# *Fiddling With the First Amendment*

UNDER THE GUISE of campaign reform, President Nixon has started something very mischievous. He has asked the Justice Department to develop legislation to give public officials and candidates greater recourse against libelous and slanderous attacks by their opponents and the press. The aim, Mr. Nixon said on Friday, is not "to restrict vigorous debate, but to enhance it," and to encourage "good and decent people" to run for office without fear of scurrilous attacks. But this new drive for truth in politics is likely to have quite different results. Intentionally or not, it may divert public attention from the real, substantial problems which discourage many citizens from involvement in politics. And it may also touch off, in a confused, bitter and unproductive way a new round of sniping at the press—though the primacy of the First Amendment was settled in this country, we had thought, about the time of the demise of the Sedition Act of 1798.

The present constitutional standard for libel actions involving public figures is quite clear. As the Supreme Court declared in *New York Times Co. v. Sullivan* in 1964, a public official must prove that an injurious statement not only was false, but was uttered or published "with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." The same standard applies to attacks leveled by public officials against each other or against private citizens. In other words, all who participate in government or the discussion of public affairs enjoy broad liberty to comment and criticize, however wrongly or intemperately, unless actual malice can be shown.

Mr. Nixon has styled the *Sullivan* decision as "virtually a license to lie." But the standard does not make all libel suits impossible; Sen. Barry Goldwater, for instance, won a $75,001 judgment in a suit against Fact magazine and publisher Ralph Ginzberg a few years ago. Mr. Nixon did not mention this. He did not indicate what specific rhetorical abuses had prompted his sudden concern. He did not provide any evidence of "good and decent people" driven out of politics because they could not stand the heat. Nor has the administration settled on a new approach to recommend instead.

Administration spokesmen do concede that attempts to enact a federal libel law—even something more modest than a new sedition act—may run into some constitutional problems. That is an understatement; the constitutional problems are so immense that any such effort appears futile from the start. The national commitment to robust, uninhibited political debate encompasses the liberty to criticize, to exaggerate, to vilify and even to defame. Or as the Supreme Court said in another case, "It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."

For Mr. Nixon to sport with this subject in terms of encouraging "good and decent people" to enter the profession of politics or government is as ludicrous as it is cynical, when you consider what has happened to most of the men who were initially closest to the pinnacle of power in the original Nixon government. Nobody should know better than the President by now that far and away the best way to begin to encourage "good and decent people" to go into government is to conduct a good and decent government.