

COURT TO REVIEW WIRETAP APPEALS

One Case Involves Alleged Plot to Kidnap Kissinger

By **FRED P. GRAHAM**
Special to The New York Times

WASHINGTON, Dec. 14—The Supreme Court agreed today to decide if witnesses subpoenaed before grand juries might legally refuse to testify until the Government showed

that they had not been victims of illegal eavesdropping.

In a brief order, the Court agreed to hear the Justice Department's appeal of a lower court's decision holding that two women called by the Government to testify about the alleged plot to kidnap Henry A. Kissinger could remain silent until the prosecution established that its questions were not based on illegally overheard conversations.

One of the women was Sister Jogues Egan, a 52-year-old member of the Order of the Sacred Heart of Mary, who was named a co-conspirator but not a defendant in the Kissinger case. The other was Anne Eliza-

beth Walsh, 29, a former nun who has been active in antiwar activities.

The women were subpoenaed early this year to testify before a Federal grand jury in Harrisburg, Pa. The panel was gathering evidence in connection with the Federal indictments of the Rev. Philip F. Berrigan and seven others who have been accused of plotting to kidnap Mr. Kissinger and set off bombs in underground heating tunnels in Washington.

They were granted immunity from prosecution and were ordered to testify. Both refused and were held to be in civil contempt of court by the trial judge, but the United States

Court of Appeals for the Third Circuit ruled, 5 to 2, in favor of their position.

Reluctant witnesses have charged repeatedly in recent years that the Justice Department used grand juries' subpoena powers to conduct wide-ranging "fishing expeditions" into the activities of radical groups and suspected members of organized crime.

Justice Department lawyers have argued that grand jury investigations could be stalled if witnesses could refuse to testify until the Government had combed through its files to learn if they had ever been overheard on listening devices.

The issue turns upon whether

the Omnibus Crime Control Act of 1968, which rules out the use of wiretap information in court, gives grand jury witnesses the standing to refuse to testify until it is shown that the Government did not learn of their involvement in the case through illegal eavesdropping.

Second Heroin Set

A spokesman for the Justice Department said today that the Supreme Court's decision to hear the case would not delay the trial of Father Berrigan and his co-defendants, scheduled to begin Jan. 10.

The Supreme Court also agreed today to consider another aspect of the wiretap

issue by reviewing the appeals of two men who had refused to answer questions before a Los Angeles grand jury that was investigating alleged gambling and nonpayment of Federal taxes on legal gambling in Las Vegas.

Their reasons were similar to those raised by the women in the Kissinger investigation. However, in the case the Government conceded that both men had been overheard over listening devices but said that the devices had been legally installed with court approval.

One of the men was Sidney Parnas of New York, a 63-year-old employe of Caesars Palace, a hotel and casino in

Las Vegas, who arranges charter gambling flights from New York to Las Vegas. The other was a Los Angeles man, David Gelbard.

They were instructed to testify by the United States Court of Appeals for the Ninth Circuit, which held that grand jury witnesses lacked the standing to challenge the legality of the evidence that prompted the investigation. They appealed to the Supreme Court, noting that a rash of cases on the point were pending in the lower courts, which have divided on the question.

In another action today, the Supreme Court overturned two obscenity convictions, but Jus-

tice Byron R. White opposed the decisions in a way that indicated he may have switched to a new conservative position that could become the majority view of the full nine-member Court.

Stand of Nixon Appointees

Since 1967, the Court has routinely been reversing obscenity convictions without granting hearings or giving reasons, other than to cite the case of Redrup v. New York, which Justice White joined. The ruling in that case suggested that obscenity convictions should be overturned unless the material had been sold to juveniles, or thrust upon unwilling adults.