

Watergate Indictments of 3/1/74 HW 3/5/74 p.m.

Opposing use of the sealed report of the grand jury, delivered to Sirica and not part of the indictment itself, seems necessarily to involve if not require an attack on the legality of the report itself. Thinking about this I recalled what those in the media conjecturing about this did not, precedent.

I phoned Barry Sussman, metro desk, WxPost, a little before 11 a.m. He was not in. I asked the city desk if anyone else working on the story was. One only, who was in a conference. So I asked for and spoke to Paul Valentine.

If there was no earlier precedent one was established by two of the defendants under this indictment. They had political purposes in that instance. Mitchell was Attorney General, "ardian Assistant Attorney General in charge of the Internal Security Division.

It was the Chicago Black Panther murders case of several years ago.

There was a federal grand jury. It refused to indict, although there is no possibility of doubt that if all its other conclusions were correct and it could not indict for the more serious offenses, it had perjury indictments that were apparent.

By the time this grand jury was convened, the case was political dynamite. By the time it completed its work under the direction of the U.S. Attorney it was clear that the intended purpose was to calm the protest while seeing to it that nobody was indicted. Motive for this emerged later and it is in my files. The man responsible for providing the information leading to the assault that had murder as its only objective was an FBI informant. Or, FBI hence federal and Department of Justice responsibility.

So, it was not possible for the department to ignore the case nor was it possible for it to permit any indictments because in any trial its responsibility had to emerge.

The Mitchellist solution was to issue a seemingly strong report. It was severely critical of local authority while covering the federals.

The grand jury report, unlike that in this Watergate case, was not written by the grand jury. It is book length and is careful to be strong while falling short of indictment. It was issued by the Department of Justice. I got my copy from the Department of Justice when these indicted held their official posts there.

Paul saw the significance immediately. With Barry not in and Rosenfeld(?) city editor off he said he would go to the man in that slot this morning (Kloss?) and tell him. How could he prove it? If he didn't want my files, ask DJ, perhaps by asking if they had a copy they could let him have. (I'm sure their library should hold a copy unless it was discarded.) I told Paul this material is in my storage files but I could retrieve it in less than five minutes if someone called back. Nobody did.

I presume the Post will have a story on this particularly because this evening's TV net news says that Wilson filed a motion claiming there is no legal authority for a federal grand jury to do other than indict and that filing a report of any kind violates the Federal Rules of Criminal Procedure. I've not checked my copy and won't. I am sure the compilers of those rules did not anticipate this situation and that Wilson's motion is most likely based on his special interpretation. If not, there is still at least this one Mitchellist/Nixon precedent.