

History on Trial
Episode 7
The United States v. The Harrisburg Seven
Researched and Written by Mira Hayward

PROLOGUE

Like most of us, Elizabeth McAlister never expected to hear her love letters discussed on the radio. She certainly didn't imagine that the person doing the discussing would be the director of the FBI, J. Edgar Hoover. But here she was, on a November day in 1970, driving to her sister's house in Maryland, listening to a news broadcast in which Hoover discussed information that he could only have learned, McAlister thought, from reading her private correspondence.

"I almost went into a stupor," McAlister remembered. "I thought, 'What is this? My God what is this?'"¹ She kept the radio on for the rest of the three hour drive, listening to the story repeat over and over, talking back at the broadcasters, trying to make sense of it.² How else would an ordinary person react to something like this?

Of course, there were a few ways in which McAlister was not an ordinary person. To start with, she was a nun, a member of the Religious of the Sacred Heart of Mary. Plus, the man she was writing love letters to, Philip Berrigan, was a priest.

Okay, so these letters might be scandalous, but what made them so interesting to J. Edgar Hoover? Well, there was also the fact that Philip Berrigan and Elizabeth McAlister were both passionate anti-war activists. Berrigan was so passionate that he'd ended up in jail for destroying Vietnam draft files. McAlister had been writing to him in the United States Penitentiary at Lewisburg, Pennsylvania.

And then there was the content of this particular letter. Because McAlister hadn't just written to Berrigan about how much she cared for him, or how much she missed him. She had also written to ask his thoughts on a plan to kidnap Henry Kissinger, President Nixon's national security advisor and the future secretary of state. How romantic!

Now, sitting in her car, McAlister was terrified. The letter, written three months earlier, had been a thought exercise. She and Berrigan were always brainstorming new ways to draw attention to their anti-war cause. He had replied to her letter with thoughts, suggestions, and concerns, but it had gone no further. Or so she'd thought. But now

¹ Jack Nelson and Ronald J. Ostrow, *The FBI and the Berrigans: The Making of a Conspiracy* (New York: Coward, McCann & Geoghegan, 1972), 21-22.

² Nelson and Ostrow, 22.

Hoover was claiming that she and her fellow activists were actively plotting to kidnap Kissinger.

How had Hoover even heard about the idea? McAlister had a guess.³ To get private letters in and out of prison, she and Berrigan had trusted a fellow inmate of his named Boyd Douglas, who was on a study-release program, to carry their mail. Douglas must have snitched. But why? McAlister had known him for months - he was just as opposed to the Vietnam War as she and Berrigan were, just as committed to the anti-war movement. How could he have betrayed them?

But those questions seemed small now. What mattered, McAlister knew, as she pulled up to her sister's house, was that the United States government believed that she had planned to kidnap a White House official. The director of the FBI was calling her a threat to national security. Whatever was coming next, it would not be good.

That was putting it lightly. Over the next year and half, McAlister, Berrigan, and five of their anti-war colleagues from the Catholic Left would be investigated and put on trial for conspiracy. It would be a journey so filled with shocking revelations and twists and turns that hearing her love letters referenced on the radio would come to seem like a triviality to Elizabeth McAlister.

Welcome to History on Trial. I'm your host, Mira Hayward. This week, the *United States v. the Harrisburg Seven*.⁴

ACT I

By the time he met Sister Elizabeth McAlister in 1966, Father Philip Berrigan had made quite a name for himself in leftist political circles. An extroverted, charismatic man, Berrigan and his older brother Daniel were vanguards of a mid-century movement within the Catholic Church to liberalize the church and make it more appealing and relevant to young people. The brothers were also known for their bold, and often controversial, stances on civil rights. More than simply taking stances, though, the Berrigans had reputations as doers. They planned sit-ins in support of racial desegregation, traveled the world meeting activists, and organized protests.

By the mid-1960s, the attention of both Berrigan brothers had been drawn to the war in Vietnam. In 1965, Daniel founded the Clergy and Laymen Concerned about Vietnam,

³ Nelson and Ostrow, 22.

⁴ Full case name is the *United States of America v. Eqbal Ahmad, Philip Berrigan, Elizabeth Mcalister, et al.*

which became one of the largest antiwar groups in the country.⁵ Philip, meanwhile, became involved with the Baltimore Interfaith Peace Mission and organized pickets at the homes of the Secretaries of Defense and State.⁶

In 1967, Philip, feeling that more conventional methods of protest were not working quickly enough, decided to take a more radical step. On October 27th, he and three fellow antiwar activists strode into the Selective Service office at the Baltimore Customs House and poured blood onto the draft records held there, destroying them.⁷

The group's bold actions inspired dozens of similar raids over the next four years, in which protestors – often members of the Catholic Left – would destroy draft records.⁸ The raiders would normally wait outside the draft board offices until the police – and the news media – showed up, willingly going to jail as a show of their commitment to the cause.

Philip Berrigan himself faced jail time for his actions in Baltimore. But while out on bail, in the spring of 1968, he decided to double down and organize another draft board raid. This time, he convinced his brother Daniel to join him.

On May 17th, the Berrigans and seven others entered the draft board offices in Catonsville, Maryland and stuffed 378 draft records into a trash bin. They brought the bin to the parking lot, where news crews recorded the group as they used homemade napalm to burn the files. It was a highly symbolic action - napalm is an extremely flammable compound that the American military was using as a weapon in Vietnam – and a photograph of the protestors praying for peace as they burned the files appeared in newspapers across the country.⁹

In November, 1968, the raiders, who had become known as the Catonsville Nine, were convicted and sentenced to various terms in prison for their actions. While the case was appealed, the Nine remained out on bail.

While on bail, Philip Berrigan made two very important decisions. The first was personal: he and Sister Elizabeth McAlister decided to get married. After meeting in 1966, the pair had grown closer and closer. They eventually realized that they were in love. It was not as simple for this couple to wed as it would be for others - they were a priest and nun, after all – but by this time, their commitment to each other and to the

⁵ Nelson and Ostrow, 48.

⁶ Nelson and Ostrow, 50.

⁷ "The Nation: The Berrigans: Conspiracy and Conscience," *Time*, January 25, 1971. <https://content.time.com/time/subscriber/printout/0,8816,904636,00.html>

⁸ Hillel Arnold, *Draft Board Raids*. <https://hillelarnold.com/draft-board-raids/>

⁹ Nelson and Ostrow, 55

antiwar cause outweighed the rules of the church. They privately declared themselves married in 1969.¹⁰

The second big decision Philip Berrigan made was political. After their appeals over the Catonsville convictions were rejected by the Supreme Court, the Berrigan brothers were ordered to surrender themselves into custody in April 1970. In the past, going to jail had been part of the process for draft board raiders. But the Berrigans had begun to wonder if surrendering was the most effective tactic. "I wanted to confront the mythology of the good guy whose goodness depends on his willingness to go to jail," Daniel Berrigan said¹¹ He thought he and his brother could be more useful to the movement on the outside. So they decided to run.

For first-time fugitives, the Berrigans were surprisingly successful at eluding capture. They moved from city to city, staying with sympathetic families or church colleagues. As the days went by, and the FBI did not locate them, the brothers became bolder. They gave a number of lectures and sermons, always managing to slip out just before the FBI arrived.

Finally, after 12 days on the run, Philip Berrigan was captured by the FBI, and brought to Lewisburg Federal Penitentiary in Pennsylvania.¹² Daniel managed to stay out for another four months, during which he made his feelings on the FBI clear: "You could say that my survival is a triumph of the love and humanity of the people who shelter me over the FBI, who are merciless but extraordinarily unimaginative men," he said in one interview.¹³

In Washington, J. Edgar Hoover fumed. He took Berrigan's taunts personally, and put the priest on the FBI's Ten Most Wanted List.¹⁴ Eventually, in August 1970, the FBI caught up with Daniel Berrigan, and he was sent to the Federal Correctional Institution in Danbury, Connecticut.

While his brother had been underground, Philip Berrigan had been adjusting to life at Lewisburg Prison. It had not been easy. Lewisburg was a maximum security prison, and most non-violent antiwar protestors who ended up there for processing were quickly transferred to a minimum security prison. For some reason, perhaps because of his time as a fugitive, Berrigan was not. Life at the prison was difficult for Berrigan - prison

¹⁰ Enid Nemy, "Philip Berrigan and Elizabeth McAlister: Resisting Together," *New York Times*, September 18, 1973. <https://timesmachine.nytimes.com/timesmachine/1973/09/18/90969992.html>

¹¹ Nelson and Ostrow, 56

¹² For an account of their time on the run, see Nelson and Ostrow, 55-74.

¹³ Nelson and Ostrow, 65.

¹⁴ James T. Keane, "Lessons from Daniel Berrigan's F.B.I. evasion," *America*, February 1, 2016. <https://www.americamagazine.org/issue/fugitives-injustice>

officials and inmates alike were largely hostile to him, and he felt disconnected from his community.¹⁵

That isolation may be why Berrigan was so quick to trust a fellow inmate, Boyd Douglas.

Douglas was the first participant in the prison's study-release program, which allowed him to attend nearby Bucknell University while he completed his sentence. While at Bucknell, Douglas had become involved in the antiwar movement. In April 1970, a Bucknell professor who mentored Douglas mentioned to him that the famous anti-war priest Philip Berrigan had been sent to Lewisburg, and encouraged Douglas to connect with Berrigan.¹⁶ The two men quickly struck up a friendship, and Berrigan soon asked Douglas if he would be able to carry a message for him out of the prison. Douglas happily agreed.

Throughout the spring and summer of 1970, Douglas regularly carried letters in and out of Lewisburg. Many of these letters were between Philip Berrigan and Elizabeth McAlister. McAlister kept Berrigan updated on the movement's activities and their plans. She solicited his feedback on actions, encouraged him to keep his spirits up, and passionately expressed her love to him.

It was in one of these letters, dated August 18, that McAlister raised the idea of conducting what she called a, quote, "citizen's arrest" on a prominent government official.¹⁷ The day before, McAlister and a group of likeminded activists had discussed the idea as part of a brainstorming session. The "citizen's arrest" had been proposed by Eqbal Ahmad. Ahmad was a Pakistani intellectual and activist who had helped coordinate the Berrigans' time underground. He now suggested kidnapping a prominent politician and holding them in exchange for getting the U.S. to stop bombing raids in Vietnam. The perfect candidate, Ahmad proposed, was Henry Kissinger, then the National Security Advisor, because Kissinger both had a lot of influence and also, quote, was "a bachelor with girl friends and wouldn't want a lot of bodyguards around."¹⁸ The group had tossed the idea around for a while, before dropping it and moving on.

McAlister raised the kidnapping idea again in her letter to Berrigan, writing about the group's discussion and asked Berrigan to think about it. She also, seemingly unironically, wrote that the idea was being shared in, quote "utter confidence & should not be committed to paper."¹⁹ Douglas delivered this letter on August 20th. Berrigan, in his reply, indicated interest in the plan, but urged caution. He also mentioned that

¹⁵ Nelson and Ostrow, 78.

¹⁶ Nelson and Ostrow, 85.

¹⁷ Nelson and Ostrow, 115-117.

¹⁸ Nelson and Ostrow, 113.

¹⁹ Nelson and Ostrow, 116.

perhaps the kidnapping could be done in conjunction with another proposed action, which involved interrupting heat or power in Washington D.C in order to impede government business.²⁰

This letter, dated August 22nd, was the last written record of Berrigan, McAlister, and their activist cohort discussing plans to either kidnap Kissinger or disrupt D.C.'s power grids. Soon after Douglas smuggled this letter out of Lewisburg, Philip Berrigan was transferred to Danbury prison, where his recently captured brother, Daniel, was now an inmate.²¹

Three months later, Elizabeth McAlister was driving to her sister's house in Maryland when the radio broadcaster announced that FBI Director J. Edgar Hoover had just revealed shocking news. In testimony to a Senate subcommittee, Hoover had stated that a, quote "militant group...composed of Catholic priests and nuns, teachers, students, and former students..[whose] principal leaders...are Philip and Daniel Berrigan...plan to blow up underground electric conduits and steam pipes serving the Washington, D.C. area in order to disrupt Federal Government operations. The plotters are also concocting a scheme to kidnap a highly placed Government official."²² Hoover promised that, quote, "intensive investigation is being conducted concerning this matter."²³

Like McAlister, Eqbal Ahmad was shocked to hear Hoover's announcement. "It sounded so ridiculous to me," he said later. "I knew I had brought up the matter of a 'citizen's arrest' but the discussion came to nothing. We talked about a lot of ideas that were rejected...I was worried about Hoover's accusations, but more amused than anything else."²⁴ He became a lot more worried, and a lot less amused, when he learned that Elizabeth McAlister had written down the group's discussion in a letter that she had trusted a virtual stranger, Boyd Douglas, to smuggle into prison for her.

Ahmad was right to be worried. Somehow or other, the FBI had obtained private correspondence from the group. And they weren't going to let the matter go. The Berrigans had been thorns in the FBI's side for years – now might be the Bureau's chance to strike back.

ACT II

²⁰ Nelson and Ostrow, 120-121.

²¹ Nelson and Ostrow, 74.

²² Nelson and Ostrow, 17-18.

²³ Nelson and Ostrow, 18.

²⁴ Nelson and Ostrow, 24.

J. Edgar Hoover's declaration to a Senate subcommittee that Catholic anti-war activists were planning a bombing attack and a kidnapping did not just come as a surprise to Elizabeth McAlister and Eqbal Ahmad – it also came as a surprise to Hoover's own Federal Bureau of Investigation.

Before Hoover's testimony to Congress, his prepared remarks had gone to Charles Brennan, an assistant director of the FBI's Domestic Intelligence division, for review. Brennan had strongly encouraged Hoover to delete the section about the kidnapping & bombing plot, saying that revealing the FBI's knowledge of the potential plot could hurt an ongoing investigation.²⁵

Hoover ignored Brennan's advice, discussing the alleged plot at least three times with government officials in the fall of 1970. In speaking publicly about a case in which no charges had been brought, Hoover was also ignoring Department of Justice guidelines which discouraged this kind of pre-trial statement.²⁶ Attorney General John Mitchell publicly said that he was surprised by Hoover's testimony, and privately scolded the FBI director.²⁷

Why had Hoover acted against the advice of the Justice Department and his own bureau and spoken publicly about an ongoing investigation? Part of his motivation may have been personal. Hoover was seventy-five years old in 1970. Though he still enjoyed the staunch support of President Nixon, public criticism of the longtime FBI director was growing as his reign entered its thirty-fifth year.²⁸ Hoover wanted to prove that he was still in control of his bureau's work. He may also have wanted to send a lesson to the Berrigan brothers, whose time on the run had humiliated the FBI.²⁹

Hoover also wanted to prove the necessity of his agency. His testimony to Congress about the alleged plot had been part of a larger campaign to get more funding for the FBI. By demonstrating that threats against the United States existed, Hoover could justify his requests for more money and more agents.³⁰ His plan worked: Congress would soon authorize additional funding for the Bureau.³¹

But Hoover's plan had perhaps worked *too* well. Discussions of the alleged plot dominated the news cycle over Thanksgiving weekend.³² The FBI now needed to back up

²⁵ Nelson and Ostrow, 31.

²⁶ Nelson and Ostrow, 19.

²⁷ Nelson and Ostrow, 30.

²⁸ Nelson and Ostrow, 11.

²⁹ Nelson and Ostrow, 15.

³⁰ Nelson and Ostrow, 20.

³¹ Nelson and Ostrow, 20.

³² Nelson and Ostrow, 20.

Hoover's claims, so a full blown investigation was launched. Hundreds of FBI agents from across the East Coast were reassigned to the case. Hoover reviewed all their reports, writing notes in the margins, helpful things like "pull out all stops" and "push this hard."³³

An investigation alone was not enough for the hard-charging director. Hoover was determined to see the case prosecuted. In early January, 1971, a grand jury in Harrisburg, Pennsylvania, began hearing testimony on the case. Guy Goodwin, an attorney working in the Justice Department's Internal Security Division, ran the grand jury's investigation.

On January 12, the Justice Department announced an indictment in the case. Six people—Philip Berrigan, Elizabeth McAlister, Eqbal Ahmad, Joseph Wenderoth, Neil McLaughlin, and Anthony Scoblick—were being charged with, quote, conspiring "to blow up the heating systems of Federal buildings in the Nation's capital and also to kidnap Presidential Advisor Henry Kissinger."³⁴ The conspiracy to commit kidnapping charges carried a maximum punishment of life imprisonment. The indictment also listed several unindicted co-conspirators, including Daniel Berrigan.

The actual material of the indictment was thin – and the press noticed. The *Saint Louis Post Dispatch* called the indictment, quote, "one of the flimsiest on record."³⁵ The Berrigans and their lawyers responded similarly, with one of their lawyers calling the charges, quote, "a colossal blunder into which the government was stampeded after J. Edgar Hoover[...]concocted them to justify an appropriation for an additional thousand agents."³⁶ Vice President Spiro Agnew, on the other hand, rebuked those who criticized the government's motives, saying, "Impugning the motives of that Grand Jury and the investigative agencies which brought the matter to their attention—in other words, popping off for political advantage prior to trial—is nearly as reprehensible as finding the defendants guilty before they have been tried and convicted."³⁷

Privately, however, Justice Department officials were concerned about the strength of the case. Instead of shutting down the grand jury after issuing the indictment, Guy Goodwin kept the grand jury running, and continued to subpoena witnesses. Critics called it a fishing expedition. Goodwin responded that he was simply investigating the possibility of further indictments.³⁸

³³ Nelson and Ostrow, 31.

³⁴ Nelson and Ostrow, 150

³⁵ Nelson and Ostrow, 162.

³⁶ Nelson and Ostrow, 159.

³⁷ Nelson and Ostrow, 160.

³⁸ Nelson and Ostrow, 177.

Even as the prosecutors looked for more evidence, the government moved towards trial, arraigning the defendants on February 8th. In mid-February, lead prosecutor Guy Goodwin was replaced by William S. Lynch. Lynch, the head of the Justice Department's organized crime and racketeering section, had an excellent reputation. He took the files home and studied the case for five days. Lynch was deeply troubled by what he saw. In his estimation, the case that Goodwin had drawn up – a case that focused on Hoover's allegations of bombs and kidnapping – was untenable. There was simply not enough evidence. Instead, he urged his superiors, the case needed to include a broader range of criminal activity. Lynch wanted to tie in charges about the raiding of draft board offices. That way, he believed, he had a better chance of obtaining a conviction. Even more than that, he told colleagues, he could avoid being laughed out of court.³⁹

Lynch's superiors agreed, and he was given the go-ahead to restructure the case. After another round of grand jury testimony, a new indictment was announced on April 30th. The new charges were subtly but crucially different from those in the January indictment. The indictment now included charges for draft board raids and omitted the conspiracy to kidnap charge. Lynch had replaced the conspiracy to kidnap charge with a general conspiracy charge. It was a much easier case to prove, although the possible punishments were correspondingly lower. Lynch also gave up on trying to connect Daniel Berrigan to the trial, removing his name from the list of un-indicted co-conspirators.

There was one more change. The April indictment added two new defendants, Mary Cain Scoblick and John Theodore Glick. Glick's case would eventually be severed, leaving seven defendants to be tried together: thus, the group became known as the Harrisburg Seven. On May 25th, the defendants were arraigned on the new charges. Each of them refused to enter a plea, citing their belief that the government was acting quote, "irregular[ly] and extrajudicial[ly]." ⁴⁰ Judge R. Dixon Herman was uninterested in their speeches, and registered each defendant as having pled not guilty. A trial date was set.

Nearly seventeen months after Elizabeth McAlister had written her fateful letter about "citizen's arrest", and more than a year after J. Edgar Hoover had discussed the plot in Congress, the Harrisburg Seven would go on trial.

ACT III

³⁹ Nelson and Ostrow, 186.

⁴⁰ Nelson and Ostrow, 201.

The courtroom for the Harrisburg Seven trial had a singularly ugly paint job. Reporters described the paint color as “oppressive green,” “tired algae,” and “millpond scum.”⁴¹ It was an unprepossessing setting for such a dramatic case.

After nearly three weeks of jury selection, opening statements took place on February 21st, 1972. As lead prosecutor William Lynch spoke to reporters outside the courtroom, it was clear that a change had come over the man in the year since he had first come to the case. “While he had taken the case reluctantly,” write Jack Nelson and Ronald J. Ostrow in their book *The FBI and the Berrigans*, “[Lynch] had psyched himself to the point that he seemed to loathe the defendants.”⁴² He described the defendants to the media as naïve attention seekers who believed themselves above the law.⁴³

However, Lynch usually kept his personal opinions to himself inside the courtroom. In his opening statement, he calmly laid out the government’s case. Philip Berrigan, Lynch said, was the ringleader of a group who, quote, “hatched a conspiracy in January, 1970, to commit a series of illegal acts the thrust of which was to disrupt governmental activities.”⁴⁴ These illegal acts included draft board raids in Philadelphia, which the defendant Father Joseph Wenderoth, among others, had publicly taken responsibility for. Lynch claimed that he would prove that Philip Berrigan and two other defendants, Anthony and Mary Scoblick, were involved in planning these raids. The next plan in the conspiracy, Lynch said, was bombing heating pipes in Washington. He claimed that Wenderoth and Berrigan had personally visited underground tunnels in D.C. with, quote, “the intent of casing or assessing the feasibility of this particular activity.”⁴⁵ Finally, Lynch said, the group planned to kidnap Henry Kissinger.

Throughout his opening, Lynch buttressed his claims by saying that they would be supported by the testimony of the prosecution’s star witness, Boyd Douglas. Douglas was the inmate who had helped Philip Berrigan smuggle letters in and out of Lewisburg Prison. The defense had long suspected that Douglas was the source of the leak, but Lynch’s opening confirmed it, and revealed just how much the prosecution’s case was based on Douglas’s information. Douglas, Lynch said in his opening argument, had become an FBI informant in June, 1970, almost immediately after he had begun working with Berrigan.

In his statement for the defense, attorney Ramsey Clark went on the attack. The defendants had a whole cohort of lawyers representing them, who would share responsibilities during the trial. Clark, the attorney general under President Johnson,

⁴¹ Nelson and Ostrow, 214.

⁴² Nelson and Ostrow, 224.

⁴³ Nelson and Ostrow, 209.

⁴⁴ Nelson and Ostrow, 224.

⁴⁵ Nelson and Ostrow, 225.

and Lynch's former boss, was chosen to deliver the rebuttal to Lynch's opening. Clark immediately went after the prosecution's motives and case. The charges, Clark said, were only brought to, quote, "justify something J. Edgar Hoover had done."⁴⁶ He said that his clients were, quote, "the gentlest of people, not capable of injuring anyone."⁴⁷ Any actions they had taken against the war had not been part of a conspiracy, but had been individual actions.⁴⁸

This was a key point for the defense. All of the defendants, except Elizabeth McAlister and Eqbal Ahmad, had at some point publicly confessed to participating in draft board raids. Clark wanted to make the distinction that these raids had not been part of a larger plot, or a *conspiracy*, which is what the government was now charging the defendants with.

Much of Clark's opening was devoted to attacking Boyd Douglas. "You'll have to watch Boyd Douglas, see him, judge him," Clark said. "He's made lying a way of life."⁴⁹

It was clear from both the prosecution and the defense's opening statements that the trial would hinge on the testimony of Boyd Douglas.

But who was Boyd Douglas exactly? This wasn't an easy question to answer. Some people – including Philip Berrigan, and his friends at Bucknell University, where Douglas had participated in a study-release program while still imprisoned – knew Douglas as a charismatic, complicated man with strong anti-war sentiments. Douglas told them that he had fought in Vietnam and had been horrified by what he had seen there. Upon his return to America, Douglas said he had been caught trying to bomb trucks carrying napalm to be shipped to Vietnam, and jailed. While in jail, he volunteered for a medical study which had left him with debilitating injuries. He'd won a settlement from the government for his suffering, he told Bucknell friends, which was how he explained his ready supply of money, his ever-stocked liquor cabinet, and his off-campus apartment – lavish living for anyone, especially a prisoner. Douglas could be insistent, and arrogant, but most who knew him just thought he was passionate.⁵⁰

At the trial, a very different picture of Douglas emerged. On the stand, Douglas described himself as a Catholic who was concerned about Catholic priests and nuns getting involved in anti-war activities. He discussed being worried about, quote, "the

⁴⁶ Nelson and Ostrow, 227.

⁴⁷ Homer Bigart, "Ex-Convict is Key Witness in Plot Trial," *New York Times*, February 22, 1972. <https://timesmachine.nytimes.com/timesmachine/1972/02/22/93415090.html?pageNumber=10>

⁴⁸ Nelson and Ostrow, 228.

⁴⁹ Nelson and Ostrow, 228.

⁵⁰ Nelson and Ostrow, 92-93.

threats of these people to the United States government.”⁵¹ He had gotten in over his head when he had agreed to help Philip Berrigan smuggle a letter out of prison, Douglas explained, and, knowing that he would eventually be caught, decided to start copying out the contents of the letters in order to help the government. After a warden caught Berrigan with a letter in June, and realized that Douglas was helping him, the warden had put Douglas in touch with the FBI.⁵² In his long answers to Lynch’s questions, Douglas explained how he had gotten deeper and deeper into the movement as a way to aid his investigation.

During Douglas’s testimony, Lynch introduced the letters between Berrigan and McAlister, reading them aloud to the jury. Douglas corroborated references in the letters to real life conversations he said he had with the defendants. Unfortunately for the prosecution, most of the letters were so dull and rambling that jurors literally fell asleep during Lynch’s readings.⁵³

However, two letters - those sent on August 18th and August 22nd by Elizabeth McAlister and Philip Berrigan respectively, were much more exciting. These were the letters that discussed kidnapping Kissinger and alluded to a disruptive action against D.C. utilities.

Douglas was key to bringing these letters to life. His testimony alleged that the discussion of these crimes was not confined to these two letters, but had been an ongoing conversation in the summer of 1970. The prosecution would ultimately bring in 64 witnesses, including FBI agents and police officers, but the only one whose testimony supported the charges of bombing and kidnapping was Douglas.⁵⁴ Douglas testified to having discussed the details of the tunnel bombing project with Joseph Wenderoth and to having conversations with Elizabeth McAlister and Eqbal Ahmad about the kidnapping plot.⁵⁵

Douglas’s allegation that he had spoken to Ahmad on the phone about the kidnapping was hard to believe. Ahmad was the most cautious and savvy of all the defendants – he constantly bemoaned the others’ naivete, saying “I am dealing with children!”⁵⁶ Why would he discuss a sensitive matter like kidnapping over the phone with a stranger? Douglas claimed to have spoken to Ahmad twice, and said that he picked out Ahmad’s voice from a tape recording that the FBI played him. The tape, it turned out, was from a

⁵¹ Nelson and Ostrow, 241.

⁵² Nelson and Ostrow, 229.

⁵³ Nelson and Ostrow, 249.

⁵⁴ Nelson and Ostrow, 286.

⁵⁵ Nelson and Ostrow, 244, 250.

⁵⁶ Nelson and Ostrow, 183, 206.

press conference that the defendants had given, in which Ahmad, the only defendant with an accent, had literally identified himself by name.⁵⁷

This identification of Ahmad's voice was so suspect that Judge Herman decided to strike it from the record.⁵⁸

This was not the only issue with Douglas's testimony. At the end of his direct examination, Lynch was forced to raise a concerning matter: a letter from Douglas in which he had requested \$50,000 from the FBI in exchange for his help with the case. The defense had told the press about the letter earlier that week, and Lynch was trying to get ahead of it. "This figure may sound a little high," Douglas had written, "but considering everything, I feel it is worth it to the government...I will do all I can to help the government obtain enough evidence to prosecute these people...However, I don't want to feel that I am just being used."⁵⁹ Lynch tried to move on from the letter quickly. Douglas explained that he had continued helping the FBI even after his money request was turned down, but the damage was done. Several jurors looked at each other and shook their heads.⁶⁰

What came next was even more troubling for the prosecution. The defense lawyers were unsure of their ability to shake Douglas from his story about the defendants' alleged crimes – he was a confident witness with an excellent memory for dates and places, and was convincing in his recall. So the defense, on cross examination, decided to instead go after Douglas's character. And it was here that a third side of Boyd Douglas emerged.

This version wasn't the anti-war activist known by Berrigan and at Bucknell, or the patriot concerned with protecting his country portrayed by the prosecution. The Boyd Douglas who came out on cross examination was, as Ramsey Clark had described him in his opening, someone who made lying a way of life.

Born in 1940 in Iowa, Boyd Douglas had started committing crimes at a young age. In 1959, he had enlisted in the military, likely as part of a deal to avoid jail time. After deserting the army multiple times, he was charged in 1962 with impersonating an army officer and passing bad checks. He pled guilty and was sentenced to jail in 1963. While in jail, he had volunteered for a medical study at the National Institutes of Health. It was true that he had incurred serious injuries during this study, but it's unclear whether these injuries were self-inflicted or not. Douglas filed a \$2 million suit against the government, but eventually settled for \$15,000, after his lawyer informed him that the

⁵⁷ Nelson and Ostrow, 250-251.

⁵⁸ Nelson and Ostrow, 251.

⁵⁹ Nelson and Ostrow, 258.

⁶⁰ Nelson and Ostrow, 258.

government suspected fraud. Paroled in 1966, Douglas immediately began forging checks again. After waving a gun at a bank employee who confronted him in Wisconsin, Douglas was apprehended, and sentenced to an additional five years in prison. It was for these crimes that Douglas was in Lewisburg Prison where he met Berrigan, not for bombing trucks carrying napalm like he claimed. Douglas also never served in Vietnam.⁶¹

Douglas's lies did not stop there. The defense revealed that Douglas had lied constantly to try to manipulate his friends at Bucknell, even over personal matters. While at Bucknell, he had dated two roommates. He told one roommate, Jane Hoover, that he was dying of cancer and asked her to marry him. When she refused, he pleaded with her, telling her that she was the only girl he had ever loved, except for a childhood neighbor of his named Nancy, who, like Jane, had beautiful blonde hair.

After Jane once again rejected him, Douglas moved on to her roommate, Betsy Sandel. He soon asked Betsy to marry him, movingly declaring that she was the only girl he had ever loved, except for a childhood neighbor named Nancy, who, like Betsy, had beautiful *red* hair.⁶²

It was a trivial lie, but it seemed to stick with the jurors. While Douglas was supposed to be gathering information for the FBI, he had instead spent his time manipulating young college students into becoming romantically attached to him. Douglas's admission that he had flagged Betsy Sandel as an anti-war activist to the FBI only after she had rejected his marriage proposal caused one juror's jaw to literally drop.⁶³

With all that said, the defense had been right in fearing that they could not get Douglas to change his story about the crimes he alleged the defendants had plotted. He consistently maintained that the defendants had planned to kidnap Kissinger and bomb the capital. The cross examinations had certainly damaged Douglas's credibility, but had they damaged the prosecution's case? William Lynch didn't think so – "Devastating cross-examination" he laughed to a reporter.⁶⁴

Lynch's real concern lay with what the defense would present during their own case. On March 23rd, after more than a month of testimony, the prosecution rested. The defense had called witnesses from all over the country to testify, and people wondered exactly who would appear on the stand. Which, if any, of the defendants would testify?

⁶¹ Nelson and Ostrow, 138-142, 263-264.

⁶² Nelson and Ostrow, 232.

⁶³ Nelson and Ostrow, 269.

⁶⁴ Nelson and Ostrow, 264.

On Friday, March 24th, Ramsey Clark again rose for the defense. But instead of delivering a traditional opening statement, he shocked the courtroom by declaring: “Your honor, the defendants will always seek peace, the defendants continue to proclaim their innocence—and the defense rests.”⁶⁵

No one knew quite what was happening. Had Clark said that the defense rested? They weren’t going to present a case? Lynch was baffled, calling it “some sort of trickery, some sort of fraud on the court,” but the defense said that they had only decided to not present a case the night before.⁶⁶ In a news conference, the defendants explained themselves. It had not been a unanimous decision: Berrigan, McAlister, and Ahmad had wanted to argue their case, but had been overruled by a majority of the defendants: the Scoblicks, Joseph Wenderoth, and Neil McLaughlin did not want to present a defense.⁶⁷ McAlister had taken notes on their discussion the night before, writing, quote “The response of silence seems the best response to the illegitimacy of this indictment, of the process of this government.”⁶⁸ By not presenting a defense, the defendants felt that they were refusing to engage in a process they saw as corrupt.

The defendants had not forgone every aspect of a defense, however. They still wished for their lawyers to conduct closing arguments – which were duly completed by both sides. No one added anything particularly novel: the defense lawyers argued that the case was politically motivated, poorly supported, and overblown, while Lynch contended that the defendants were wolves in clerical clothing, formerly non-violent activists who had graduated to violence and posed a genuine threat to the nation.⁶⁹

On March 30th, the jury began their deliberations. They had to return to the courtroom several times for clarification on the charges – it was a complicated set of interrelated charges, and the jury – and Judge Herman himself–seemed unsure about just how to approach the law. Over the next week, the jury delivered several verdicts on a few of the more minor charges, finding Philip Berrigan and Elizabeth McAlister guilty of smuggling letters out of federal prison. But on April 5th, 1972, the jury declared to Judge Herman that they were deadlocked on the conspiracy charges. They could not reach a decision about the defendants’ guilt or innocence in conspiring to raid draft board offices, kidnap Henry Kissinger, and bomb Washington D.C. In the case of the United States v. the Harrisburg Seven, Judge Herman declared a mistrial.⁷⁰

⁶⁵ Nelson and Ostrow, 287.

⁶⁶ Nelson and Ostrow, 287.

⁶⁷ Nelson and Ostrow, 288.

⁶⁸ Nelson and Ostrow, 288.

⁶⁹ Nelson and Ostrow, 291-292.

⁷⁰ Nelson and Ostrow, 293-294.

ACT IV

The case might not have ended there. The government could still choose to retry the Harrisburg Seven. But it seemed extremely unlikely – public opinion was against the government in this case. The local newspaper, a conservative journal called the Harrisburg *Patriot*, wrote “it must be evident that conspiracy is an elusive charge; that a principal witness [Douglas] whose testimony can be eroded as his motivation is revealed is a very weak reed; and that a faulty case is better left untried than subjected to pitiless media and public exposure.”⁷¹

The jurors concurred with the Harrisburg *Patriot's* conclusions. Interviews with jurors after the verdict revealed that they had voted 10 to 2 against convicting on the conspiracy charges, and that the two jurors who supported conviction had had their minds made up from the beginning of the trial. The jurors who voted for acquittal cited Boyd Douglas's lack of credibility as a major reason for their decision.⁷²

Any possibility of a retrial died along with the man who had pushed for the trial in the first place. On May 2nd, 1972, J. Edgar Hoover died of a heart attack.

A little more than a year later, on May 28th, 1973, Philip Berrigan and Elizabeth McAlister were legally married. Given that they were still technically a priest and a nun, the couple were excommunicated from the Catholic Church, but the excommunication was later lifted. Berrigan and McAlister had three children. They never gave up their activism work - in the early 1980s, they, along with Philip's brother Daniel, turned their focus to protesting nuclear weapons. They employed many of the same tactics they had used for protesting the Vietnam War, including breaking into nuclear weapon manufacturing facilities and pouring blood on equipment.⁷³

⁷¹ Nelson and Ostrow, 296.

⁷² Nelson and Ostrow, 297.

⁷³ Art Laffin, “A History of the Plowshares Movement,” speech, October 22, 2019, <https://kingsbayplowshares7.org/plowshares-history/>

Philip Berrigan died at age 79 on December 6th, 2002.⁷⁴ Daniel Berrigan died at age 94 on April 30th, 2016.⁷⁵ Elizabeth McAlister is still alive; her last interaction with the legal system was her 2019 conviction for breaking into a nuclear submarine base.⁷⁶

Eqbal Ahmad died on May 11th, 1999, after a lifetime spent teaching political science and speaking out against war and imperialism. His writings influenced other prominent thinkers including Edward Said and Howard Zinn.⁷⁷

Father Joseph Wenderoth and Father Neil McLaughlin returned to Baltimore to continue their work as priests. They are both now retired.⁷⁸ Anthony and Mary Scoblick seem to have led more private lives after the trial.

During the 1960s and 1970s, the country struggled to figure out how to respond to protests over the Vietnam War. America has long been a land of protestors – some of the most famous acts of the country’s founding were acts of civil disobedience – but exactly who is allowed to protest, and how they are allowed to do so, are hotly debated issues. “I agree with the protestors, but now with how they’re protesting,” is a common refrain during fraught times.

The theologian Robert McAfee Brown, writing about the Berrigans’ destruction of draft records in Catonsville, Maryland, said that the action was meant to be, quote, “a vivid reminder of what has happened to the collective conscience of our nation; we are outraged when paper is burned, and we are not outraged when children are burned.”⁷⁹ But the ethical stakes for burning paper are very different than those for kidnapping and bombing.

⁷⁴ Daniel Lewis, “Philip Berrigan, Former Priest and Peace Advocate in the Vietnam War Era, Dies at 79,” *New York Times*, December 8, 2002. <https://www.nytimes.com/2002/12/08/us/philip-berrigan-former-priest-peace-advocate-vietnam-war-era-dies-79.html>

⁷⁵ Daniel Lewis, “Daniel J. Berrigan, Defiant Priest Who Preached Pacifism, Dies at 94,” *New York Times*, April 30, 2016. <https://www.nytimes.com/2016/05/01/nyregion/daniel-j-berrigan-defiant-priest-who-preached-pacifism-dies-at-94.html>

⁷⁶ Jesse Remedios, “Kings Bay Plowshares activists found guilty of all charges,” *National Catholic Review*, October 25, 2019. <https://www.nconline.org/news/kings-bay-plowshares-activists-found-guilty-all-charges>

⁷⁷ Edward W. Said, “Obituary: Eqbal Ahmad,” *The Guardian*, May 13, 1999. <https://www.theguardian.com/news/1999/may/14/guardianobituaries1https://www.dissentmagazine.org/article/eqbal-ahmads-internationalist-vision/>, and Arvin Alaigh, “Eqbal Ahmad’s Internationalist Vision,” *Dissent*, Spring 2023. <https://www.dissentmagazine.org/article/eqbal-ahmads-internationalist-vision/>

⁷⁸ Archdiocese of Baltimore, “Directory of Priests with Faculties in the Archdiocese of Baltimore.” <https://www.archbalt.org/clergy/directory-of-priests-with-faculties-in-the-archdiocese-of-baltimore/>

⁷⁹ *Time*, “The Berrigans: Conspiracy and Conscience” *Time*.

And ethical considerations are often different than legal ones. Prosecuting protestors who commit illegal acts is as much an American tradition as protesting itself. “The system must have integrity,” said the attorney general in the 1960s. “It never seemed wrong to me that Thoreau and Gandhi were prosecuted or that they went to jail. That was their point. They so disagreed with their government that they would sacrifice freedom itself to show their concern.”⁸⁰ The speaker there was none other than Ramsay Clark, former attorney general and defense attorney for the Harrisburg Seven.

The pattern of protest and prosecution, writes William O’Rourke in his book *The Harrisburg 7 and the New Catholic Left*, was a symbolic one. “Church and State are the practitioners of myth and ikon. The activists of the Catholic New Left carry out their symbolic acts of resistance; the government...responds with its own.”⁸¹ Each side used its own unique powers and tools to either upend or uphold the status quo. For the most part, each side understood the rules of the other.

The Berrigans had upended this balance by choosing to run instead of surrender for their prison sentences in 1970. But the government, in prosecuting the Harrisburg Seven, committed an even graver violation. In this case, the government responded disproportionately to a basically non-existent threat. There is no evidence that any of the defendants ever seriously planned to carry out a kidnapping or a bombing. Had J. Edgar Hoover not used the alleged threat of these attacks as leverage to get more funding from Congress, it’s likely that no prosecution would have occurred. Hoover’s power was so great that it subverted the rule of law, write Jack Nelson and Ronald Ostrow: quote, “When a nation that prides itself on being a system of laws—not men—permits itself to be so corrupted, the portents are ominous.”⁸² We often see this issue on a smaller scale – the personal whims and biases of judges and attorneys and jurors can radically shape the outcome of a trial. But rarely do we see this kind of personal influence on as grand, or as disturbing, of a scale as we do in the trial of the Harrisburg Seven.

That’s the story of the *United States v. The Harrisburg Seven*. Stick around to learn a fun fact about one of the Berrigan brother’s musical legacy.

EPILOGUE

In 1971, Paul Simon was hard at work on his second solo album. Best known, at that point, as a member of the duo Simon & Garfunkel, Simon’s first solo album had only been released in England. This second album would be getting an American release, and

⁸⁰ William O’Rourke, *The Harrisburg 7 and the New Catholic Left* (New York: Crowell, 1972). <https://archive.org/details/harrisburg700will>, 49.

⁸¹ O’Rourke, *Harrisburg 7*, 49.

⁸² Nelson and Ostrow, 306.

it was Simon's chance to define his own voice outside of his partnership with Art Garfunkel. He had to make something good.

Fortunately for Simon, he did. The album, titled *Paul Simon*, debuted in January 1972 and was critically acclaimed. It took a little while for sales to catch up with the buzz, but the album made it to Number 4 on the Billboard Pop Album Chart. The album has remained a classic, and was certified platinum in 1986.⁸³

One of the best known songs from *Paul Simon* is the album's second single, "Me and Julio Down By the Schoolyard." The song tells the story of two boys breaking a law – what law exactly is never made clear, with Simon saying in a 1972 *Rolling Stone* interview, "I have no idea what it is...Something sexual is what I imagine."⁸⁴ After the boys are reported to the police by a woman called 'mama', they are arrested. Fortunately, a radical priest comes and gets them released...and they all end up on the cover of *Newsweek*. And yes, it was very hard to read that line without singing, but you don't want to hear me sing.

Some commentators have theorized that the song tells the story of two gay teens getting kicked out of their house.⁸⁵ And they have also suggested that the radical priest who gets the pair released is none other than Father Daniel Berrigan.⁸⁶ The biggest hint is the line about ending up on the cover of *Newsweek* - in 1971, during both the Harrisburg Seven fiasco and Paul Simon's album recording process – an image of Daniel and Philip Berrigan appeared on the cover of *Time* magazine, paired with the headline "Rebel Priests: The Curious Case of the Berrigans."⁸⁷

The song may very well not be about gay men, and the radical priest may not be Daniel Berrigan. Simon has never confirmed nor commented on either claim. But if these theories are true, then "Me and Julio Down at the Schoolyard," besides being a very catchy tune, is also nice foreshadowing for Daniel Berrigan's later career.

In the 1980s, in the midst of the AIDS epidemic, when the cause and treatment of AIDS was still unknown, and while those affected were largely shunned by society, Daniel Berrigan began volunteering at the AIDS Hospice program at St. Vincent's Hospital in New York City. He spent twelve years working with the sick and dying, treating them

⁸³ Rob Sheffield. "Surviving Garfunkel: How Paul Simon Found His Voice and Made His First Solo Masterpiece," *Rolling Stone*, January 24, 2022.

<https://www.rollingstone.com/music/music-features/paul-simon-1972-solo-album-rob-sheffield-1289027/>

⁸⁴ Jon Landau, "Paul Simon: The Rolling Stone Interview," *Rolling Stone*, July 20, 1972.

<https://archive.is/UUr71>

⁸⁵ Sheffield. "Surviving Garfunkel."

⁸⁶ Lewis, "Daniel J. Berrigan, Defiant Priest."

⁸⁷ *Time*, Cover, January 25, 1971. <https://content.time.com/time/covers/0.16641.19710125.00.html>

with love and compassion. In 1989, he wrote a book about his experiences, *Sorrow Built a Bridge: Friendship and AIDS*. At a time when so many, including the American government, willfully ignored the crisis or blamed its victims for their fates, Daniel Berrigan, once again, turned his face towards suffering and did what he could to alleviate it.⁸⁸

Thank you for listening to History on Trial. My main source for this episode was Jack Nelson and Ronald J. Ostrow's book *The FBI and the Berrigans: The Making of a Conspiracy*. For a full bibliography as well as a transcript of this episode with citations, please visit our website, historyontrialpodcast.com.

⁸⁸ Carl Siciliano, "Remembering Daniel Berrigan, a Forgotten AIDS Hero," *HuffPost*, May 20, 2016. https://www.huffpost.com/entry/remembering-daniel-berrig_b_10068406