

Jurors Convict Berrigan On One Count, Debate 9

NYTimes By HOMER BIGART APR 3 1972

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HARRISBURG, Pa., April 2— The Rev. Philip F. Berrigan was convicted today of smuggling a letter out of the Lewisburg, Pa., Federal prison.

But the jury was deadlocked on whether Father Berrigan or the six other defendants, mostly priests and nuns, were guilty or not guilty on other counts, including one charging them with plotting to kidnap Henry A. Kissinger, President Nixon's foreign affairs adviser, to blow up generators and steam-heat-

The jurors looked weary and glum, but Federal District Judge R. Dixon Herman told them to go back and deliberate on the remaining nine counts for another half-hour. Then he sent them back to their motel at 4 P.M. with instructions to resume deliberations at 9 A.M. tomorrow.

"If you become hopelessly deadlocked, the court must dismiss you," the judge said.

Remaining to be decided are count one, the general conspiracy charge involving all seven defendants; count two, charging Sister Elizabeth McAlister, a New York City nun, with sending a threatening letter (the proposal to abduct Mr. Kissinger) through the mails; counts three, six, eight and ten charging that Father Berrigan tried to smuggle letters out of Lewisburg, and counts five, seven and nine charging Sister Elizabeth with attempting to smuggle letters to Father Berrigan in the prison.

The jury received the case Thursday afternoon after a charge by Judge Herman that seemed, to the defense attorneys, like a "summation for conviction."

The jury quickly became mired in the complexities of conspiracy law and asked the judge for clarification on a number of points. It labored through most of Easter Day and then the foreman, Harold C. Sheets, a tax accountant, sent Judge Herman the following note:

"The jurors, after long, seri-



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The Rev. Philip F. Berrigan

ing tunnels in Government buildings in Washington, and to vandalize draft board records in several states.

After 33 hours' deliberation, the jury was able to agree on only one of the 10 counts in the indictment. Although count four carries a maximum penalty of 10 years, it relates to the smuggling of an innocuous letter containing no mention of the bombing-kidnapping plot.

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BERRIGAN GUILTY ON SINGLE COUNT

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ous and conscientious deliberation on all facts available and their recollection of testimony heard during the past weeks, are unable to arrive at a unanimous verdict of nine counts of the indictment.

"We will await further instructions from you."

Judge Herman asked the jurors to prepare a sealed verdict on the single count they had agreed upon. Back they came in five minutes and Mr.

Sheets handed an envelope to Richard Bowen, a clerk of court.

"As to count four we find the defendant Philip Berrigan guilty," Mr. Bowen read.

Father Berrigan, sitting against a wall behind the defense table, heard the verdict with no show of emotion. He is now serving a six-year sentence at Danbury Federal Prison for destruction of draft board records at Catonsville, Md., and Baltimore in 1968.

"Small verdict, small reaction," said his elder brother, the Rev. Daniel J. Berrigan, S.J., the "poet-priest" recently paroled from Danbury after serving 18 months for participation in the Catonsville incident. Father Daniel Berrigan was first listed as a co-conspirator in this case, but was

dropped in a superceding indictment.

Defense attorneys objected to the split verdict. They said that if the jurors had reserved their decision on count four there was always a possibility of changing it during their deliberations on the other counts.

Once the verdict was read, defense attorneys objected to continued deliberations and asked that the jury be discharged.

But Judge Herman said the case was too important and too expensive—it has already cost the Government several million dollars—and, besides, “it’s unlikely a retrial would get a better jury.”

The letter cited in count four was written by Father Berri-

gan on May 24, 1970, and was carried out of Lewisburg prison by Boyd F. Douglas, Jr., a fellow convict, who made a copy of the letter and later turned it over to the Federal Bureau of Investigation.

Douglas, who has served seven years in Federal prisons for fraud and assault with a gun, was the Government’s star witness in this case. Under cross-examination Douglas admitted that he became a paid informer for the F.B.I. after June 3, 1970.

Defense lawyers said that after that date, the contraband letters to and from Father Berrigan were carried by Douglas with the knowledge and consent of prison officials and the F.B.I., and consequently broke no law.

The count four letter was written before Douglas says he made his agreement with the F.B.I. to become a paid informer.

Paul O’Dwyer, one of the defense counsel, said today that prosecution for contraband mail in and out of prisons was almost unprecedented. He said the passage of such mail was commonplace.

Father Daniel Berrigan said at a news conference that Judge Herman was “very determined to get convictions in this case” and that his instructions to the jury were “savage and unfair.”

As for letters between Father Philip Berrigan and Sister Elizabeth, he predicted: “They’ll probably be literary treasures in a few years.”