GRAND JURY SYSTEM

Views Mixed on Allowing Counsel for Witnesses

Solons Ask Session Face War Issue

WASHINGTON (AP) — A call for Congress to stay in session until it deals with the question of war policy in Vietnam was sounded today by three House members.

The suggestion from Reps. Paul Findley, R-Ill., F. Bradford Morse, R-Mass., and William L. Hungate, D-Mo., comes at a time congressional leaders are predicting that with a little luck the 1967 session could wind up around Thanksgiving Day.

"Our men in Vietnam cannot adjourn the war," Findley said, "and I do not think the Congress should adjourn until it has dealt squarely with the question of war policy."

The 3 are among 57 House sponsors of a reslution calling for congressional hearings to determine whether "further legislative action is desirable in regard to Southeast Asia policy."

By ROSEMARY JAMES

Arguments on the merits of the grand jury system are not new. They have been raised here as in other sections of the country and they will continue to be raised.

One of the complaints voiced in recent weeks has been the problem of a witness unable to bring legal counsel with him into a jury session.

There are mixed feelings on the subject.

A person cannot refuse to appear before the grand jury, unless his subpena is quashed by court action, and he can-

This is the second of two articles analyzing Louisiana's grand jury system.

not refuse to answer all questions. He can only refuse to answer those which might be self-incriminatory.

The question is whether the ordinary man is capable of determining which questions are self-incriminatory in the legal sense.

ATTORNEY SAM MONK Zelden said that one of the problems facing a witness is that grand jurors can ask leading questions. "It is possible to take advantage of a witness who is not familiar with the law," he said. "A man should have his lawyer with him for his own protection, whether he is under suspicion or not."

William F. Wessel, a past president of the Louisiana Bar Association, agrees and said that the right to counsel will have to come eventually. It would be a simple enough matter to change the law, which now reads that a witness may have an interpreter if necessary. The list of people

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Counsel for Witness Views Here Mixed

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permitted in the grand jury sessions could be expanded to say "and counsel of witnesses."

Charles Ray Ward, first assistant district attorney of Orleans Parish, said that he feels the matter is "more of an academic problem than a practical problem" because persons under suspicion or already charged are almost never called before the grand jury, unless they request to testify.

He said, however, that he thought it would be no problem at all if the state law had a stronger immunity clause. He said that right now the grand jury cannot guarantee a witness immunity from prosecution when he testifies, except in public bribery cases.

WARD BELIEVES THAT the grand jury should be able to grant immunity in other types of investigations as well. He said the DA's office will work for a stronger immunity law.

"This would help," he said, "in cases where a little man in a criminal operation might be willing to tell what he knows if he could be assured that he would not be prosecuted."

On the matter of grand jury secrecy, Ward said that he feels that the requirement should be binding on all persons involved except the witness. The requirement that a witness keep silent about what he has said to the jury is "unrealistic, unworkable and may be in violation of the First Amendment to the Constitution, which guarantees free speech."

In many other states and in the federal grand jury system, the witness, for his own protection, has the option to make his testimony public. Secrecy is binding on all others who hear grand jury testimony. This prevents a man from falling under suspicion in the community when he may only be providing minor, but helpful, testimony in an investigation.

Aaron Kohn, managing director of the Metropolitan Crime Commission, and a number of attorneys questioned feel likewise.

LEON D. HUBERT JR., a former district attorney, now a professor of law at Tulane University, said if the state law were interpreted strictly, the names of people appearing before the jury would not be made public. Since this is not the case, he said, and since the whole purpose of secrecy is for the protection of the innocent, the witness should be able to protect himself.

There are others who feel that the secrecy rule has worked well and that it should be continued as it is. Professor Dale E. Bennett of the Louisiana State University Law School said there is a good strong reason for secrecy by all — "The protection of the innocent man who comes under investigation but then is not indicted." Judge Bernard J. Bagert, senior jurist of the Criminal District Courts, and a number of attorneys agreed with him.

Leander H. Perez Sr., who is considered an authority in the area of constitutional law, said that he feels the present law is not only constitutionally sound, but fundamentally sound, and should not be changed.

ANOTHER POINT WAS brought by a number of people questioned, who feel that the law could be changed to allow a grand jury to extend its term in the case of complicated investigations. Now, juries are automatically dismissed at the end of their six-month terms. Ward, Hubert, Kohn and a number of defense attorneys feel that it would alleviate duplication of effort and the precedent exists in the federal system.

However, several people, including Hubert, pointed out the danger of men becoming "professional grand jurors."

In some instances, jurors could get carried away with their own importance and engage in irresponsible witch hunts, with little regard for constitutional guarantees, attempting to punish what they think is wrong instead of what is against the law. This would be the exception, however.

Professor Bennett believes that more than six months is asking too much of a potential grand juror, who has to give up a lot of his time even in a six-month term.

Kohn said that the crime commission believes the law should have changes in several other areas. "The law should read that any member of the jury or the jury as a body should be able to seek information and guidance from any source they might deem helpful to them. The law should authorize a grand jury to seek and to employ its own legal conusel, its own investigators and any other specialists necessary to the full development of an investigation," he said.

Kohn said that the law should provide that the presiding judge order such assistance when three-fourths of the jurors ask for it and that the funds be made available for such professional assistance.

MOST OF THE OTHER PEOPLE questioned felt that these suggestions, which would give the grand jury more independence from the prosecutor's office, are not needed.

They pointed out that if there is a conflict between the jury and the DA, the jury, under state law, can appeal to the attorney general to supercede the DA.

If they needed funds from some source other than the DA's funds for investigation, the jury now could appeal to the governor for funds. Ward pointed out that Gov. John J. McKeithen recently made funds available to the East Baton Rouge Grand Jury for its crime probe.

Kohn also suggested that a criminal judge should be allowed to convene a grand jury at his discretion. However, many people questioned the wisdom of this, stating they feel such power would permit a judge to use the grand jury for purposes of political vendettas.

Wessel raised a point about the type of cases which go to the grand jury. Under law, a grand jury indictment is required only in capital cases and the jury may act in other cases. In the federal system, grand jury indictments are required in all felony cases, unless the defendant waives indictment.

WESSEL AND ONE OF THE judges questioned feel that some similar provision should be made in the state law, as a check against the power of district attorneys.

Judge Bagert, on the other hand, feels that if "we are going to have to live with the grand jury system," the law should be changed to make a grand jury indictment in capital cases optional.

His main point in this regard is that frequently in capital cases valuable time is lost before they come to trial. "If the matter were handled by the district attorney himself on a bill of information, a case could be presented for arraignment within a week of the offense."

Too, Judge Bagert said, the very fact of a grand jury indictment sometimes can be prejudicial to a defendant. He said that even though petit jurors in a case are instructed that "the indictment is a mere accusation and is not to be considered as evidence of the defendant's guilt," there are instances where the indictment itself is prejudicial. He noted that the jury was abolished in England 30 years ago and that it has been done away with in Canada and in Michigan.

While many agree with Judge Bagert that the grand jury is a "cumbersome, 800-year-old habit that has outlived its usefulness," Zelden notes that there is the problem of what would replace the grand jury.

Without the grand jury system, he said, all cases could be handled by bills of information filed by the DA's office. This would be more efficient, he said, but where would be the check against a DA's power then?

Judge Bagert said the check is obvious.

"A bill of information, like an indictment, is an accusation — not fact. A man still has the right to a preliminary hearing and a trial."