

Jury Begins Deliberations In Plot Case

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HARRISBURG, Pa., March 30—A federal jury began deliberating the conspiracy charges against the Rev. Philip Berrigan and six other antiwar activists today as defense attorneys denounced the judge for causing "irreparable prejudice" to the defendants in his charge to the jury.

U.S. District Judge R. Dixon Herman completed his two hours of jury instructions by reciting prosecution evidence against each of the seven defendants. Defense attorneys immediately charged the judge with making "errors" in the summation.

The judge's comments were "no less than an argument on behalf of the government for conviction," said defense attorney Terry F. Lenzer.

At the end of the judge's charge, but before the jury was dismissed, defense attorneys spent an hour at the bench trying to convince the judge to "instruct the jury to completely disregard his evidence on the basis that it was a summation of the government's case," said Lenzer.

The judge refused their request but upon resuming told the jury to pay attention to defense exhibits as well as government exhibits. Earlier, he had only advised the jurors to read exhibits written by defendants. However, he did not discuss the "errors" the defense lawyers said they had pointed out.

One example of an "error," the defense attorneys said,

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was that the judge recalled that a witness had said defendant Mary Cain Scoblick was part of a group that fell suspiciously silent when the witness entered a Philadelphia house. The government contended that the house was a planning center for draft board raids. Testimony did not indicate Mrs. Scoblick was part of the group, defense attorneys said.

The judge also said defendant Sister Elizabeth McAlister, according to informer Boyd Douglas' testimony, had told the informer in September, 1970, that the "kidnap plan" was progressing. Douglas did not so testify, the defense attorneys said.

In his opening remarks the judge told the jury, "This is not a political trial. It is not a trial against the war in Vietnam. It is not a trial against Boyd Douglas."

The government's chief witness, Douglas, is an ex-convict who met Father Berrigan in 1970 while both were inmates at Lewisburg, Pa., federal penitentiary.

Judge Herman advised the jury to "scrutinize" Douglas' testimony with "caution," in view of his past criminal record. He said the jurors should not assume "that he is incapable of telling the truth."

The seven defendants are charged with conspiracy to kidnap presidential adviser Henry A. Kissinger, to bomb tunnels under federal buildings in Washington and to raid federal offices.

According to the judge's instructions, to convict any of the defendants the jury must find one "over-all conspiracy." But that one conspiracy may include only one of the three principal elements, or two or three elements.

Two of the defendants face long potential prison sentences because they also are

charged with sending threatening letters and with illegally attempting to get letters in and out of Lewisburg Penitentiary, attempts that were successful with Douglas' assistance.

Father Berrigan, now serving a six-year sentence for destruction of Selective Service records, faces a potential 50-year sentence in this case. Sister McAlister faces a potential 40-year sentence. The other five defendants face potential five-year sentences.

On the defendants' contention that they were entrapped by Douglas, the judge told the jury that entrapment existed only if the government agent implanted the original "intent" to commit a crime, and not if he "merely provided a favorable opportunity for breaking the law."

The judge urged the jurors to distinguish between motive and intent. The questionable "wisdom of a law" also should not play a role in the jury's deliberation, the judge said.