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BERRIGAN JUDGE WARNS O'DWYER

Attorney Scores Frustration
of Douglas Questioning

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—The judge in the Berrigan conspiracy case threatened Paul O'Dwyer, defense counsel, with a contempt citation today after Mr. O'Dwyer said that the judge was "frustrating" the cross-examination of the Government's star witness, Boyd F. Douglas Jr., a paid F.B.I. informer.

Mr. O'Dwyer suggested that Federal District Judge R. Dixon Herman had adopted a protective attitude toward Douglas and that Douglas was becoming increasingly unresponsive and arrogant.

He asked for a mistrial. Judge Herman, a former juvenile Court judge whom President Nixon elevated to the Federal bench two years ago, flushed angrily, banged his gavel and told the white-maned New York lawyer: "You better be seated right now or I'll be forced to hold you in contempt."

Incident Protested

Mr. O'Dwyer was protesting an incident that had just interrupted testimony in the trial of the Rev. Philip F. Berrigan and six other antiwar activists.

Douglas was on the stand undergoing cross-examination by Leonard Boudin. The witness had been studying the jury of nine women and three men — "I don't have to look at you," he had told Mr. Boudin coldly — and now he leaned toward the bench and informed Judge Herman that juror No. 1, Mrs. Vera P. Thompson, the only black member of the jury, appeared to be ill. She was pressing a handkerchief to the left side of her face.

Judge Herman declared a 10-minute recess during which Mrs. Thompson, who had two teeth extracted on the previous day and whose discomfort was known to all the court attendants, was given a glass of water and a penicillin pill.

Before the jury returned, Mr. O'Dwyer made his motion for a mistrial, declaring that Douglas's apparent solicitude for the juror was "highly prejudicial" and that "to permit a witness this liberty is unheard of in jurisprudence."

Mr. O'Dwyer went on to say that Douglas apparently felt he could behave that way "because of the relationship that has developed between this witness and the court."

Judge Herman, banging his gavel, shouted, "That's all, Mr. O'Dwyer, that's all." But Mr. O'Dwyer, stayed on his feet, requesting additional argument on his motion for mistrial.

To Be Submitted

The chief prosecutor, William S. Lynch, a deputy assistant attorney general, called the mistrial motion "nonsensical" but Judge Herman said he would allow M. O'Dwyer to submit a written motion tomorrow.

The Berrigan group is on trial for conspiracy to kidnap the Presidential aide Henry A. Kissinger, blow up heating tunnels in Washington and destroy draft files in several states.

Douglas is a former convict who gave the Federal Bureau of Investigation copies of letters he had been smuggling in and out of Lewisburg Federal Penitentiary for the Berrigan group. He has angrily denied he was an agent provocateur who tried to keep the alleged plot alive long after it had been shelved by the militants of the Catholic left.

Judge Herman has not admonished Douglas to answer questions directly although defense lawyers have complained selective and that his replies were unresponsive.

"He can't recall, he can't recall," Judge Herman has told defense attorneys impatiently when they have tried to jog Douglas's memory.

Douglas had indicated in his testimony that Sister Elizabeth McAlister and another defendant, the Rev. Joseph Wenderoth, had called him or written him frequently to keep him informed of new developments in the alleged conspiracy. But Mr. Boudin produced telephone records today indicating that most of the calls had originated with Douglas.

"Weren't you trying to instigate actions?" pressed Mr. Boudin.

"I was not," said Douglas.