

Judge to Rule on Bugging

By Tom Hall

The federal grand jury here investigating the militant Weatherman group resumed sessions today, calling subpoenaed witnesses other than three facing possible contempt after refusing to answer questions although granted limited immunity.

After two days of argument on whether the three witnesses should be held in contempt, U. S. District Judge Robert F. Peckham late yesterday said there were two issues that concerned him:

- Whether he should accept as sufficient the U. S. Justice Department's flat denial that any illegal wire tapping was used that resulted in calling more than 15 witnesses or whether he should hold an evidentiary hearing at which testimony could be taken on how reliable was the government's denial.

- Whether prior statements given by some of the witnesses to FBI agents should be made available to the witnesses before they are quizzed by the jury to avoid the hazards of possible perjury.

Transcripts Published

Because transcripts of the normally secret grand jury proceedings were made public during the contempt hearing, it became apparent the Justice Department is interested primarily in trying to find fugitives believed involved in bombings possibly done by Weatherman.

Certain witnesses were asked questions as to whether they had discussed with anyone, for instance, the Feb. 16, 1970, bombing of the Park District police station.

Witnesses also were asked if they had been "mail drops" — received and forwarded mail to fugitives.

Silent Witness

Daniel Rosenberg, a mechanic, of San Francisco, and former conservationist worker with the Sierra Club, for instance, refused to answer jury questions as to whether he discussed the Park Station bombing with

anyone, ever possessed dynamite, or was a mail drop for Kathy Boudin, alias Janet Patricia Scott.

Miss Boudin was wanted in connection with the March, 1970, "Weatherman bomb factory" dynamite explosion in Greenwich Village.

Yesterday, Rosenberg told The Examiner he had "never" discussed the Park Station incident with anyone, never possessed dynamite and was not a member of the Weatherman group.

Splinter Group

The Weatherman is a splinter group of the Students for a Democratic Society. The underground organization has claimed credit for several bombings nationally.

Rosenberg also told The Examiner he did not know Miss Boudin, but when asked if he had received and forwarded mail to her under her real name or the alias of Scott, he declined to answer on advise of his attorney, Norton Tooby.

The challenges to the grand jury's questions have been based on several constitutional grounds, including not only possible self-incrimination, but the right to privacy, association, speech, and abuse of the grand jury process.

'Historical' Role

Tooby summed up the alleged abuse of the "historical" use of the grand jury as a buffer between the public and the government by claiming the Justice Department is "turning it into an activist bloodhound hunting down fugitives," instead of making quasi-judicial decisions on whether crimes have possibly been committed.

"It is being used as a substitute for an investigating agency," he said.

Wiretaps Charged

In addition to Rosenberg, the two other witnesses facing possible contempt are Dr. Philip Craven, 28, a U. S. Public Health Service quarantine officer at San Juan, Puerto Rico, and Howard Berg, UC-Berkeley graduate and physicist, now in Minneapolis.

In support of their effort

to attempt to establish the Justice Department may have used illegal wiretap methods, at least 11 affidavits were filed with the court.

They were not only from subpoenaed witnesses, but also their attorneys.

Justice Department attorney Robert Dierker, of the Internal Security Division, however, claimed the affidavits were "too vague and not creditable evidence" that phones were tapped.

"All they say is that they heard strange noises on their phones," adding that is not an-uncommon complaint of phone subscribers.

Concern Emphasized

But Judge Peckham's concern over the possibility of wiretap was emphasized when he asked Dierker if he had asked the San Francisco police chief if that department did any wiretapping from which information might have been revealed to the FBI.

"No," Dierker replied, "but if the police had done so, it would have shown in the FBI files and it doesn't show in the check the department made."

Attorney Joseph Rhine noted Craven had been visited as early as March, 1971, at his then home by local police, asking questions about whether he had received and forwarded mail for certain persons.

Family Calls

And Craven's affidavit claimed he was asked questions about phone calls to his wife's family that only could have come from overhearing his conversations.

Attorney William L. Osterhoudt, representing two unidentified witnesses recently subpoenaed from Michigan and Oregon, argued that the witnesses were entitled to know just how thorough the check was and whether the federals checked the local police.

Rhine attempted to convince Judge Peckham he should hear ex-FBI agent William Turner, now a private investigator and writer, who was fired from the FBI in 1961 when he demanded a

congressional investigation of the organization then headed by the late J. Edgar Hoover.

When Peckham said he wouldn't hear Turner, now of Mill Valley, who was sitting in the courtroom, Rhine was allowed to state what Turner's testimony would be.

Turner, according to Rhine, would testify as a former FBI agent skilled in wiretap methods, that sometimes agents tap phones and don't tell their superiors.

"Suicide taps," for instance, he said are where an agent "puts a quick tap on a phone, takes the information and sometimes doesn't even let his superior know he's done it."

Code System

Turner, too, Rhine said, would testify to the FBI's coding system whereby the fact that they may have wiretapped never reaches the Justice Department.

Craven's affidavit said that when he talked to Dierker, before his grand jury appearance, Dierker told him:

"We're not interested in indicting you. We are simply looking for some persons who are going under false names and are wanted as fugitives from the law for blowing up buildings."

U. S. Attorney James L. Browning Jr. also has indicated the witnesses are not potential defendants or they would not have been called to testify.