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Berrigan

Jury 10 to 2

For Acquittal

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HARRISBURG (Pa.) —

Ten members of the hung jury in the Harrisburg Seven trial favored acquittal on the principal kidnap-bombing conspiracy charge, one juror said today.

Government prosecutors postponed a decision on whether to conduct a second trial on the seven anti-war defendants on charges of conspiring to abduct presidential adviser Henry A. Kissinger and to destroy the federal building heating system in Washington, D.C.

But a defense attorney claimed today the 10-2 vote for acquittal made retrial unlikely.

Father Philip F. Berrigan and Sister Elizabeth McAlister were convicted of trying to smuggle six letters in and

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out of Lewisburg (pa.) federal prison in 1970.

Possible Sentences

Each could be sentenced to 32 years in prison for those offenses. The priest was convicted Sunday on a similar charge that also carries a maximum 10-year sentence.

Federal Judge R. Dixon Herman declared a mistrial on the conspiracy count and two other counts accusing Father Berrigan and Sister Elizabeth of sending kidnap threats through the mail.

Herman acted after the jurors ended 59 hours of deliberations over seven days by declaring they were hopelessly deadlocked on the first three counts.

Lawrence Evans, 56 year old supermarket owner from Dillsburg, York County, said he and Kathryn Schwartz, 60, also of rural York, who has four conscientious objector sons, were the only ones supporting conviction on the conspiracy charges.

Informer Doubted

"I think they should have been found guilty," Evans said. "I don't care if the whole world knows it."

Evans said many of the jurors — especially the women — didn't believe the testimony of FBI informer

Boyd Douglas, whom the defense attacked as "a liar all his life."

"What swayed some women was that he lied to some girls when he promised to marry them, poor souls," Evans said.

'Cussed Country'

He said one male juror, Robert Foresman, 45, Lewisburg, "was for acquittal right from the start."

"Foresman cussed the country and the government and said that's the way they operate," Evans said. "He thought the indictment wasn't written properly and you couldn't convict on those charges."

Evans said the jurors "were all shocked that the defense rested without offering any witnesses or any testimony."

"It shot me down," he said. "I feel if you didn't do something you should tell the world you didn't do it."

Throughout the trial, he added, there were heated arguments among the jurors and he was sorry to have served "because of the outcome."

Another juror, Mrs. Vera P. Thompson, of Carlisle, attributed the deadlock to the testimony of Douglas.

"Boyd Douglas was the reason you had a hung

jury," she told reporters, indicating that several jurors never believed the 31-year-old former convict's story about the kidnap-bombing plot.

Mrs. Thompson said the division within the jury remained fairly constant, not shifting very much as days went by.

"It took a long time to get the whole picture," she said.

And she added that, despite the judge's reading of his conspiracy instructions on three occasions, she was "totally confused" on the conspiracy law.

A relative of a third juror reported that the jury felt the defense attorneys' cross-examination had seriously damaged Douglas' credibility.

Douglas had served two terms in prison and been called an accomplished confidence man by the FBI itself.

Free on Bond

The defendants will remain free on bond, except for Father Berrigan, who will return to Lewisburg Federal Prison where he is serving a six-year sentence for destroying draft records in Maryland.

William S. Lynch, the government prosecutor, said he and U.S. Attorney S. John Cottone would make a rec-

ommendation soon to the Justice Department on whether to retry the kidnap-bombing conspiracy charges. The indictment also accused the Harrisburg Seven of plotting draft board raids.

Cottone noted that the extensive publicity in the Harrisburg area about the first trial would make it difficult to get an unbiased jury for a second trial.

Discrimination Claim

"It is not likely they are going to retry the case when the jury vote was 10 to 2 for acquittal, defense attorney Thomas Menaker said.

Menaker also said there was a good chance the defense could prove that the government discriminated against Father Berrigan and Sister Elizabeth on the basis that the Justice Department never had prosecuted anyone before under the laws against contraband for smuggling mail out of prison.

Another defense attorney, Paul F. O'Dwyer, said if Judge Herman did not dismiss the convictions on May 2, an appeal would be filed with the 3rd Circuit Court of Appeals in Philadelphia.

"If reason doesn't prevail on this level, certainly it will prevail on that level," he said.