

Berrigan Trial Lawyer, Judge Swap Charges

By Betty Medsger
Washington Post Staff Writer *3/18/72*

HARRISBURG, Pa., March 14—Defense Attorney Paul O'Dwyer today told U.S. District Court Judge R. Dixon Herman that he "frustrated and denied" adequate cross-examination of Boyd F. Douglas Jr., the government's key witness in the conspiracy trial of seven antiwar activists.

Herman dismissed O'Dwyer's oral motion for a mistrial and threatened to hold him in contempt of court.

O'Dwyer charged that a "protective relationship" existed between the judge and ex-convict Douglas. The outgrowth of that relationship, O'Dwyer said, is that the judge has throttled the cross-examination of Douglas by at least three of the defense attorneys.

"I think this is highly prejudicial . . . To permit a witness this liberty is something unheard of in jurisprudence," O'Dwyer said.

The defendants, who include the Rev. Philip Berrigan, are charged with conspiracy to kidnap presidential adviser Henry A. Kissinger, to bomb tunnels under federal buildings in Washington and to raid federal offices.

Most of the information leading to their indictment, the government has said, came from Douglas who was an inmate with Father Berrigan at Lewisburg, Pa., Federal Penitentiary in 1970.

The exchange between O'Dwyer and Judge Herman

immediately followed a recess the judge had called after Douglas informed him that a juror, Vera P. Thompson, was in pain.

Defense attorneys believe that Douglas informed the judge about Mrs. Thompson in an attempt to curry favor with the jury. O'Dwyer said the judge informed the defense and the prosecution prior to today's court session that Mrs. Thompson had had two teeth extracted Monday and would be receiving penicillin from the marshalls periodically today.

O'Dwyer maintained that by automatically responding to Douglas' comments about Mrs. Thompson the judge had re-enforced Douglas' attempts to curry favor with the jury.

Angered by O'Dwyer's assertions, the judge threatened a second time to hold O'Dwyer in contempt and called for the jury to be brought in. He apologized to Mrs. Thompson: "I didn't notice you, but Mr. Douglas apparently did."

During later cross-examination by Leonard Boudin, Douglas acknowledged that he wrote to Sister Elizabeth McAlister, another defendant, in 1970 and told her he could get a gun for the alleged kidnaping.

His note to her, said Douglas, was attached to the last of several letters he smuggled out of Lewisburg for Father Berrigan and then copied for the FBI before sending them to Sister McAlister. That Aug. 22, 1970, letter from Father Berrigan, in which he questions whether a political kidnaping is feasible and suggests that Sister McAlister and others think about it, is one of the government's most important pieces of evidence on the kidnaping charge.

The only other evidence presented to the jury so far on the alleged kidnap plot, be-

sides conversations Douglas said he had with defendants, is an earlier letter from Sister McAlister in which she asks Father Berrigan what he thinks of a proposal "to kidnap—in our terminology make a citizens' arrest of—someone like Henry Kissinger."

Boudin asked Douglas if he did not also promise in the note he attached to Father Berrigan's reply to the nun's question that he could get a gun for the kidnaping "that would not be traced."

"Possibly I said that," said Douglas, who repeatedly denied today that he tried to initiate protest activities.