

Show-Trial by Proxy

ESSAY

By William Safire

WASHINGTON—The publicity extravaganza that opened in Federal Courthouse here this week is the most inherently unfair trial in many a year: The accused face the wrong charge in the wrong place before the wrong judge.

The central accusation is not that the President's men actually "covered up" the Watergate break-in; it is that they "conspired" to do so. The broad conspiracy cop-out is used when a prosecutor cannot prove the crime itself; its use ordinarily makes the skin of civil libertarians crawl.

The wrong place is Washington, D.C., hotbed of anti-Nixon sentiment, center of all the Watergate publicity, where defendants are spat upon as they come to court, the one area in the United States most likely to burden any juror with the most prejudice.

The wrong judge is "Maximum John" Sirica, the man who rode to renown by cracking the case originally with his aggressive prosecution from the bench. This judge, who appointed himself to try this case, cannot be as disinterested as a judge must be.

Of course, much good can come from the Watergate trials and its likely reversals and appeal. The conspiracy statutes can be exposed as unfair; new rules for changes of venue can flow from the refusal to avoid the circus-like atmosphere of Washington; and Federal judges may learn the need to disqualify themselves, as Mr. Justice Rehnquist did in the Nixon case, to avoid even the appearance of favoritism.

Ages ago, when Special Prosecutor Archibald Cox fought against forcing the defendants to testify at televised public hearings, making the sensible point that such pre-trial publicity would harm their chances for a fair trial, Senator Sam Ervin grandly swept aside that objection, saying that the exposure of the truth was more important than putting a few men in jail. Now the Government is trying to have it both ways.

Those who are profoundly convinced that the Nixon men are guilty of trying to subvert our civil liberty should be in the vanguard of those demanding that the rights of these particular defendants be scrupulously safeguarded. But they are silent, perhaps in the mistaken belief that excesses of power can be curbed by the counterapplication of excesses of power.

This is not the fair trial of Messrs. Mitchell, Haldeman et al, as it could and should have been, but the show-trial by proxy of Richard Nixon. Frustrated by the pardon of the man they

wanted to see broken and punished before their eyes, the Nixon-haters need a substitute show-trial as an emotional outlet.

That is why there is so much salivating at the prospect of fresh tapes showing the former President to be culpable, and of the dramatic possibilities of defendants blaming their safely fallen leader to save their skins. Most of the accused will cater to the public demand, hoping to be let off in a national fist-shaking in the direction of San Clemente.

Out there, however, Mr. Nixon is not cooperating in the general hammering of nails into the coffin containing his reputation. For a time, the reader will recall, there was a spreading suspicion that his illness was a trick, an orchestrated spate of rumors first to encourage and later to excuse the action of President Ford in pardoning him.

To the keen disappointment of those who write his name in vitriol, Mr. Nixon turned out to be legitimately ill. This was especially infuriating since it could not be complained about; ironically, the people who most fervently wish him the speediest recovery are the ones who despise him most. He can be expected to recuperate, in Shakespeare's phrase, "with all convenient speed."

Because Mr. Ex is out of reach, both physically and legally, his pursuers have turned to this trial to flay him by proxy. Already, public resentment has begun to cool, which they cannot allow to happen; curiously, those flash polls showing anger at the pardon have not been followed by comparative polls now that the anger is ebbing.

Trial by fury is really all the Nixon-haters have left, and they will seek to seal the judgment of history now, as if history can be prevented from coolly revising the record later. In so doing, the prosecution in the court and in the press claims to be "letting the system work"—when they are abusing the judicial system to pre-write historic condemnation of a man who is not there in the dock. That system is damaged severely whenever the wrong charge in the wrong place in front of the wrong judge is wrongly hailed as justice.

Non-haters have a vision to cheer us up. It is the year 2000, and in our vision a decrepit old man dodders up the steps of the White House, supported on either side by a Governor named Cox and a Senator named Eisenhower, to be greeted at the front door by his daughter Julie, in her second term as President of the United States.

An impossible dream? Let's not be sexist.