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The New McCarthyism

By William Safire

WASHINGTON, Jan. 8—Erwin N. Griswold, former dean of the Harvard Law School and former Solicitor General of the United States, was victimized today by a leak from the Watergate grand jury room.

An anonymous source made known that Mr. Griswold, who was chosen this week to be on the commission looking into the Central Intelligence Agency, had been called before the grand jury to testify on the International Telephone and Telegraph case. He was not indicted; the source evidently felt he should have been.

And so Mr. Griswold lands irreparably smeared, charged by a witness he cannot confront for a "crime" a grand jury did not believe he committed.

Was The New York Times wrong to run the story? Probably not; Seymour Hersh, who first uncovered the C.I.A. intrusion into civil liberty, wrote the piece convinced that Mr. Griswold had not revealed to the White House his experience before the grand jury. Certainly the former Solicitor General should have done so before accepting the Presidential appointment.

The Times neither suppressed the story nor gave it front page treatment; perhaps there was some concern about damaging a reputation it took a man a lifetime to build on the basis of unproven allegations made in a place where secrecy exists to protect individual rights.

For a man called before a grand jury has little to protect him except secrecy. He cannot have counsel, nor cross-examine his accusers, nor is he even told what is being investigated. His only protection, if he is not later charged with a crime, is the guarantee of our legal system that the proceedings will not be made public to blacken his name.

That is why grand jurors take an oath of secrecy. That is why prosecutors, who are officers of the court and also attorneys bound by canons of ethics, must never reveal any charges unsubstantiated by an indictment.

What difference, then, is there between the illegal compilation of C.I.A. dossiers on American citizens that could be used to smear them, and the actual smearing of those citizens by a prosecutor who has his own dossier from secret grand jury proceedings?

The difference is that the C.I.A. dossiers pose a potential danger of unfair smear, while smear by a lawbreaking prosecution is no longer potential but actual.

I have made an assumption here—that the leak came from a disgruntled member, or former member, of the special prosecution force—which may or may not be valid. The special prosecutor's spokesman has said "it's inappropriate" for a staff member to talk about cases out of court.

"Inappropriate"? If the smear artist is or was a member of the special prosecution force, he has betrayed his oath of office, ignored the canons of ethics and is in contempt of court. It is a wonder that the spokesman does not call this "a bizarre incident," or a "third-rate smear attempt."

If the leaker is a present or former prosecutor, the integrity of the special prosecutor's office has been seriously compromised, and a more vigorous reaction than a tut-tuting "inappropriate" is called for.

We may be dealing here with an unlawful act by a law enforcement officer who sees what H. R. Haldeman used to call a "higher duty" than obeying the law.

But Judge Sirica—"Minimum John," they call him now—is going on vacation, Archibald Cox is long gone from the scene, and the press can hardly be expected to urge lawmen to annoy productive sources. So this little act of vengeance against Mr. Griswold will go uninvestigated. Serves him right for standing up to old Joe McCarthy, master of the unsubstantiated smear, a generation ago.

ESSAY

Of course, by ignoring this inappropriate excess of zeal, we encourage more lawbreaking by lawmen in years to come. More than fifty lawyers will leave the special prosecution force with their pockets crammed full of live ammunition which could be used to assassinate the characters of witnesses called before the Watergate grand juries. One thing leads to another, as Gordon Liddy would tell us.

If the present special prosecutor, Henry Ruth, cared about history's judgment of his office, he would march every past and present member of the special prosecution force in front of a grand jury to see if any law enforcement officer betrayed his trust by breaking the seal of secrecy of its proceedings.

Yes, Mr. Griswold was wrong not to warn the White House of potential embarrassment before accepting the job; yes, the C.I.A. commission seems to be set up to write its report in whitewash; yes, The Times had some obligation to print the information it was given.

But the law must never be allowed to break the law; higher duties and greater causes are no excuse. Having undermined civil liberty in the name of national security, shall we now undermine civil liberty in the name of civil liberty?

If we permit prosecutors to break their oaths—if we close our eyes to the new McCarthyism—then the investigation of the C.I.A. will be a farce, and all the agony of the past two years will have been for naught.

The Op-Ed article on Dec. 26, 1974, by Arnold Jacob Wolf, "A Time for Renewal," was adapted from an article in the Yale Alumni Magazine that appeared in November, 1974.