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Fairness Is No Vice JUN 14 1971

Attorney General Mitchell in a recent speech recalled a warning by the late Justice Benjamin Cardozo that "justice, though due to the accused, is due to the accuser also."

There can be no quarrel with this basic view of the law. But the general tone of Mr. Mitchell's remarks to the National District Attorneys' Association was clearly intended to please those who believe that law and order are threatened because prosecutors have been "shackled." The statement that "a preoccupation with fairness for the accused has done violence to fairness for the accuser" is remarkable precisely because the Federal Government's chief legal officer appears to be suggesting to his subordinates that a legal system can actually be faulted for being "preoccupied" with fairness toward anyone.

The Attorney General presented no evidence to substantiate his complaint that the war against organized crime is being hampered by the "shackling" of prosecutors or that either juries or judges have shown much sympathy with members of crime syndicates. Even more disconcerting was Mr. Mitchell's criticism of the courts'

"overweening attention to proceduralism," to the benefit of the accused. "Proceduralism" has come to be a favorite target of New Left radicals, precisely because adherence to procedures is so effective a safeguard of the rights of the opposition. For the nation's chief legal officer to scorn "proceduralism" is all the more alarming in view of his persistent attempts to justify unauthorized wire-tapping on the basis of "inherent"—not procedural—Presidential powers.

In depicting prosecutors as the underdogs of the judicial system, Mr. Mitchell obscures the historic fact that the prosecution, backed by the considerable power and resources of the state, has on many occasions in this and other nations' past turned into a force of inquisition and repression.