



Rocky Flats Grand-Jury Members Plan To Show Feds Tried to Obstruct Justice

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DENVER -- In the summer of 1989, the U.S. attorney here impaneled a special grand jury to investigate whether officials at Rocky Flats Nuclear Weapons Plant willfully committed hundreds of environmental violations, including dumping radioactive waste into drinking water.

After questioning 110 witnesses and reviewing 760 boxes of documents over nearly three years, jurors returned indictments against eight plant and government officials. The U.S. attorney, however, refused to sign the orders before disbanding the panel.

Unlike a trial jury, a grand jury is forbidden by federal law from disclosing anything that has gone on during its investigation and deliberations. Breaking the silence could result in jail time.

But now, in an unprecedented move, 19 of the 23 members of that grand jury want to go public with charges that federal prosecutors obstructed justice. The jurors are seeking permission to tell a federal judge how they believe the U.S. attorney and U.S. Department of Justice officials scuttled their investigation.

On Monday, a lawyer for the panel is expected to file documents in federal court in Denver detailing official misconduct in the jury room. U.S. District Judge Richard Matsch is expected to decide within a month whether to grant jurors immunity to testify at a court hearing.

Back to Basics: The case has fueled a longstanding debate about the need for tighter controls for prosecutors and rules re-establishing the historical independence of grand jury panels.

"The account of the grand jurors is perhaps the most unsettling record I have reviewed in my career. The evidence of obstruction of justice and conspiracy [by prosecutors] is remarkably strong," said Jonathan Turley, a law professor at George Washington University, who is representing the jurors.

"The traditional independence of grand juries has been whittled away over the last few decades by the Department of Justice," he added. "This case is the first comprehensive test of the jury's independence and authority."

To be sure, these former jurors -- including a hairdresser, a bus driver, a letter carrier and a retired police officer, ranging from their mid 20s to late 60s -- have little to gain by revolting. Since launching their battle, they have been the subject of relentless media attacks by prosecutors and a probe by the FBI.

The former jurors, many moved to act because of their religious beliefs, said they are fighting because they took seriously an oath to see the case through.

"I remember [Judge Finesilver's] charge to us," said Jere Joiner, 60, a retired police officer. "He said that we represent the country, and that as an independent body it was our duty to pursue all the issues that came before us or whatever we wanted to look into." When prosecutors refused to sign the indictments, he said, "we felt betrayed because we were not allowed to do the job we had taken an oath to do."

Outrage: The jurors issued indictments against five employees of Rockwell

International Corp. and three U.S. Department of Energy officials, who operated Rocky Flats, but then-U.S. Attorney Mike Norton refused to sign them. Outraged, the jurors issued a blistering report against Norton and other Justice Department officials. However, Chief Judge Sherman Finesilver, who has since retired from the bench, promptly sealed the report.

Turley has carefully choreographed the former grand jurors' statements about their service, prohibiting them from furnishing specifics until their case is heard.

U.S. Atty. Henry Salano declined comment on the case and Norton, in private practice, did not respond to a phone message. But the National District Attorneys Association said the prosecutors' actions seem justifiable.

While not commenting specifically on the Rocky Flats case, Jim Polley, the association's director of governmental affairs, said: "A grand jury is a freewheeling body that doesn't have to observe the standards of proof and evidence that a prosecutor would in a real courtroom trial. Knowing what will and will not stand up in court, a prosecutor is the best judge of whether it is best to go to trial or to accept a plea bargain."

For decades the Rocky Flats plant, 18 miles northwest of Denver, played a crucial role in the country's arms race with the Soviet Union. The plant was a major supplier of plutonium triggers for nuclear arms in the Cold War.

Before there were strict federal standards, plant officials allegedly stored radioactive-tainted gloves, uniforms and other work materials in metal drums at the site, according to a report issued by a subcommittee of the House Science, Space and Technology Committee. But in the 1980s, the drums started deteriorating, and plant officials scrambled for ways to dispose of the wastes.

In June 1989, the FBI raided the plant to investigate allegations that Rockwell and the Department of Energy dumped radioactive chemicals into public drinking water supplies and secretly burned plutonium-laced materials in an incinerator that was supposed to be shut down.

Court affidavits at the time asserted that their motivation was an \$8.6 million bonus that Rockwell received as part of a program intended to reward contractors that dispose of their hazardous wastes in an efficient manner. The special grand jury was handed the case a few months later.

According to Turley, then-U.S. Attorney Norton at first cooperated fully with jurors, giving them advice on how to question witnesses and prepare documents.

But shortly before jurors were ready to issue indictments, according to a complaint they filed in U.S. District Court last August, Norton abruptly stopped assisting them. The complaint asserts that Norton and other Justice Department officials interfered with deliberations and refused to help jurors draft the indictment report.

The charges could constitute obstruction of justice.

Unbeknownst to jurors at the time, officials at Rockwell and the Department of Energy had negotiated a settlement with the Justice Department on the case. Rockwell paid an \$18.5 million fine in exchange for an agreement that prosecutors would charge the company -- and not individuals -- with the environmental crimes.

At the time, Donald Beall, Rockwell's chairman and chief executive officer said: "We continue to believe that the company operated the [Department of Energy] facility in a responsible manner, but agreed to plead guilty and pay the fine to avoid a very costly and lengthy trial."

The grand jury system dates back to 5th century England, conceived as an independent body of lay citizens with broad investigatory powers to safeguard individuals from abuses of the crown.

But in the past two decades, many defense lawyers have argued that grand juries have lost their autonomy, becoming merely rubber stamps for prosecutors.

"The prosecutor controls evidence before a grand jury like a spigot on a faucet," said Michael Ross, a New York-based defense lawyer who chaired an American Bar Association committee that studied the grand jury problem.

The bar association in recent years has called for reforms -- including bringing defense lawyers into the proceedings, and allowing juries to disclose obstruction of justice allegations.

Juror Connie Modecker, a 51-year-old homemaker, agreed.

"We feel in our hearts that this [alleged prosecutorial abuse] will go on unless we do something. It has got to stop."