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ATTORNEYS CLASH IN BERRIGAN CASE

Pretrial Publicity Is Issue as
Dismissal Plea Is Heard

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—Defense and Government attorneys in the Berrigan conspiracy case accused each other today of exploiting the news media with pretrial publicity.

In a two-hour argument in the Federal District Court for Eastern Pennsylvania, the defense sought to have the indictments of the Rev. Philip F. Berrigan and the seven other defendants dismissed, on the ground that pretrial publicity has prejudiced the case.

The defense argument stressed the Government's releasing, as part of the indictments returned April 30, two letters purportedly exchanged by Father Berrigan, who is a Josephite Roman Catholic priest, and another defendant, Sister Elizabeth McAlister.

Conspiracy Charged

The eight defendants are charged with conspiracy to kidnap Henry A. Kissinger, adviser to President Nixon; to blow up heating tunnels in Government buildings, and to destroy files in draft boards and other Government offices.

Judge R. Dixon Herman took the dismissal motion under advisement and gave each side 10 days in which to file further argument. He rejected the defense request for an order restraining the Government from releasing any other alleged evidence.

In arguing for dismissal, Leonard Boudin accused the Government of a deliberate effort to color public opinion by releasing the two letters. He asked that the prosecutors be cited for contempt of court.

As part of the indictments, the letters would be read to the trial jury if the case is not dismissed.

Release of the letters, Mr. Boudin argued, had taken from the court important decisions as to what may and may not be properly used as evidence in the case and adversely affected the right of the defendants to a fair and impartial trial.

'Purposeful Abuse'

Further, he argued, the release of the letters with the indictments had no precedent in law and was a "deliberate and purposeful abuse" of the grand jury process.

William S. Lynch, deputy assistant attorney general, dismissed Mr. Boudin's arguments as "largely hearsay" and cited legal authority to support the release of the letters as part of the indictments.

"The fact is," Mr. Lynch said, "that the defense has gotten a good deal of attention from the press and very, very little of the impetus has come from the Government."

Paul O'Dwyer of New York, one of the defense attorneys, at one point charged that the sole motivation for the indictments was the Government's desire to "save face" for the director of the Federal Bureau of Investigation, J. Edgar Hoover, who publicly disclosed the conspiracy charges weeks before the indictments were returned.

"As the record now stands," Mr. O'Dwyer told the court, "you cannot preside over a fair trial in this court because the atmosphere here has been raped before you were even assigned to the case."

Mr. Lynch denounced Mr. O'Dwyer's arguments as "pulled out of thin air." He accused defense attorneys of a "dazzling display of shoddy scholarship" and of presenting a "curious amalgam of disjointed hearsay, conclusory allegations, innuendo, argument, impugning of motives and an apparent abysmal lack of knowledge of criminal practice and procedure."

Before hearing the dismissal motion, Judge Herman found a Rochester dentist guilty of contempt. The dentist, Dr. George McVey, had refused to testify before the grand jury.

Execution of the contempt order was postponed pending the outcome of challenges of earlier contempt convictions in connection with the case.

In addition to Father Berrigan and Sister Elizabeth, those indicted were Eqbal Ahmad, a Pakistani national studying at the University of Chicago; John T. Glick of Lancaster, Pa., now serving time at a Federal prison in Ashland, Ky., for taking part in a raid on a Federal building in Rochester; the Rev. Joseph Wenderoth and the Rev. Neil McLaughlin, Baltimore Catholic priests, and Anthony Scoblick, a former priest, and his wife, Mary, a former nun, both of Baltimore.