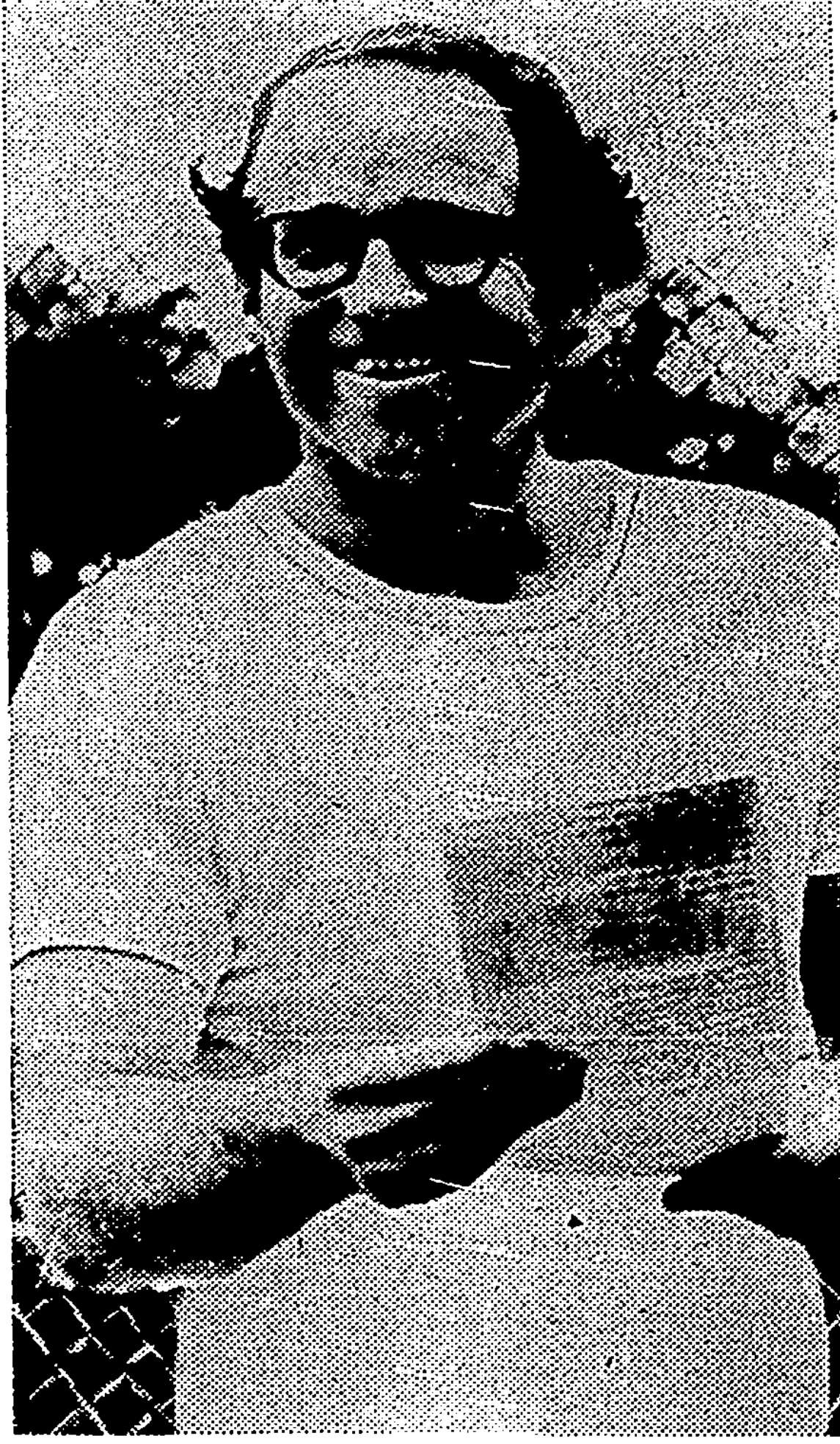


Spock and Coffin After Learning of Court Decision



Dr. Benjamin Spock, left, at a news conference on Martha's Vineyard and the Rev. William Sloane Coffin Jr. in New Haven after they heard that the U.S. Court of Appeals had upset their convictions. Mr. Coffin was playing tennis when told of the decision.

Associated Press

U.S. COURT UPSETS SPOCK CONVICTION IN FIGHT ON DRAFT

He and Student Are Freed
—New Trial Ordered for Coffin and Goodman

A FREE SPEECH SPLIT

One Judge Votes to Release All Defendants—Scores Finding on Conspiracy

Excerpts from court opinions are printed on Page 12.

By **JOHN H. FENTON**
Special to The New York Times

BOSTON, July 11 — The United States Court of Appeals for the First Circuit reversed today the convictions of Dr. Benjamin Spock and three other men who were found guilty in 1968 of conspiring to counsel evasion of the draft.

But the cases of two men, the Rev. William Sloane Coffin Jr. and Mitchell Goodman, were ordered returned to the Federal District Court for another trial because of an "error" by Judge Francis J. W. Ford in submitting 10 special questions to the jury that returned the verdict.

The decision of the three-man appellate court was split, in part, 2 to 1. Chief Judge Bailey Aldrich and Judge Edward M. McEntee agreed that Dr. Spock, 66 years old, of New York City, the pediatrician and author, and Michael Ferber, 24, of Buffalo, a Harvard graduate student, should be freed from further prosecution.

Freedom of All Urged

Judge Frank M. Coffin agreed to that, but dissented from the decision to return the cases of Mr. Coffin, 44, chaplain of Yale University, and Mr. Goodman, 45, a teacher, of New York City and Temple, Me., to the lower court. The chaplain is not related to the judge.

The majority opinion held that there was insufficient evidence of a conspiracy to warrant a case against Dr. Spock and Mr. Ferber, but that the activities of Mr. Coffin and Mr. Goodman could have led "a properly instructed jury" to find both defendants guilty.

The majority rejected the de-

Continued on Page 12, Column 3

U.S. COURT UPSETS SPOCK CONVICTION

Continued From Page 1, Col. 8

fense contention that the First Amendment's guarantee of free speech, by itself, warranted the acquittal of all the defendants.

Judge Coffin, in dissent, held that all the defendants should have been freed on the ground that applying a doctrine of conspiracy to these cases was "not consistent with First Amendment principles."

Possibility of Guilt

"In my view," Judge Coffin wrote, "whatever substantive crimes of aiding, abetting and counseling, or whatever more specific conspiracy may have been committed, the crime of conspiracy, as charged in the indictment, was not."

The majority agreed with the defendants that "vigorous criticism of the draft and of the Vietnam war is free speech protected by the First Amendment, even though its effect is to interfere with the war effort."

But, the court went on in effect, that when a dissenter went beyond vigorous verbal support for resisters and became party to specific illegal acts, the Government had a right to prosecute him under the conspiracy laws.

The case may ultimately be appealed to the Supreme Court.

The Government based its case on a series of events in 1967. A fifth man originally indicted was subsequently acquitted. He was Marcus Ruskin, 35, co-director of the Institute for Policy Studies, a private research organization in Washington.

Evidence included a document, "A Call to Resist Illegitimate Authority," with a covering letter asking for signatures in support. It was originally signed by Dr. Spock and Mr. Coffin. Evidence also included a statement, "civil disobedience to the war," written by Mr. Goodman, in August, 1967.

Those three men took part in a news conference in New York on Oct. 2, to start the call to resistance. On Oct. 16, Mr. Ferber and Mr. Coffin took part in a ceremony at the Arlington Street Church in Boston at which draft cards were burned.

In addition, a sit-in in front of the Whitehall Street induction center in New York City and the turning in of draft cards to the Department of Justice in Washington became part of the court record.

The trial began on May 20, 1968, and the convictions were returned on June 10.

Leonard B. Boudin of New York was chief lawyer for Dr. Spock. Edward J. Barshak was chief of Mr. Goodman's legal counselors and James D. St. Clair of Boston and later Arthur J. Goldberg, the former Justice of the Supreme Court, represented Mr. Coffin.

The court decision, and Judge Coffin's dissent, were published in the 52-page document. It held that "inseparable from the question of the sufficiency of the evidence to convict are the rights of the defendants and others."

The court said the Government improperly introduced statements, "of third parties alleged to be co-conspirators." It held that, "the specific intent of one defendant in a case such as this is not ascertained by reference to the conduct or statement of another, even though he has knowledge thereof."

The court said that it had adopted a description of the case in a brief filed by the Unitarian-Universalist Association as a friend of the court for Mr. Ferber.

This held that a petition calling for resistance to the draft had "a double aspect; in part it was a denunciation of governmental policy and, in part, it involved a public call to resist the duties imposed by the [draft] act."

There remained the question, the court went on, whether it could be found, in the strictest sense, whether the defendants, "personally agreed to employ the illegal means contemplated by the agreement, including counseling on lawful refusal to be drafted or other violations of the Selective Service Act."

In the case of Mr. Goodman, the court said that "because a properly instructed jury could have found Goodman had the requisite specific intent he was not entitled to an acquittal."

"We do not think of Coffin as one to run with the hare and hold with the hounds," the court said. "In any event, he was not entitled to an acquittal."

As for Dr. Spock, the court said that "viewing the record as a whole we feel we would be doing poor service" to judicial principles requiring substantial evidence by failing to hold him entitled to acquittal.

The court said that while Mr. Ferber's action might have constituted a minor conspiracy, "this does not mean he should be convicted for the larger one."

The decision marked one of the few occasions on which Judge Ford, 86, has been overruled. In addition to being overruled, he was criticized on grounds he had not properly instructed the jury.

The crux of the criticism centered on the judge's putting to the jury, during his charges, a list of 10 special questions to be answered yes or no. The questions dealt with the jury's findings, "beyond a reasonable

doubt," of the specific phraseology of the original indictment.

The indictment charged the four defendants with having conspired to counsel, aid and abet Selective Service registrants to refuse and evade service in the armed forces, to fail to have in their possession their registration certificates or their notices of classification and to interfere with the administration of the draft act.

The court held that while the submission of questions to a jury in a civil case was an everyday occurrence, "in criminal cases, outside of a special narrow area, the Government is not only without precedent but faces a formidable array of objections."

"Put simply," the court said, "the right to be tried by a jury of one's peers finally exacted from the king would be meaningless if the king's judges could call the turn."

"In the exercise of its functions," the court went on, "not only must the jury be free from direct control of its verdict, but it must be free from judicial pressure, both contemporaneous and subsequent."

Mr. Ferber, the only one of the defendants in Boston today, said at a news conference at the Statler Hilton Hotel that he had been optimistic about the outcome and was not surprised at the decision. He said he planned to help organize anti-war demonstrations in Chicago and Washington next fall.

Mr. Ferber is attending the opening of the annual meeting of the Unitarian-Universalist

Association. He was accompanied by his lawyer, William P. Homans Jr., of Boston.

Dr. Spock, vacationing on Martha's Vineyard, commented that the reversal was "a big moment," but he added, "The tragedies are that the war is still dragging on and that young men have been imprisoned for being opposed to it and doing as their consciences dictated."

John Wall, a former United States attorney who was the chief prosecutor for the Government, said he was surprised, but he declined specific comment. Mr. Wall has since joined the Massachusetts Attorney General's department as head of the criminal division.

The lawyer suggested that the decision on a Government appeal would be made in Washington.

Government Move Awaited

Mr. Barshak said in a telephone interview here yesterday that further legal steps would depend on what action the Justice Department took. "I will discuss it with Arthur Goldberg and we will make a joint decision," he said.