

Dropping Bomb Conspiracy Case

Saves U.S. Public Answers

By John Hanrahan
Washington Post Staff Writer

By dropping bombing conspiracy charges against the Detroit 15 on Oct. 15, the Nixon administration avoided having to publicly answer allegations by defense lawyers that the government has used illegal wiretaps, break-ins, mail intercepts, infiltrators and provocateurs against their clients.

Detroit U.S. District Judge Damon J. Keith, in an unprecedented order last June, said the defense had the right to question officials of various government units—including the FBI, the CIA and the White House—about alleged governmental misconduct.

The government repeatedly has denied any wrongdoing, but said it could not go ahead with the court inquiry because to do so would compromise national security.

Detroit U.S. Attorney Ralph B. Guy told the court Oct. 15 that one federal agency, which he refused to name had "legally intercepted communications of individuals who are not defendants presently before this court." Guy did not name the individuals, but said the interceptions were done "for the lawful purpose of obtaining foreign intelligence information essential to the security of the United States."

For this reason, Guy said, the government could not comply with Judge Keith's order and would have to drop the charges against all of the defendants.

Defense attorneys scoffed at the national security position of the Justice Department. They said this was merely an excuse by the government to keep the public from learning that a domestic spying plan, which President Nixon says was in operation for only five days in 1970, actually continued to operate in an effort to crush the radical left. The Detroit 15 all were associated with the radical Weather People (formerly Weathermen), who were listed as among the chief targets of the plan.

To bolster their allegation of widespread government misconduct, attorneys for the Detroit 15 in recent

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months have filed with the federal court in Detroit numerous papers, which they say document many of their allegations.

The defense has contended that the government used:

Thousands of illegal wiretaps against the defendants, who are accused of conspiring to blow up police stations and other public buildings across the country.

The government, following a landmark Supreme Court decision last year, turned over to the defense more than 3,000 pages of transcripts of wiretapped conversations.

The defense contends there were even more wiretapped conversations and estimates that, overall, the government overheard as many as 12,000 conversations in connection with the investigation between June, 1969, and February, 1970.

In that decision involving the Detroit case, the Supreme Court ruled that the government did not have the right to wiretap without a court order in domestic security cases.

Numerous break-ins and thefts of documents from the defendants, their attorneys and associates.

Last June, Newsweek magazine reported that Senate Watergate investigators had obtained specific information that break-ins were committed by the government against the Detroit 15 and other radicals who were defendants in other conspiracy trials. This information has not been made public by the committee, but defense attorneys have come up with several examples on their own.

For example, defense lawyer Gerald B. Lefcourt told the court last spring that his residence had been burglarized twice and his office broken into three times, as well as his office being destroyed

by fire—caused by arson—in the spring of 1970.

Also, defense attorneys Lefcourt, William J. Bender and William H. Goodman last August filed sworn affidavits alleging that the government had broken into the files of Goddard Vt. College, and the regional office of SDS and the office of the Radical Education Project (REP), both in Ann Arbor, Mich.

An affidavit sworn to by Goddard President Gerald Witherspoon last Aug. 10 states that a picture of Ronald Flegelman, one of the defendants and a student at Goddard in the 1969-1970 school year, was stolen from college files and turned up on an FBI wanted poster in the fall of 1971.

Another affidavit, sworn to by Diana Oughton on Feb. 10, 1969, and made public only last summer, describes a break-in and theft of financial records, membership records, outgoing letters and other documents at the SDS office in Ann Arbor two days earlier.

Miss Oughton, originally a defendant in the Detroit case, was killed March 5, 1970, when a Greenwich Village town house, alleged by the government to have been a Weatherman bomb factory, blew up.

Yet another allegation submitted to the court by the defense concerns a break-in and theft of an address book from the Chicago apartment of Cathy Wilkerson, one of the Detroit 15 defendants.

Lefcourt submitted to the court a copy of a 1971 edition of "On Target," a publication of the ultraright-wing Minutemen. The publication boasted that members of the organization had broken into the apartment and then turned the stolen address book over to the FBI.

Extensive interceptions of mail intended for defendants, their associates or rela-

tives. The defense has cited two examples to the court.

The first took place in May, 1970, the defense lawyers allege, about the time that Weatherman leader Mark Rudd and other of the defendants were going into hiding. (Ten of the 15 defendants including Rudd, are still underground.) At that time, Rudd's mother sent a letter to a distant relative in Canada, asking if Rudd could stay with her if he came to Canada. The relative wrote back, saying Rudd would be welcome. Before the return letter arrived at Mrs. Rudd's New Jersey residence, the defense contends, the Royal Canadian Mounted Police came to the Canadian woman's home and asked about Rudd.

A second allegation was made last week by defendant Russell Neufeld, who said that an unnamed mail carrier had told him in July that the mail of Neufeld's brother, Peter, was being routinely taken to a postal inspector before being delivered to his brother's residence. (Peter Neufeld was an unindicted coconspirator in the Detroit 15 case.)

Used informers and provocateurs to try to gain information on the defendants and spur them into violent activity.

The first indictment in the Detroit case was returned in June, 1970. At that time, one of the defendants listed in the indictment was Larry Grathwohl. The government returned a superseding indictment last December, and Grathwohl was no longer listed as a defendant, nor even as an unindicted coconspirator. His name appears once in the indictment in one of the acts the government alleges made up the conspiracy.

Grathwohl's father-in-law acknowledged to the news media earlier this year that

included in what

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his son-in-law had infiltrated the Weathermen for the FBI. He said Grathwohl supposedly was in the New York town house when it blew up and killed Miss Doughton and Theodore Gold, an unindicted coconspirator in the Detroit case, and that he provided the tip

that led to the April, 1970, arrests in New York of Linda Evans and Dianne Donghi, two fugitive Weather People in the Detroit case.

Some of the defendants in the Detroit 15 case have alleged that Grathwohl repeatedly tried to provoke radicals to go beyond property destruction, saying they could only be true revolutionaries if they were willing to kill.

"There's no doubt in our See DETROIT, ES, Col. 1

minds that he was a government provocateur," said defense attorney Lefcourt. "We figure that he would have been the major government witness if the case had ever gone to trial."

Since President Nixon took office in 1969, the government has brought a number of conspiracy indictments against antiwar activists and radicals and has acknowledged in virtually all of the trials that it made use of infiltrators and informers.

The most recent example came in the August trial in Florida of the Gainesville 8, seven of whom are members of the Vietnam Veterans Against the War. In that trial, two FBI informers, described by two of the defendants as their best friends, showed up to testify against them.

The Gainesville 8 were acquitted by a jury on federal charges that they conspired to cause a riot at the 1972 Republican National Convention.

In recent major conspiracy cases brought by the government against 80 defendants, 79 of them have either been acquitted of conspiracy charges or had the charges dropped by the government.

Only the Rev. Phillip Berrigan, convicted of the minor charge of smuggling letters out of prison in the Harrisburg 7 case, ended up with

a conviction in a major conspiracy case. Berrigan, who was imprisoned for destroying draft records in Maryland in pre-Nixon administration days, was acquitted with six other persons on charges that they conspired to kidnap presidential adviser Henry Kissinger, now Secretary of State.

In many of the previous conspiracy cases, wiretapping was alleged by the defendants and, in many cases, was admitted by the government. Break-ins and mail intercepts also were alleged in some of the cases. But only in the Detroit 15 case has the government been accused of such a wide range of spying activities.

It is this alleged broad range of spying activities that has led defense attorneys to charge that the so-called "Huston plan"—or something very much like it—was put into operation against the Detroit 15 and others in an effort to crush the radical left.

The Huston domestic spying plan, which came to light during the Senate Watergate hearings last summer, derives its name from former White House aide Tom Charles Huston, who oversaw preparation of the plan in 1970. The plan recommended using a number of spying techniques—wiretaps, break-ins, mail intercepts, infiltrators and provocateurs—against radicals, with particular emphasis on the Weathermen and the Black Panthers.

President Nixon last spring acknowledged he had approved the plan, despite warnings in one of Huston's memos that certain aspects of the plan—such as break-ins—were clearly illegal. Mr. Nixon said the plan was in operation for only five days in late July, 1970, and was rescinded by him when then-FBI Director J. Edgar Hoover refused to go along with it.

In most of the publicized conspiracy cases lost by the government—including the Detroit, Gainesville 8 and Camden 27 cases—the grand jury investigations were led by Justice Department attorney Guy L. Goodwin.

Defense attorneys in the Detroit 15 case and in many other conspiracy

cases, as well as the American Civil Liberties Union, have denounced Goodwin's nationwide use of grand juries as an unconstitutional, anti-democratic attempt to stifle protest and dissent over the Indochina War and domestic issues.

In many of the recent major conspiracy cases, the defendants were from the non-violent, or even pacifist, left. In the Detroit 15 cases, the defendants were a virtual who's who of the revolutionary white left in the late 1960s and early 1970s.

The Detroit 15 defendants include former SDS leaders Bernardine Dohrn, Mark Rudd and William Ayers; Kathy Boudin, the daughter of Leonard Boudin, the attorney for former Pentagon

Papers' defendant Daniel Ellsberg; Robert (Bo) Burlingham, now managing editor of Ramparts magazine; Cathy Wilkerson, Linda Evans, Diane Donghi, Ronald Fliegelman, John Fuerst, Leonard Handelsman, Russell Neufeld, Naomi Jaffe, Roberta Smith and Mark Real.

Only five of the 15—Burlingham, Donghi, Evans, Neufeld and Real—were in court Oct. 15. The other 10 are fugitives. With the dropping of the Detroit case, only Burlingham, Donghi and Neufeld have no other charges pending against them anywhere, Lefcourt said.

For years, the left has alleged it was the target of illegal government activity. It was only last June 5 that it was given the opportunity in court to try to prove it.

On that date, Judge Keith ordered various governmental units to make full disclosure of any "burglary, acts of sabotage, mail searches, electronic surveillance devices, provocateurism, break-ins and entering" that were used against the Detroit 15, their lawyers or SDS or Weather People offices.

The order applied to the FBI, the CIA, the National Security Agency, the Departments of Justice, Defense and Treasury, the Secret Service, the White House and the White House "plumbers" unit, of which Watergate conspirators Gordon Liddy and E. Howard Hunt Jr. were members.

The judge's order also permitted the defense to

call any governmental or former governmental officials to question them at an evidentiary hearing about government spying on radicals.

Throughout the summer, the government periodically went into court asking for clarification of the judge's June order, or to tell the court that it had certain information it did not want to be made public.

After granting several delays, the judge last month set Oct. 22, as the date for the evidentiary hearing. Faced with this, U.S. Attorney Guy appeared in court last Monday and said:

"The Justice Department has received sworn denials of these agencies that any such illegal or improper conduct as described in the defendant's motion and affidavits has been engaged in by any of these agencies."

However, an agency of the federal government, for the lawful purpose of obtaining foreign intelligence information deemed essential to the security of the United States, has legally intercepted communications of individuals who are not defendants presently before this court.

"The government has determined that the security of the United States requires that there be no disclosure of this information and further that the broad scope of the evidentiary hearing previously ordered by this court permits inquiries, which may lead to disclosure of this vital national security information."

For this reason, Guy told the court, the government was asking dismissal of the case "with prejudice," which means that the defendants cannot be tried again for the offenses alleged in the indictment.

Guy, in a telephone interview with The Post, said he could not disclose which agency of the government had intercepted communications relating to the Detroit 15 case, nor the names of persons who were parties to the communications.

He also expressed regret that the case could not be tried. Many previous indictments "involving the New Left had to do with political philosophy, but not this case," he said. In the Detroit case, he contended, "serious allegations involving acts of violence were made" against the defendants.

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The government contends the alleged bombing plot was hatched in Flint, Mich., on Dec. 27, 1969, and continued for three years, covering 15 cities in 10 states and extending from southern California to northern Vermont.

The indictment lists 44 alleged conspiratorial acts, but only one is an actual violent act—the firebombing of a Cleveland policeman's home on March 2, 1970, allegedly by one of the defendants and an unindicted coconspirator.

Most of the other alleged acts relate to fiery speeches made by defendants in which they urged others to bomb police stations and public buildings in general. The indictment lists no specific police station or public building that was actually bombed.

Guy said he regards the defendants as dangerous, but he said the national security issue outweighed society's need to bring the Detroit 15 to trial. He said he could give no other details beyond what he said in court, that the intercepted communications related to "the lawful purpose of protecting the national security" and, for this reason, he could not disclose their source or content.

Defense attorney Bender says the defendants are planning to file a civil suit, seeking damages for the alleged illegal government conduct. In this way, Bender said, the defendants hope, through the process of taking sworn depositions from government officials, to obtain the same information on alleged government misconduct they would have obtained if the evidentiary hearing ordered by Keith had taken place.



GUY L. GOODWIN
headed investigations