

The dismissal of all charges of espionage, theft and conspiracy in the Ellsberg case is an indictment of the Government's resort to police-state tactics in its effort to discredit and intimidate critics of its Vietnam policy.

Seldom has a Government-initiated criminal prosecution revealed such contempt for individual rights and lawful procedure by the Government itself.

By the same token, seldom has a case provided more dramatic proof of the importance of a free and independent judiciary operating as a check on abuses of executive power. Both the best and the worst in the current state of the American political process were on display in the Federal district court in Los Angeles.

The one regrettable aspect of the decision is that it leaves unresolved the basic question of law raised by the Administration's mania for secrecy, its consistent stretching of any legitimate concept of national security into an instrument for cutting off public access to the data required for intelligent decisions on vital matters of policy. It would have been a manifestly unfair burden on Dr. Ellsberg and his co-defendant, Anthony Russo, to have forced them to stand trial again, in the light of the judge's finding that a fair verdict had been rendered impossible by the scope of governmental misconduct throughout its investigation into the leak of the Pentagon papers. But the absence of a definitive ruling on where the national security line properly begins and ends leaves the way open for further abuses by a secrecy-minded Administration.

The formation of a special White House unit to spy on Dr. Ellsberg, the unconscionable raid on the files in his psychiatrist's office and the disclosure that the F.B.I. had been tapping his telephone calls long before the leak—with the records mysteriously vanishing from the official file — were all chilling evidences of the misapplication of official power. The resources of the C.I.A. were even more outrageously misapplied. Only under extreme pressure from the court did the Government inform the defense of these trespasses, and even with that pressure great gaps were left in the information supplied.

Perhaps the most shocking transgression of all was the action, in the midst of the trial, of the President and John D. Ehrlichman in calling Judge Byrne to the California White House in San Clemente to offer him the directorship of the F.B.I. Whatever the propriety of the judge's going at all while presiding over a trial with such heavy political overtones, he of course refused even to entertain the offer during the trial. His decision now to dismiss all the charges is a splendid affirmation of American justice and a needed rebuke to the misuse of executive authority.