

Post 8/22/78

Ex-Guard Will Get New Trial On Nixon Threat Conviction

RICHMOND, Aug. 21 (AP)—A security guard at the Norfolk Naval Shipyard turned to his fellow officer in the patrol car and said without preamble:

"I'm going to kill President Nixon and I'm going to Washington to do it."

That was on May 16, 1969, and it was unsettling enough for Herbert N. Cherry to report it to his supervisor.

Agent Listens In

Six days later Cherry and Ronald Douglas Patillo again were on patrol together. But this time a Secret Service agent with listening gear crouched in the trunk of the car.

Cherry engaged Patillo in conversation about the rioting in the country and Nixon's nomination of a new chief justice of the United States. Patillo agreed the rioting was bad but didn't comment on the Supreme Court.

Then Cherry asked Patillo if he thought President Nixon was doing a good job. To this Patillo replied: "I will take care of him personally."

He was asked how. Patillo made no direct response but said he would gladly give up his life doing it, and volunteered that getting close to the President would not be a problem because he didn't need to get close to do it.

This sequence of events was set out in an opinion of the 4th U.S. Circuit Court of Appeals Friday. Patillo had been indicted, tried and convicted and sentenced to four years' imprisonment in U.S. District Judge Richard B. Kellam's court in Norfolk.

At his trial, Patillo said he had no recollection of the first conversation with Cherry dealing with the President, had nothing against Nixon and was not concerned with politics.

As to the second conversa-

tion—when the Secret Service man was in the trunk of the car—Patillo said he remembered the talk about the riots, but had not mentioned or referred to Nixon.

Testimony Credited

The trial court, however, fully credited the testimony of Cherry and the Secret Service man on what Patillo said.

However, the court of appeals reversed Patillo's conviction and ordered a new trial.

It agreed, in an opinion by Judge J. Braxton Craven, that Patillo's remarks constituted a true threat. But the court added that an act that makes criminal a form of pure speech must be interpreted with the guarantees of the First Amendment in mind.

Craven said the threat, even if not communicated to the President, could form the basis for conviction "but only if made with the present intention to do injury to the President."

"There is no danger to the

President's safety from one who utters a true threat and has no intent to do actually what he threatens," the court said.

Craven noted that a true threat must be made "knowingly and willingly" with the intention of following through.