

DISMISSAL ASKED IN BERRIGAN CASE

Defense Raises the Issue of
Pre-Indictment Publicity

By LINDA CHARLTON

Six pretrial motions have been filed by defense lawyers in the Berrigan conspiracy case, including a motion to dismiss the charges because of publicity before indictment and a challenge to the constitutionality of a Federal statute under which the six defendants were charged.

Copies of the motions were made available in New York yesterday by the Defense Committee for the Harrisburg 13. They were filed recently with the United States District Court for the Middle District of Pennsylvania, in Harrisburg, Pa., where the indictment was handed up by a Federal grand jury Jan. 12.

The seven-count indictment alleged that the six defendants — seven other persons were named as co-conspirators but not as co-defendants — had plotted to kidnap Henry M. Kissinger, President Nixon's adviser on national security affairs, and to blow up heating-plant tunnels in Government buildings in Washington.

Two Routine Motions

The six were the Rev. Philip J. Berrigan, a Roman Catholic priest now in prison for having destroyed draft records; Sister Elizabeth McAlister; the Rev. Neil McLaughlin; the Rev. Joseph Wenderoth, and Anthony Scoblick.

Among the six motions are two that are fairly routine — a request for a "bill of partic-

ulars," or the details of the charges against the defendants, and a motion for "discovery and inspection by defense counsel" of evidence relating to the case.

One motion asks that the indictment be dismissed on the ground that "pre-indictment publicity instigated by the prosecution . . . so biased the grand jury proceedings that . . . the defendants' constitutional rights were violated."

The defense cited statements by several individuals, notably J. Edgar Hoover, the director of the Federal Bureau of Investigation, dating to almost two months before the indictment. At that time Mr. Hoover told a Senate subcommittee of "an incipient plot on the part of an anarchist group . . . the so-called 'East Coast Conspiracy to Save Lives.'" He described the group as "militant" and led by Father Berrigan and his brother, the Rev. Daniel Berrigan.

The motion maintains that "the right to an unbiased grand jury is guaranteed by the Fifth Amendment."

Another motion asks for the dismissal of six of the seven counts in the indictment on the ground that the statute upon which they are based —

which relates to contraband in Federal prisons — is unconstitutional because it suppresses the inmates' rights under the First Amendment. The statute, United States Code 1791, stipulates that introducing "anything whatsoever" into such an institution without the warden's knowledge and consent is punishable by a 10-year sentence.

The charges relate to communications alleged to have passed between Father Philip Berrigan and Sister McAlister.

The defense also filed a mo-

tion asking that the Government make known any evidence obtained through the use of electronic surveillance. The motion requests a pretrial hearing to determine the legality of the methods by which the evidence was obtained and the dismissal of the indictment if it appears to have been obtained through "illegally obtained evidence."

A motion asking for the right to examine the "juror qualification" questionnaires used for both grand and petit juries was also filed.

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The motions were filed by J. Thomas Menaker, acting as one of the 13 defense lawyers in the case. The others include Ramsey Clark, former United States Attorney General; Paul O'Dwyer, a former Democratic candidate for the United States Senate from New York State, and Leonard Boudin, who served as defense lawyer for Dr. Benjamin Spock, the pediatrician, during his 1968 trial in Boston on charges of having aided young men in evading the draft.