

The Fearless Spectator

Charles McCabe

Mopery, Grand Scale

THAT THE LAW has been used to win ends often contrary to the written statutes is not something which should astonish us here devoted law-and-order watchers.

A useful way of legally nailing some people you do not like, for the opinions they hold, and even though they have not yet committed a crime, is to invoke the U.S. law of conspiracy.

There is an astonishing similarity between the law of conspiracy, as invoked these days, with the old police crime of mopery. This used to be defined as threatening to shoot craps. Mopery was used to keep guys in line who, in the opinion of the arresting officer, might cause some trouble if the majesty of the law was not brought forcibly into play. Mopery arrests may have prevented some crime. Mostly they were made to show putative delinquents just who was Boss.

Conspiracy trials like those against the Berrigan Brothers and Dr. Benjamin Spock and other misguided folk who dislike our little Indochina war and sometimes urge the burning of draft cards, are a way of letting you know The Man is The Boss. A long time ago Judge Learned Hand called conspiracy laws "the darling of the prosecutor's nursery." These laws are there when all other laws fail.

"The modern crime of conspiracy is so vague that it almost defies definition," said Supreme Court Justice Robert Jackson.

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VAGUE, indeed. The legal definition of conspiracy is quite simple. Two or more people decide they want to do something illegal. They don't do it, you

see, they just talk about doing it. When this situation is complicated by an "overt" act — something done to advance the plot, still short of an actual crime, then a conspiracy has been hatched.

According to the prosecutors, this is all to prevent awful things from happening before they happen. You would think that, logically, the job of law enforcement is to prevent crime without taking court action, or to catch the criminals after the act has been committed. The conspiratorial mind doesn't work that way.

Conspiracies are being hatched by the hundred every minute in every big city of the world. Four or five men who set up a poker game, and use the telephone in their preparations, have determined on an illegal course, and the telephone calls constitute an "overt act." Same for a pot party, using tokens instead of coins in a telephone booth, or five guys getting drunk in a bar, and calling up a sixth to pervert him. Even if the sixth doesn't come, the phone call is enough to prove conspiracy.

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SURE, there are conspiracies that are not at all this trivial. Guys try to hold up banks, and murder people, and make conspiratorial arrangements. Seldom, indeed, do the cops ever hear of these arrangements.

The conspiracy laws are seldom used against hard crime. In these days they center on political dissidents, mainly on those who don't like the Vietnam war, and on Black Panthers and such-like, who just don't like the way things are handled around here.

It is not illegal to dislike the government, and to say so. Far from being illegal, it is a right guaranteed by the First Amendment of the Constitution. The conspiracy laws are being used by the government to erode that right. This worries a hell of a lot of people, including lawyers.

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THE TRIAL of the Berrigan Brothers is soon upon us, as a result of an alleged plot to kidnap Henry Kissinger which reads more like an elaborate sophomore practical joke than a threat to our institutions.

Juries are getting tougher about conspiracy cases where no solid proof exists. Last May in New York 13 Panthers were acquitted of all 156 conspiracy counts in an alleged plan to bomb buildings. No proof. But the Berrigans are far from home free, as are those who continue to talk dissidence, and go to the phone to involve someone else in their dissidence. Free speech stops at the political barricades, it seems.

