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The Berrigan Indictment

The recently revised indictment against the Rev. Philip F. Berrigan and five other persons suggests that the Justice Department prepared this potentially important criminal case in an extraordinarily careless and irresponsible manner.

Nothing could have been more damaging to the Government than for J. Edgar Hoover, chief investigator, to blurt out the charges as he did last November before the investigation was complete. Mr. Hoover made his disclosure before a Senate Appropriations subcommittee when he was seeking \$14.5 million to hire an additional 1,000 agents and several hundred clerks. Since Congress always grants his requests for money, it is hard to understand why Mr. Hoover felt the need for a dramatic headline to bolster his appeal. Nevertheless, he put publicity ahead of prosecution.

Speaking in the present tense, Mr. Hoover told the subcommittee, "the plotters are concocting a scheme to kidnap a highly placed Government official." Why did the Government not wait until the plot, if one existed, was well matured and the evidence was firmly in hand? Why was secrecy not maintained until an indictment was approved by the grand jury? There are no good answers to these questions.

In subsequent weeks, Government agents worked vigorously to put together evidence which would substantiate Mr. Hoover's accusation and which would stand up in court. But they worked under the enormous and wholly gratuitous handicap that the persons they were investigating had been fully alerted.

On Jan. 10, a grand jury indicted Father Berrigan and five other persons and named, but did not indict, seven co-conspirators. Clearly, this action did not leave the case in a satisfactory state from the Government's viewpoint. After another three months of work the grand jury last month brought forth a drastically revised indictment.

The scope of the alleged crime has been broadened while its seriousness has been greatly reduced. Instead of a plot to kidnap Henry A. Kissinger and sabotage Government buildings, which would be punishable by life imprisonment, it has become a conspiracy to commit various unlawful acts such as the destruction of Selective Service records which would be punishable by only five years' imprisonment.

Moreover, two new defendants have been indicted but three of the original co-conspirators have been dropped. This indicates the Government has shifted back and forth in its judgment about the participants and ramifications of this alleged conspiracy. It is not unprecedented for the Government to publish letters which lend some plausibility to its conspiracy charge, but one must assume that the Government has some more substantial evidence to offer at the trial. These rambling and amateurish reflections on possible acts—letters to and from a man already in Federal custody whose mail could and doubtless would be read—suggest the vaguest kind of common enterprise rather than a well-articulated criminal conspiracy.

Yet it may well be that the Federal agents could not come up with any firmer evidence once Mr. Hoover broke the news that the investigation was under way. The entire management of this case thus far suggests that changes in the direction of the Justice Department and its Bureau of Investigation are urgently needed.