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ORDER IS VACATED IN ELLSBERG CASE

But Relatives' Silence Could
Spur New Contempt Move

By ROBERT REINHOLD

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BOSTON, Nov. 24 — A contempt order against Mrs. Idella Marx, mother-in-law of Dr. Daniel Ellsberg, was vacated today by the United States Court of Appeals for the First Circuit.

However, the three-judge panel opened the way for further contempt action against Mrs. Marx if she continues to refuse to testify before a Federal grand jury looking into the release and distribution of the Pentagon papers. Dr. Ellsberg has said that he turned over the secret documents to the press.

The court held in effect that Mrs. Marx, one of several recalcitrant jury witnesses, had not been given her full rights in the earlier proceedings. It also held that a new Government assertion that she had not been called as a result of wiretapping removed her ground for further refusal to testify.

It may be some time before she can be recalled. The jury has been enjoined since Oct. 29 from taking any testimony on the Pentagon papers case until the court rules on a claim by Senator Mike Gravel of Alaska. He says that the investigation is infringing on his legislative immunity.

Lower Court Action

Mrs. Marx had been held in contempt by a lower court, the Federal District Court for Massachusetts, when she resisted the jury despite being offered immunity against self-incrimination. The Government asserted that she had not been subjected to wiretapping. Evidence from illegal wiretapping is not admissible.

Her lawyer, Victor Rabinowitz of New York, appealed on the ground that the Government's denial of eavesdropping was inadequate since it did not deal with the possibility that she had been summoned on the basis of wiretaps placed on other persons.

During the oral argument before the appeals court on Nov. 10, Warren P. Reese, an assistant United States Attorney, said that there had been no wiretap of Mrs. Marx or anyone else leading to her questioning.

In his opinion today, Chief Judge Bailey Aldrich told the lower court that it could hold the witness in contempt because further refusal on the ground of wiretapping would be "frivolous."

Mrs. Marx has been free on personal recognizance of \$10,000.