

Thursday

Church and state collided head on Thursday during Sanctuary trial proceedings as three unindicted co-conspirators refused to testify on grounds of their 1st Amendment right to free exercise of religion. Kay Kelly, 62; Mary Ann Lundy, 53; and Rev. George Lockwood, 39; all entered written motions at the beginning of the day to override government efforts to call them to the witness stand.

Trial action began with about 45 minutes of argument before U.S. District Judge Earl H. Carroll by Mrs. Kelly's attorney, Mark D. Rosenbaum of the ACLU foundation of Southern California. Rosenbaum contended that the government had no real need to call Kelly to the stand since her testimony would contain no material the government could not easily obtain from other witnesses. Rosenbaum said his client's testimony would be "redundant and super-cumulative," and said that the government's persistence would only serve to harass Mrs. Kelly.

Mrs. Kelly, an ordained Deacon and the Treasurer of Southside Presbyterian church, explained her decision to remain silent in an affidavit issued Wednesday saying that she felt "guided by a Higher Power." Kelly continued in the statement saying, "I could not live with my conscience if forced to breach the bond of faith I have with my brothers and sisters, and could not carry out the substance of my religious work."

Referring to Mrs. Kelly's religious convictions which prompted her to refuse to testify, Rosenbaum said that he had "never had another client like Mrs. Kelly." The Los Angeles attorney went on to say that whatever small purpose the government could extract from her testimony would be far outweighed by the violation of her rights that would result if the government compelled her to take the stand.

The law states that in order to subpoena a witness, the government must show it has a "compelling interest" in the testimony of that witness, and that there are no other "less restrictive means" of obtaining that information. Generally, the merits of the expected testimony are weighed against the deprivation of rights that would result from an order to testify.

After Rosenbaum's argument, Judge Carroll denied the motion to quash the subpoena and at least temporarily denied Rosenbaum time to make an appeal. However, shortly thereafter the other two co-conspirators advised the Judge that they too intended to refuse to testify on the same grounds. Apparently reluctant to jump headlong into a potential contempt of court situation, Judge Carroll then heard additional argument from the other two attorneys and from government prosecutor Donald M. Reno.

Marcia Levy, attorney for Mrs. Lundy, largely argued the same points as Rosenbaum, but added that her client had never been properly served with the subpoena to appear. On behalf of her client, Levy also submitted an amicus curiae brief that had been filed by a number of national church bodies and Christian organizations.