

A.B.A. Rebuffs Subpoena In Plea Like Newsmen's

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By FRED P. GRAHAM

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NEW ORLEANS, Feb. 8 — An American Bar Association committee, asserting a right to refuse to testify akin to some journalists' refusals to reveal their sources, has successfully avoided answering a Federal grand jury subpoena.

The case concerned Federal Judge Otto Kerner, who has been indicted on bribery charges.

It was disclosed at the association's mid-year meeting here that the bar association's Committee on the Federal judiciary, which investigates potential judges for the Justice Department, refused last November to comply with a subpoena obtained by the Justice Department in its investigation of Judge Kerner.

Session Is Ended

The disclosure came as the A.B.A.'s House of Delegates ended its two-day session by voting not to endorse a Nixon Administration bill that would permit the police to fingerprint suspects although lacking enough evidence to arrest them.

In the Kerner case, Federal lawyers in Chicago subpoenaed the bar association's record last November to determine if the committee's investigation of Mr. Kerner, prior to his appointment to the bench in 1968, had turned up evidence of the alleged race track stock dealings that led to his indictment.

Albert E. Jenner Jr. of Chicago, the committee member who has the records, said today that he had refused to produce them because the committee assures the secrecy of information given about potential judges.

He said the committee's role of screening judicial candidates would be "finished" if people who gave unfavorable information could not be protected.

'Nobody Will Talk'

Mr. Jenner said that this "is very much like the privilege being claimed by reporters—if you can't protect the confidentiality of your sources, nobody will talk to you."

He alluded to a case that will be argued before the Supreme Court later this month. Three reporters, including Earl Caldwell of The New York Times, are asserting that the free press guarantee of the First Amendment shields them from having to comply fully with grand jury subpoenas.

Mr. Jenner said that he had informed James R. Thomson, the United States Attorney in Chicago, that he would not produce the records unless ordered to do so by Chief Judge

Edwin S. Robson of the Federal District Court in Chicago.

Mr. Jenner also told Mr. Thomson that the investigation had turned up no evidence of the alleged stock dealings.

The A.B.A. has not been pressed to comply with the subpoena, and Mr. Jenner said he did not expect to hear more about it from the Government.

Mr. Thomson, reached in Chicago today, said the Government had not insisted on compliance with the subpoena because of Mr. Jenner's statement that he had no relevant evidence.

Kerner Awaits Trial

Judge Kerner, a member of the United States Court of Appeals for the Seventh Circuit, has disqualified himself from judicial duties pending the trial. He and four others were accused of conspiracy and mail fraud, based on alleged race track stock transactions while he was Governor of Illinois from 1960 to 1968.

The 307-member A.B.A. House of Delegates, traditionally a conservative body, dealt the Justice Department's legislative program a blow when it rejected a recommendation by the association's criminal law section that the Nixon Administration's so-called non-testimonial identification bill be endorsed.

The bill would authorize officials who have reasonable grounds to suspect a person of a crime to require him to give fingerprints; voiceprints; specimens of blood, urine, hair, saliva and handwriting, and to be photographed or to appear in lineups even though the police lack enough evidence to make an arrest.

The House approved recommendations by the House Administration bills to make it a crime to send lewd advertisements through the mail and to allow Federal judges to consider a suspect's danger to the community in deciding whether to grant him pretrial release.

It voted, 107 to 93, to defer action on a recommendation by the young lawyer section urging states to let students vote either at their home cities or where they attend college.

The House of Delegates also approved, with only one dissenting vote, a resolution favoring equal constitutional rights for women, but not specifically endorsing the constitutional amendment now pending in Congress.

Chesterfield Smith, a 54-year-old Lakeland, Fla., lawyer, was elected as president-elect nominee. His one-year term will start in August, 1973.