

Court Ponders Total Immunity For Witnesses

Supreme Court justices pondered yesterday whether anything less than total immunity from prosecution will suffice when the government tries to compel testimony from a balking witness by administering an "immunity bath."

The court heard arguments in cases growing out of a New Jersey investigation of organized crime and a federal grand jury probe of suspected schemes to violate the Selective Service laws.

In a third case from Illinois the court heard debates over how far the state must go to make clear to an uncooperative witness that his Fifth Amendment privilege against self-incrimination will not be abridged if he testifies under compulsion after being offered immunity.

Harassment Charged

The hearings, which were postponed until the court was up to full strength, were considered vital to the Nixon administration's approach to crime investigation. Over protests that the Justice Department was using grand juries for political harassment of dissidents, the government has leaned heavily on the limited immunity allowed under the 1970 organized crime act.

Invoking the law, federal prosecutors in Los Angeles demanded testimony from two draft-age men, Charles J. Kastigar and Michael G. Stewart, about a dentist suspected of helping them and others evade the draft by rendering unnecessary "dental services."

The witnesses were held in contempt, subject to up to 18 months' imprisonment as long

Defense lawyers argued that it would be impossible for them to prove what many of them suspect—that any subsequent prosecution of a witness for a crime about which he testified under compulsion was not derived from "independent" sources of evidence.

U.S. Solicitor General Erwin N. Griswold said the answer was to require the government to carry a "very heavy burden of proof" of showing its evidence was untainted. He said he expected the government to have an especially heavy burden if its evidence came in after the immunized witness had testified.

Called Speculation

Griswold, whose principal support from the bench came from Chief Justice Warren E. Burger and Justice Byron R. White, said the defense lawyers were speculating about the future and that the proper time to argue the tainted evidence question was in the course of any subsequent prosecution.

Courts across the nation have split over whether an 1892 Supreme Court decision requires full immunity. Federal prosecutors have become involved in the question in the Berrigan conspiracy case, the investigation of the Capitol bombing and the prosecution over release of the Pentagon Papers as well as organized crime probes.

as they refused to testify, after they insisted that the immunity being offered was incomplete.

Their demands for total guarantees against future prosecution for any transactions discussed before the grand jury were countered by the government's contention that they were entitled only to a promise that nothing they said would be used against them directly or indirectly.

New Jersey's Investigation Commission posed the same issue in its attempt to get off-convicted organized crime figure Joseph A. Zicarelli to talk about crime in his state.

Justice William J. Brennan disqualified himself from all three cases, apparently because his son was a special organized crime prosecutor in New Jersey in 1968. Justice William H. Rehnquist, who as assistant attorney general had been assigned to argue the Justice Department's side of the issue, also sat out the argument.