

Text of Judge's Charge to Grand Jury in Agnew

Special to The New York Times

BALTIMORE, Oct. 3 — Following is the text of a special charge that United States District Judge Walter E. Hoffman gave today to the Federal grand jury investigating allegations against Vice President Agnew:

Ladies and gentlemen of the grand jury, I have directed that you appear before me today for the reason that I have been designated, in accordance with law, to preside over any matters which may arise during your consideration of the evidence now being brought to your attention involving certain alleged criminal activities on the part of one or more individuals. As you already may know, I am Judge Hoffman from the Eastern District of Virginia but, having received the appropriate designation as required by law, I am a United States district judge for the District of Maryland as far as these proceedings may be involved.

Since my designation, and perhaps prior thereto, I have noted with great reluctance that the news media have caused many articles, statements and newscasts to be issued. While I am confident that Judge Blair, who originally charged you when you initially were convened, probably mentioned that you should hear and determine matters coming before you, without regard to anything you may have heard or seen by reason of the news media, I think that you should be reminded again of same.

As you know, you are sworn to secrecy as to any matters brought to your attention while sitting as grand jurors and, insofar as I am aware, you have adhered strictly to this oath of secrecy. To what extent, if any, the news media have attempted to obtain information from you, I do not know. I congratulate you for adhering to your oath of secrecy and only request that you continue to do so, even after you have completed your deliberations and have been discharged.

Because of the fact that it has been several months since you were charged by Judge Blair, I deem it appropriate to remind you of your duties and powers, even

though it may be repetitious in nature.

You have been impaneled, pursuant to Federal law, as an arm of the Court to inquire into the commission of offenses against the laws of the United States. Under the Fifth Amendment to the Constitution of the United States, no person can be brought to trial for a capital or otherwise infamous crime except on a presentment or indictment of a grand jury. An indictment is a written accusation of crime submitted by the prosecutor to the grand jury, which is found by the grand jury to be "a true bill."

A presentment is an accusation initiated by the grand jury itself, as a result of its own knowledge or information, or on information from others. It cannot form the basis of a prosecution, but must be followed by an indictment. In reality, a presentment is merely a direction that a formal indictment be presented.

The oath which you previously took tends to prescribe your duties in that you are to "diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service." Of course, this means knowledge brought before you by credible witnesses appearing before you and testifying; it does not mean knowledge acquired through the news media or any other source.

Grand Jury's Purposes

It is not your function to determine the ultimate guilt or innocence of a person under investigation. You are a jury of inquiry and accusation. You ascertain whether a person should be put upon trial and, if you think that he should be tried, then you accuse him of the crime or crimes by returning an indictment against him marked "a true bill." If you think that the credible evidence is insufficient to require the person to be put upon his trial, then you either mark an indictment "not a true bill" or otherwise do not report any action against that person.

The underlying purpose of a grand jury is twofold: In the first place, you constitute a bulwark of protection to our citizens in that it is your duty to see that no one is

put upon his trial for a frivolous or ill-founded charge, or merely because the person has been subjected to undue publicity; in the second place, you are a protection to the United States in that it is your duty to present or indict in cases where the commission of crime is brought to your knowledge by credible evidence before you, and this is true irrespective of whether or not the law enforcement officers of the United States have preferred charges.

Of course, you are not concerned with any violation of the laws of the state of Maryland, but you are charged with the duty of diligently inquiring into the violation of the criminal laws of the United States, that is Federal crimes committed or triable within the District of Maryland. For your purposes, you are not concerned with whether a person is immune from indictment or trial.

You are Not concerned with the policy of any law. Congress makes that policy. Nor are you concerned with whether any other person may have committed a like criminal act and avoided prosecution. After a law is enacted it is every person's duty to conform his acts to it. All are equal under the law, but No one is above it.

You should Not return an indictment as "a true bill" upon mere suspicion or if the evidence be merely sufficient to render the truth of the charge probable. You should return an indictment as "a true bill" — and this is the test to apply — if you are convinced that the credible evidence before you, if unexplained and uncontradicted, would warrant a conviction by a trial jury. You need Not hear all of the witnesses summoned, but only enough to convince you to the extent that I have just mentioned.

Hearsay Evidence

Every indictment which you return reflects the existence of probable cause. And probable cause exists only when there is competent credible evidence, direct or circumstantial, presented before you in your grand jury room which leads you, as reasonable persons, to believe that the accused person is guilty of the offense charged.

Hearsay testimony, that

is, testimony as to facts not known by a particular witness of his own personal knowledge, but told to him by others, may be considered by you if you deem it to be thoroughly reliable but, if you are in doubt as to the reliability of any hearsay testimony, you may insist that the prosecutor produce the witness or witnesses to substantiate the essential facts. Of course, a written or oral statement made by a person under investigation for the violation of one or more Federal crimes is not hearsay evidence if the statement is testified to by one who heard the person under investigation make the same.

Statements made by a person under investigation when not before the grand jury cannot be considered unless a witness testifies with respect to same. If there is competent credible testimony establishing probable cause, the fact that there also may be hearsay testimony becomes unimportant. But there must be before you some competent credible testimony establishing probable cause to render proper the finding of "a true bill." It would be a tragedy to the cause of the administration of justice if grand jurors returned an indictment marked "a true bill" merely because the jurors may have heard or seen comments by the news media.

Unanimity Unnecessary

Since you already have been in session for several months, I will not repeat the duties of your foreman and deputy foreman; nor will I discuss the function of the United States Attorney or any other prosecutor except to emphasize the fact that the prosecutor has no right to influence you in making your final determination as to whether an indictment should be returned as "a true bill." If there is any indication that the prosecutor is attempting to influence your vote, other than through the orderly presentation of evidence, the matter should be brought to the attention of the court.

You have also been told that a unanimous vote in favor of returning an indictment as "a true bill" is not necessary. It is necessary that at least 12 of your number vote in favor of indicting before an indictment can be returned by you as "a true bill." If fewer than 12 of your number vote for the return of an indictment, such indictment should be endorsed "not a true bill," and this is true even though the number voting for the indictment may be a majority of the number actually voting. Always record the affirmative vote, but not the names of the jurors and how they individually voted.

It is possible that you may have voted, in political cam-

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paigns, for or against one or more of the persons who may be under investigation. This fact is entirely immaterial to your determination as to what you should do in a given case. Your service as grand jurors is not a part of the political arena.

Since you have been permitted to go to your homes and, in general, carry on your normal business affairs except while serving as grand jurors, it would be an insult to your intelligence to inquire as to whether you have seen or heard anything concerning the party or parties under investigation.

Sources of Information

Obviously you have. We are rapidly approaching the day when the perpetual conflict between the news media, operating as they do under freedom of speech and freedom of the press, and the judicial system, charged with protecting the rights of persons under investigation for criminal acts, must be resolved.

You are not concerned with the sources of the information disseminated by the news media. It is because I have learned, over a period of 20 years as a judge and an additional 23 years as an attorney, that the news media frequently are wholly or partially inaccurate, that I must warn you to disregard totally any comments you have seen or heard from any source, save and except what you have heard or seen in your grand jury room while in official session.

The news media are integral and necessary parts of our lives. My relationship with them has been generally good. I know that there are reporters and editorial writers who insist upon checking the facts before making any comment but, unfortunately in the present-day grab for priority in getting news items, the news media frequently overlook the rights of others, especially where criminal matters are involved.

In closing, may I urge you to consider only the credible evidence presented to you in your grand jury room. If you follow this admonition, you will have fulfilled properly your duties as grand jurors, irrespective of the result or final outcome.

If any one of you feels that you cannot abide by this supplemental charge because you feel that your mind has been improperly influenced by the news media, or any other source beyond the credible evidence presented in the grand jury room, you should advise me promptly to this effect.

Just to show how inaccurate the paper is, I saw in a paper this morning that I was coming up to here to take charge of the investigation. I appreciate the compliment, but I will have nothing to do with the investigation.