

# New Trial For Gurney Undecided

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Attorney General Edward H. Levi yesterday took the unusual step of contradicting a key subordinate and said he has not yet decided whether former Sen. Edward J. Gurney (R-Fla.) should be retried on charges of conspiracy and perjury in the use of political contributions.

Levi's statement caused considerable confusion in the Justice Department since it ran counter to a department announcement Nov. 21 that Gurney's retrial was being set for Jan. 5.

The Nov. 21 announcement, made by a Justice Department spokesman, was based on information from assistant Attorney General Richard L. Thornburgh, who heads the department's Criminal Division. At the time, it also was made known that Thornburgh's office had notified Gurney's attorneys and the trial judge of the retrial.

Gurney, 61, was tried in Tampa last summer on federal charges of conspiring to create a \$233,000 slush fund from contributors seeking favored treatment from the

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government and then lying about the contributions to a grand jury.

The jury subsequently acquitted him of five of seven counts, but deadlocked on the conspiracy and lying counts, causing a mistrial. The Justice Department's Nov. 21 announcement said it was on those two charges that he would be retried.

After a staff meeting yesterday, Levi met with a group of reporters but said nothing about the Gurney case. Shortly after the press briefing ended, he suddenly appeared in the press room to say that he had another announcement.

A decision about retrying Gurney can be made only by himself and Deputy Attorney General Harold R. Tyler, Levi said. He added: "A decision has not been made. We have

not made a decision one way or the other."

Neither Levi nor other Justice Department officials elaborated on the reasons for the department's apparent turnaround or for the Attorney General's two-week delay in commenting. The immediate speculation was that there had been some kind of communications breakdown resulting in misunderstandings between Levi and Thornburgh or between Thornburgh and the press office.

Some speculated that Thornburgh had acted precipitately and was being given an indirect rebuke by his boss. In the past, however, Thornburgh, when discussing pending criminal cases with reporters, has stressed that he can only make recommendations about prosecution and that the decision is always up to the Attorney General.