

COURT REVERSES BERRIGAN RULINGS

It Rejects 6 of 7 Convictions
Against Priest and Nun

By WAYNE KING

Special to The New York Times

PHILADELPHIA, June 27—A Federal Court of Appeals here has reversed the conviction on six of seven counts of smuggling letters into and out of a Federal prison levied against the Rev. Philip F. Berrigan and Sister Elizabeth McAlister — who is now Mrs. Berrigan — in 1972.

The three-judge court upheld one conviction against Father Berrigan, rejecting the others on the ground that the law under which the antiwar Catholic priest and nun were convicted stipulates that letters cannot be sent into or out of a Federal prison without the "knowledge and consent" of the warden or supervisor.

Ruling on the counts against Father Berrigan and Sister Elizabeth, the court said that the warden at Lewisburg Prison, where Father Berrigan was serving concurrent sentences for two raids on draft boards in the late sixties, was aware in all but one case that the letters were being sent and received, since the letters were carried by an inmate who was an informer.

Courier Acted on Order

The inmate, Boyd Douglas, was acting on orders from the warden to go ahead with his role as courier for the letters, which discussed various antiwar activities, including a suggested plan to kidnap the President's adviser on national security, Henry A. Kissinger, and subject him to a mock war-crimes trial.

In the count that was upheld, the court decided that the attempt was made to smuggle a letter, and no officials knew about it, thus there was no "knowledge and consent of the warden," as required by law.

Sister Elizabeth, who resigned from her religious order when the two were married, was involved because she had written and received some of the letters. Father Berrigan was convicted on four counts of smuggling letters, Sister Elizabeth on three. The original trial was held before the United States District Court for the Middle District of Pennsylvania in Harrisburg.

In Father Berrigan's case, the reversal on three of the four counts was only a moral victory — and a technical one at that — while the reversal of Sister Elizabeth's conviction on all four counts will mean she will not have to serve a one-year term levied against her, nor live under the three-year suspended sentence that was to begin after the imprisonment ended.

Father Berrigan was paroled from the Federal correctional institution at Danbury, Conn., last December after having served 39 months for antiwar activity.

Had he not been paroled, he could have been behind bars until 1975. He would have had to serve concurrent sentences of six years for having poured blood on records at a Baltimore draft board in 1967 and three and a half years for having burned records at a board in Catonsville, Md., in 1968, and four consolidated concurrent two-year terms for the letter smuggling, had those convictions not been reversed.

Entrapment Denied

The letter-smuggling convictions, had they been upheld, would not have added new time to the previous convictions and Father Berrigan would have remained free in any case.

He and Sister McAlister are living in an antiwar commune they formed in Baltimore. They were married in 1972 in what was described as "formalizing their union before friends" at the prison in Danbury.

Paul O'Dwyer, who along with Ramsey Clark, a former Attorney General for the United States, served as lawyer for the appellants, said in a telephone interview from New York that while he was heartened about the decision, which was what he had expected, it was a reversal on clearly technical grounds.

The court took pains to point out that it did not consider the convictions the outgrowth of entrapment—in this case a possible plot by Federal officials to draw the defendants into illegal activity through the use of an informant who would encourage breaking the law—nor did it countenance arguments that proceedings against the appellants had been discriminatory and designed to save face for the director of the Federal Bureau of Investigation, J. Edgar Hoover, who died last year.

Mr. Hoover, in a rare public outburst, had accused Father Berrigan, his brother, Dan, also a priest, and others of a dangerous revolutionary conspiracy to bring down the Government by violent means. At the time no formal charges had been brought to back the allegations.

The court, however, rejected that argument as well as others contending discriminatory treatment and other legal abuses. "Appellants' scheme," the court said, "was bizarre in concept and purposefully dramatic [and] unique. There is no historical precedent for kidnapping of an American presidential advisor for demonstrating political or moral opposition to a given war."