

DISMISSAL ASKED IN BERRIGAN CASE

Lawyers Seek Quashing of
Conspiracy Indictments

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WASHINGTON, May 4—Defense attorneys for the Rev. Philip F. Berrigan and seven other persons indicted by a Federal grand jury on conspiracy charges have asked that the indictments be dismissed and Federal officials held in contempt of court for "abuse of the grand jury process."

In a motion filed with Federal District Court in Pennsylvania, the lawyers charged the Government with the prejudicial release of evidence in the form of letters allegedly exchanged between two of the defendants. Hearings on the motion have been set for 2 P.M. Monday before Judge R. Dixon Herman in Harrisburg, where the grand jury that handed down the indictments is seated.

The motion was touched off by the Government's release, as part of the indictment, of two letters purportedly exchanged by Father Berrigan and Sister Elizabeth McAlister, another defendant, who is a nun. These letters discuss in some detail the plot alleged in the indictment to kidnap Henry A. Kissinger, national Security Adviser to President Nixon.

A spokesman for the Department of Justice reacted to the motion by saying, "it is not an uncommon practice for such information to be attached to an indictment."

Indictments Superseded

The letters were released last week as part of new indictments the grand jury handed up to supersede the indictments originally handed up Jan. 12. The original indictments charged Father Berrigan and five other persons with conspiring to destroy Government property and kidnap Mr. Kissinger as part of a protest against the war in Vietnam.

Those indictments touched off criticism by supporters of the defendants that the charges had been brought hurriedly on the basis of insufficient information. Two weeks ago the Government reopened the case and, after an investigation, issued the new indictments. These added two new defendants and charges of a conspiracy to destroy draft board files as part of a series of antiwar acts "leading up to" the alleged plot to kidnap Mr. Kissinger.

The indictments also reduced the kidnapping charge from one carrying a life sentence to a lesser charge of conspiracy with a maximum sentence of five years.

Part of Another Count

William S. Lynch, special prosecutor for the Justice Department in the case, said at the time that the letters had been included because they formed part of yet another count of transmitting threatening communications through the mail.

Motions filed today by Leonard B. Boudin, visiting professor of law at Harvard Law School, who is on the team of defense attorneys, said the letters formed a "deliberate and purposeful abuse of the indictment process," and asked the following relief from the court:

¶That both the original and the superseding indictments be dismissed.

¶That the Government be enjoined from discussing, releasing or publishing any evidence in the case either privately to reporters or in any subsequent indictments that might be handed down.

¶That Mr. Lynch, S. John Cabotone, United States Attorney, and "all other persons acting in concert" be held in contempt of court.

¶That defense counsel be allowed to inspect the grand jury minutes to determine how the decision was made to include the letters as part of the indictment.

¶That any superiors in the Justice Department having knowledge of the decision be named.

Reports Magazine Offer

In an affidavit he filed with the court, Mr. Boudin said the alleged letters had been offered to Time and Life magazines and that "the Government could have been the only source of that offer," but the magazines had declined to publish them because of a question of authenticity.

A spokesman for Time magazine confirmed that the magazine had seen excerpts from the alleged letters and tried to establish their authenticity but added: "We cannot and will not reveal the source of the alleged letters."

Mr. Boudin also challenged the Justice Department's statement that inclusion of such letters was normal procedure.

"We point out," he said, "that on the face of it this is not a threatening letter within the meaning of the statute," and therefore not properly included in the indictment.