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A Commentary

By Nicholas von Hoffman

Judges like to make a big thing over protecting defendants from publicity that might prejudice juries... sometimes. The big battle between the First and Sixth Amendments, fair trial versus free press, but as often as not judicial gag orders are a means whereby authority-infatuated judges help prosecutors conduct a private lynching.

Then there are the times when there is no gag order. The loudest recent example of the bench cooperating in this way to deprive unpopular figures of their constitutional rights has been transpiring in Detroit where a bunch of guys from New Jersey with Italian names and reputations as hoodlums have been marched in before a federal grand jury and forced to undergo a police lineup, all

Detroit Grand Jury Lineup:

under maximum possible publicity.

Although these characters haven't been indicted for anything, the government not only has let it be known through the media that they are under suspicion for murder, but gallons of other stuff about them has been spilled and

Poster

leaked to the press. The spillers and leakers have to be the D.A.'s office and/or the FBI.

Maybe these ginks we see being shoved down official corridors and in and out of grand jury rooms are as bad as they're made out to be. Let's hope so, because God help them if they're innocent. The Justice Department has already tried them on television and in the papers, and

where have all those prating judges

gone? Where are the gag orders? When do we get to hear one of those black-robed, sententious jurists read us the lecture on the rights of these unpopular persons to a modicum of due process?

Granting the conspicuous moral cowardice of the bench, you would still think that some judge in Detroit would have the moxie to object to what the prosecutors are doing to the little that's left of the grand jury's original functions. In this case, as in many other ones in the last few years, it has been used as an investigative arm of the Justice Department, a legal torture chamber for the extraction of self-incriminating testimony.

A grand jury's function, according to a Supreme Court ruling on the subject as recently as 11 months ago, is "both the determination whether there is probable cause to believe a crime has been committed and the protection of citizens

Mostly for the Media

against unfounded criminal prosecutions."

In keeping with that, it is for the protection of innocent people that grand jury proceedings are secret. In this investigation, though, the grand jury has been used as an occasion for publicizing the Justice Department's as yet unproven suspicions and for putting extralegal pressure on these men. Guilty or not, whether they are eventually indicted or are dropped for a new set of suspects, the men's reputations have been blasted. The grand jury, which was once thought of, to use the Supreme Court's language again, "as a protector of citizens against arbitrary and oppressive government action," has been perverted into the mechanism for carrying out such action.

The introduction by Congress a few years ago of something called use immunity has helped to destroy the grand jury as our protector. This device enables the government to force a man to

incriminate himself in front of a grand jury in return for a limited immunity against prosecution. His own words can't be used against him in a subsequent trial, but the government can take the leads he is forced to provide by testifying against himself to find witnesses and evidence which can be used in the trial which will hang him.

Last year the Supreme Court helped the abuse of the grand jury along by ruling that illegally obtained evidence may be presented to it. As with testimony exacted by use immunity, the evidence can't be used in a trial itself but it can be used to develop other leads.

A happy byproduct of this ruling is to encourage the good folks at the FBI to smash down your door without a warrant. If judges ever get back into contact with reality and see how cops wreck people's homes when they search them, they'd understand what these decisions can mean to us innocent tax-

paying serfs.

The more elaborate methods of inflicting inequity ordinarily are saved for unpopular people who become targets of political opportunity for prosecutorial vendettas. Often the victims are radicals, but sometimes a district attorney may determine it's enough to be Italian and a teamster from New Jersey. The recent indictment of Marvin Mandel, the governor of Maryland, by a grand jury that leaked worse than Jerry Ford trying to keep a secret, seems to have stemmed from nothing more than a general Justice Department zeal to shoot itself a deer with 20-point antlers.

Some congressional lawmaking is needed to stop blind and uninformed grand juries from being used as investigatory adjuncts of the FBI. But judges who know they're not supposed to be the D.A.'s little helper could contribute too.

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