

In Berrigans' case: Entrapment law figures to be a crucial consideration

WASHINGTON — Some time ago here in this city, police went on a drive to discourage white suburban males from coming into the downtown area at night to purchase the services of black prostitutes.

Their plans were carefully laid. They chose their most attractive black policewomen and stationed them on prominent corners wearing seductive clothing. The policeladies were an instant success.

Dozens of affluent white males were arrested by the prospective partners on the very first night just as they were entering downtown rooming houses. But the scheme turned out badly in the end.

SOME OF THEM, embarrassed by anticipated publicity, forfeited bail. But of those who stood trial, none was found guilty. Police were forced to discontinue the scheme. The reason, judges agreed, was the law of entrapment.

The law of entrapment holds that a man who is induced by police to commit a crime is not guilty of that crime. If you, as a policeman, say to a man, "Let us go and rob a gasoline station," and in the course of the robbery you arrest him, you, not he, have committed a crime.

The reason the law of entrapment is important right now is that it appears to be the principal defense in the case of the brothers Berrigan, two Catholic priests accused of plotting to kidnap presidential aide, Henry Kissinger, and to blow up the streets of Washington.

THE KEY WITNESS against the Ber-



Father Philip Berrigan
A question of intent

rigans and their co-defendants is a paid informer for the FBI named Boyd Douglas.

Douglas was in jail for larceny when he met Father Phil Berrigan. Was he assigned by the FBI to encourage Father Berrigan to crime? Or was he caught, as the FBI says, in the act of delivering letters for the priest and thereafter persuaded to become an informer.

The evidence on this point is not yet in. But it is clear from the testimony so far that Douglas did his best to encourage the Berrigans to violence. He kept telling the conspirators that peaceful protest "wasn't any good" and that they should engage in "more meaningful acts," such as vandalizing draft board offices. He also told the Berrigans he was a bomb expert and produced a bomb manual which had been given him by the FBI. He is as unsavory a witness as the courts have seen in years.

BUT DID HE manufacture the conspiracy with which the Berrigans and their friends are charged? The classic Supreme Court ruling on entrapment was set forth in *Sherman vs. U.S.*:

"The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime. Criminal activity is such that stealth and strategy are necessary weapons in the arsenal of the police officer. However, a different question is presented when the criminal design originates with the officials of the government . . . and they induce its commission in order that they may prosecute."

THE BERRIGANS were true believers in God and in sin. They had committed what they called acts of protest and they must have conceived that they were doing God's work. But they were men of intelligence as well as of faith, and it is hard to imagine that they could seriously have considered themselves capable of kidnaping the President's chief adviser and of blowing up Washington streets, even had their religion assured them that it would not be sinful to do so.

The law of entrapment is more susceptible than most law to questions of intent and predisposition. The Berrigans may have thought about committing a crime. But if former Atty. Gen. Ramsey Clark, who is their counsel, can prove that they had no predisposition to commit this particular crime until Boyd Douglas came along, the FBI and J. Edgar Hoover will turn out to be the guilty persons.