just remain calm and do not argue with the prosecutor and the grand jury. Nothing can be done to you inside the grand jury room. The matter will be referred to a judge in court if the prosecutor wants to compel you to answer. If the judge decides that the claim of privilege is proper, the question can go unanswered. If he decides that the claim was not proper, he will order you to answer the question. It is extremely difficult, however, for a judge to find that your testifying could not in any way incriminate you, and usually the courts uphold your fifth amendment right.

CAN I BE FORCED TO TESTIFY? -- IMMUNITY.

Although the witness has the Fifth Amendment privilege against self-incrimination, that privilege can be taken away once she is granted immunity. Immunity is

a guarantee that the witness' testimony will not be used against her. Immunity strips the witness of the right to remain silent. If you continue to refuse to testify after you are granted immunity, you will probably be found in contempt.

There are two kinds of immunity, "transactional" and "use" immunity, both of which were created to force witnesses to talk. Transactional or complete immunity protects you from prosecution for all illegal activities touched on in your testimony (i.e., you can't be prosecuted for any "transaction" you testify about.). Transactional immunity can only be granted for questions relating to certain serious crimes specified in the statute, including kidnapping, conspiracy, extortion, and narcotics.

Before 1970, the government found itself powerless in investigating certain crimes if the witness pleaded the Fifth Amendment. If the crime was not specified in the transactional immunity statute, the government could not coerce a witness to talk by a grant of immunity, backed by the threat of contempt and jail. As a result, "use" immunity was legislated into existence by the 1970 Organized Crime Control Act. Use immunity can be granted in investigations of any crime. Use immunity provides that the witness' own testimony, or leads developed from it, will not be used against her. However, it does not necessarily protect her from prosecution.

For example, suppose a bank robbery occurs. A witness sees three men fleeing from the bank, and, in discussions with the F.B.I. she identifies John as one of the men. John is then subpoenaed before the grand jury and given use immunity. Thinking he's adequately protected, John testifies that he did rob the bank and identifies his two accomplices. However, the witness is also called before the grand jury and testifies that she has positively identified John. He is then indicted because of her testimony, and

his two accomplices are indicted because of this testimony. Use immunity has not protected him.

No indictments have yet been brought against people who have been given use immunity, but clearly the possibility exists. Essentially, use immunity destroys the Fifth Amendment. It compels you to talk without guaranteeing you protection against prosecution. Nevertheless, in June, 1972, the Nixon Supreme Court ruled that use immunity is constitutional.

Your lawyer can still make several challenges to the immunity grant. If the grand jury is investigating crimes listed in the transactional immunity statute, your lawyer can argue that you should be given full transactional, not use immunity. If the government gives you use immunity, you can try insisting that the judge examine all the evidence that the government has against you at that point. This will be done in private in the judge's chambers without you or your lawyer being present, but there would then at least be a record of what the government had against you before you testified. If you are later indicted and the record is made available to you, you can be pretty clear to what degree your indictment was based on your own testimony, and leads garnered from it.

You should be clear that once you are given immunity, you can no longer refuse to answer questions on Fifth Amendment grounds. There are other grounds which can be raised, but which usually fail. This means that in most cases, after you are granted immunity, you may have no legal grounds for refusing to testify, and will have to choose between testifying and contempt.

You should realize that the U. S. Attorney's motive in giving you immunity is to get information from you which he probably needs in building a case against a brother or a sister. Your Fifth Amendment right against

self-incrimination only protects you; the same is true for immunity although in that case even your own protection is questionable. If you are granted immunity, you should seriously consider how your testifying will affect other people. The factors you should consider are discussed in the chapter "Should I Testify?".

ARE THERE OTHER GROUNDS FOR REFUSAL TO TESTIFY?

Your Fifth Amendment privilege, unless you're given immunity, is your primary ground for refusing to testify. Nevertheless, many questions can be objected to on the basis of your other legal and constitutional rights. These objections remain valid even after you receive personal immunity from prosecution, and if the court upholds them, you would not have to testify. Most courts, however, have thus far not ruled favorably on these. Still, by asserting these other objections along with your Fifth Amendment privilege, you may be able to avoid contempt penalties and continue to refuse to testify even if you are granted immunity.

The main constitutional grounds for refusing to testify are:

First Amendment--freedom of speech, association and press;
Fourth Amendment--protection against illegal search and seizure, including wiretapping;
Sixth Amendment--right to counsel;

Ninth Amendment--any rights not enumerated in the other amendments.

First, you may have a First Amendment right not to testify. In some circumstances, the courts have ruled that you cannot be compelled to reveal your political associations and memberships. However, none of these

cases has involved grand jury investigations. News reporters have claimed that the very fact of appearing in a secret grand jury proceeding would destroy the trust between themselves and their news sources, and therefore infringes upon freedom of the press, but the Supreme Court recently ruled against them. Similar claims have been made on behalf of scholars. So far, none of these have been successful.

Second, you may have a Fourth Amendment ground to avoid answering the questions. The Fourth Amendment prohibits the admission in criminal proceedings of any illegally seized evidence. This prohibition includes the admission of evidence gained from unauthorized wiretaps. The Supreme Court recently ruled that if a grand jury witness is being questioned on the basis of information gained by illegal electronic surveillance (wiretaps, etc.), the government must inform the court of any such surveillance. If the government admits that it has used electronic surveillance, it must disclose the contents of the relevant "tapped" (intercepted) conversations. The court will determine whether or not there is a connection between the illegal taps and the questions. If there was a connection between the question and the illegal taps, then the question cannot be asked.

You should always raise this wiretap area since it is one of the few subjects on which the Supreme Court has ruled in favor of witnesses. In practice, when a witness demands that the government reveal if it wiretapped her, the government will dismiss the subpoena if it has. (The prosecutor prefers to do this rather than to admit the unlawful wiretaps in open court.) Usually, however, the government simply denies having used any wiretaps, and so far the courts have upheld these denials and required witnesses to testify.

Third, you may raise your Sixth Amendment right to

counsel because your lawyer is not allowed inside the hearing room with you. This objection will probably be summarily denied. Traditionally, the defense lawyer has not been allowed into the grand jury room in order to maintain the secrecy of the proceedings.

Fourth, you may assert the Ninth Amendment. This amendment is loosely defined, and it has been raised when the witness feels that she has a right not covered by other amendments. It has been specifically used to protect the right to privacy.

In addition to constitutional objections, you may be able to object to questions because they go beyond the proper scope and jurisdiction of the grand jury investigation. Such an objection might succeed where the immediate purpose of the investigation is set out and limited. Unfortunately, the scope of a grand jury investigation is usually unlimited. The courts are also very reluctant to put restrictions on grand jury investigations. An objection on these grounds will probably fail.

Finally, you may be able to refuse to answer certain questions because they probe into relationships that enjoy legal protection. These so-called confidential relationships include:

1) Attorney-Client Privilege. The witness doesn't have to disclose communications between herself and her lawyer or between herself and anyone working for the lawyer.

2) Wife-Husband Privilege. Communications between wife and husband are "sacred." A wife cannot be compelled to testify against her husband and vice versa because it would violate trust between them.

3) Priest-Penitent Privilege.

4) Physician-Patient Privilege. This includes communications between a patient and her physician's receptionist, assistant, etc.

In order to decide what objections to raise, you should confer with your lawyer after every question. The combination of objections may vary with each question.

WHAT HAPPENS IF I REFUSE TO TESTIFY?

Once you, the witness, refuse to testify, the prosecutor will either accept your refusal or try to force you to talk. If you have claimed your Fifth Amendment right against self-incrimination, you will probably be given immunity. If you are not given immunity, your Fifth Amendment privilege stands and you do not have to answer the questions. The prosecutor will then dismiss your subpoena. However, sometimes when the prosecutor does not give a witness immunity it is because the prosecutor intends to have the person indicted (charged with a specific crime) by the grand jury. Thus, if you are not given immunity you should consult with your lawyer about the possibility of your being indicted. If you are indicted, then you and your lawyer will prepare a criminal defense, just as in any case in which a person is charged with a crime.

If you continue to refuse to testify after being given immunity, on the basis of your other constitutional rights, you will probably be given a contempt hearing. A contempt hearing means that you will be brought before the judge again, and the judge will rule on the other grounds you are asserting. If the judge rules against you, you will then be told that you now have absolutely no grounds left for refusing to testify. The judge will then ask you whether you intend to answer the questions now. If you say yes, you will go back to the grand jury room to testify. If you say no, the judge will hold you in contempt of court, and you will immediately go to jail.

WHAT IS CONTEMPT?

There are two kinds of contempt, civil and criminal.

Civil contempt is supposed to be coercive. You will be freed from jail as soon as you decide to testify. The judge may tell you that the keys to your freedom are in your mouth. The sentence for civil contempt is indefinite, and can last through the term of the grand jury (a maximum of 18 months). It is important to remember that any time during the sentence you can be released if you agree to testify.

Criminal contempt is supposed to be punitive, and so the penalty is a fixed jail sentence. Persons charged with criminal contempt are entitled to a jury trial if the sentence is more than six months. Criminal contempt can arise where a witness is willfully disrespectful to the prosecutor, court or grand jury. For this reason it is not a good idea to argue or banter with the prosecutor or the grand jury-- simply state your answer or your grounds for refusal.

As a practical matter, criminal contempt has not come up in connection with these grand juries. When a witness refuses to testify, the courts have only used civil contempt.

CAN I BE RELEASED ON BAIL?

After you are held in contempt, it is important to keep separate the issues of: (1) appealing your case itself; and (2) asking for bail while your case is being appealed.

As soon as you are held in contempt, your lawyer should tell the judge that the contempt ruling will be appealed (you will raise in the appeals court all the grounds for refusing to testify that you have asserted before the grand jury). The lawyer should then ask the judge to release you

on bail (or on your own "recognizance"-- promise to return) while your case is being appealed. Usually the judge will refuse bail, but sometimes it is granted. If the judge refuses bail, the lawyer will ask the Appeals Court for bail. If the Appeals Court denies bail, your lawyer should appeal to the Justice of the Supreme Court for your area, and if he denies bail, your lawyer should consider appealing to Justice Douglas for bail (since he is one of the few judges who has shown concern over the rights of witnesses).

The process of asking for bail can take between a few days and a month. The important point is that you will know fairly soon (a month at the latest) whether or not you will be out on bail while your case is appealed. Some people therefore delay the decision to testify until this point. They reason that they can stand a month in jail. If they are released on bail, they are free until the courts finally decide the actual appeal itself-- which can, including appeals to the Supreme Court, take a number of months. Meanwhile the term of the grand jury is running out. If the appeal itself is finally lost, the person will then be ordered to return to jail; but she can always agree to testify at that point. If she wins her appeal, the subpoena is dismissed.

On the other hand, if bail is denied all along the line, the witness will know that within a month; then she knows that she is likely to stay in jail for the full time, unless she testifies. At that point she can re-evaluate whether or not to testify. If she wants to testify then, she can do so and she will be released from jail (the technical term is that testifying "purges" the contempt).

It is vital to keep this sequence in mind, because sometimes witnesses are subpoenad on only a few days notice, then called to testify, given immunity, and held in contempt all on the same day. This may be too fast for a witness to fully reflect on whether or not to testify. However, by remembering that you may only have to

spend a short time in jail until bail is granted, the decision can be postponed. If bail is denied, the witness may then decide to testify.

WHAT IS THE MAXIMUM JAIL SENTENCE?

Unfortunately, there is no sure answer to that. A new federal law states that a witness who is held in civil contempt for refusing to testify can be jailed for the life of the grand jury, but in no event longer than 18 months. Thus, the maximum sentence is clearly 18 months under this law (and it could be less if the life of the grand jury is less; however, if the government extends the life of the grand jury, as it can do, for longer than 18 months, the maximum jail sentence is still limited to only 18 months). The problem comes when the government ends one grand jury, and then starts up a new grand jury investigating the same thing. This happened in Tuscon; the witnesses were jailed for four months until the grand jury expired. Then, the day they were released, they were re-subpoenaed before a new grand jury. Most of the witnesses decided to testify before the new grand jury; one refused, and the Appeals Court upheld her second contempt conviction. The case is pending before the Supreme Court, but it will probably be decided on another point (wiretapping), so this issue of repeated grand juries will not be fully resolved.

It can be argued that the double jeopardy and the due process clauses of the Constitution prohibit the repeated harassment of witnesses in this manner. Also, it could be argued that the federal statute which limits the jail sentence to 18 months meant that to be a limit for any one investigation, regardless of whether the government uses more than one grand jury. However, these arguments have not been fully tested; they were all made and rejected by the court in the Tuscon case, and other courts have not ruled on them.

So far, no witness has ever served a full 18 month sentence; so there has been no occasion in which the government has then tried to re-subpoena a witness who served 18 months. It is possible, since the government did re-subpoena the Tuscon witnesses, that it would try to do that again. You should discuss this possibility with your lawyer.

It is important to remember that under a civil contempt sentence you can end the sentence at any time by agreeing to testify. If you are willing to serve an 18 month term rather than testify, you can do that and then see whether the grand jury investigation simply ends (in fact, it may end before the 18 months are up). If it doesn't and you are re-subpoenad before a new grand jury, you can raise the 18 month limit at your second contempt hearing. If you lose that and lose the bail appeals on that issue, you will be sent to jail again. At that time you can reconsider your decision not to testify. You may decide then to testify rather than serve another term. Assuming that you were willing to be jailed for the term of the first grand jury, it may thus be better to wait until a second grand jury jail term is actually confirmed before you decide whether or not to testify.

SHOULD I TESTIFY AT ALL?

You have been subpoenaed, you have fought the subpoena, and lost; you have appeared in the grand jury room and asserted your First, Fourth, Fifth, Sixth, and Ninth amendment rights not to testify; you have been taken before a judge and granted immunity; you have reentered the hearing room and again refused to testify on constitutional grounds; you have been taken before the judge again and this time the judge orders you to answer questions or be cited for contempt and sent to jail. Do you still refuse to testify?

This decision is an agonizing one. Whether or not

you testify will affect not only your own life but the lives of people who may go to prison because of your testimony. Some of those people may be close friends; others may be movement people you hardly know. In a very real sense, the future of the revolutionary movement will be influenced by how you and other witnesses respond to grand jury investigations. The question of testifying is therefore more than a personal decision. It is imperative that the question be discussed within your defense collective.

The final decision of whether or not to testify should be made only after all legal recourse has failed and you have only one choice--jail or testifying. Several political groups have dealt with this decision when faced with grand jury probes of their activities; they have reached differing conclusions.

THE TUCSON EXPERIENCE

In Tucson during a 1970 grand jury investigation of dynamite sales, the Tucson Working Committee was formed as a defense collective. The collective decided after lengthy political deliberations that the witnesses should testify. The witnesses were in jail on contempt charges for several months while these political discussions were going on. The Tucson Working Committee has tried to summarize its experiences and the factors it considered.

The committee's basic principle was NEVER TESTIFY WITHOUT BEING GRANTED IMMUNITY. In some cases the witness' subpoena will be dismissed before she reaches the immunity hearing stage of the proceedings. For example, if the witness has raised Fourth Amendment grounds for refusing to testify, the government may dismiss the subpoena rather than reveal its illegal wiretaps. If the witness has raised the Fifth Amendment protection against self-incrimination, the government may decide not to grant immunity and may allow her to

remain silent. The government may decide this either because the witness' information is not important enough to warrant an immunity hearing or because the witness may be someone the government hopes to indict. Also, if the witness raises issues pending before the appellate courts, the government may decide to dismiss the subpoena until the issues have been resolved.

Leslie Bacon's case shows that even if you think your information is totally harmless, you still shouldn't testify without immunity. You may inadvertently get into dangerous areas. When called before a grand jury investigating the Capitol bombing--of which she knew nothing--Leslie began answering a series of questions about her associations with movement groups. When she admitted knowing a New York based political commune, the Family Trust, the prosecutor began to probe for information about a bank bombing allegedly planned by the commune. At this point Leslie tried to refuse to answer questions on Fifth Amendment grounds, but it was too late. By answering the first incriminating question she gave up her Fifth Amendment right to remain silent. However, instead of finding her in contempt, the government granted her immunity and she continued to talk. She was eventually indicted for perjury, but the government recently dropped this charge so that they would not have to reveal the extent of their illegal wiretapping.

The Tucson Working Committee formulated several principles of testifying. After the witness has been granted immunity, she should base her decision to testify or not on the following factors:

1) What information does the witness have?
2) What information does the government need?
3) What information does the government already have?
4) What is obviously public information?
5) How do others feel about being testified about? "A

good rule is never to testify about a person until you have found out, if possible, how she or he feels about it. If during the course of questioning, a name of an individual comes up whom you know hasn't been contacted, it might be a good idea to sit in jail for a little while until that person can be contacted by others."

6) Does the witness have a need for immunity? (Does she face a possible indictment?)

7) How do we deal with the secrecy of the grand jury? (The Tucson Working Committee was very conscious of the effect testifying could have on creating distrust among the movement. It therefore formed a publicity committee which extensively published what was going on and how decisions were being made.)

In the Tucson case, the witnesses weighed all the factors and decided to testify. They thought the government had most of the information about which they could testify. Even though they realized their testimony would form the basis for serious indictments, they knew that the people they would incriminate had already gone underground. If ever those people underground were caught and brought to trial, the witnesses would have the option of refusing to testify at that stage of the proceedings. The two witnesses also felt a strong personal need for immunity because they were implicated in transporting dynamite. The Tucson Working Committee felt that the testimony that only two others were involved in the dynamite transaction could prevent the U.S. Attorney from using that incident as a springboard to investigate the whole LA movement on possible conspiracy charges.

Thus, the Tucson Committee felt that its decision was "successful," in that truthful testimony was given, but the government did not gain any new information. However, precisely because of this "success" the government was unsatisfied. It applied pressure to one of the members of the defense collective to make claims that the collective

encouraged the witnesses to commit perjury and may have obtained statements from him to that effect. In any event, the government is now threatening the members of the defense collective with charges of conspiracy to commit perjury. As of this time no formal charges have been filed, but the government has made threats to do so. This latest development of government threats of perjury charges when it is dissatisfied with the testimony it receives raises the possibility that the Tucson strategy of testifying should be re-evaluated. In many cases, when testimony is based on the Tucson Committee's criteria, it would of necessity be unsatisfying to the government.

THE POSITION OF NONCOLLABORATION

Other political groups have concluded that no one should ever testify. Their immediate aim has been to protect the witness from jeopardizing herself and others.

If your testimony will send your friends and comrades to prison for many years, perhaps the rest of their lives, the reasons for not testifying, and spending 18 months in jail as a consequence, seem clear. Yet what if your information seems totally harmless? Why should you remain silent and go to jail?

The experiences of other witnesses has shown that even in this situation the consequences of testifying can be both personally and politically disastrous. If you have not been given immunity or even if you have been granted limited use immunity, you may ultimately be indicted for the event about which you testified. By testifying, you may also find yourself facing perjury accusations, even if you tell the truth. Moreover there is the possibility of being held in contempt for being evasive. That is, you may say "I don't know" too many times, even if it is true. This may occur even after you have given the government a large amount of information.

Besides hurting yourself, you may inadvertently hurt others by testifying. You can never be certain that your information is harmless. The FBI and its agents including the U.S. attorney and the grand jury do not ask purposeless questions. Your answers to superficially irrelevant questions may provide just the information needed by the government to place a particular person at a particular place and time; you may thereby assist the government in its case against a sister or a brother. You may give the government enough "innocent" information (or information you are sure that they already have) for them to find a witness to subpoena who has information which is less "innocent." Thus your testimony may be the direct or indirect cause for sending others to jail.

The implications of not cooperating with the grand jury extend beyond the witness and those mentionned in her testimony. Perhaps most importantly, noncollaboration with the enemy is not an abstract moral principle; it is a political tactic for fighting repression. The decision to refuse to collaborate can be based on an historical understanding of the dynamics of fascism.

The rise of police states in Germany and Italy provide frightening lessons of how fascism can gather momentum. While most of the population looked the other way, laws restricting the rights of Jews quickly multiplied until Jews were shipped off to concentration camps. Fascism feeds on the quiet submission of people who ignore tyranny as long as they themselves are not its victims. It feeds on the fear of those who can see what is coming but are afraid to act.

Dr. Martin Niemoller, a German who spent much of World War II in a concentration camp, described the insidious process. "When Hitler jailed the Communists, I did not protest because I wasn't a Communist. When he jailed the Jews, I didn't protest because I wasn't a Jew.

When he jailed the Catholics, I kept silent as I wasn't a Catholic. When he jailed the trade unionists, I remained quiet as I wasn't in a union. When he finally jailed me, then there was no one left to protest." Our experiences with repression in Europe as well as in the United States in the McCarthy era have taught us that fascism cannot be appeased; if it is to be stopped, it must be resisted without compromise from the start.

The threat of fascism in the U.S. is not a figment of the left's paranoia. Recent repressive legislation and court rulings (for example, the elimination of unanimous verdicts in jury trials; the enactiment of no-knock laws and gun control laws; the creation of limited, use immunity in grand jury proceedings) make it clear that basic constitutional rights are being redefined out of existence. Unless we act now and show that we will not tolerate political grand juries and attempts to suppress dissent, in a few years dissidents may be facing widescale "preventive detention."

Obviously, the action of an individual grand jury witness will not be able to stop the grand jury inquisition. Yet in order to build a mass movement conscious of fascism and willing to resist it, it may be necessary for individuals to set an example of noncollaboration, knowing in advance that the price to be paid will be imprisonment.

Many of us were part of this same pattern of resistance a few years ago. In the early and mid-1960's, a few men took positions of open, articulate noncooperation with the draft. Many men who were in fact conscientious objectors to war refused to ask for or accept the CO classifications which would have kept them out of the military. After refusing induction, many were given longer prison sentences than they would have been given if they had not articulated their positions so publicly. These men (and their families and loved ones) suffered

great personal sacrifice. But one result of their actions was the development of a massive draft-resistance movement, and the collapse of the draft as an effective instrument of the military as it had existed for more than 20 years. The development of that movement, and the collapse of that institution, would not have been possible without the public acts of resistance of the first draft refusers.

It would be senseless to ignore or deny the painful aspects of imprisonment. None of us looks forward to jail time. But whenever people attack the major instruments of power, the institutions which oppress them, they can expect the holders of power to fight back; they can expect to suffer personal sacrifice. We would be dreamers if we were to believe that we can build a revolution, or free our society of oppressive institutions, without serving some time in jail.

Now is both the easiest and the most difficult time to resist fascism--easiest because the risks are "low" (relatively short jail terms); most difficult because you may not be able to see any significant effect of your going to jail. It is in the long term struggle for freedom and against fascism that each person's sacrifice will be significant. The Chinese understand this well: "The journey of 10,000 miles begins with a single step."

WHAT ABOUT LYING?

Perjury (lying) is against the law; it is a serious federal crime carrying a possible 5-year prison sentence. It is also illegal to counsel someone to perjure herself (a crime called "subornation of perjury"). A perjury charge involves a jury trial and the possibility of an appeal. If the witness decides not to testify and is found in civil contempt, she will not have the advantage

of a jury trial. However she does have the possibility of an appeal. She should also realize that the maximum time she can spend in jail for contempt is 18 months, as compared to 5 years for perjury.

Several witnesses who have testified rather than risk contempt have been indicted for perjury or threatened with perjury charges. The government through its wiretaps and informers as well as the testimony from other witnesses may be able to determine that the witness is lying. This does not necessarily mean that the government will prosecute for perjury. Sometimes its evidence has been illegally obtained and is inadmissible in court. In other instances the government has dropped charges rather than reveal the nature of its wiretaps. However, the possibility of a perjury charge is always present. Threatening the witness who testifies with a perjury proseuction, however unfounded, seems to be a tactic that the government occasionally uses to try to force the witness to expand her testimony.

SHOULD A SUBPOENA SEND ME UNDERGROUND?

It is a federal crime to cross state lines to avoid service of a subpoena. In order to convict someone under this act, the government must prove that the person knew about the subpoena when she left the state. The penalty is up to 5 years in prison and/or a fine of up to $5,000. Interstate flight after the subpoena has been served carries similar penalties. Moreover you may be charged with criminal contempt for failure to comply with the subpoena once it has been served. Anyone who helps a person who has gone underground can be charged with aiding and abetting a fugitive or harboring and concealing a fugitive.

Going underground means leaving behind people you

love and political work you may be deeply involved in. It means starting a totally new life under an assumed name and under a constant fear of being discovered. In the past, those who've made the decision to go underground are not people trying to avoid an 18-month contempt citation. They are people who become fugitives rather than face long term imprisonment. If the government suspects that a person is likely to flee, it will take her into custody when the subpoena is served and it may set bail at $100,000 as it did in Leslie Bacon's case.

After the witness' first appearance it may be impossible for that person to escape. It is conceivable that a witness can appear early in the morning and be in jail for contempt by the afternoon. Unless she is released on bail pending appeal, she will be held in custody when the indictments come out and probablyup through the trial.

HOW DO WE SMASH THESE GRAND JURIES?

Organizing against grand juries is essential for the movement's survival, yet we must recognize the limits of making grand juries a political focus. Mobilizing against repression can lead to a sense of defeatism and defensivenss. It also diverts attention from organizing against U.S. oppression in the Third World and of poor and working Americans. The way to fight repression is to persist in demanding community programs that serve people's needs, in calling demonstrations, in joining labor struggles, in supporting GI resistance, for these are precisely the actions which grand juries are trying to stop. We must continue with even greater determination to build a revolutionary movement, for grand juries will only be smashed when the system they are protecting is destroyed.

CHECKLIST

When you receive a subpoena:

1. "Don't mourn, organize"

2. Contact a movement lawyer (Call the National Lawyers Guild chapter in your area or the Grand Jury Defense Office, 2588 Mission St., Room #207, San Francisco 94110. Telephone--415 285-9207. The Grand Jury Defense Office has contacts throughout the country.)

3. Consult with your political group.

4. Call straight and underground media.

5. Form a defense committee of witnesses, lawyers, and legal workers.

6. If feasible, form a defense collective.

7. Call together support groups to plan political mobilization and publicity.

---Don't let yourself get isolated. Seek political and legal help immediately.

---Leave the grand jury room after every question. Write everything down.

---Don't testify until all legal recourse has failed and you have been granted immunity.

---Keep politics primary, both in deciding whether or not to testify and in planning your offensive against the grand jury. Political resistance may do more to protect you from the grand jury than any legal argument.

This booklet belongs to the people.
Reprint it freely.