

Berrigan Case a Mistrial On Main Plotting Charges

But Jury Finds the Antiwar Priest and Sister Elizabeth McAlister Guilty of Smuggling Letters at U.S. Prison

NYTimes

By HOMER BIGART APR 6 1972

Special to The New York Times

HARRISBURG, Pa. April 5—The conspiracy case against the Rev. Philip F. Berrigan and six others antiwar activists ended in mistrial late today.

After 59 hours of deliberation, the Federal jury reported itself hopelessly deadlocked and was excused without reaching a verdict on the Government's charge that the seven conspired to kidnap Henry A. Kissinger, assistant to President Nixon for national and security affairs.

Father Berrigan and Sister Elizabeth McAlister, a New York City nun, were convicted of smuggling contraband letters of the Federal prison in Lewisburg, Pa. Father Berrigan faces a total maximum sentence of 40 years on four counts of sending contraband letters out of the prison in 1970, and Sister Elizabeth faces a maximum total sentence of 30 years on three counts of sending illegal letters to Father Berrigan.

Defense lawyers said it was unlikely that the convictions

would stand. The sending of illegal letters into and out of prisons is so commonplace as to be generally overlooked, they said, and they said they could not recall any previous prosecution for contraband mail.

The Government's failure to obtain a verdict on the general conspiracy count may mean the end of prosecution for the other defendants — two priests, the Rev. Joseph Wenderoth and the Rev. Neil McLaughlin; a former priest, Anthony Scoblick, and his wife, Mary Cain Scoblick, who is a former nun, and Dr. Eqlal Ahmad, a Pakistani scholar, the only non-Roman Catholic in the group.

The chief prosecutor, William S. Lynch, would not comment on whether the Government would seek a retrial on the charge that the seven conspired to abduct Mr. Kissinger, blow up generators in the Government's heating tunnels in Washington and vandalize draft

boards in several areas.

Continued From Page 1, Col. 3

The prosecutor found solace in the convictions of Father Berrigan and Sister Elizabeth on the smuggling counts. He had sharply attacked the priest and the nun during the trial. He told reporters that convictions on seven out of ten counts ain't bad.

The defendants, for their part, could not conceal their joy and relief. Earlier a note from the jury room indicated that some convictions on the conspiracy count were being considered. The seven, who had remained cheerful throughout the long trial, fell grim when the jury foreman, Harold C. Sheets, submitted to Federal District Judge R. Dixon Herman the following question:

"Do we find some of the defendants guilty if we have evidence they have conspired to commit A, B, C, and F [offenses relating to the vandalizing of draft boards and the kidnapping of Mr. Kissinger] an if we cannot find enough evidence that anyone conspired to commit D and E [offenses relating to the alleged bombing plot]."

Judge Herman answered affirmatively.

Defense attorneys immediately denounced the judge's action as "amounting to a directed verdict of guilty against at least some of the defendants." The defense attorneys also contended that the instruction was inconsistent with the judge's charges to the jury that it would have to find a single over-all conspiracy in order to bring in convictions.

Mr. Sheets indicated in his

note to the judge that the jury discussions, which began last Thursday afternoon and continued through the Easter weekend, were finally nearing an end. Tension grew. Father Berrigan, 48 years old, a stern, gray-haired priest described by the Government as the chief strategist of the alleged plot, buried himself in a paperback edition of "Bleak House." Sister Elizabeth, a slender, handsome brunette, usually smiling, sat soberly by his side.

The jury deliberated a few more hours, found itself unable to agree not only on the conspiracy count but also on Count 2, charging Sister Elizabeth with sending a kidnapping threat through the mails, and Count 3, charging Father Berrigan with the same offense.

Before newsmen and spectators were readmitted to the courtroom, the defendants learned that the jury was "hung" on the conspiracy count. Mr. Scoblick and Father Wenderoth raised fingers in peace signs to the courtroom spectators. When the verdict was announced and the court recessed, Sister Elizabeth hugged everyone within reach.

'Shoddiness' Is Charged

At a news conference later, Sister Elizabeth said, "We have a feeling we are celebrating something of a victory. But the rejoicing doesn't hide our awareness of the shoddiness we've seen."

"We shall be out on the streets as fast as we can to continue our antiwar demonstrations," Dr. Ahmad said.

Defense lawyers said that a post-trial hearing would be held here May 2 and 3. Former Attorney General Ramsey Clark will argue that the convictions

Father Berrigan and Sister McAlister for smuggling letters should be set aside as "discriminatory prosecution," contending that the law on contraband does not apply to letters but to dangerous weapons and drugs.

Role of 2 Letters

Two letters and the word of an ex-convict paid informer were the basis of the Government's case against the Harrisburg Seven.

The letters discussed a plot to kidnap Mr. Kissinger, hold him for a week and then release him unharmed after a mock war crimes trial.

The kidnapping was to follow by one day the blowing up of generators in a tunnel system supplying steam heat to Government buildings in Washington. The date set for the tunnel destruction was Feb. 22, 1970.

Imprecise and "grandiose" was Father Berrigan's first reaction to the kidnapping proposal outlined in a letter to him by Sister Elizabeth. He preferred the tunnel idea.

The letters promptly fell into the hands of the Federal Bureau of Investigation. They were copied by the informer, Boyd F. Douglas Jr., who had become a trusted messenger for the priest.

Douglas, a 31-year-old fellow prisoner of Father Berrigan at the Lewisburg Federal Prison, had a criminal record involving impersonation, fraud and assault with a gun.

It was never explained how Douglas, with a record of two escapes from custody, became the only one of 1,800 prisoners at Lewisburg permitted to attend Bucknell University.

In early May, 1970, Douglas

started carrying messages for Father Berrigan.

Douglas did not turn over the first letters to the F.B.I., immediately, but he made copies of them, waiting, he said, until he had enough material to incriminate the "Catholic radicals." He said the time came when the prison authorities found a contraband letter in the priest's cell in early June and accused Douglas of having smuggled it in. Douglas was immediately recruited as an informer by the F.B.I.

Looking For Brother

At first the letters were rather routine. There were references in them to draft board raids, but what the F.B.I. was really looking for was a clue to the whereabouts of Philip Berrigan's fugitive brother, the Rev. Daniel J. Berrigan, S.J.

Wanted as an accomplice in the Catonsville, Md., draft board raid for which Philip Berrigan had received a six-year sentence, Daniel Berrigan was kept hidden by an efficient "underground railroad" maintained by students and professional people.

Finally, in early August, Father Daniel Berrigan was captured on Block Island by agents posing as bird watchers. A few weeks later the "kidnap letters" of Philip Berrigan and Sister Elizabeth were delivered by Douglas to the F.B.I.

On Aug. 20, Sister Elizabeth sent through Douglas a "very hot letter" to Philip Berrigan. There had been a dinner party in Westport, Conn., attended by a small group of antiwar activists. Over cognac there was a discussion of how to escalate from civil disobedience to actions that held the danger of criminal convictions.

According to Sister Eliza-

beth's letter, Dr. Ahmad a Pakistani Moslem who is a research fellow at the Adlai Stevenson Institute in Chicago, outlined a plan "to kidnap — in our terminology, make a citizen's arrest of — someone like Henry Kissinger." A film would be made of his mock trial by "big wigs of the liberal ilk" — who might also have to be kidnapped for the occasion, she said — and the publicity impact would be "phenomenal."

Two days later Philip Berrigan replied. The proposal was brilliant but grandiose, he said, and he warned that it "opens the door to murder."

"Nonetheless I like the plan and am just trying to weave elements of modesty into it," he said. "Why not coordinate it with the one against Capitol utilities?"

At the trial the defense made no effort to dispute the authenticity of the letters, insisting, however, that the bombing-kidnapping plan never developed beyond an amorphous discussion.

Summarizing 24 days of Government testimony—the defense decided not to put on a case—the assistance prosecutor, William Connolly, denied that Douglas had tried to entrap the defendants.

The defense was in the hands of former Attorney General Ramsey Clark, Leonard Boudin, Paul O'Dwyer, Terry Lenzner, Thomas Menaker and the Rev. William C. Cunningham, a Jesuit priest.

The case went to the jury Thursday afternoon after a charge by Judge Herman that was denounced by defense attorneys as "a summation for conviction."

Continued on Page 22, Column 4