The Case of the Disappearing Conspiracy

By Betty Medsger Staff writer Medsger covered the Harrisburg trial for the Washington Post

JUST MINUTES before the federal jury announced its decision, the Rev. Philip Berrigan and his six codefendants were quietly emptying their purses and

we wallets, hands noney and personal paners a ares to one of their lawyers "What are you count?" asked the ecretary "We're going to be going to fall," old one of the defondant. The sorre-tary started to cry. She had toged oriefs about the defendance for over year, and had come to imaw and like them very much. Now she shared the them very much, dive see such as a such that is a such as a such a such as a won a political victory. And the gavernment had lost. Later, chief procontor William S Lynch, a man known for his prostolic the skill against organized grame, riled minimize the government's ender samment. "Seven out of 10 is pretty good," he said. There were 10 counts in the indictment. The jury had convicted five of ment. The jury had convicted five of the defendants for smarzding seven letters in and out of a federal prison. But only one cruss mattered—the one that charged that the seven defendants —a Pakistani scholar and see Castlelle brings of seven to seven defendants conspired to Sidnap presidential adnels under federal buildings here and to raid federal offices. On that count the jury westaulit 10 to 2 in zayor of acquittai - surprise to everyone, including the defendants Wast two hours before the announce ment of the hung jury, they had heard U.S. District Judge R. Dixon Herman explain how easy it would be to con-vict them. The jury did not have to find them guilty of all elements of the conspiracy count-kidnaping, bumbing and raiding-in order to convict them. Only one element draft board raids alone, for instance-had to be proven in order to find guilt on the conspiracy count. Still, the jury was bung:

Bow could a nice Middle American

Haw enforcement officer in the nation, TBI Director J. Edgar Hoover, that these people were dangerous conspirators? Hoover had publicly announced tint they were guilty on Nov. 27, 1970, even before there was a grand jury investigating the case.

As it turned out, 10 jurers wanted to acquir the defendants without having ever heard a word from them. The detense presented no evidence, except as it developed a case through cross-exanimation of government witnesses.

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Against the Odds PRIOR TO the triat the rodds seemed heavily against the detending Of nine East Coast locations where the government rould have triat alleged over sets look place-it have the only sets round have one in the for the Heomiv Middle District of Pennsylvania, a slice of Nixon country whose white Protestant farmers and working people share generally conservative views diarrisburg the most urban part of the Middle Disrict, sown has its first Domocratmayor is 28 years

Another significant all to the proscution was the way it had recession the indiciment in the first indicing the jury would have had to assess the defendants' guilt or innocence on separate compliances. But after 1 such took the once a peur ago, the second is a reindiced them, added two increases sons to the original six, and added drait board raids to the consumer. All elements of the consumer, all elements of the consumer. All elements of the consumer, all placed within one net instead of each studing as a separate cound. Prospective jury after prospective information than 400 we called be ore the final 12% plus is afternate were seated—expressed wither total support for the Vietnam, wat or little interest in it.

support for the Vichnam. was or little interest in it. Two of the 12 jurors chosen, howtree, appeared to have quanties that would make them sympathetic to the defendants. Lawrence A. Evans said during jury selection that he thought "our best clergy" should be involved in social action, such as protesting the was the mother of four conscientious objectors, men who had taken that stance because of religious convictions about way. Yet, in the send, it was Evans and Mrs. Schwartz who wanted conviction on all counts. Everyone else wanted ac-

quittal on the major count, the conspiracy count. The nine women and three men ended their deliberations hung not day on the conspiracy count but also on two counts that charged Pather Berrigan and Sister Elizabeth McAlister had exchanged "threatening" letters. . In addition to its other assets the

In Judge Herman, a 1999 Nixon appointee. At the end of the trial, after giving the jurors so complicated a charge on conspiracy law that they asked to have it reread four times, the judge summarized some of the sovernment's evidence against each detendant, misstating some of the information.

Scuttling the Witness

B UT THE presentation of evidence didn't go well for the government. Despite two years of preparation at a cost of more than \$1 million, some of the chief prosecution witnesses urned out to be more helpful to the oriense than to the government.

the chief prosecution witnesses under out to be more helpful to the drense than to the government. At times the government at orneys were visibly angry with their own witnesses. Prosecutor William Connelly concluded one direct examination saying to the witness, "Well, maybe you'll have something to say to them."

In his summation, Connelly attacked the credibility of one of his own witnesses, Joseph Joynt. The government's key witness, check forger and ex-convict Bo₃d F Douglas Jr., said Joynt was the man Berrigan wanted another defendant to ask for diagrams of the tunnel network the group allegedly planned to blow up in Wasnington.

Joynt, who regaled the grand jury a year ago with his praise of the FBI, testified that no one ever asked him for diagrams of the tunnels. None of the defendants, he said, had ever asked him about his job. Yes, he had seen Berrigan one time at his mother's house, but he was just passing through and there were a lot of people present, said Joynt in his slight Southern accent, and "it was just hello, how are you doin'. Then I'd bug out."

But Connelly, in summing up Joynt's testimony, sarcastically told the jury to remember that Joynt just happened to work at the Forrestal Building as an elevator repairman, and just happened to have access to the tunnels under that building, and just happened to have once met Phillp Berrigan. J Of the 64 government witnesses,

many others if little beyond innuender to contribute to the prosecution's case.

William D. Stephey, a barrel-chested man with a booming voice and 19 years' experience on the Wilmington, Del., police department, described how he rushed to the third floor of the Customs House there on June 19, 1970 to inspect what "appeared to be a flashlight but might have been an explosive."

Stephey, who heads the Wilmington police department's bomb squad, said he examined the foll-covered object that looked like a flashlight. And it turned out to be, as he put it, a "common flashlight." The jurors had the





Hashlight with thema to be jury too during their deliberations.
It is difficult to uncertain the part of a second state of the part of the p

tearned about the tochester raids, he teartified, from Ted Glick, who called ing from tochester. Dougles, in fact, you a 41,500 reward for his arrest of eight persons in the Rochester raid. Glick has already been convicted for the raid and served time in prison. He is also a defendant in the Harrisburg case and will be tried separately if he government does not drop the charges against the other seven defendants. Glick was severed from the earlier trial because he wanted to represent himself.

Evidence about the Philadelphia draw raid in February, 1970, the only other raid charged as part of the conspiracy, also was frail. A Philadelphia police officer attempted to link Glick month before the raid Orick and an original person were a different tarked and the start tarked and the start three services receases. The service services the services are also be a service of the service of the service of the service service of the service of the

Janse Testimony

California and the terminal of the terminal to say about the terminal had nothing to say about the case being tried. One afternoon of the government's 24 days of testimony was consumed largely by several senter who described the round-thesenter who described the round-thesenter who described the round-thesenter the maintained on States McAlister in the summer of 1978

It was exciting chase testimony. They described following the young num from Tihaca, N.Y., to New York City, spending the night in a car in front of her convent of the Sisters of the Sacred Heart of Mary, watching her mail letters, then following her at 6 a.m. as the headed toward the Lincoln Tunnel and down the New Jersey Turnplke for her ultimate destination, delphis. It took agents from New York and Philadelphia offices to tell the story. Philadelphia agents had followed her on her return trip to New York. At one point they called New Jersey state police and asked them, said the agent on the stand, to stop her for speeding. But defense lawyers said the policeman who stopped her only asked her to identify berself and her passengers. As first presented, the testimony suggested that these FBI agents were chasing someone who might be a sus-

bected kidnaper or bomber: Oh, no, they all explained in crossexamination. They were just looking for the Rev. Daniel Berrigan, brother of Philip Berrigan. For four months in 1970 Daniel Berrigan was a federal fusitive, refusing to turn himself in to begin a federal prison term for the destruction of Selective Service records, the same crime for which his brother is serving a six-year sentence.

In fact, said an agent from the New York FBI office, surveillance of Sister McAlister was suspended Aug. 11, 1970, the day Daniel Berrigan was arrested on Block Island, R.I. There was no surveillance of her again, said the agent, until Jan. 12, 1971, the day she was arrested on charges of conspiring to kidnep and bomb.

Inasmuch as the FBI allegedly believed after seeing letters exchanged in August, 1970 by Philip Berrigan and Sister McAlister that she was a leader of a kidnaping-bomb plot, it seems strange that she was not under surveillance. Douglas, who corraved Philip Berrigan as the pope of the Catholic Left, said Sister McAlister was in

charge of coordinating both the kidnap. and bomb plots.

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By the time Delmar Mayfield, the Lewisburg TBI agent who had enga.ed te stand, Daniel Berrigan was on paand in the audience. His mouth is, ing as he heard Ma field testhat Douglast services as a letter rie, wore engaged in early hune, in order to get leads on where he, of Berrigan, was hidton. And, mi-interer from Sister McAlister in

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Government investigators did not Government investigators did not and Barone and Millard the only pres-ons besides Daughs who used testi-mony about the tunnels mailed or who mentioned kidnaping, until October. 971, the month the trial originally was checkled to begin and six months after the final indictment was handed dome. down.

Barone said he was surprised when he arrived at his desk at the Civil Service Commission on the morning of Oct. 19, 1971, to be called to the office of the deputy security chief of the commission. When he got there the office was crowed. In addition to the se-

curity chief were two FBI agents, chief prosecutor Lynch and two other proseeuting attorneys, Connelly and J. Philip Krajewski, He said they interviewed him for three hours about the

meeting where someone mentioned the word "kidnap" and about another meeting where a defendant, the Rev. Joseph Wenderoth, said he and Philip Berrigan had walked into the tunnels under the Forrestal Building but feared that any plan to shut off the heating system in the tunnels would endanger lives.

"He (Wenderoth) made it clear they would not go forward with anything that involved any danger to a human Martine one of the govern

TELINCASES The relation of the stand Below the interest of solare such to one concentration and to have the case of the solar of the stand the case of the solar of the solar the case of the solar of the solar the case of the solar of the solar the of the solar of the solar the solar of the so or and the fort forestable in the second sec

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No," said Douglas, adding that he recalled a conversation he had with hereign her the boundary of the hereign research building on the campus the University of Wheelaste. "He said. "What's one blacks Wiscon

he said, what s deal used a specific sin when they're **Hilling** they'r and any every day in Vietnam?" But-Douglas had already messed up that story. Earlier he had testified that the last time he talked with Berrigan was on Sunday, Aug. 23. The bombing in Wisconsin occurred Aug. 24 and Berri-gan was transferred from the prison Aug. 25. Aug. 25.

Unanswered Questions .

YNCH CLAIMED the evidence L was adequate, that the letters 10 gether with Donglas' testimeny, showed a conspiracy He said it all added up to "the inevitable evolution to violence of people who take the law into their own hands."

The defense matrituined the case was the work of a con man who was unable to move the defendance to agreement, let alone action. Referring to numerous persons whom Doughs tried to get involved in the plot but who didn't reply to Douglas' overtures, defense at, torney Terry Lenzner said in his sum mation, "Everyone who came into con-tact with him was in leopardy. Every-one who came to Lewisburg to see him was subject to prosecution."

For those who take the Berrigan phi-tosophy and example of nonviolent resistance seriously, there may remain tions moral questions—even for nose who hold, along with 10 memconspiracy.

and some of the defendants, these as or surning off the heat in federal hundings could be done nonviolently. rathan such acts would be good pro-

the defendants say that in the meat of the violence in Indochina iter talked about whether such s would be possible. But the ques-tion was barely asked, they say, when it as rejected because of a fear that such thougs could not be done nonvi-thenity and because the political im-pact of such acts would be disastrous.

The government's evidence would seen to bear out the contention of some defendants that they ruled out uncline feasibility of such projects very quickly. Virtually no government evi-dence showed that a plan developed in the ral of 1970 after Philip Berrigan inc ral of 1970 after Philip Berrigan feft Lowisburg, despite the fact that the idea of a kidnap had been intro-duced in letters exchanged just prior to his transfer. And despite the fact that Douglas made many telephone calls and wrote many letters trying to find out what was happening to the conspiracy in the fall and winter of 1970

Other questions remain unanswered: Why was this case prosecuted? Why was the Justice Department willing to endure the inevitable embarrassment of such flimsy evidence?