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'Chicago Seven' Trial Consequences in Future

WASHINGTON — Events in Judge Julius J. Hoffman's courtroom have spoken so loudly for themselves that there remain only a few things worth saying. On every side, there has been enough and to spare of near outrage and for that reason the end of this historic political trial is at least merciful.

But it is clarifying, too. The first point that needs to be made, in fact, is that Judge Hoffman's final gavel shifts the burden of proof in the most specific way. Far from any courtroom disorder, out of range of epithet, in the presence only of the law and the record, the whole American judicial system—not just the defendants and their lawyers—now goes on trial. This is not to say that American justice must necessarily reverse Judge Hoffman and acquit the Chicago Seven; but whatever it may do as to the facts of the case, it must do it in such a way as to prove itself innocent of malice, worthy of trust, after the debacle in Chicago.

A second point that is now clear, and which is not without relevance to the first, is that there is a depressing parallel between accounts of the Chicago violence of 1968 and the trial it occasioned. It was said of the violence that demonstrators "provoked" the police and left them no choice but to respond with greater violence; it is now said of Judge Hoffman that the defendants provoked him and disrupted his court and left him no choice but to respond with harsh contempt sentences and maximum penalties following conviction. What profound contempt for the law, let alone justice, is expressed in these complaints that the law can only punish wrong-doing by itself doing wrong!

Search for Scapegoat

Another unavoidable conclusion is that if anyone in government or out of it believed that the Chicago Seven were truly the primary instigators of the youthful unrest of recent years, or that their trial and conviction would help to suppress that unrest by intimidating or warning others, the response has now been given by unruly demonstrations breaking what had been the quiet of winter. The search for scapegoats will never restore peace and quiet, much less bring us together.

Judge Hoffman
Accepts A Radical Doctrine

But perhaps the most important thing to be said about the trial and the higher court review that now impends does not really concern the fate of the defendants—already, they have been elevated by Judge Hoffman to a standing beyond any dreams they could ever have had, and for decades to come American society will have to deal with the consequences of this folly. Nor is determining the constitutionality of the dubious law under which they were convicted necessarily the most important next step; the Chicago trial, after all, showed how hard it would be to get a conviction on such flimsy charges in more respectable circumstances.

Of far greater consequence was Judge Hoffman's off-hand acceptance, on the last day of the trial, of Atty. Gen. John Mitchell's novel and pernicious doctrine that in the guise of protecting national security the government may eavesdrop (by wiretapping and bugging) upon domestic organizations and individuals, on its own decision, without court permission and without having to dis-

close the transcripts to defendants. While the courts have so far permitted the government such unrestricted eavesdropping in the area of "foreign intelligence" (say, the wiretapping of an embassy or an espionage agent), it would be an unwarranted and extraordinary grant of unrestricted police power to the executive branch if the Mitchell doctrine, already accepted by Judge Hoffman, were to be allowed to stand.

Eavesdropping

The practical meaning of this doctrine is that if Mitchell or the President should decide that ANY person or organization is a threat "to use unlawful means to attack and subvert the existing structure of government," they could tap and bug him, her, them, or it without any restriction whatsoever and without any necessity to disclose to anyone who might as a result be charged with a crime—any crime—the eavesdrop evidence upon which the charge is based.

It is not just the actual depredations that such federal police power might wreak upon a particular person or organization that ought to be considered, although that is frightening to contemplate (after all, even those who implicitly trust their being always in office; who will have the power to bug YOU tomorrow? Just as obvious is the chilling and intimidating effect the acceptance and operation of such a doctrine is bound to have on political opposition and dissent in general. (I have already interviewed this year one liberal Democratic candidate for federal office in a major state who insisted on meeting me outside his own headquarters, which he had reason to believe was bugged.)

This is not an issue that concerns only the Chicago Seven, or the Black Panthers, or the SDS, or the Ku Klux Klan, or criminals, or nuts, kooks, creeps, long-hairs, intellectuals, liberals, bleeding hearts and effete snobs. This is an issue that ought to arouse even the most convinced and hard-nosed conservatives; because if conservatism means anything, it must mean a concern for personal liberty in conflict with the power of the state. And that is the issue raised directly and specifically by the Mitchell doctrine.

"This court," said Judge Hoffman, in accepting the doctrine, "does not believe it can question the decision of the executive department on what does and what does not constitute a national threat." But if the courts cannot question the executive, who can? Is the answer of free Americans really to be that no one can?

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