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William M. Kunstler with defendants in a Harlem murder case at a news session at 100 Centre Street yesterday. From the left are Walter Thomas, Mr. Kunstler, Ronald Felder and Wallace Baker.

'Harlem 4' Ask Curb on Prosecution

By LACEY FOSBURGH

Defense lawyers in the "Harlem Four" case charged yesterday that the Manhattan District Attorney's office had used "force" and "terror" to make a key witness support the prosecution's case.

In a motion in State Supreme Court in Manhattan, the four defense lawyers asked that the witness be placed under Federal protection, so the prosecution could have no further access to him.

The witness in question is Robert Barnes Jr., 25 years old, a major part of the prosecution's case against the defendants at their three trials on a 1964 murder charge. A fourth trial is scheduled to begin Sept. 5.

Last July 7 Barnes gave the defense a 38-page signed affidavit that said his trial testimony was untrue, coerced from him by detectives.

Last Thursday he recanted his recantation, telling the prosecution that his testimony was

true. In court, Robert Lehner, an assistant district attorney, quoted Barnes as having said that inmates in the Clinton Correctional Facility in Dannemora, N. Y., where he is serving a six-year sentence for armed robbery, had forced him to make his July recantation.

The thrust of yesterday's motion by the defense was that Barnes's latest statements were the result of "official wrongdoing" on the part of the prosecution.

"The District Attorney has utilized improper and illegal methods to terrorize, intimidate and improperly influence [Barnes] to repudiate his recantations . . . and are now improperly preventing and-or deterring him from communicating with the outside world."

Witness 'in Custody'

"We don't know if he's being held against his will," William M. Kunstler, a defense attorney, explained yesterday as the papers were filed. "We can't talk to him; we can't reach him. He's being held incommunicado."

The defense papers, including letters and affidavits from prison officials and lawyers,

quoted Edwin LeVallee, superintendent of the Clinton prison, as saying that Barnes was "taken into custody" by two detectives from the Manhattan prosecutor's office on July 8.

The papers further indicate that Barnes was moved from prison to prison without his lawyers being informed. Their letters and telegrams to him, warning him of his right to refuse to speak to detectives, were not delivered, according to statements from both the lawyers and the prison officials.

Such a situation, the papers said, is "rife with intimations of Machiavellian conduct on the part" of Mr. Lehner, the prosecutor.

The motions renewed the defense's earlier request for the case to be dismissed and, alternatively, for an evidentiary hearing to investigate Barnes and his future testimony. The motions are all returnable Sept. 5.

The defendants are charged with the 1964 murder of a Harlem shopkeeper. Their first trial ended in a conviction, which was reversed on appeal. The second and third trials ended in hung juries.