

The Berrigan Trial: To What Purpose?

Now that the trial of Father Phillip Berrigan and his co-defendants is over, it might be useful to go back over the course one more time to try to see what it tells us about the trend in the administration of justice in this country these days. The first news of this business came seeping out of the White House in news dispatches in mid-October 1970 reporting that the Director of the FBI had warned Republican Congressional leaders at a White House briefing that the wave of political kidnappings and assassinations in Canada and Latin America might spread to the United States. Specifically, Mr. Hoover was reported to have warned that "a new secret revolutionary group, called the 'East Coast Conspiracy to Save Lives' planned to use political kidnappings and assassinations as a device to disrupt government."

The anti-war movement was still alive and kicking and draft board raids were still being carried out. This was—if true—heady and heavy stuff. Later in the year, Mr. Hoover testified before a subcommittee of the Senate Appropriations Committee that the East Coast Conspiracy planned to kidnap White House aide Henry Kissinger and to blow up tunnels under government buildings.

At that point the FBI really went to work interviewing, investigating and putting all kinds of information together. A federal grand jury, which had begun sitting in December, handed down indictments in January charging Berrigan and a number of others with conspiracy to kidnap and to bomb and—inexplicably—with the substantive crime of kidnapping. During the next month portions of letters which had been passed between Sister Elizabeth McAlister and Father Berrigan somehow found their way to Time and to Life.

At about the same time, William S. Lynch, who was to become chief prosecutor, was assigned to the case. Shortly thereafter, a second indictment was handed down by the grand jury changing the cast of defendants a bit, dropping the substantive kidnap charge and making the major charge general conspiracy—with bombing, kidnapping and draft board raids being mentioned, thus relieving the government of the obligation to prove the specific crime of kidnapping. It contained, as an attachment, two of the letters which had passed between Sister Elizabeth and Father Berrigan. The press picked them up and the plot began to look real while the private lives of Berrigan and Sister Elizabeth became the subjects of salacious gossip. Then came the trial. The prosecution took 24 days to present 64 witnesses, but the chief witness for the prosecution was Boyd Douglas, 31, a man with a criminal record dating back to 1958 includ-

ing convictions on such crimes as passing bad checks and forgery followed by an assault on an FBI agent. When Philip Berrigan was brought to Lewisburg Federal Penitentiary to begin serving time for his part in draft board raids, Douglas was the only prisoner in the institution on a study-release program—giving him access to the outside world. Shortly thereafter, Boyd Douglas began to act as courier between Berrigan and Sister Elizabeth. When the prison authorities confronted him with their knowledge of his activities Douglas agreed to become an informer for the FBI.

Douglas testified about the letters and about his conversations with the defendants. He told about passing himself off to the defendants as a demolition expert and he told about turning in friends after urging them to participate in demonstrations. The defense tried to make him out a professional liar, but it was clear when Douglas left the stand that the defendants had corresponded in a manner that violated prison policy and that, indeed, there had been conversation about the tunnels of the capital and a "citizens' arrest" of Dr. Kissinger.

After the prosecution rested, so did the defense—it offered no evidence whatever, letting the prosecution's case rise or fall on its own weight. The jury convicted Father Berrigan and Sister Elizabeth of seven counts of smuggling illegal contraband—seven letters—an offense for which no one had ever been previously prosecuted, but it hung—overwhelmingly 10 to 2—for the defendants on the major conspiracy charge.

Now that the smoke has cleared, it seems fairly obvious that the great bogey man Mr. Hoover conjured up for us was something closer to a nun's dream of glory, fueled by letters passing between people who shared a twin passion: one for each other and the other for peace, and having it all frustrated by a long, enforced separation. The FBI discovered the correspondence between Berrigan and Sister Elizabeth and, instead of stopping the continuing crime—of which the two now stand convicted—they encouraged, aided and abetted it. Then Mr. Hoover jolted the country and the snowball became an avalanche—not to say a screen behind which to hide the FBI's failures in other matters such as running fugitives Bernadine Dohrn and Kathy Boudin to earth. An enormous amount of the taxpayers' money was spent in this folly, and to what purpose?

To some purpose, we think. The work of the law is to draw lines between situation A and situation B or between lawful conduct and that which is illegal. The Harrisburg jury did a great service, we believe, in voting ten to two that written fantasies are not yet against the law in the United States.

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