

Frustrating Grand Juries

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Becomes Activists' Strategy

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In recent months a new subject has been added to the literature of antiwar activists and their supporters: how to refuse to talk to grand juries.

The new literature is based on the movement's conviction that more than ten federal grand juries now in session around the country are primarily political instruments with which the Justice Department hopes to break the back of the peace movement.

The message of the literature "don't talk" is urged even at the risk of imprisonment for civil contempt up to 18 months, the potential life of a grand jury, or a trial and sentence for these convicted of criminal contempt.

According to antiwar activists the new resistance is provoked because grand juries are being used as a fishing expeditions to obtain information the FBI has failed to confirm in its investigations.

One example of the new resistance is a meeting last week of recently subpoenaed grand jury witnesses and their lawyers. They met behind closed doors in Manhattan to exchange tactics on non-collaboration.

Another example is pro-

vided by Tom Davidsen, a Washington man originally named but later dropped as an unindicted coconspirator in the alleged conspiracy to kidnap Henry Kissinger. Davidsen is collecting and disseminating information to underground newspapers and sympathetic law offices on the "latest about grand juries."

One of the pieces of literature is "It Could Be You," a guide to grand jury resistance now being prepared for publication by "Non-Collaboration," in Davidsen's New York office. It gives advice to those who feel they must testify once they are given immunity from prosecution:

"Your freedom to remain silent can be ordered away by courts, generals, presidents and congressmen, but you can still keep your mouth shut if you choose. There may be rough consequences—without doubt they will threaten a trial and imprisonment.

"But the fact is that there is no painless way to create social change. Did any of us think that basic fundamental changes could come overnight? Just as plainly, how much risk and change will this take on our own parts? If we feel that a contempt sentence (up to 18 months) is too long—to keep other sisters and brothers out of jail—we should reexamine our commitment."

The advice is offered for those who think they know something the government

wants in order to prepare indictments and also for those who have no such information.

Sue Sussman falls in the category of those who think they know nothing that could be damaging. Formerly employed at the United Methodist office at the U.N., she is now the office manager of the New York headquarters of defense committee for the eight persons indicted in the

alleged Kissinger kidnap-bomb plot. Recently she was subpoenaed to appear before a grand jury in Brooklyn.

"I'm not going to testify," she said in a telephone interview. She echoed the sentiments of others who have refused to talk despite being granted immunity from prosecution.

"I'm getting psyched up for 14 to 15 months in jail," she said.

"In the past six or seven months, I've made new friendships (in the movement)," Miss Sussman said. "No one has confided to me, I'm about to raid a draft board" or raid anything else. But I'm not about to say anything to a grand jury about these people."

She referred to the fear stressed in the new antiwar literature that innocend-sounding information could be valuable in a way un-

known to the witness.

Because of the secrecy that surrounds the closed-door proceedings of grand juries, it is impossible to know how many now in session are investigating alleged criminal activity by the antiwar movement. At least the following, however, are known to be in session:

• **Harrisburg, Pa.** — At least 36 persons have been subpoenaed to testify before this grand jury, which in two separate indictments has charged 8 persons and named seven (later dropping three) as uncharged coconspirators in the alleged conspiracy to kidnap Kissenger, to bomb heating systems under federal buildings in Washington and to raid federal offices in various states.

In Harrisburg, 10 of the subpoenaed persons have testified. Of three who refused to testify six have been cited for civil contempt, four indicted for criminal contempt, including John Swinglish of the Washington Catholic Peace Fellowship. Two of the subpoenas were dropped and others were temporarily excused.

• **Detroit**—Seven persons are known to have been subpoenaed were dropped and investigation of the March 1 bombing of the Capitol. One has testified and six have refused.

• **Washington** — At least two persons have refused to testify in an investigation of May Day protests held here in May. One of them has been cited for civil contempt.

• **Seattle**—One person, Leslie Bacon, is known to have been subpoenaed before a grand jury also investigating the Capitol bombing. She was jailed for contempt and later indicted for conspiracy to burn a branch of the First National Bank in New York City.

• **New York** — Local bombings and alleged bombings are under investigation here. Five persons are now in jail for trying to burn a First National Bank branch. Six persons subpoenaed have refused to testify.

• **Los Angeles** — Draft counseling has been under investigation. Movement sources say three different grand jury panels have been involved, but official sources would not comment. Lawyers for several defendants say the about 50 persons

have been subpoenaed, with many of them refusing to testify. Another Los Angeles federal grand jury was investigating the burning last year of the Bank of America in Sant Barbara.

• **Tucson**—In an investigation of possession of dynamite, interstate transportation of dynamite and conspiracy, five persons who refused to testify were cited for contempt and jailed for four months. After the five completed their sentences, a second grand jury was convened and the same persons were resubpoenaed. Three of them have testified and two have been excused, perhaps only temporarily.

• **Cleveland** — A grand jury has been investigating arson that occurred in 1969 at Selective Service offices in Ohio and alleged conspiracy. Three persons have been indicted; two of them are in prison and one is underground. Two persons refused to testify.

• **Brooklyn**—Six persons have been subpoenaed before a grand jury so far, all have refused to testify. Questioning of witnesses indicates that the crimes being investigated are an attempted burglary if the Garden City, Long Island, FBI office in May and the successful March raid on the Media, Pa., FBI office. One witness, a nun, has been cited for civil contempt. She is free, pending appeal.

The above figures, of course, do not include the FBI agents or volunteer witnesses who may have appeared before the grand juries.

One of the investigations, in Tucson, is notable for two unusual techniques used by the movement.

First, they tried to take advantage of the fact that the first grand jury before which they had refused to testify had been adjourned without their immediately being released from jail. Their release should have been automatic. Government sources in Tucson would neither confirm or deny that the witnesses, four months in jail, were not informed immediately that the grand jury had been dismissed.

According to a member of the Tucson movement, the five witnesses learned privately that the grand jury was no longer in session and

announced in early April that they wanted to purge themselves of contempt by offering to testify—a meaningless offer if the grand jury was not in session.

According to this account, as the prisoners left the jail, the government handed the five witnesses new subpoenas—a new grand jury had been convened. Not relishing the idea of risking another session in jail—and possibly repeated 18-month sessions—the five decided to reverse their former refusal to testify.

Next, however, came their second unusual technique: compiling their own transcript of all questions and answers given in the closed and usually secret grand jury questioning.

As each witness would leave the grand jury room to seek advice from his or her attorney, the question and the about-to-be-given answer would be written. This was done despite warnings from Special U.S. Attorney

Guy Goodwin that such a transcript could not be kept. Goodwin has been a central figure in a half dozen federal prosecutions of radical groups, including the Seattle and Harrisburg investigations.

Nevertheless, the Tucson witnesses and their lawyers not only kept a transcript, but mimeographed the 37 pages and are distributing it throughout the country as part of the new movement literature on how to deal with grand juries.

A letter distributed by the "Tucson Working Committee" to underground newspapers and movement lawyers, explains why the unofficial transcript is being made public:

"We defeat one of the purposes of grand juries: mystery, confusion and isolation . . . The movement must be able to speak about things like the incident in Tucson, both for its own sake and to the people in this country. Our behavior must never become a complete mystery to whomever we are trying to speak."

Three of the five who originally refused to testify in Tucson have talked. Subpoenas of the other two persons have been delayed, but

an official source said this week that the grand jury is continuing the investigation.

Two of the three who testified, Teri Volpin and David Scheffler, have been named, but not charged, as co-conspirators in an indictment that charges two other persons, Robert Smith and John Fuerst, as conspirators.

The indictment, according to the court clerk's office in U.S. District Court in Tucson, charges them with conspiracy, possession of unregistered destructive devices and transportation of destructive devices. Both of the defendants are said to be underground.

In their testimony, Miss Volpin and Scheffler, protected by immunity, said they had known a couple ("Chris and Phil") who talked of using violence as a movement tactic. They also said Scheffler and Phil went to Tucson, where Phil bought dynamite that was brought back to Los Angeles.

Miss Volpin, according to the unofficial transcript, testified that "when David returned, we talked about our relationship with Phil and Chris . . . We had both decided that those means would not achieve what we sought—a change in this society. Rather it was necessary to talk to large numbers of people and deal with the problems of people living in this country rather than operating secretly.

"We decided, therefore, we had to terminate the relationship with Phil and Chris because we didn't want to pursue the course that we had previously considered. Then there was another conversation at which we terminated the relationship at the USC (University of Southern California) cafeteria."

Pictures of the two underground persons who had been indicted, Miss Smith and Fuerst, were shown to

Miss Volpin and Scheffler when they testified. Both said they "thought" the pictures were of the persons they knew as Phil and Chris.

Photograph albums containing pictures of hundreds of peace movement supporters, most of them apparently taken during public demonstrations, have been shown at the numerous grand juries in session. They also are shown routinely by FBI agents who attempt to interview friends and relatives of activists.

The third person who testified in Tucson, Lee Weinberg, has not been named on an indictment.

In another grand jury investigation, in Los Angeles, subpoenas were issued for dentists, lawyers, doctors, counselors, a clergyman and draft registrants, their families, friends, employers and landlords.

Begun in October, the investigation appears to focus on medical fraud in draft counseling, with questioning centering on doctors whom the government suspects have falsely diagnosed medical disabilities as a way of helping young men avoid the military draft.

Lawyers for witnesses, who estimate that more than 50 subpoenas have been issued in the investigation, suggest that inasmuch as no indictments have been handed down, perhaps the investigation is being used as a means of creating paranoia among draft counselors.

In the Los Angeles area a highly organized network of

lawyers and doctors specialize in Selective Service work. "We have been very successful, and the government doesn't like it," said William Smith, a lawyer for some of the subpoenaed witnesses.

Among those who have been subpoenaed, said Smith, are 10 Selective Service registrants who had been medically disqualified from being drafted, six dentists, two doctors, two attorneys and four draft counselors, including the Rev. Gordon Verplank, a United Presbyterian chaplain at Claremont College who heads a draft counseling team.

Mr. Verplank was asked to bring records of his draft counseling sessions, but he has declined either to testify or to make his records available. As a clergyman, he is claiming that he should not testify because of the confidentiality of the clergy-penitent relationship. Lawyers are claiming that attorney-client confidence should exempt them testifying.

As with other grand juries in other parts of the country, the Los Angeles grand jury has run into resistance. Among the main objections of witnesses there, as elsewhere, is that questions reportedly go beyond seeking factual information and attempts to record political attitudes and memberships.

Some witnesses have been asked if they belong to "any peace groups or whether they are opposed to the Vietnam war," according to Allen Lenard, Mr. Verplank's attorney.

The draft counseling

grand jury took a bizarre twist Wednesday when Dr. Bernard Bender, a subpoenaed witness for whom there is a material witness arrest warrant, was released from jail in Cuba.

Dr. Bender, a dentist, has been missing since January. His whereabouts became known several weeks ago when Havana radio reported that he and three other men, including two sons, were arrested a few weeks ago by Cuban officials while sailing in Cuba's territorial waters. One of the sons is also wanted in connection with the same investigation.

The arrest of Dr. Bender, his passengers and fourteen other Americans apparently came in retaliation for the arrest in Florida of four Cuban fishermen. Each of the countries agreed to release its prisoners Wednesday upon payment of reduced fines.

U.S. officials apparently expected to capture Dr. Bender and his son soon after their release by Cuba. Attempts to get the two Benders, who reportedly sailed from Cuba Friday afternoon aboard their yacht White Cloud, were described by one government source as being "like a bit out of James Bond."

Bender is apparently a key suspect in the government's alleged draft fraud case. The sailing dentist, according to government sources, is to be asked about fitting draft-eligible youths with braces and other orthodontic devices. Such devices make a man ineligible for military service.