

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,)
)
) Grand Jury No. 88-3
v.) (Under Seal)
)
JOHN and JANE DOE 1185)
)

MEMORANDUM OPINION

This matter is before the Court on the defendants motion to quash two grand jury subpoenas duces tecum or in the alternative for a protective order.

In their Memorandum in support of the instant motion, the defendants explain that, since April of this year, they have been the subjects of an investigation by the Inspector General's Office (IG) of the Department of the Interior. Several IG subpoenas were issued in connection with this investigation, which were challenged by the defendants. The defendants allege that, at that point, the IG's office referred the case to the United States Attorney's office in order to avoid having to reveal the nature and extent of their investigation. The defendants further allege that the current grand jury investigation is in fact being conducted by the IG's office, using the U.S. Attorney's office as its puppet. In support of this allegation, they contend that the various Assistant United States Attorneys to whom they have spoken concerning the case have not been familiar with the details of the case, that the

grand jury subpoenas were served by an officer of the IG's office, and that documents produced by operation of grand jury subpoenas duces tecum have been "diverted" to the IG's office.

The defendants' legal arguments seem to be that, through the involvement of the IG, a grand jury investigation is being improperly used for the purposes of furthering a civil or administrative investigation, and that, in any event, the IG's office has improperly usurped the investigation. The defendants have, however, misconstrued both the role of the IG and the import of the cases they cite in support of their legal arguments.

One of the duties of the IG is to report to the Attorney General when he or she "has reasonable grounds to believe there has been a violation of Federal criminal law." Inspector General Act, § 4(d), 5 U.S.C. Appendix 84(d). Furthermore, participation of investigatory personnel in the grand jury process is not illegal or unusual. In Re Grand Jury Proceedings (Schofield), 486 F.2d 85, 90 (3d Cir. 1973) stated that "although federal grand juries are called into existence by order of the district court, ... they are ... for all practical purposes an investigative and prosecutorial arm of the executive branch of the government." That case also states that grand jury subpoenas are "issued pro forma and in blank to anyone requesting them ... [and] are in fact almost universally instrumentalities of the United States Attorney's office or of some other investigative or prosecutorial department of the executive branch." Id. Finally,

as pointed out in United States v. Duncan, 598 F.2d 839, 867 (4th Cir. 1979), it is permissible to instruct that documents produced under a grand jury subpoena duces tecum be delivered to government agents -- in that case the Federal Bureau of Investigation -- instead of to the grand jury itself. These specific holdings are superimposed on the general rule that a presumption of regularity is afforded grand jury proceedings. Hamling v. United States, 418 U.S. 87, 139 n.23 (1974); United States v. Johnson, 319 U.S. 503, 513 (1943).

There is no evidence that the procedures used in this case in connection with the grand jury subpoenas are in any way out of the ordinary. The IG's office conducted an investigation, the details of which are not at issue before this Court, determined that there were "reasonable grounds to believe" that Federal criminal law had been violated, and referred the case to the United States Attorney's office. That office, in turn, "made a determination that [the] matter should be pursued as a criminal investigation." Affidavit of Justin W. Williams, AUSA, at 2. In pursuing this investigation, the AUSA is entitled to rely on other investigatory personnel to issue subpoenas, In re Grand Jury Proceedings (Schofield), supra, and to require that documents be turned over to such personnel rather than directly to the grand jury. Duncan, supra.

The defendants cite a number of cases in support of their argument. Unfortunately, none is on point. United States v. Sells Engineering, 463 U.S. 418, 432 (1983) states that grand

jury materials may not be disclosed to anyone other than the attorneys who "conduct the criminal matters to which the materials pertain." The IG in its capacity as investigator falls within that scope. In re Patriarca, 396 F. Supp. 859, 863 (D.R.I. 1975) was cited by the defendants for the proposition that "unauthorized parties cannot, and should not, be permitted to compel the attendance of prospective witnesses before a grand jury." This statement was in fact dicta in a case that approved the appointment of a special attorney to issue subpoenas. Durbin v. United States, 221 F.2d 520 (D.C. Cir. 1954), cited by the defendants at oral argument, In Re Grand Jury Subpoena of Martin R. Stolar, 397 F. Supp. 520 (S.D.N.Y. 1975), and In Re Grand Jury Proceedings, 593 F. Supp. 92 (S.D. Fla. 1982) all involved situations very different from the present. The appellant in Durbin was required to respond to a grand jury subpoena by appearing before the U.S. Attorney rather than the grand jury because the AUSA "was not satisfied with the appellant's statement." Id. at 522. The subpoena at issue in Stolar was an unnecessary attempt on the part of the F.B.I. to obtain information only tangentially related to an ongoing grand jury investigation. In Re Grand Jury Proceedings dealt with a raid by a postal inspector in which all occupants of a building, including a visiting repairman, were rounded up and identified so that their names could be entered on blank grand jury subpoena forms. In each of these cases, the grand jury subpoena was invalidated. There is no evidence, however, that the defendants

in this case will be questioned by the U.S. Attorney rather than the grand jury, that the information requested is unnecessarily duplicative, or that the conduct was as overbroad and peremptory as that of the postal inspector.

For the foregoing reasons, the defendants' motion to quash two grand jury subpoenas is hereby DENIED.

The defendants move, in the alternative, for a protective order. Any fears concerning disclosure of the information produced to non-investigatory personnel at the Department of the Interior should, however, be dispelled by the rule set forth in Sells Engineering, supra, that grand jury materials not be disclosed to anyone but the attorneys involved in the criminal matter at hand. In view of this, no protective order is currently necessary, and the motion is therefore DENIED.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

11/22/88
DATE

Richard L. Williams
UNITED STATES DISTRICT JUDGE