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Doubtful Conspiracy Statutes

THE OUTCOME OF THE BERRIGAN trial in Harrisburg provided a clear lesson to those concerned with the vitality of American democracy.

It demonstrated the good sense of the average American jury, particularly when confronted with the legal flypaper known as the law of conspiracy. Those who have survived this column over the past years will recall my repeated condemnation of the conspiracy indictments against Dr. Spock, the Chicago Seven, and various other troublesome characters, including the Trotskyites and Communists earlier brought to ground by the Smith Act.

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FOR TAKING this position, I have received a good deal of criticism as being "soft on subversion." The difficulty is that the critics simply don't know what they are talking about.

The Communist leadership, for example, was not indicted for trying to overthrow the government of the United States. The grand jury brought its members up for "conspiring to teach and advocate" the forceful overthrow of the government. Any time the Communists, the Minutemen or any other group actually want to try to overthrow the government, you arrest them for criminal

attempt. Not for conspiracy, but for committing an overt, felonious act.

Conspiracy is a lazy prosecutor's rap. Many years ago, for example, a group of alleged Mafiosi were attending a birthday party in upstate New York. The police descended, arrested them and inquired what they had been discussing besides birthday presents.

Each one invoked the Fifth Amendment's guarantee against self-incrimination. They were then indicted, tried and convicted for conspiring to commit unknown crimes—the proof being that they had all taken the Fifth! Fortunately this judicial monstrosity was overruled at the appellate level.

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THE EVIDENCE in the Berrigan case was hardly much better. I have been teaching constitutional law for over 20 years and I confess that I have never been so utterly baffled at the alleged linkages that presumably brought these seven people into the conspiracy net.

Indeed, when a group of students asked me to explain what was going on, to elucidate the whole notion of "vicarious guilt," I ended up covering a blackboard with

dotted lines — and I still couldn't fit Eqbal Ahmad into the picture. (Interestingly enough, after the Harrisburg jurors had been out a while, they sent for a blackboard!)

Politically speaking, the defendants at Harrisburg are on a different wave length from me. But that is irrelevant to the point. For months they have been harassed by the United States government and have had to raise money to defend themselves against a patently bum rap. All we have left to show for it is the conviction of Father Phil and Sister Elizabeth for bootlegging letters out of prison — via an FBI plant, who struck me as a prize provocateur.

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WHICH LEADS ME to two recommendations to the President of the United States, who I hope shares my concern with this outrageous demeaning of the judicial process.

First, exercise executive clemency and let Father Philip Berrigan and Sister Elizabeth McAlister out of jail: compassion is in order.

And second, direct the Department of Justice to put the conspiracy statutes into the museum of common law aberrations, where they richly belong.