

# Berrigan Lawyer Bars Mistrial, Says He Believes Jury Is 'Fair'

NYTimes

By HOMER BIGART FEB 19 1972

Special to The New York Times

HARRISBURG, Pa., Feb. 18—An attorney for the Rev. Philip E. Berrigan and six other persons accused in an antiwar conspiracy said today he was satisfied that a "fair" jury had been chosen.

J. Thomas Menaker, local attorney for the seven defendants, said that there was no present intention of moving for a mistrial on the basis of reported prejudicial remarks by one or more of the jurors.

Mr. Menaker added that there would be no attempt to delay the opening next Monday of the Government's case.

The defendants are accused of conspiring to kidnap Henry A. Kissinger, President Nixon's national security adviser, and conspiracy to blow up heating tunnels to Government buildings in Washington and to destroy draft records in several cities.

Mr. Menaker made his statement after Federal Judge R. Dixon Herman received in his chambers three former prospective jurors who had been involved in newspaper reports suggesting that the panel had engaged in improper discussion of the case.

Mr. Menaker said that the reports of prejudice lacked sufficient corroboration and that he had no intention of demanding the removal of any present member of the jury.

"On the evidence available to us there is no direct bias among the jurors," he said.

## Panelist Gives Statement

One former prospective juror, Robert C. Baltimore, a state welfare official, said, however, that he had given Judge Herman a sworn statement that at least one of the 12 jurors selected had openly discussed the impropriety of Roman Catholic priests and nuns getting involved in politics.

Mr. Baltimore said he had told the judge that this defiance of court instructions against discussion of the case had taken place among prospective jurors on several occasions before the 12 regular jurors were chosen Feb. 8.

He said Judge Herman had given him only 10 minutes,

asked him no questions and offered no comment.

"He seemed very noncommittal," Mr. Baltimore told a news conference. "He didn't have much of a reaction. He seemed to be disinterested in the whole procedure. I think he's taking it too lightly."

Mr. Baltimore recalled overhearing "snatches of conversation" in the Federal Building between a group of women panelists the day before the jury selection.

"I heard a woman saying that priests and nuns shouldn't be involved in politics," he said.

## Comments on Pakistani

Three of the defendants are priests, one is a nun, one is a former priest and one a former nun. The seventh defendant, Eqbal Ahmad, is a Pakistani Moslem.

Mr. Baltimore said he had told the judge that he had overheard prospective jurors on other occasions express prejudice against Dr. Ahmad, calling him an alien who should not express opposition to the nation's Vietnam policy.

A defense motion to sever the trial of Dr. Ahmad from that of the other defendants and move his trial to New York, Connecticut or Chicago is pending before Judge Herman.

Judge Herman interviewed two other former prospective jurors who were said to have been exposed to prejudicial comment. They were Constance Mills, a secretary in the State Department of Labor and Industry, who was reported to have heard a prospective panelist describe Dr. Ahmad as "scary," and Mrs. Barbara R. Comitz of York, whose friends and neighbors had told her that the defendants were certainly guilty.

Mr. Menaker, the defense lawyer, said he had requested that Judge Herman interview Mr. Baltimore and Miss Mills. He said he did not know why Mrs. Comitz had been called but he told reporters he had been allowed to sit in on the interview and that Mrs. Comitz had "said nothing disturbing at all."