

January 30, 1932.

Lawyers Cooperative Publishing Co.,
Rochester, New York.

Gentlemen:

In connection with your research bureau and the subscription of the Court to the American Law Reports, would it be possible for your Research Bureau to throw any light on the within matters?

A matter of great public interest both here and in the mainland, in connection with the functions of a Grand Jury and a Court in our structure of orderly criminal procedure is involved.

I am enclosing full copy of instructions given by myself as presiding Judge, in connection with the duties of Grand Jurors in a case now of wide-country interest. Counsel for the accused are attacking the indictment. Conceding however for the purpose of their Motion to Quash that there was ample credible evidence before the Grand Jury to sustain an indictment for Second Degree Murder; and also conceding that the indictment which was returned and is now before the Court, was approved by the affirmative vote of a sufficient number of qualified Grand Jurors.

The questions then involved as you will see from the instructions are:

1. The authority of the Court to refuse to receive a report of a "no bill" and call upon Grand Jurors for further calm reflection so that their judgment ultimately cannot be excused on the ground of ignorance of the law or hasty judgment.
2. The power of the Court to resubmit to the same Grand Jury, either of its own motion or on motion of prosecuting authorities, the question of whether or not a crime had been committed under evidence before them.

#2.

3. The general power of a Court to dismiss a Grand Juror on the ground of impropriety of Grand Juror to sit as police commissioner and as Grand Juror.
4. The possibility of attack upon indictment for dismissal of Grand Juror when record concedes twenty qualified Grand Jurors remaining on panel, sufficiency of evidence to warrant an indictment, and that indictment returned or voted by the requisite numbers of qualified jurors.
5. The general question whether or not instructions to Grand Jury on open files of Court, occurring as per transcript enclosed (which is conceded to be accurate as to proceedings when Judge was present) seeking to emphasize necessity of Jurors to be bound by the law of the case as announced by the Court, seeking also to direct their attention to the gravity of the charges and the public interest involved, requiring calm, cool deliberation and leaving the entire matter of credibility of witnesses and sufficiency of evidence to warrant prima facie showing of crime and perpetrator entirely to the functions of the Jurors themselves - whether or not such instructions are coercive in a legal sense and to what extent the authorities analyze rights of judge and jury under the circumstances.
6. Where facts are conceded sufficient and qualifications of Jurors conceded, what rights attorneys of accused have to examine minutes of Grand Jury as to earlier deliberations, when attempts to bring in "no bills" are admitted in the record.

Very truly yours,

BY ORDER OF JUDGE A.M.CRISTY,

Clerk.

AMC:F
encl.