

The Ambushed Grand Jury

Kindle Edition

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CARON BALKANY, ESQ.

**How the
Justice
Department
Covered Up
Government
Nuclear Crimes and
How We Caught
Them Red Handed**

A massive nuclear deception, a Justice Department conspiracy, a bunch of citizens who caught them at it and need our help. All true, and an exciting read. —Mike Gray, author, *The China Syndrome*

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October 24, 2001

United States Congress
Washington, DC

Open Letter to the U.S. Congress,

I am an FBI agent. My superiors have ordered me to lie about a criminal investigation I headed in 1989. We were investigating the US Department of Energy, but the US Justice Department covered up the truth.

I have refused to follow the orders to lie about what really happened during that criminal investigation of Rocky Flats Nuclear Weapons Plant. Instead, I have told the author of this book the truth. Her promise to me if I told her what really happened was that she would put it in a book to tell Congress and the American people.

Some dangerous decisions are now being made based on that government cover-up. Please read this book. I believe you know what needs to happen.

Respectfully,

A handwritten signature in black ink, appearing to read "Jon Lipsky", written in a cursive style.

Jon Lipsky

exhibits and notes we were using had been messed with. Someone was getting into our stuff.

Finally, in July, 1991, with the Grand Jury bored to tears, time flying way and nothing happening, almost two years of investigation, seven months of Justice Department stalling, I told Fimberg we were going to write our report and indictments whether they helped us or not.

The Justice Department cancelled the August Grand Jury session. In September, we told Fimberg no more Rockwell witnesses, we are ready to write our report and indictments. No sessions had been scheduled for October.

Shortly afterward, everything really went crazy.

Wes' journal Nov. 12: The attorneys told us we were through. Just got up after presenting two insignificant witnesses and said the case was over and walked out.

We sat around looking at each other for a while, angry, worried, confused. Several Grand Jurors wanted to just go home. He said we were through, they argued.

But we hadn't written our report, hadn't done anything with all the information we'd been gathering for the last two years. After a bit of visiting among ourselves, we decided to do what we'd been sworn to do whether the prosecutors would help us or not.

We were on our own.

Wes' journal Nov. 13: I arrive at the courthouse, go to Laura's temple of command, receive the vault key, gather the paperwork and meet the rest of the folks in the Grand Jury room. Coffee, morning pleasantries, and nearly ten in the morning and still no government boys. Government late was an accepted condition but this went a little beyond even that. We concluded we have really been abandoned.

Without the prosecutors to help us, we decided to ask the judge for help. That's what his instructions, way back in the beginning, had said to do. We requested the judge to meet with us and clear up some questions we had regarding indictments, Grand Jury Report and presentments.* We needed some legal answers.

* According to Judge Finesilver's printed instructions to the Grand Jury: "... [a] presentment is an accusation initiated by the Grand Jury itself without any formal charge or written indictment having been submitted by the government. You have the power to make a presentment, even over the active opposition of the government attorneys. . . ."

I conducted the Grand Jury session. A few of the folks wanted to go home and call it quits. After much discussion and some heated moments it was agreed we would meet next month (Dec). It would be a very important meeting. We would hold our second Christmas party. Grand Jury 89-2 would be the only Grand Jury in recorded history to be impaneled long enough to hold two Christmas parties. **We parted for our homes with a solemn promise to meet next month.**

The judge had ignored us. I asked Laura why we had no response and she told me the judge could not respond to our letter because we had not dated it. She handed it back to me and I wrote a date on it, any old date, it didn't matter, and handed it back to her.

The judge responded with a letter telling us how good our questions were and the court would have to take some time and think about the good questions. The letter also told us to have a nice holiday and to await word from the court as to when we would meet again.

We never did get word from Judge Finesilver, and no one ever called us back into session.

Wes' journal Dec. 9: I talked to Steve [Deputy Clerk]. I asked him to call the Grand Jury members and remind them to be in attendance tomorrow. I drove to Denver.

Wes' journal Dec. 10: I waited in the foyer of the courthouse. Soon I was joined by Paul, later Peck showed up. We waited, the three of us. Ten in the morning and still we waited. Just then [another Justice Department attorney] strolled by. He stopped, grinned, and commented, Looks like you guys are about to be history.

Stunned, we asked him what he meant and he told us our term was up after this week. Pleased with himself for this last stab to the heart, he sauntered on down the hall.

I rushed down to Laura's desk and asked her why she had not called anyone to remind them we were to meet today. She told me the judge would not authorize our meeting. I talked to Clerk Manspeaker. **He said any time there is a quorum while the Grand Jury is lawfully impaneled, that we are entitled to meet.**

We then awoke to the truth of what was being done to manipulate us. Peck and Paul went to Peck's office to call the rest of the Grand Jury members. I went to the clerk's office to see about

getting our term extended. Clerk Manspeaker said he would personally deliver our request for extension to the judge.

Wes' journal Dec. 11: Spent the day in the courthouse to make sure we got our extension. I wanted to be conspicuous so they'd have a hard time pretending we didn't exist. I strolled the hallways of the courthouse, I sat in the foyer, I stretched on the hard oak hallway bench and took a noon day nap. It was a long day, and still no word from the judge as to our extension. We got commitments from the Grand Jury members they would be in attendance tomorrow.

Wes' journal Dec. 12: This morning I went to Clerk Manspeaker's office. He was smiling. Yes, the judge had granted us our extension. We had a quorum.

Starting time of nine o'clock, just a short few minutes before, and I was making preparation to start the meeting. I was making assignments for the various aspects of the report, the presentations, and indictments when the government lawyers all stalked in.

This was the first time we had seen Norton since the first meeting in August 1989. Norton told us there would be no report, no indictments, and we were to do nothing. There was nothing we could do. The case was over, we were to go home, and it would be inappropriate if we were to ever meet again. Fimberg then waved a piece of paper and told how his feelings had been hurt. He felt we did not trust him. He said he had our extension right here in his hand and that he had promised us he would not let the Grand Jury's term expire until we were finished, why did we have to go to the judge ourselves for an extension?

Later, when I told Manspeaker about Fimberg telling us this he banged his fist on the table and said, that son of a bitch. I lobbied the judge hard for that extension. Fimberg didn't have anything to do with it.

Norton and Fimberg put some information up on the overhead projector and Fimberg read it into the record. It was a draft indictment of Rockwell corporation. Nothing about Energy or Rockwell people. They said they were giving us an overview of the case. I asked for a copy of it, but Norton said no, and they left the room.

I wondered why Norton wouldn't let us have a copy of the overview he'd just showed us. I went to Manspeaker's office and asked him for a copy of the day's transcript, and he said he'd

have it to us the next day. Fimberg had read the information from the overview so it was in the written transcript from the court reporter.

Wes' journal Dec. 13: The transcript was ready that morning and we used it to prepare our report, presentments and indictments. We worked all morning. Without an over abundance of enthusiasm, yet we did make good progress. At noon, after solemn promises to meet next month we departed for the Armadillo restaurant for our second annual historic Grand Jury 89-2 Christmas party. At its best a subdued Christmas party. I extracted yet one more promise to meet next year, next month, January 1992. We adjourned.

Wes' journal Jan. 23: Judge Finesilver came lumbering in today and visited with us. He was very cordial and pleasant. The judge must have finally realized we would persist in seeking a visit with him.

Finesilver immediately recognized me and tried to establish a good ole boy, fellow cowboy relationship. He rambled a little about his summers of working on a ranch while in college. It appeared to me to be a meaningless discourse. The judge acted rather pissed at Peck. I got the impression they were personally acquainted.

The judge then talked about the legal questions we had asked. But he didn't ever really answer the questions. He told us the indictments and the Grand Jury Report are done under the direction of the US Attorney. He omitted saying anything at all about presentments.

I reminded the judge that we wanted to know what a presentment was. This pissed the judge off. I now had the same low status as Peck. The judge shook a fat finger at me and said presentments were an old fashioned term and they were no longer used. I read to the judge his own instructions to us that mentioned the presentments. The judge, his fat finger still activated, told me the instructions he had given us were an old set and I could rest assured the next Grand Jury would see a new set of instructions.

The judge's discussion over, he gathered his black robe about himself and marched out. Manspeaker followed the judge out.

A few years after the Grand Jury was dismissed, Clerk Manspeaker told me he had walked out of the Grand Jury talk-

ing to himself that day. When I asked what he meant he said it was the most incredible thing he had ever heard, the way the judge talked to us.*

When the judge and Manspeaker had left the room, the Grand Jury members looked at one another and said, What did he say? The general consensus was there could be found no meaning to what had been said.¹⁰⁰

Left on our own, we discussed the evidence we'd heard over the last two years. We didn't have much trouble coming to our conclusions. I remember waving around a copy of a *Reader's Digest* I'd found in my hotel room. Some poor rancher had been fined and prosecuted because he'd repaired a broken river levee without a permit. He'd been trying to keep the overflowing river from flooding his property. But he got prosecuted anyway because he broke the law.

If the Justice Department could prosecute a rancher who'd been trying to help protect his property in an emergency, it sure as heck wasn't right for them to let Rockwell and Energy Department folks off the hook for serious crimes Rockwell had made millions from.

But it wasn't just the fact that government employees shouldn't be treated any differently than the rest of us citizens. There was a bigger reason for what we did.

We all felt that holding individuals accountable was the only way anything would ever change in the nuclear industry. There was so much money involved, slapping a fine would be just another cost of doing business, anyway.

It wasn't only Rockwell as a company that needed to be held accountable. A very simple premise was underlying our decisions. If you hold individuals accountable for what they do, you can change the system, break the cycle. If people know they might go to jail, maybe they won't agree to break the law, even a little bit.

Sort of the way you raise children, I said at one point.

It's the only way to keep a system with that much power in check.

* CB Note: We now know that Justice Department headquarters had vetoed the issuance of a Special Grand Jury Report by the time Judge Finesilver finally met with the Grand Jury. He did not tell them this. Also, Finesilver had the power to overrule this Justice Department decision, and order the prosecutors to assist the Grand Jury in writing a report, or to help them himself. He did neither.

The presentment charging five Rockwell and three Energy Department folks with crimes would tell the public about the criminal activity we had investigated. Norton had already told us he wouldn't sign the indictments we wrote saying the same thing. We wrote the indictments anyway.

The Grand Jury wrote our Report of the activities at Rocky Flats using our notebooks and the boxes of documents we'd been working with over the past two years. We used our Report to let the public know about the terrible things the government had been doing at Rocky Flats for the past several decades, without mentioning names, like the law required. Our indictments told about the Energy Department and Rockwell officials who had committed those crimes.

We worried about why the government lawyers wouldn't help us, but we kept going anyway. We can't let a few bad folks stand in the way of justice, I said at some point. The judge gave us instructions not to be swayed by anyone, including the prosecutors. The law calls for this report to be public. We've got to follow the rule of law, I said. I remember feeling sad as I glanced at Finberg's empty chair.

Each of us took a section for the report and worked it up, using our notes and the boxes of evidence. We assembled our notes, and Peck then did most of the writing, seeing as how he knew how to do it. But we all decided what to put in it.

We gave it to the judge's secretary to be typed. We finished the draft report, presentments and indictment, and put them all in the locked vault. There were still some finishing touches which would be done later at Peck's office.

Finally it was finished, and we made arrangements to present it all to the judge in open court, just as he'd told us it should be done back in 1989.

Wes' journal Jan. 24: By our invitation, Mr. Norton came in this morning. We wanted to give him the indictments, like the judge had instructed us in the beginning. He wanted to make a peace offering, told us how good a job we had done, and that we were through. I handed him our indictments and asked him to sign them. He looked surprised, then sort of curled his lip.

I suppose you've got the statute numbers and the days of violation and the facts? he sneered. He was surprised when he looked and saw that we had all that. He didn't know we'd gotten

it from the court reporter's transcript where Fimberg had read the government's overview. We just changed it as we needed to.

The rest of the members and I had already planned that when we were through handing Norton our indictments, we would ask him to leave. We didn't want another lecture. So, when I handed Norton our indictments, and he started to lecture us again. I excused him from our Grand Jury session. Jere got up and held the door of the Grand Jury chambers open for him. Norton looked at the smiling faces of the rest of the Grand Jurors, and stomped out.

Wes' journal Feb. 19: I took the presentments, report and indictment down to Manspeaker's office to be placed in the vault.

Wes' journal Mar. 11: Left for Denver this morning. Tomorrow is to be the last session for the Grand Jury. We are going to give the judge our report, presentments and indictment in open court and then we will be through.

When I got to the hotel they told me the news. The judge's secretary had called them and left a message for me. Grand Jury had been cancelled. This was hard to figure because the courts had not scheduled the meeting. I had called the meeting and here the courts had cancelled it. I got the session rescheduled for March 24.

Wes' journal Mar. 24: Last week I called the court secretary and told her I was getting my old pickup—The Grey Ghost—serviced and I went to the county courthouse and brought the tags up to date and was coming to Denver to hand the Grand Jury Report, presentments, and indictments to the presiding judge, Judge Finesilver.

The judge's instructions, handed to us over two years ago, instructed the foreman, me, to hand the findings to the judge in open court after we had completed our investigation. I was going to do so on this date. I could tell from the displeasure in the secretary's voice that my call had not improved her day.

I called the session to order, and started to say this was our last session and the judge would receive our findings this afternoon. Before I could get started on my speech there was a knock on the door.

The court clerk came in. Mr. Foreman, he said. The US

Attorneys have requested one last meeting with you.

I was stunned. I did not want to meet with the attorneys. Over the last three months, **abandoned by the attorneys and the judge, we had worked on our own. We had completed the report, the presentments and the indictments.** There was no need to meet with the US Attorneys. But the majority wanted to meet with the attorneys.

We filed out of our familiar Grand Jury room for the last time. The clerk led us deep into the bowels of the federal courthouse to another room. This was the first time we would meet anywhere but in our regular Grand Jury room. He opened the door. We, single file, walked into the dark room. The door clanged shut.

Ambushed.

The windows were covered in heavy black cloth so that it was technically a "sealed courtroom," but we were in a courtroom for regular juries, not like our Grand Jury room. Judge's bench to one side, the jury section where in regular court trial jury members would be seated, oak pews for spectators.

And seated in the judge's chair was US. Attorney Norton, his assistants Murtha and Fimberg at each side.

Lambs to the slaughter, we sat down in the spectators' section.

Norton said, As you know we did not want you to do a Grand Jury Report. But since you have worked so hard and are persistent in your efforts to write a report, we have decided to help you.

He nodded to Fimberg.

Fimberg got up and came down to us and handed each of us a sheaf of papers. My heart skipped a beat then stopped. It was a copy of a rough draft of our Grand Jury Report. My hand written notes were scrawled all over it.

It was the rough draft we had revised for the finished report I had in my briefcase ready to hand to the judge.

The papers all handed out, Fimberg scurried back under the protective wing of Norton. Deep in shock, my heart not beating, I sat silent.

Norton began. As we looked over this report, we realized it contained some good material. We also found many parts that will fail the test for a legal Grand Jury Report. Now that you have an extension, you have three more months 'till the end of your extended term and over the course of these three remaining

months we, working together,* can write another report that will pass the requirements for a Grand Jury Report.¹⁰¹

For the next two hours, he went over our draft report, pointing out the parts he said needed revision. He finished just as there was knock on the door.

The attorneys' ambush had been choreographed very well.

We will now pick up the copies of the report you have and adjourn for lunch, he said.

I jumped to my feet. No, I said. You will not get my copy of the draft report. This report was locked in the Grand Jury vault when we adjourned the last session. Only the foreman, or in case of his death, the foreman's replacement, has the authority to remove this from the Grand Jury vault. Someone has committed a serious breach of security. As soon as this court session is over, I am taking this down to the court clerk's office and I am going to find out who stole this from the Grand Jury vault.

Norton was calm. No one stole this from your vault. It was hand delivered to me by a Grand Jury member.

If this was true there had been no breach of security. Any Grand Jurist had the right to take our work and show it to the US Attorneys. But I was sure Norton lied about receiving this report from a Grand Jurist.

Norton said, If you will let me have your copy of the report I will meet with you in the court clerk's office when we finish for the day to discuss this.¹⁰²

I had no choice. I held up my copy.

Norton nodded to Fimberg. A sad man, Fimberg came over and collected my report.

There was a second knock on the door.

Norton said, It is past lunch break. We knew there would be a lot of work to be completed so we have ordered a lunch to be brought in. We will now take a short lunch break in order to allow you to eat. You will remain locked in here while we leave to take a break in my office. We will be back in thirty minutes.

They trooped out. An unknown, never before seen, fright-

* CB Note: The prosecutor's attempts to convince the Grand Jury to let them help write the Grand Jury Report were in December 1991 and February, 1992, when the prosecutors already knew no Grand Jury Report would be allowed by the Justice Department. Any Grand Jury Report that was written was going to be sealed.

ened person brought in a large box and set it on the first pew, turned and rushed from the courtroom.

We were all weary. The completion of the indictments, presentments and Grand Jury Report had consumed the last of our energies. I knew if we allowed the US Attorneys to lead us in the writing of a report it would end up saying what they wanted it to say.

I looked around. Together the three prosecutors were a powerful force. Some of the Jurists were ready to throw in with Norton. Silently I opened the box and handed out the sandwiches. The last one, mine, I left laying in the box. I was not hungry and the grease seeping through the waxed paper was unappetizing. I would have preferred sardines packed in mustard anyway.

After much discussion, we agreed the Grand Jury Report met the guidelines the judge had given us nearly three years earlier. We had completed it on our own, the judge's instructions told us we could put in the report what we wanted as long as we didn't identify any individuals.

The report would stand as written. We would hand it in unaltered by the US Attorneys.

There was a knock on the door. For the first time in two and a half years the US Attorneys had returned from a lunch break on time.

I went to the door and returned their knock. While they filed in, I collected the greasy sandwich wrappers. Some with half eaten sandwiches, some with uneaten sandwiches. The eating instinct was weak in the Grand Jury today.

The attorneys assumed their earlier position on the judge's dais. Norton said, We will now begin the joint effort of rewriting the report.

I stood up, taking advantage of my high heeled cowboy boots to stretch myself to my full height.

No, I said. We will not rewrite the report. We are going to hand in all of our documents as they now exist. You are through, Mr. Norton, we will hear no more from you.

Norton was dethroned. He shriveled. Recovering quickly, he reached down and pulled some papers from his briefcase. He held them up. He looked directly at me. His face red, his lips pulled back, he said, Mr. Foreman, here is an indictment against Rockwell International. It charges the company with violations of criminal environmental laws. I am giving it to you to vote on

and you had better sign it.

I tried to ignore the papers he was holding out. While I do not profess to be a very good poker player, I do often join in a poker game with the other cowboys in the bunk house on the ranch. I knew that at the right time, a properly executed bluff can often win a sweet pot. I prayed this was the time.

I said, Mr. Norton, in one hour it will be two o'clock. This morning before I came to the courthouse I called the Denver newspapers and told them the foreman of Special Grand Jury 89-2 was following the judge's instructions and today at two o'clock he is going to, in open court, go into Judge Finesilver's courtroom and hand in the Grand Jury findings.

Norton said, It will not be possible for you to go to Judge Finesilver's courtroom. He is presiding in a court case today.

If Norton could keep us from handing in the documents **in open court**, they'd be invalid, all our work for nothing.

I don't care if he is in court today, I replied. The reporters are probably here by now and I am sure they will enjoy seeing us interrupt the honorable Judge Finesilver's court to hand him our findings. In one hour we are going to Finesilver's court.

If Norton was a poker player I hoped at least he was a poor one.

When the attorneys finally left us alone to make our decision about whether to hand up the government's indictment, Fimberg was the last to pass through the door. Just before the locked door clicked shut, he stepped back into the courtroom.

It makes no difference, he said, whether or not you sign the indictment against Rockwell. The case is settled, it is all done, your decision will make no difference on what happens at Rocky Flats.

Fimberg looked like a man with a sordid burden laying on his soul. He looked inward summoning strength. But please, he said, I beg you, for my sake, for your own sakes, please sign the indictment.

I looked at the papers Norton, the US Attorney, a political appointee by President Bush, had handed me before leaving.

Norton wanted us to hand up an indictment charging the company, Rockwell International, with environmental crimes. No individuals—from either the Energy Department or Rockwell—were to be charged, just the corporation.

Fimberg's pleading eyes sought out each of the other 15 members of the Grand jury present at this session. My eyes locked with Fimberg's. Swiftly he broke eye contact.

My heart was heavy. Fimberg had several people who would support him. They would back him in any action. Norton knew when he handed me the indictment that I had, by law, to conduct Grand Jury deliberations and have the Grand Jury vote on it. If I didn't, he could invalidate everything we did.

In order for the government's indictment against Rockwell Corporation to be valid, the vote had to be twelve in favor of it. There were several people in the Grand Jury who felt that by handing in the indictment against the corporation as a True Bill we would have something to show for our efforts. If twelve or more people voted in favor of a True Bill on Norton's indictment, the company Rockwell would be charged with environmental crimes, it would pay a fine and no one would be held accountable.

If there aren't twelve votes in favor of the indictment, it is Not A True Bill and Rockwell is not charged.

The Grand Jury had written an indictment charging Rockwell, as well as individuals at the Energy Department and top level Rockwell employees, with violations of environmental crimes. Norton had refused to sign *ours*.

If we signed Norton's indictment, our whole point about holding individuals accountable, including government officials, would be down the drain. But the Grand Jury was tired, we all wanted to be through with this arduous task. **Some members wanted something for their two and a half years of being the conscience of the country.** Agreeing to indict just the corporation might be better than nothing, some of them felt.

For the next hour I had my work cut out for me, but this was not my first rodeo. I opened the floor for deliberations.

One hour later, my boots soggy with the sweat that had formed at the top of my bald head and coursed downward to collect in them, I called for the vote *against* the indictment drafted by the US Attorneys.

My heart raced. As foreman I cast the first vote. I counted the votes against. It did not take long. I counted them again. It still didn't take long. There were not enough votes to kill the government's proposed indictment against the corporation.

Beaten, I had to complete my duty as foreman. My voice slightly trembling and weak, I called for the vote *in favor* of the government's indictment.

The hands went up. I counted them. Not enough. In a millisecond the truth hit me. Some of the Grand Jurists had

refrained from voting.

There were not enough votes in favor of the government's indictment, either.

I must not be accused of closing the vote too quick. I directed my gaze in turn at each of the Jurists who had not voted. They stared at the floor. While unwilling to vote against the indictment, they nonetheless had refused to vote in favor of it, either.

The US Attorneys had lost this round.

Now, I was faced with another problem. How do you close the vote of a Grand Jury? I resorted to the method used at the horse sales I had attended over the years.

I shouted, Going once, going twice. I paused, looked around and lacking a gavel I slammed my hand down on top of the courtroom railing. I nearly forgot myself and said SOLD, but stopped in time and managed to croak out, The vote is closed.

I crossed over to the lawyers' table in the courtroom and with great ceremony laid the indictment down and reached into my pocket to get a pen with which to sign the indictment Not A True Bill.

I had no pen. Humbled, I asked the nearest Jurist if I could borrow his pen. I signed the indictment Not A True Bill and recorded the voting record underneath my signature.

We sat in silence, toying with our thoughts. No one seemed inclined to visit with his neighbor. Soon there was a knock at the door.

The courtroom clock stood at two o'clock.

Norton was not a poker player.

The judge, Sherman Finesilver, the US Attorneys and their court reporter, and the court clerk came in. This time the judge sat in the judge's chair.

This was turning out to be a good day for me. Not so for the judge. He looked the Grand Jury over. This was the third time the Grand Jury had seen the judge. **We had lost our respect for him during** the second meeting. I sensed he knew this. He said, I understand you want to meet with me.

Yes, your honor, I said. I walked up to his bench and handed him our Grand Jury findings.

These are the indictments drawn up by the Grand Jury, signed A True Bill, I said. I handed him our signed indictments.

These are the presentments drawn up by the Grand Jury and signed by the members. I handed him the presentments.

This is the report the Grand Jury has compiled. It is signed by the Grand Jury members. I handed him our report.

This is an indictment given to us an hour ago by the US Attorney Mike Norton. The Grand Jury has signed it Not A True Bill.

I handed the judge the government's indictment against the corporation that we had rejected.

The judge took the sheaf of papers. He then gave us a little speech on patriotism. It fell short. He asked me if we had completed our duty. I told him we had. The judge then asked the Grand Jury who was in favor of ending our term.

I raised my hand hoping the rest of the Grand Jurists would do the same.

The judge looked over the Grand Jury and pronounced the majority in favor of ending our term.

I could see Fimberg, his eyes pleading, shaking his head from side to side. He wanted the Grand Jury to continue to meet. To the very end, the US Attorneys had hoped to get the Grand Jury to give their stamp of approval to the indictment against the company without the individuals.

Fimberg's efforts were in vain. The judge dismissed us.

It was done.