

NYTimes

# The First Ten in Jeopardy

JUN 25 1972

By ALAN M. DERSHOWITZ

The American dollar is not the only bill that has been shrinking in value over the past few years. The American Bill of Rights, our most precious national resource, is also in the process of being significantly devalued. The civil liberties of all Americans — the right to be free from unwarranted Government intrusion, to speak critically of those in power, to be treated fairly and with due process — have been seriously curtailed over the past few years. As the chief counsel to the Senate subcommittee on constitutional rights recently put it: "The only part of the Bill of Rights that the Administration hasn't either rewritten or violated is the only one it should have—the 'right to bear arms.'"

The First Amendment's "right of the people peaceably to assemble and to petition" was emasculated last year when the Government indiscriminately rounded up more than 10,000 war protestors, most of whom — as the courts later held—were engaging in entirely legal behavior. Freedom of speech and press has also been endangered by the Vice President's thinly veiled threats against the broadcast media.

The Administration has also taken aim at the Fourth Amendment's protection against "unreasonable searches and seizures." It has audaciously claimed to be exempt from the requirement that a court-approved warrant be obtained before it may tap or bug conversations involving the national security; and it has defined "national security" in the most expansive possible way to include American citizens engaged in what the Administration regards as radical activities. In 1969 and 1970 alone, more than 40,000 days\* of tapping and bugging were conducted without court approval. Fortunately, a unanimous Supreme Court has rebuffed the Administration on this practice.

The Fifth and Sixth Amendments have fared no better. The privilege

\*54 per day



Ed Fisher

against self-incrimination and the right to counsel—the bulwarks of our adversary system of justice—may well become dead-letter if the Administration succeeds in its express goal of abrogating the constitutional rule under which illegally obtained evidence is excluded from trial; the "exclusionary" rule is the only presently effective protection against unlawful police behavior.

The Eighth Amendment's right to reasonable bail has also been undercut by the Administration's preventive detention law, which authorizes the imprisonment of suspects, not because of what they have done but because

of what it is predicted they might do at some future time. Though the statute has been used only twenty times in its ten-month history (and is thus, obviously, not a critical weapon in the law-enforcement arsenal), the implications of preventive imprisonment based on future predictions are frightening to contemplate.

Despite these setbacks to liberty in recent years, it would be wrong to conclude—as many radicals have asserted—that we have become a repressive society, or even that we are on the road to becoming one. We are still among the freest and least repressive societies in the history of the world. It would also be wrong to assume — as some politicians have argued—that attempts to erode the Bill of Rights are unique to the Nixon Administration. All administrations seek to expand the power of Government at the expense of constitutional safeguards.

But it is widely felt by lawyers and civil libertarians that the Bill of Rights is in greater danger today than it has been in recent decades. This Administration has consciously set out to weaken the powers of the other branches of Government. It has demeaned the Supreme Court by considering for appointment some lawyers whose only apparent qualifications have been a thorough distaste for the provisions of the Bill of Rights. It has encouraged the rhetoric of repression. Finally, and perhaps more important, there seems to be a mood of repression, of intolerance, in the air.

The American people seem to have lost some of the vigilance that we have traditionally exercised in defending our sacred rights. We owe it to ourselves and to our children to see that our noble experiment with liberty —our Bill of Rights—is kept strong as we enter into our third century of nationhood.

Alan M. Dershowitz is professor of law at Harvard.