

Legal Obstacles Blocking Boston Grand Jury in Its

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BOSTON, Oct. 31 — After nearly three months of investigation, a Federal grand jury looking into the unautoorized distribution and publication of the Pentagon papers appears to be far from completing its inquiry.

By most indications, the jury has become entangled for the moment in an almost impenetrable thicket of legal objections raised by a group of doggedly recalcitrant witnesses.

By Friday evening the proceeding had been forced to an indefinite standstill while the United States Court of Appeals for the First Circuit decided if the jury's efforts were violating the legislative immunity of Senator Mike Gravel of Alaska.

To some, it seemed almost superfluous to stop the inquiry, for during three days of complex legal wrangling last week the jury of 23 mostly dour, middle-aged Bostonians heard hardly a word of testimony, apart from that of one witness who gave little more than his name and occupation.

A Scattering of Subpoenas

In its investigations, the jury has scattered a score or so of subpoenas that have touched many of the scholars, writers and journalists who have provided the intellectual underpinnings of the antiwar movement.

That these were not garden variety witnesses became apparent late Friday when the Government seemed to have driven one of them, Ralph L. Stavins of the Institute for Policy Studies in Washington, into a legal corner to force his testimony.

But Mr. Stavins strode into court with four lawyers and an affidavit that stopped everything. The document was from Dr. Leonard S. Rodberg, a physicist on the staff of Senator Gravel.

In the affidavit, Dr. Rodberg, who is himself a reluctant witness, told how he and C. R. Wallace, an electronics expert who owns the Spy Shop in Washington, had tested the phone at Mr. Stavins's office with a "relative field strength meter" and detected a sophisticated new type of tap on the line.

The judge stayed Mr. Sta-

vins's appearance so that the Government could decide what to do. The law forbids the use of evidence gathered by unlawful wiretapping, and the Government may have to confirm or deny such eavesdropping.

It was the kind of delay that has become customary to David R. Nissen and Warren P. Reese, the affable, California-based Government attorneys on loan to the internal security division of the Justice Department to run the investigation.

Just what the closed-door inquiry is seeking is not fully clear, but the oaths of office filed by the two young prosecutors indicate that they are exploring possible violations of Federal laws against the transmission, retention and use of national defense information and conspiracy to commit such offenses.

So far, it appears that the chief targets are Dr. Daniel Ellsberg, the former Pentagon official who has said he gave the secret war study to the press; Neil Sheehan, who obtained the Pentagon papers for The New York Times, and Mr. Sheehan's wife, Susan, who writes for the New Yorker.

Dr. Ellsberg has already been indicted by a grand jury in Los Angeles for conversion of classified documents. So it is widely assumed that the Boston jury, along with a similar one in Los Angeles, is aimed at persons who helped Dr. Ellsberg distribute the documents or who had access to them before they became public.

Academic Unease

All of this has caused deep unease in the academic community, where many of the subpoenas have landed.

Some of those who have been called are:

Noam Chomsky, a linguist at the Massachusetts Institute of Technology who is a leading New Left spokesman.

Richard A. Falk, a Princeton professor, who is a frequent war critic.

Mr. Stavins, co-author of "Washington Plans an Aggressive War."

Samuel L. Popkin, a Vietnam expert at Harvard, who is a war opponent.

David Halberstam, a Pulitzer Prize-winning journalist who is writing a history of American involvement in Vietnam.

K. Dun Gifford, who is a former legislative aide to Senator Edward M. Kennedy and a friend of Dr. Ellsberg.

Dr. Rodberg, who transmitted Senator Gravel's copy of the war study to the Beacon Press in Boston for republication.

Most have expressed puzzlement at being summoned and

Investigation of the Release of Pentagon Papers

have raised elaborate and often novel constitutional objections.

Employing some of the most skilled civil rights lawyers in the country, they have invoked First Amendment freedoms, Fourth Amendment protection against illegal search and Fifth Amendment bars against self-incrimination.

The process has settled into a kind of routine. At the appointed hour, each witness takes the elevator to the 11th floor of the main Post Office building, which houses the Federal Courts.

There he generally refuses to testify or to answer any questions of substance.

Thereupon, he goes one flight up to the wood-paneled courtroom of United States District Court Judge W. Arthur Garrity Jr., the genial white-haired jurist who is supervising the grand jury. The witness's lawyers argue that the subpoena should

be quashed, stayed or restricted.

Mr. Reese, the tall, striking Government lawyer, then trots upstairs to defend the jury's sanctity.

Appeals Likely

Sometimes the judge rules for the petitioner, sometimes not. If not, the witness is likely to appeal.

The net effect was that the grand jury members idled away most of last week knitting, reading and lounging in the drab, apple-green jury room.

In an interview, Mr. Nissen expressed some irritation.

"I've been fishing many times," he said, "but never in a grand jury. If I had all the answers, why should I hold an inquiry? The Supreme Court has said that the truth is found at the end, not at the beginning of the grand jury."

Judge Garrity has consistent-

ly dismissed the contention of such scholar-journalists as Mr. Chomsky, Mr. Falk, Mr. Popkin and Mr. Stavins that they should be excused from testifying because the public's right to know demands that they be insulated from the inquiries into the sources of their information, the position taken by full-time newsmen.

Testimony Sought

"We're not trying to sweep away his sources," Mr. Reese said of Professor Falk, who has refused even to enter the jury room. "We desire to question him regarding the unlawful acquisition of Government documents."

About the only person who seemed to be thoroughly enjoying it all was Mrs. Idella Marx.

A beatific looking woman with hair turning gray, she is the stepmother of Dr. Ellsberg's wife Patricia. Mrs. Marx

has refused to testify and has been held in contempt.

"It's the most fascinating thing; I've never been in court before," she said in an interview. "The F.B.I. and the Federal attorneys have been terribly polite."

Moments later she heard the judge order her bail revoked this week.