

Post 5/17/73
Lesson to Be Learned

Your editorial of Sunday, May 13, on the Ellsberg case brings to mind an excerpt from an opinion of Mr. Justice Brandeis in *United States v. Olmstead*, 277 US 438, which seems also to have relevance to the entire Watergate situation:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto itself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should absolutely set its face.

“Against that pernicious doctrine” the Supreme Court in that case did not “resolutely set its face”; in this case, fortunately, Judge Byrne did. Considering that Brandeis made his remarks in 1928, in dissent, perhaps the lesson to be learned is that although the courts have learned their lesson, after 45 years the executive still has not learned its.

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