

An Unseemly Judicial Collision

THE IDEA that an attorney general of the United States, particularly one who has been a federal judge, would deliberately disobey an order of a federal judge—and run the risk of being sent to jail—is fantastic. But that was happening in New York City until the Second Circuit Court of Appeals intervened on Friday. One of its judges wisely stayed the effectiveness of the contempt finding against the attorney general until his court has time to consider an appeal.

What is involved here is more than just a personal confrontation between Attorney General Griffin Bell and Judge Thomas P. Griesa. Mr. Bell believes the government has a legal right to keep confidential the names of the FBI informants who told it about the activities of the Socialist Workers Party. Judge Griesa believes that legal right does not exist and has ordered Mr. Bell to turn over those names to the party's lawyers. Mr. Bell believes the judge is totally wrong but has no way to appeal the order except by first refusing to obey it.

What is being exposed here is not the perversity of the attorney general, as some have suggested, but the mechanisms of a legal system that sometimes do not permit speedy or tidy resolutions to difficult ques-

tions. The higher courts refused to consider an appeal of Judge Griesa's order at an earlier stage in the case because it was not final. Now, presumably, it is final, and they will consider it. By hewing to this technical rule, the judicial system is more responsible for the present situation than is the attorney general.

Frankly, we are surprised that Judge Griesa has carried the confrontation so far. The appellate court posted a good many signs when the case was before it previously that he should find a way to avoid the situation that now exists. It even went so far as to indicate it thinks the attorney general's legal position is quite strong. It did so by expressing its "concern" that Judge Griesa was requiring Mr. Bell to make a "disclosure for which there is no substantial need."

We do not know how the higher courts will decide the question of confidentiality now that it is, presumably, before them. Our guess, based on previous cases, is that Mr. Bell will prevail. But whether he wins or loses—and he has said he will obey Judge Griesa's order if he loses—both the executive branch and the judiciary have already been damaged by the mismanagement that has produced this unseemly collision.