

Complex Litigation Docket
Waterbury Superior Court
400 Grand Street
Waterbury, CT 06702

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From: Ronald Ferraro, Esq. Date: 7/23/2009
Re: Grand Jury #07-004 Pages: 13

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IN RE: : SUPERIOR COURT
INVESTIGATORY : JUDICIAL DISTRICT OF
GRAND JURY : NEW BRITAIN at
: NEW BRITAIN
#2007-04 : JULY 23, 2009

MEMORANDUM OF DECISION

RE: STATE OF CONNECTICUT'S
MOTION TO SEAL RECORD AND
REPORT OF INVESTIGATORY GRAND
JURY

I. BACKGROUND

On June 29, 2009, the Investigatory Grand Jury filed a final report of its finding with the Court of the Judicial District of New Britain pursuant to C.G.S. Section 54-47g. This report was filed within sixty days following the conclusion of the investigation as dictated by the aforesaid statute. Copies of said report were also filed with the Grand Jury Panel and the Chief State's Attorney.

C. G. S. 54-47g (b) instructs that "the finding of the investigation shall be open to public inspection and copying at

the court where it has been filed seven calendar days after it has been filed, unless within that period the Chief State's Attorney or a state's attorney with whom the finding was filed files a motion with the investigatory grand jury requesting that a part or all of such finding not be disclosed." On June 29, 2009, the State of Connecticut filed a Motion to Seal the Record and Report of the Investigatory Grand Jury, and requested a hearing pursuant to C.G. S. Section 54-47g. C. G. S. 54-47g (c) directs the Investigatory Grand Jury to conduct a hearing on the matter. It further instructs the Investigatory Grand Jury to give written notice of said hearing "to the person filing such motion and any other person the investigatory grand jury deems to be an interested party to the proceedings, which may include, but not be limited to, persons who testified or were the subject of testimony before the investigatory grand jury." Notice was given to all persons who were deemed to be interested parties. These parties were either people who testified or were the subject of testimony before the Investigatory Grand Jury. On July 13, 2009, the hearing commenced. At that time, attorneys representing the respective parties requested that they be allowed to view the report before presenting arguments concerning the issue of whether the findings should be made public. The Investigatory Grand Jury granted the requests with the proviso that each attorney was only to receive that portion of the report which related to his client, and the attorney was ordered not to share the information with anyone but his client. The hearing was then continued to the following Monday.

On July 20, 2009, the hearing continued. At that time, the Investigatory Grand Jury granted the motion made by the Hartford Courant to intervene in the matter as an "interested

party.” This Motion to Intervene was opposed by all other counsel present. The attorney for the Courant was then allowed to participate in the argument concerning the State of Connecticut’s Motion to Seal the Record and Report of the Investigatory Grand Jury.

II. DISCUSSION

The Investigatory Grand Jury is guided in its determination of disclosure by the dictates of C.G. S. Section 54-47g (b) and (c). The relevant portion of subsection (c) of the statute reads as follows:

Within five calendar days of the conclusion of the hearing, the investigatory grand jury shall render its decision, and shall send copies thereof to all those to whom it gave notice of the hearing. It shall deny any such motion unless it makes specific findings of fact on the record that there is a substantial probability that one of the following interests will be prejudiced by publicity that nondisclosure would prevent, and that reasonable alternatives to nondisclosure cannot adequately protect that interest: (1) The right of a person to a fair trial; (2) the prevention of potential defendants from fleeing; (3) the prevention of subornation of perjury or tampering with witnesses; or (4) the protection of the lives and reputations of innocent persons which would be significantly damaged by the release of

uncorroborated information. Any order of non-disclosure shall be drawn to protect the interest so found.

The Connecticut Supreme Court has held that C.G. S. Section 54-47g (b) "established a rebuttable presumption of disclosure. . . Recognizing the purposes behind the common-law presumption regarding the confidentiality and secrecy of grand jury proceedings, the statute favors disclosure after the grand jury has completed its investigation." State v. Rivera, 250 Conn. 188, 205-06, 736 A.2d 790 (1999). However, "public disclosure of grand jury proceedings must be regulated with an eye to the recognized importance of secrecy in the proper functioning of the grand jury system." In re Grand Jury Inv. by Judge John M. Alexander, 207 Conn 98, 107, 540 A.2d 49 (1988) see also In re Final Grand Jury Report Concerning the Torrington Police Department, 197 Conn. 698, 709, 501 A.2d 377 (1985). It is in this context of the presumption of the public's right to disclosure versus the current need for secrecy that the investigatory grand jury has considered the State's motion. The Investigatory Grand Jury has evaluated the information in the report pursuant to the requirements of C.G.S. Section 54-47g (c).

It may be helpful to the analysis regarding disclosure to relate the current stage of the proceedings. The investigation stage of the Investigatory Grand Jury has concluded. The report has been filed. No arrest warrants have been issued as the result of the final report. Indeed, whether the State's Attorney will ever apply for arrest warrants as the result of the final report is a

matter within his sole discretion. There are numerous people mentioned in the report of whom there was no finding of probable cause. In one instance, there was a specific finding of no probable cause. Presumably, the people referenced above are the "innocent persons" referenced in the statute at 54-47 © (4). However, it may reasonably be argued that, prior to any conviction and, certainly, prior to any arrest, all persons named in the report, of whom the Investigatory Grand Jury found probable cause existed that crimes had been committed, are certainly presumed to be "innocent persons".

The first prong of the disclosure analysis relates to people named in the report of whom the Investigatory Grand Jury did not find probable cause. The statute is clear with regard to any such person. C. G. S. Section 54-47g (b) provides, in relevant part, that "the finding may include all or such part of the record as the investigatory grand jury may determine, except that no part of the record shall be disclosed which contains allegations of the commission of a crime by an individual if the investigatory grand jury failed to find probable cause that such individual committed such crime unless such individual requests the release of such part of the record." Therefore, with regard to those parts of the finding which contain the names of people of whom the Investigatory Grand Jury did not find probable cause, in the absence of an application for release by said person, the Investigatory Grand Jury is specifically forbidden to release said information pursuant to the express wording of the statute. The Investigatory Grand Jury has not received any requests from any person in said situation. The Hartford Courant, through its attorney, agrees with this interpretation. However, it suggests that the matter is easily remedied by redacting the names of the

people so specified. The central problem with that position is that the names of said persons may be identifiable simply by reading the remainder of the report as it applies to both them, and people with whom they are associated. The Investigatory Grand Jury specifically refers to pages 16-20 of the report in this regard. In addition, statements made on pages 6, 7, 8, 9, 11, 12, and 13 may easily be traceable to determine the identity of people named in the report of whom the Investigatory Grand Jury did not find probable cause in the final report. The intent of Section (b) of the statute is clearly not to disclose any part of the record, or the finding as it may be deemed to include the record, relating to these individuals. The mere fact that a name may be deleted is not sufficient if the body of the report would lead an inquiring mind to the identity of the person. It is also noteworthy that this section represents a direct mandate from the legislature. The statute reads that: "no part of the record shall be disclosed" as it pertains to the above individuals. The test prescribed in subsection (c) of the statute does not apply to subsection (b) which contains an express instruction regarding the individuals concerned. Therefore, the report, as it pertains to those individuals of whom there was no finding of probable cause, will be redacted regarding the pages previously mentioned, pursuant to the instructions of C. G. S. Section 54-47g (b).

The second part of the analysis concerns the right of a person, presumably of whom the Investigatory Grand Jury found probable cause to believe that crimes had been committed, to a fair trial. The attorneys for all defendants have argued that the release of this information would affect the ability of their clients to receive a fair trial. They argue that pretrial publicity

of facts found by a Superior Court Judge acting as an Investigatory Grand Jury would influence any potential jurors in the case. The fact that certain findings were made by a Judge acting as an Investigatory Grand Jury, they argue, would lead people to believe that the facts were true, they contend, even though the Investigatory Grand Jury was only charged with making a finding of probable cause, not making a determination of guilt beyond a reasonable doubt. They argue that any findings made by the Investigatory Grand Jury were made after a presentation by the State's Attorney's Office, without the benefit of any cross-examination or argument from the defense.

The Hartford Courant argues that the public has a right to know what the Investigatory Grand Jury has found. The Courant also argues that there has not been the requisite showing of "substantial probability" made by the other "interested parties". At this stage in the proceedings there have not been any arrests based upon the final report of the Investigatory Grand Jury. Whether or not there will ever be a trial regarding the individuals of whom the Investigatory Grand Jury found probable cause is a question best answered by the Chief State's Attorney and any Superior Court Judge before whom any subsequent proceedings transpire. Further, even if arrest warrants were subsequently signed in this matter for certain individuals named in the report, those warrants may not contain all of the information in the report. If the information is made public, prospective jurors may be reading about aspects of the case which will never be disclosed in a trial. In addition, arguments were advanced to the effect that there are three individuals who were arrested and are facing trial as the result of certain findings made in the Interim Report filed by the

Investigatory Grand Jury. It is argued that if this Final Report is disclosed it will seriously affect the ability of those three defendants to receive a fair trial. The Investigatory Grand Jury agrees with this argument. At least one of the defendants has a trial scheduled for the fall of this year. There is a substantial probability that the release of information contained in this Final Report would jeopardize the ability of that defendant, and the other defendants, to receive a fair trial due to pretrial publicity of unrelated matters.

The Investigatory Grand Jury can take judicial notice of all facts contained in the record, the report and findings. After considering all of these items, together with the arguments of counsel, the Investigatory Grand Jury makes specific findings of fact on the record that there is a substantial probability that the interests of all parties of whom there was a finding of probable cause would be prejudiced by publicity that nondisclosure would prevent, and that reasonable alternatives to nondisclosure cannot adequately protect said interest of said individuals to a fair trial. The information contained in the report, records, and findings, is so damning that the publicity would affect the said individual's right to a fair trial. The information was garnered based upon the presentation of the State's Attorney's Office. All or some of it, as it relates to these individuals, may not survive the scrutiny of cross-examination. In fact, some of the information may never be presented during any future trial. However, if released, the information will be in the public domain and will surely affect the individual's right to a fair trial. Accordingly, the DISCUSSION Section of the Report and Findings is redacted in its entirety. There are no reasonable alternatives to this decision. Redaction of the names alone would be an empty gesture. The

content of the report would lead most readers to the identity of the person named. Partial release of certain paragraphs in this section would not be useful. Each paragraph contains information which supports the finding of probable cause that crimes had been committed.

The Attorneys for the "interested parties" were not concerned with either subsection (c) (2) the prevention of potential defendants from fleeing; or (3) the prevention of subornation of perjury or tampering with witnesses under 54-47g (c), therefore, the Investigatory Grand Jury will not discuss those sections.

The third prong of the analysis relates to subsection (4) of Section (c) of 54-47g. This section concerns: "(4) the protection of the lives and reputations of innocent persons which would be significantly damaged by the release of uncorroborated information." All of the attorneys, except the attorney for the Courant, argued that their clients could suffer greatly if this information were released. As the Investigatory Grand Jury noted earlier, technically, at this stage of the proceedings all people mentioned in the report and findings are "innocent persons". The phrase is not defined in the statute. However, the presumption of innocence attaches to all named persons through the time of trial until there is a guilty verdict. At this stage of the proceedings there have not been any arrest warrants issued. There may never be arrest warrants issued with respect to some or all of the persons of whom there was a finding of probable cause. What if the report and findings are released and there is never an arrest, a trial, a conviction? The Investigatory Grand Jury makes a specific finding on the record that there is a substantial probability that the protection of the lives and reputations of all "innocent persons" would be significantly

damaged by the release of uncorroborated information and said persons would be prejudiced by publicity that nondisclosure would prevent. The allegations of participation in criminal activity, some of which may be uncorroborated or inferred, would cause substantial damage to those concerned if released prior to an arrest in the case. The disclosure of items upon which a Superior Court Judge relied in signing an arrest warrant is a matter, perhaps, for subsequent proceedings. At this stage in the proceedings, however, the release of such information contained in the report would be irreparable. As Ray Donovan, the former Secretary of Labor under Ronald Reagan who was acquitted on charges of larceny and fraud, so aptly stated after his trial: "Which office do I go to get my reputation back?" At least Mr. Donovan had received public vindication of the charges against him through an acquittal by a jury. If arrests are not made as the result of this final report, but it is disclosed to the public, the lives and reputations of innocent persons would be significantly damaged. Where would they go to get their reputations back? Again, there are no reasonable alternatives to nondisclosure. For the reasons previously stated, the report is so intertwined with the various facts supporting the finding of probable cause that any redacting of names, sentences or paragraphs would still leave enough information for people to discover the identity of the persons involved. For these additional reasons stated, the Investigatory Grand Jury redacts the DISCUSSION Section of the report.

The principle of grand jury secrecy is well entrenched in the common law and is "older than the nation itself." Pittsburgh plate Glass Co. v. United States, 360 U.S. 395, 399, 79 S. Ct. 1237, 3 L. Ed d 1323 (1959). "Obviously the secrecy that is

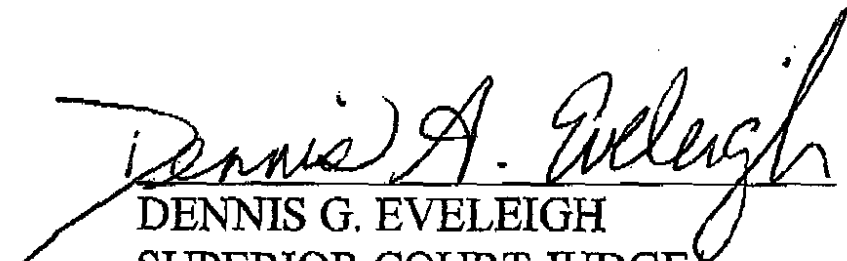
guaranteed is only temporary and provisional. Permanent secrecy would be more than is necessary to render a witness willing . . . [The need for secrecy] ceases when the grand jury has finished its duties and has either indicted or discharged the persons accused.” 8 J. Wigmore, *Evidence* (4th Ed. 1961) Section 2362 p. 736. “The common law, therefore, recognized that the veil of secrecy surrounding grand jury proceedings may be lifted when and if the purposes of protecting witnesses and preventing premature disclosure of information are no longer served.” *State v. Rivera, supra*, at 203. The Legislature appears to have recognized many of the legitimate reasons for the secrecy of grand jury proceedings by its codification of the four factors which the investigatory grand jury may consider regarding nondisclosure of the report. It is noteworthy that, although Wigmore was obviously referring to a Grand Jury that had the power to indict, he recognized that the need for secrecy ended with either the indictment or the release of people accused. We do not have either an indictment or an arrest warrant in this case. If there is an arrest made in the case some or all of the findings may eventually be made public. At this time, in the absence of same, the prejudice on the people mentioned, which would result from this premature disclosure of the report, cannot be sanctioned.

III. CONCLUSION

For the reasons stated, the Investigatory Grand Jury orders that the State of Connecticut Motion to Seal the Report and Record is granted with respect to the following pages or portions thereof of the report: All of Part III, the DISCUSSION Section,

except the signature line on page 20. The remainder of said motion is denied and Sections I and II may be available for public inspection after the expiration of the seventy-two hour appeal period, if no appeals have been filed. The Investigatory Grand Jury holds that the Public has a right to know the background and scope of the investigation contained in Sections I and II. Although some of the attorneys argued against disclosure of some of the information contained therein the Investigatory Grand Jury cannot find that there is a substantial probability that the release of the information contained in Sections I and II will prejudice the rights of persons named in the final report. It should be noted that the interim report and its findings were incorporated in the final report. The interim report has previously been ordered sealed, and that order shall remain in effect.

So Ordered .


DENNIS G. EVELEIGH
SUPERIOR COURT JUDGE
INVESTIGATORY GRAND JURY