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Court Study May Stall Bombing Inquiry

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The Justice Department's effort to obtain grand jury testimony from Leslie Bacon about the bombing of the United States Capitol could be stalled for many months while the Supreme Court considers a challenge to a new law concerning compulsory testimony.

Miss Bacon's lawyers were preparing court papers today, asking that she be released on bail as a result of the Supreme Court's decision on Monday to rule on the constitutionality of the law under which she was jailed this week.

Her prospects for release appeared to be strengthened yesterday when the United States Court of Appeals for the Seventh Circuit, in Chicago, acting in an unrelated case, declared the law unconstitutional.

Miss Bacon, a 19-year-old antiwar activist, was imprisoned Wednesday in Seattle for civil contempt of court after she rejected a grant of immunity issued under the Organized Crime Control Act of 1970.

Civil contempt proceedings pressure witnesses to testify by, in effect, "placing the keys to their cells in their own pockets." When they agree to talk, they are freed.

Pressure Would End

Thus if Miss Bacon were released on bail until the Supreme Court ruled on the law—a decision that is not expected before next winter—the pressure upon her to testify would be lifted.

Government lawyers here assume that she would then continue to refuse to answer questions before the Federal grand jury in Seattle that has been questioning her for more than two weeks about the March 1

blast in the Capitol. Justice Department spokesmen declined today to say whether the investigation would bog down without her testimony.

At issue is Miss Bacon's contention that the 1970 law violates the Fifth Amendment's privilege against self-discrimination because it forces her to testify and provides only that her testimony cannot be used directly or indirectly in any future prosecution against her.

Her lawyers contend that this "use of immunity" is inadequate, and that she should be given "transactional immunity," which would shield her from prosecution for any act or transaction about which she testified.

The Supreme Court ruled unanimously in an 1892 case, *Counselman v. Hitchcock*, that "use immunity" is insufficient and that "transactional immunity" is required by the Fifth Amendment. However, in decisions in 1964 and 1968, the Court indicated that transactional immunity might not be required, and Congress responded by enacting the 1970 law. It says that witnesses can be forced to testify before grand juries, administrative bodies, and Congress on the basis on "use immunity" alone.

The Seventh Circuit, in declaring the law unconstitutional, stated that if Government prosecutors "seek to compel a witness to testify," they "must grant him full immunity from prosecution."

A three-judge panel composed of Luther M. Cwygert, chief judge, Thomas E. Fairchild and Walter J. Cummings overturned contempt convictions

against two Chicago men, Robert Likas and Jack Jack Jorman. The two had refused to testify in a gambling-murder investigation.

On Monday the Supreme Court agreed to review a decision by the United States Court of Appeals for the Ninth Circuit, at San Francisco, which had upheld the law.

Although the Ninth Circuit found the law valid, it released the two men who had challenged it until the Supreme Court decides the issue. The appellants are Michael G. Stewart and Charles J. Kastigar, who had refused to testify in a grand jury investigation of an alleged draft evasion conspiracy.

Plan to Seek Bail

One of Miss Bacon's lawyers, Jenny Rhine of Oakland, Calif., said today that the Seventh Circuit's ruling "could be a tremendous help" in winning her freedom on bail. Miss Rhine said the application for bail would be filed in the Federal District Court in Seattle next week.

When the Supreme Court hears arguments on the 1970 statute next fall, it will also consider the constitutionality of similar laws that were passed to aid anticrime investigating commissions in New Jersey and Illinois.

The New Jersey appeal was filed by Joseph (Joe Bayonne) Zicarelli, a reputed Mafia figure in North Jersey who was jailed last year when he refused to testify before the New Jersey Crime Commission. After the Supreme Court agreed to hear Mr. Zicarelli's appeal he asked to be released on bail, pending the decision. The Supreme Court refused.