

Judge Rebuffs 2 F.B.I. Agents In Bid to Halt Burglary Inquiry

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A Federal judge today rebuffed an attempt by two agents of the Federal Bureau of Investigation to halt a grand jury investigation of illegal burglaries committed by them and other agents in New York City in recent years.

The judge, Henry F. Werker, rejected a claim by the two agents, Philip Newpher and Claiborne Poche, that the Justice Department, which is investigating the burglaries, was preparing to place them in violation of the law by requiring them to disclose national-security information before grand jurors at a hearing here next Tuesday.

After an oral argument at the United States District Court-house on Foley Square this morning, Judge Werker ruled that while a grand jury could not be used as an "instrument of pressure," it did have a responsibility to obtain "every man's evidence" relating to matters under investigation.

The motion to quash the grand jury subpoenas also involved assertions by Jack B. Solerwitz, a Long Island lawyer who represents Mr. Newpher and Mr. Poche, in addition to some 20 other F.B.I. agents, that the Federal investigation had been overbroad.

The judge said, however, that he had not found the scope of the subpoenas to be "oppressive," and he also rejected a request by the agents that he appoint a special prosecutor to conduct the inquiry.

Mr. Solerwitz immediately appealed the judge's order to the Court of Appeals for

Second Circuit on an emergency basis, but no decision on that motion is expected before Tuesday.

Mr. Solerwitz had argued earlier that because the fugitive members of the Weather Underground Organization, whom the F.B.I. burglaries were intended to help track down, had links to some hostile foreign governments, the agents would violate their national-security oaths in discussing those burglaries before the grand jury.

Points in Rebuttal

J. Stanley Pottinger, the head of the Justice Department's Civil Rights Division, dismissed that contention in his rebuttal argument today, saying that "it would border on fantasy to believe that the national interest is at stake" in an investigation of what was "essentially a domestic action."

In his oral opinion, Judge Werker declared that the fact that the prospective witnesses were F.B.I. agents did not, by itself, "exempt them from appearances before grand juries." The concern about disclosure of secret information by the two agents, the judge said, was "premature," since neither of them had yet been questioned.

Mr. Solerwitz, who is acting in his capacity as counsel to the Federal Criminal Investigators Association, said outside the courtroom that several of his clients in this case had indicated their intentions to put themselves in contempt of the grand jury and go to jail rather than answer questions they deemed injurious to national security.