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'Conspiracy,' Big Catch-All

FOR SOME MONTHS we have been reading news of a Catholic priest, Father Berrigan, and six associates, accused of a conspiracy to kidnap Dr. Henry Kissinger, assistant to the President, and to bomb the United States Capitol.

No doubt the Father and his colleagues are intellectual leftists of a genteel stripe, anti-war, anti-much of which we all in widely varying degree, disapprove.

But to bring them to court for these heinous crimes, as the Federal Bureau of Investigation and a Grand Jury indictment did, turned out to be so implausible as to be absurd. Those who plan kidnappings and dynamiting are desperate characters, and the "Harrisburg Seven" simply did not fit the mold.



So in a recent trial in federal court in Pennsylvania, no evidence was offered that the Seven actually attempted a kidnaping or a bombing, and the jury was hung ten to two against conviction (excepting a piffling charge of letter smuggling). So as a practical matter the case is lost, however dismayed the Justice Department may be.

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THIS DISMAY OF prosecutors, federal and state, over failure of their "conspiracy" cases, is a mark of our time, a time of sloppy and slap-happy prosecution aimed at the attitudes of certain reprehended citizens, individually and collectively.

But the dismay is essentially over their own bad judgment and incapacity, in bringing many of these citizens to the bar with insufficient evidence in actions obviously tainted with persecution, substituted for prosecution.

Some of the dismay should be reserved for the Congress and the legislatures which retain on the law books the several conspiracy statutes, which show a large incidence of failure to convict when submitted to sensible juries.

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CONSPIRACY STATUTES have always existed in the United States, and perhaps they should be retained, but in a limited form, and not in the catch-all form presently embedded in law.

Police and prosecuting authorities should be compelled to appear against defendants with clear evidence the accused actually met and planned, talked about or wrote about a specific crime, or concerted for a crime already committed. Such evidence is hard to gather, but who the hell told the prosecution it was easy to get the goods on malefactors? Not the writers of the Constitution or the Bill of Rights, who devised many obstacles to conviction to protect the innocent. An illuminating example of this prudence is contained in the Constitutional provision on treason, Art. III, 3-1: "... no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

But against those accused of non-treasonable acts, a prosecutor often brings to court a shoddy witness or two, many criminals themselves or proved liars, hoping his stooges won't blow it. The Bill of Rights does not contain the word "conspiracy," but it contains many clauses precluding it as an offense.

In our noisy concern for law and order, we could profitably enlarge the common sense and perceptions of the police and prosecuting authorities, and diminish their insatiable lust for juridical glory.

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