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Plot Cases Deluge Court

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THE MOST PROFOUND change President Nixon has worked in his three years in office is on the Supreme Court of the United States. Four Nixon appointees now sit on the high tribunal and, with the conservative director White, the Court is a different institution.

The new Court—the strict constructionist Court—will receive in the next year or year and a half a succession of appeals in cases involving fundamental rights of the individual and the guarantees of freedom in the constitutional rights. Many cases will have political and sociological overtones hardly subject to strict interpretation of the law. In the Court of the past, the Warren Court, these extralegal considerations were taken into account and the highest judicial body was regarded as a last resort of freedom.

Angela Davis, Daniel Ellsberg of the Pentagon papers, along with many others are likely to have their appeal before the new Court. More far reaching are the number of conspiracy cases now being pushed in one federal grand jury after another around the country. Guy Goodwin, chief of the litigation section of internal security in the Department of Justice, is zealously promoting in the federal courts the charge of conspiracy.

THE ACTS of violence in recent years must be part of a conspiracy—that is the conviction behind the department's effort to throw a net around the radicals of the New Left. The fear of civil libertarians is that in the secret proceedings of the grand jury chamber, where witnesses are without the protection of an attorney and where they may be cited for contempt and jailed for refusing to answer the district attorney's questions, the narrow line between overt acts and spoken dissent will break down.

When there is any doubt of conviction for an overt act, throw in the conspiracy charge, that seems to be the rule. It is what happened in the Ellsberg case, with the government adding conspiracy to the list of criminal charges in a 15-count indictment in Los Angeles.

The tent of conspiracy was thrown over an even more dramatic and consequential case. The Rev.

Philip Berrigan. A Catholic priest and six other antiwar dissidents are going on trial at Harrisburg, Pa., charged with conspiracy to harass the Selective Service System and with conspiracy to blow up the heating system of the Capitol in Washington and kidnap Henry A. Kissinger, the President's adviser on national security. Father Berrigan and two new defendants were already in prison for destroying draft records and the new indictment would seem to insure a second conviction for virtually the same offense.

THE CASE of the Berrigan brothers and their co-conspirator, Sister Elizabeth McAllister, a Catholic nun, has all the disturbing elements of a time of turbulence bordering on revolution. The judicial process will be challenged from top to bottom to show they have had a fair trial in the context of the guarantees protecting the individual in the Constitution.

Was the plot to blow up the heating plants and kidnap Kissinger merely fantasizing? How could these religious pacifists hope to muster the strength—they estimated it would require six or seven men—to kidnap the President's aide who is under constant Secret Service protection? And if it was a fantasy, a kind of wishful dream, was there any overt and illegal act that could convict all seven as conspirators?

Repeated illegal acts have been committed by antiwar dissidents. Government property has been burned. Father Philip deliberately and publicly with others destroyed draft records at Catonsville, Md.

How to separate these illegal acts from the right of dissent is the puzzle the courts must try to resolve. By throwing the tent of conspiracy over as many as a dozen cases, with prosecution before grand juries taking on the character of star-chamber proceedings, the Department of Justice has made the untangling of the puzzle far more difficult.

Eventually most of these cases will go before the new Court to unravel. This will be a test of strict construction and the capacity of the Supreme Court to see beyond mere legalism.