Garry Wills Post 8/23/71

Justice Quibbles Over Kent State

TOO MANY CROOKS are getting off on quibbles, according to John Mitchell—and for once I agree with him. He is quick to denounce the "sea of legalisms" available to the wrong sort (mainly blacks). But he has just availed himself of an empty quibbling formalism to protect the right sort (our boys in uniform). There will be no federal grand jury indictments of the men who killed four students at Kent State and crippled or wounded eight others.

Why not? Because, says Mr. Mitchell, there is no compelling evidence of prior conspiracy, on the part of National Guardsmen, to kill demonstrating students.

It is unfortunate that this allegation of a plan to kill was drawn up and publicized. In the first place, the evidence offered was weak, even on the showing of the charge's authors. Besides, the charge shows that readiness to find conspiracy everywhere which characterizes the Justice Department itself.

Only on grounds like these can Mitchell be blamed for rejecting the idea that Guardsmen plotted murder—a Justice Department that put together a "conspiracy" of such flimsy evidence at the Chicago Eight trial should be able to find plots anywhere, if it only looked hard enough.

IT MAY WELL BE that Guardsmen, sour over being called out, fed up with the antics of "longhairs," may have shot the breeze beforehand about "getting some of those punks." In fact, I'd be surprised if some had not talked that way. But these are not grounds for a conspiracy charge—just as one should not bring conspiracy indictments against those in the peace movement if, in their agonizing war, they say "Why don't we put Henry Kissinger under citizen's arrest?"

But all this quibbling about prior conspiracy has nothing to do with the facts, with the crime that was committed. If, on the spur of the moment, a peacenik felt inspired to nab Kissinger, crowded him into a car, and took off, that would be a crime, even if the kidnaper had not plotted his act beforehand, in concert with others. Would the Justice Department refuse to bring charges against such a criminal, airily dismissing the act because no conspiracy preceded it?

I do not think Guardsmen planned, ahead of time, to kill. But I know that they killed. The thought came to them on the spot, and they acted on the thought. That was their crime, one that no quibbles can argue away.

Oh, there were extenuating circumstances—there often are, when crimes are committed. Many murders, and most manslaughters, involved extenuating circumstances that must be weighed at trial. But these are not reasons for refusing to bring trial. The man who gets into a barroom brawl may not intend, beforehand, to kill his opponent—even if, in fact, he does kill him. The drunk driver did not want to run over a child. Men usually kill in a panic, or when driven by awful pressures. But we do not say "poor fellows!" and let them go their way.

Were the Guardsmen panicky, put in an unfortuante situation, acting under misconceptions? Then it was the job of their defense lawyers to establish these points, and of a jury to weigh them. Yet now no jury will hear the arguments, pro or con. Why is this?

THERE WERE, after all, extenuating circumstances for those students indicted as rioters by the Ohio state grand jury. Some of them, too, acted in panic, or out of misapprehension—were ignorant of curfew hours, overexcited, trying to aid the stricken. The ones indicted did not conspire ahead of time to bring about the sad results. Yet none of these things seem to matter where the students are concerned. They have been charged, summoned to the jeopardy of trial, forced to give their accounting for what took place. Legal quibbles were used against them, not for them (as for the Guard).

Law and order is being mocked, all right, and criminals coddled and quibbles used politically to let men off—and all this by a Justice Department whose double standard, whose lack of equable procedure, is manifest once again by our Attorney General.