

# Washington Post

Times Herald

THURSDAY, APRIL 6, 1972

Phone 2

## 2 Guilty In Plot

### Letters

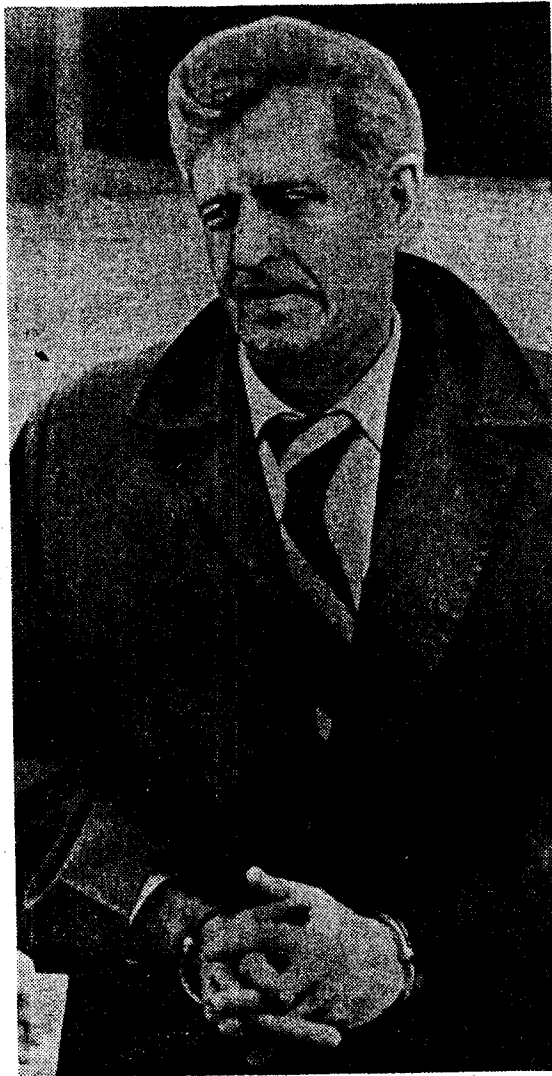
3/6/71  
Berrigan Jury  
Fails to Agree  
On Conspiracy

By Betty Medsger  
Washington Post Staff Writer

HARRISBURG, Pa., April 5 — U.S. District Court Judge D. Dixon Herman dismissed the federal jury here today as deadlocked on whether the Rev. Philip Berrigan and six other anti-war activists conspired to kidnap presidential adviser Henry A. Kissinger, to bomb tunnels under federal buildings in Washington and to raid federal offices.

The jury found Father Berrigan and Sister Elizabeth McAlister, a New York college art history teacher, guilty of charges that they smuggled contraband letters in and out of Lewisburg, Pa., federal penitentiary in 1970.

The jury also reached an impasse on charges that Father Berrigan, now serving a six-year prison term for the destruction of Selective Service records, and Sister McAlister sent letters to each other that pertained to the kidnaping of



Associated Press

Father Berrigan returns to jail after being convicted.

Kissinger in August, 1970.

The five other defendants, freed by the jury's deadlock on the general conspiracy count, are: Eqbal Ahmad, 41, a Pakistani scholar who is the only non-Catholic among the defendants; the Rev. Neil McLaughlin, 31, and the Rev. Joseph Wenderoth, 36, both Baltimore parish priests; and Anthony Scoblick, 31, and his wife, Mary Cain Scoblick, 33, former priest and nun from Baltimore.

The defendants and their attorneys generally felt the hung jury on the conspiracy and "threatening" letter counts was a victory.

"A hung jury is often more just than the judge or the Justice Department," said Sister McAlister at a press conference after the discharge of the jury.

"We should put more and more authority in the hands of the people," she said. "They have a greater sense of decency than those in power."

Prosecution attorneys refused to comment. "There's still a prosecution pending," said Harrisburg U.S. Attorney S. John Cottone.

The government must now decide whether to drop the charges first brought in January, 1971, or to retry the case.

The nine women and three men announced their inability to make a decision on the major charges just two hours after Judge Herman, responding to a juror's question, said that according to his charge the jurors could convict the defendants of conspiracy even if they thought the defendants had conspired to commit only one element of the conspiracy—kidnaping, bombing, raiding

See PLOT, A27, Col. 1

offices or possessing explosives.

Sequestered for two months, the jury deliberated for about 60 hours over seven consecutive days before their announcement at 4:15 p.m.

On Sunday afternoon, the jury had announced that they were deadlocked on all but one count. At that time, they found Father Berrigan guilty of one of the four contraband counts. That involved a letter smuggled for the priest by informer Boyd F. Douglas, the government's key witness, before the FBI and federal prison officials learned about the smuggling system.

Since Sunday there have been several hostile exchanges

between Judge Herman and the defense attorneys, with the attorneys insisting that the judge was purposely keeping the deadlocked jury in session. They accused him of trying to "coerce" guilty verdicts.

Three times the jury, confused by the judge's original charge on conspiracy last week, asked him to reread it. Today they specifically asked how many of the elements had to be proven.

The seven contraband letter charges carry maximum sentences to 10 years each.

A hearing will be held here May 2 to determine if Father Berrigan and Sister McAlister were the objects of selective prosecution. Former Attorney General Ramsey Clark, a defense attorney, said his research indicates that this case was the first time anyone was prosecuted for violating the prison contraband statute.

Such violations of prison regulations, Clark said, are routinely handled as administrative decisions by prison officials. A violator, for instance, might be placed for a short period.

The "threatening" letters on which the jury could not agree on a verdict were the heart of the government's evidence that the seven defendants conspired to kidnap Kissinger.

"It needs much more thought and careful selection of personnel," Sister McAlister wrote in an Aug. 20, 1970, letter to Father Berrigan about a proposal "to kidnap—in our terminology make a citizens' arrest of—someone like Henry Kissinger."

Replying from his cell at Lewisburg, where he had then been imprisoned four months, Father Berrigan wrote to Sis-

ter McAlister, "... The project as you outlined it is brilliant, but grandiose. I've found with bitter experience, that when people opt for too much, they're either stupid or egotistical. . . . Nonetheless, I like the plan and am just trying to weave elements of modesty into it.

"Why not coordinate it with the one against capitol utilities. . . . To disrupt them, and then grab the Brain Child (Kissinger)—This would be escalation enough."

Father Wenderoth said at a press conference after the jury's decision was announced, "It's not actually a hung jury. The verdict says it's a hung

government."

Declaring that the defendants "will not be frightened by this government," Ahmad said at the press conference the defendants would be demonstrating against the Vietnam war Thursday morning in York, Pa., at a plant that manufactures bombs destined for Vietnam.

"My plans are to get out of here as soon as I can and to get into the streets to protest the war in Vietnam," said Ahmad.

The jury began deliberating last Thursday after a charge from Judge Herman that defense attorney Lenzer characterized as "no less than an argument on behalf of the government for conviction."

The jurors heard only from one defendant, Father Berrigan, who rose in court March 24 and said "Since I discharged my lawyers, I rest my own case." His words came after defense lawyers stood one-by-one and rested without testimony.

The decision to rest was made by the defendants in an hour and a half meeting March 23 in Father Berrigan's cell in Dauphin County prison.

In addition to their belief that the government had not presented a convincing case, the defendants said Judge Herman's refusal to let them present evidence of what they termed "discriminatory prosecution" was a factor in their decision.

Additionally, the judge's refusal to extend immunity to defense witnesses, who were said to be awaiting presentation of the defense case, contributed to the decision, they said.

The prosecutors over 24 days presented testimony from 64 witnesses.

The government's case rested primarily on the contents of 24 letters exchanged between Father Berrigan and Sister McAlister, 32, a professor of art history at Marymount College in Tarrytown, N.Y., and the 14 days of testimony by Douglas, 31, who met Father Berrigan when both were inmates at Lewisburg, Pa., federal penitentiary in 1970.

The defense contended that Douglas, much of whose testimony dealt with conversations he had with the defendants in the summer and fall of 1970,



Associated Press

Six of the seven Harrisburg defendants answer questions after Father Berrigan and Sister Elizabeth McAlister were found guilty of letter smuggling. From left, Eqbal Ahmad,

Father Neil McLaughlin, Father Joseph Wenderoth, Sister McAlister, Anthony Scoblick and wife Mary. Except for Sister McAlister, the remaining defendants went free.

offered to help Father Berrigan on the day they met in May, shortly after the priest was brought to the penitentiary.

Douglas, who in 1970 was the only Lewisburg prisoner on a study-release program at Bucknell University, was the go-between for the letters between the priest and the nun.

From the outset Douglas read each letter he smuggled. He copied the letters, saying them, he said, for the day when he would be able to make prison officials "realize the threat of these people to the United States."

In early June, a guard discovered a letter in Father Berrigan's cell. The letter indicated that a mail smuggling system existed, and prison officials confronted Douglas.

He was introduced to the FBI the evening of June 3 by prison officials. After June 3, all letters exchanged by Father Berrigan and Sister McAlister were smuggled by Douglas with the knowledge and approval of both the FBI and prison officials.

The prosecution sought to buttress the letters with Douglas' testimony.

Shortly after he met Father Berrigan, Douglas said, the priest told him that he and Father Wenderoth had entered heating tunnels under the Forrestal Building in Washington, D.C., to determine if they could turn off the heat to that and other federal buildings supplied by the system.

Father Wenderoth later told

him the same thing, Douglas said. Two other witnesses testified similarly.

The majority of the government's witnesses were FBI agents, policemen and other public employees who testified about raids of draft offices in Philadelphia, Rochester, N.Y., and in Delaware.

Testimony revealed that two of the three sets of raids cited in the indictment occurred with the prior knowledge of the FBI.

Officials knew of the Delaware raids through Sister McAlister's letters and through telephone calls she made to Douglas from Delaware. Two persons involved in the raids were arrested, and the charges against them were dropped.

The FBI knew about the Rochester raids through a tip from Douglas, who got a \$1,500 reward. The raids were allowed to be carried out and the raiders were arrested.

John Theodore Glick, who as a defendant will be his own attorney in a separate trial, served a federal prison term in connection with the Rochester raid.

The defense maintained that there was no conspiracy to kidnap or to blow up tunnels. Describing the two letters the government said were the key to the kidnaping conspiracy charge, defense attorney O'Dwyer said in summation, "There it was born and there it died, except in the newspapers."

The latter phrase was a reference to FBI Director J.

Edgar Hoover's public announcement Nov. 27, 1970, that a plot to kidnap a high official existed.

From the time they were indicted, the defendants insisted that they were being prosecuted in an effort to save the reputation of the FBI Director.

During cross-examination of prosecution witnesses, defense attorneys stressed these points:

- Three days after the director's statement, handwriting experts at FBI headquarters examined for the first time the two letters written by Sister McAlister and Father Berrigan that discuss the feasibility of a political kidnaping of "someone like Kissinger." The FBI possessed the letters since they fell into Douglas' hands in August 1970.

- The same day Hoover made his statement he sent Lewisburg FBI agent Delmar Mayfield a memorandum in which he approved an arrangement whereby Douglas, on his release from prison in December, would be paid \$1,000 a month for additional information about the case.

- A week after Hoover's statement, while Douglas was still a prisoner, agents took him to a Holiday Inn in Danville, Va. and for the first time asked him to identify pictures of persons in the "plot" and to explain how deeply each one was involved.

On that same day, the FBI

equipped the informer with a device to record telephone conversations with the defendants. A short time later, he testified they gave him another recorder, in the shape of a money belt, to get recordings of face-to-face conversations with the defendants.

The defense also attacked Douglas' criminal record and his credibility as a witness.

Douglas' latest federal term ended Dec. 16, 1970. His criminal record dates back to 1958 when he was a high school sophomore in Ohio and was arrested for passing bad checks.

In 1962, he allegedly forged checks amounting to \$60,000 in banks throughout the nation and was arrested in an Aca-pulco hotel where he was spending the money. At his latest arrest in 1967 in Milwaukee, Douglas was armed with a pistol.

In cross-examination, defense attorneys elicited from Douglas an admission that he had lied to Father Berrigan and the other defendants numerous times. He said he would not, however, lie on the stand in order to convict them.

But in his summation defense attorney Clark told the jury Douglas had "lied to you more times than you and I will ever know."

"If you believe him," Clark said, "you will go to your last day wondering if you are the last one in a long, long line of people he has taken in."