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# Twisting Slowly

A Commentary

By Nicholas von Hoffman

Whoever it was who spit on John Ehrlichman as that once-powerful man was going into the courthouse for his trial did us a favor. He provided us with the occasion to ask ourselves what we think we are doing by prosecuting Ehrlichman and his four fellow defendants.

We can say we're serving the ends of justice, but there is a vile aroma about these proceedings, a smell not unlike the one around the federal court building where Judge Julius Hoffman was attempting his judicial lynching of the Chicago Seven. Flair your nostrils and you'll get a whiff of the Berrigan and Ellsberg trials. We seem to be doing to Mitchell, Ehrlichman, Haldeman and the others what we accused them of doing not very long ago.

They're being made to stand trial in Washington, the city that is most inflamed against them, and in John Sirica we've allowed them to be judged by the one man on the federal bench who, given the part he has played in this whole affair, must believe they're guilty as sin. This is not to say that Sirica didn't do some good and fine things, but his time is past.

We're charging these five men with violating the conspiracy statute. This was the very device that they used again and again to prosecute their political enemies.

Under the conspiracy law there is no end of hearsay junk that can be admitted in evidence. It allows a jury to find one man guilty on the basis of an act committed by another. The law is an invitation to the bizarre perversions of justice in which a defendant can be acquitted of attempting to rob a bank but convicted of conspiring to do so.

It is hard to believe it has any place in ordinary criminal prosecutions but its use in cases with political overtones is frightening. Ehrlichman and company have no chance for a fair trial. President Ford would have served us better had he pardoned these five along with Mr. Nixon.

One part of wisdom is to recognize when you can't

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do something. The nature of the crimes the five are accused of is so inextricably bound up with non-criminal, political offenses there is no way we can separate the two. This is a case that can't be equitably adjudicated, so what we must do is either lynch them or let them go.

Not that letting them go would save them from punishment. Look at the ghoulish performance of media, politicians and part of the public in regard to Mr. Nixon. The camera crew stakeouts at the hospital, the indignant editorializing, the righteous posturing and the pursuing of a person who no longer has the power to help or hurt anyone. Stoning Richard Nixon to death will not expiate our folly in having twice elected him; it will confirm it.

The 535 Forgettables who make up the membership of Congress have turned themselves into a metaphorical mob over their debates about how many maids and butlers the invalided, old man of San Clemente is to be permitted. Ten, five, two or none, his staff is slashed with dubious courage by the same legislators who were warned for years that the Nixon White House entourage had grown to a point that it not only offended the sumptuary standards of a Republic but the health of our political processes.

In that period, however, our congressional heroes were too chicken to lop off one presidential limousine from the budget. Now in a time of economic crisis which will shortly become excruciating, they spend their days pulling wings off flies. Whether or not discussing the salary of Richard Nixon's chauffeur is the only public issue they have brains to comprehend, the exercise is as ignoble as it is frivolous against a national backdrop of apprehension about what is to become of us.

Perhaps thinking up new ways to bedevil a harmless political has-been is to distract us from noticing their inability to challenge clear and present menaces like Nelson Rockefeller. What they tell us, with an obliging obligato from the ordained moralists of the media, is that they occupy themselves in these activities to see justice is done and that a historical record of these sad days is preserved. Their ideas of justice dovetail too smoothly with their political interest into turning us from citizens into a disorderly crowd; and as for their talk against pardons and in favor of trials so that future generations can read about Watergate, it's not our job to write history, but to make it.

To punish Richard Nixon or his associates any further demands our becoming like them. Let's pick on another ex-President. What about giving it to Chester A. Arthur? There's a guy who's really gotten away with it for years.