



Attorney General

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Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

July 2, 1984

Mr. W. Allen Stooks
Chief Deputy
Office of the Pinal County Attorney
Florence, Arizona 85282

Re: I84-094 (R84-082)

Dear Mr. Stooks:

You have asked whether the clerk of the superior court may release, reveal, or disclose the contents of a grand jury transcript. For the reasons set forth below, we conclude that, absent a specific order by a court of competent jurisdiction, a superior court clerk may not release, reveal, or disclose the transcript of a grand jury proceeding to anyone other than the defendant or the prosecuting attorney.

All proceedings before a grand jury, except deliberations, are recorded by a court reporter. The reporter's notes of those proceedings which result in an indictment are transcribed and filed with the clerk of the superior court. See also Rule 12.8, Arizona Rules of Criminal Procedure, 17 A.R.S.; State v. Superior Court, in and for Pima County, 26 Ariz.App. 482, 489 P.2d 577 (1976). The fundamental ingredient of the grand jury system is the secrecy of those proceedings. See United States v. Calandra, 414 U.S. 338 (1976); United States v. Proctor and Gamble, 356 U.S. 677 (1958). Recognizing the need to maintain the secrecy of grand jury proceedings, the Arizona legislature has placed prohibitions on the release of a transcript of a grand jury proceeding. A.R.S. § 21-411 provides:

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A. . . . The reporter's notes containing the proceedings from which an indictment is returned shall be transcribed and filed with the clerk of the court not later than 30 days following the return of said indictment, unless the court otherwise orders. Such transcripts shall be made available to the prosecuting officer and the defendant. Said transcript or a portion thereof may be denied to a defendant by the court upon a showing of extraordinary circumstances by a prosecuting officer. The reporter's notes which are not transcribed as provided hereinabove shall be filed with the clerk of the superior court and impounded and shall be transcribed only when ordered by the presiding judge of the superior court.

B. The reporter and typist who transcribed the reporter's notes of the grand jury proceedings shall be sworn by the foreman or acting foreman, not to disclose any testimony or the name of any witness except to the County Attorney or other prosecuting officer or when testifying in court.

A.R.S. § 13-2812 prohibits disclosure of the nature or substance of any grand jury testimony:

A person commits unlawful grand jury disclosure if such person knowingly discloses to another the nature and substance of any grand jury testimony or any decision, result or other matter attending a grand jury proceeding which is required by law to be kept secret, except in the proper discharge of his official duties or when permitted by the court in furtherance of justice.

Thus, the only two exceptions to the general prohibition against disclosure of grand jury testimony or proceedings to anyone other than the defendant or the prosecuting attorney are (1) when the person making a

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disclosure is doing so in the proper discharge of his official duties or (2) when the person making the disclosure is permitted by the court in furtherance of justice.

We can find no specific authority of the clerk of the Superior Court to disclose grand jury proceedings. In the absence of any specific authority granting the clerk the power to disclose grand jury proceedings without first obtaining a court order and in light of the fundamental principle of preserving secrecy of grand jury proceedings, we must conclude that the clerk of the superior court has no power to release the transcripts of grand jury proceedings unless that clerk has been ordered by a court of competent jurisdiction to do so.

Very truly yours,



BOB CORBIN
Attorney General

BC:SMS:pd