

Federal Grand Juries: Out

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A Commentary

By Nicholas von Hoffman

In the course of the last year or so federal grand juries have been at work trying to get the goods on radicals, liberals, clergymen and allied white trash in the following cities: Harrisburg, Pa., Brooklyn, Boston, Detroit, Seattle, Manhattan, Kansas City, Cleveland, Camden, N.J., Wilmington, Del., San Francisco, Tucson, Ariz., and Los Angeles, where they've had three grand juries.

In some instances the work of these grand juries has been defensible, indicting people for unlawful transportation of explosives, burning ROTC buildings and generally carrying on in ways that even those of us who may sympathize with their cause find a wee bit hard to justify. However, the bulk of these grand jury operations seem to have no other purpose but to harass, intimidate and make life miserable for people who've found disfavor with Assistant Attorney Robert C. Mardian and those other wet-skinned, hairless fellows born without sebaceous glands in the pouches and follicles of the Justice Department's Internal Security Division.

Take the case of Dun Gifford, the publisher of *The Morning News*, a new, Washington-based national newspaper that's scheduled to have a month's trial run and shakedown cruise next April. Gifford, a former administrative assistant to Teddy Kennedy, is an acquaintance of Daniel Ellsberg, the Pentagon Paper hanger. If that wasn't bad enough, Gifford is a friend of Neil Sheehan, *The New York Times* man who broke the story.

His connection with these people was purely social, but, be that as it may, he was subpoenaed to appear before a federal grand jury in Boston. An honorable man, he's refused to testify, with the result that since July when the FBI first paid him a visit he's run up a \$5,000 lawyer's bill in resisting the government's pressure to go behind doors and satisfy Mardian's desire

for salaciously ungermane bits of chit-chat about his friends.

Gifford believes that he was called because the FBI tapped his phone and overheard him making dates to play tennis with other equally dangerous types. One of Gifford's friends thinks it was a remark Gifford made at a cocktail party that put the creeps onto him.

Gifford, however, is no lonely mayrtr. He says the FBI has bothered "literally hundreds of people in Cambridge" where he lives. Or take the case of Richard Falk, a Princeton University professor who's in the same fix as Gifford. "It's so absurd because I was so trivially related to what the press said was the purpose of the grand jury inquiry. I was out of the country when the Pentagon Papers happened," says Falk, who is nonetheless stuck with a \$10,000 law bill. "People don't understand the magnitude of the expenses, but you can't escape them. I'm a lawyer myself and I

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couldn't have avoided going to jail without assistance. If you don't have either personal or economic resources, you don't have access to the judicial system."

Falk's experience illustrates the Fed's M.O., and how, if you don't talk to the FBI, they get back at you by dragging you in front of a grand jury, a nervous-making experience for most of us honest citizens, it being only the crooks who have the nerve and the know-how to deal with it.

"They came to my house one day in the summer without any prior indication. They said they wanted to talk to me about a fellow named Ellsberg. I told them I thought what he did was right and in the national interest but that I would not discuss it beyond that. They said, 'OK, only general questions,' and then they asked, 'Do you have the Pentagon Papers in your possession? Are they circulating through the New Left?'"

I asked, 'What is the New Left?' and they said, 'You know.'"

That little conversation cost Falk \$10,000 in legal fees, but both he and Gifford are in relatively good shape. Not so a free-lance writer of considerable repute who lives in another city and was caught in Mardian's webs and vines. This poor guy doesn't have much money and must work all the time to keep the Phase II landlord happy. His name is being withheld because his case is still pending, but it's already cost him \$2,000 he can't afford and much time that he needs for his work. He's in a state of fury close to physical assault. "What right do they have to muck around with my life like this? I haven't committed any crime; I haven't witnessed one. Why do I have to go through this demeaning and exhausting business? The grand jury was designed to be a means for protecting the innocent and they're turning it into an instrument of the government."

On the other side of the continent the government has been using the grand jury on the anti-draft movement in Los Angeles. There they've gone past such primitive gestures as draft card burning.

Instead of dramatic monkeyshines, they've assembled a panel of 75 lawyers and another medical panel of doctors, dentists, podiatrists, psychiatrists and optometrists. These professional people use the technical regulations of the Selective Service System to keep young men out of the armed forces. There's nothing illegal or unethical about it. They're simply doing for the draft bait and the cannon fodder what the tax lawyers do for their clients . . . to wit, get the best possible break that the law allows.

According to William G. Smith, the chairman of the lawyers' panel, their work has been so successful that, "Any kid in California who wants to stay out can stay out." He claims that for every young man drafted in his area they have to send out induction

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notices to six others, as compared to a 2-to-1 ratio nationwide. His claim is given validity by the fact that the government has had three grand juries and hundreds of FBI agents trying to break the operation up. It was for being part of this that the dentist, Dr. Bernard Bender, was taken off his pleasure boat in the Caribbean and brought back to trial on 13 counts of putting braces on young men's teeth to keep them out of the army. (He was acquitted on seven counts with the jury unable to decide on the rest, so he'll be tried again.)

Smith reports his fellow lawyers have been harassed by having FBI agents go out and interview their clients and pull their clients into the grand jury room. This has resulted in few trials and fewer convictions, although, again, the expenses have been high, but there are so many rich kids from Beverly Hills whose families'll pay stiff legal fees to beat the draft that the money is there to fight back and do it rather successfully. With understandable pride, he points out that no one in Southern California, no one at all, has been drafted in the past month.

Still, the government doesn't do this to the tax lawyers or the legal finaglers around Washington sniffing special deals for their clients at the regulatory agencies. They don't get grand juried, or telephone tapped or interrogated by the FBI. Not because they're more legal, only more acceptable.