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Prosecutor Quashes Charges Against Judge

By RALPH BLUMENTHAL

HOUSTON — A grand jury's bitter backroom struggle to charge a Texas Supreme Court justice and his wife in the burning of their house burst into the open on Friday after a prosecutor who had opposed the indictments went to court and had them quashed.

The grand jury foreman and assistant foreman said political favoritism was behind the decision to drop the day-old charges against the justice, David M. Medina, and his wife, Francisca.

"I felt like a dentist pulling teeth," said Robert Ryan, 63, the foreman, a real estate broker and a previous grand juror. "The district attorney's office did not want to prosecute this case."

Mr. Ryan said his suspicions were aroused early when District Attorney Charles A. Rosenthal Jr. of Harris County said he had assured Justice Medina that the judge was not a target of the investigation. The officials are Republicans.

"My hope," Mr. Ryan said, "is that early next week the grand jury will be reconvened and subpoena more documents and witnesses to back up what we obviously feel is probable cause, and let the chips fall where they may."

Mr. Rosenthal, who is facing pressure to resign over e-mail love notes and sexually explicit and racially charged messages from his office, referred questions to his prosecutor in the case, Vic Wisner, who said, "Any claim that I stonewalled is not true."

"We have an ethical duty to seek justice," said Mr. Wisner, a 24-year-veteran of the office. "And it would be unlawful, unethical and irresponsible for me to proceed with a case that I do not think has the ability to get beyond a directed verdict of acquittal, let alone beyond a reasonable doubt."

He said that it would be unlawful to comment further and that the grand jurors were violating the law if they commented on the proceedings.

Mr. Ryan and his assistant foreman, Jeffrey Dorrell, 52, a civil trial lawyer, and another grand juror who agreed to be interviewed, Dan Hall, 57, a landowner, said they had not discussed the evidence and so had not broken the law. They all described themselves as staunch Republicans, as were all 12 grand jurors, as far as they knew, they said.

Terry W. Yates, a lawyer for Justice Medina, filed a petition on Friday against Mr. Ryan and Mr. Dorrell for a contempt-of-court proceeding based on comments in The Houston Chronicle. The Texas Code of Criminal Procedure says a grand juror "who discloses anything that transpires before a grand jury" in the course of official duties is liable to up to 30 days in jail and a $500 fine.

Fire investigators reported finding an accelerant in the blaze on June 28 in the Medinas' garage in Spring, a northern suburb of Houston. The blaze spread to their house and two others.

In the indictments, Justice Medina, who is on the state's highest civil court, was charged with a count of tampering with evidence, a threatening letter he reported having received. Mrs. Medina was charged with one count of arson.

Mr. Wisner said his position on insufficient evidence was "also the opinion of the Harris County fire marshal's office."

But the chief investigator in that office, Dan Given, declined to confirm that, referring questions to the prosecutor's office.

Mr. Ryan said Mr. Wisner's assertion surprised him. "The testimony of the arson investigator is what we went on," the jury foreman said. "Draw your own conclusion if it was sufficient."

Although a grand jury may be guided by a prosecutor, it alone decides in secret if there is probable cause to charge someone with a crime. A petit jury then determines guilt or innocence.

Dick DeGuerin, a leading criminal lawyer here representing Mrs. Medina, said the accelerant was explainable because any homeowner had chemicals like mower fuel and weed defoliants in his garage. Mr. DeGuerin portrayed the Medinas as innocent victims of "a runaway grand jury."

"If the D.A. says there's not enough evidence, why in the world are they indicting?" he asked. "To indict a public figure on no evidence is outrageous. It's done indelible damage to Justice Medina."

Robert Black, a spokesman for Gov. Rick Perry, who appointed Justice Medina, said Mr. Perry never discussed the case with Mr. Rosenthal or anyone else.

"He has known David Medina a long time and has a lot of respect for him," Mr. Black said of the governor. "But the legal process has to run its course, and it's improper for him to be involved at all."

Justice Medina was appointed to the court in 2004 and was then elected to a six-year term in 2006.

Mr. Ryan said that the grand jury was experienced, with two lawyers and three police officers, and that at least half the members had been grand jurors multiple times.

"We've been to the rodeo before," he said. "I know the system."

He said: "My antennae were raised when I read in The Houston Chronicle that Chuck Rosenthal called Justice Medina and told him to appear before the grand jury, but that he would not be a target. It wasn't a couple weeks later that Mr. Wisner suddenly cooled and said, 'I don't think you got anything.' "

Mr. Dorrell said the panel's feeling was "if the D.A. does not have enough evidence, get some more."

Mr. Ryan said, "We asked for things they never produced."

On Thursday, he continued, Mr. Wisner sought to block a vote and "we met over his objection."

The prosecutor told them, he said: " 'Don't bother to bring an indictment. We're going to "nolo" it.' "

They sent Mr. Wisner out of the room and deliberated, Mr. Ryan recounted, and called him back with instructions to draw up two indictments.

“He said, ‘I will not,’ ” Mr. Ryan added. “We said, ‘Get your boss.’ He slammed the door.”

But 15 minutes later, Mr. Ryan said, Mr. Wisner came back “meekly,” as instructed, although Mr. Ryan added, “We knew he was going to move to dismiss.”

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