Court Curbs Wiretapping Of Radicals

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A unanimous Supreme Court rejected yesterday the Nixon administration's claim that the Executive Branch may wiretap suspected "domestic" radicals without a court warrant.

In a major rebuff to an important administration law enforcement policy, the court held that freedom for private dissent "cannot safely be guaranteed if domestic security surveillances may be conducted solely within the discretion of the Executive Branch."

The blow was delivered by one of President Nixon's own appointees to the court, Lewis F. Powell Jr., writing for himself and five other justices. Concurring separately were Chief Justice Warren E. Burger and Justice Byron R. White.

Beginning in the 1969 prosecution of the "Chicago 8" conspiracy defendants, one of many cases vitally affected by yesterday's decision, the Justice Department asserted that judicial supervision was not required when the President and Attorney General deemed a specific wiretap necessary for protection from subversion from within.

But Powell, despite past public support for wiretapping and a reputation for concern over national security, said the Justice Department had failed to make out a case for "the time tested means" of judicial warrants for safeguarding Fourth Amendment guarantees against unreasonable searches and seizures.

Presidents since Franklin D. Roosevelt have asserted the power to conduct electronic surveillance against suspected foreign agents without permission from a court but it was not until John N. Mitchell became Attorney General that the government claimed similar authority concerning home-grown radicals who were not accused of acting as foreign-supported spies or revolutionaries.

Emphasizing that the foreign agent problem was not before the high court, Powell said that even the domestic issues pressed by the department "merit the most careful consideration" when urged "on behalf of the President."

"We do not reject them lightly," said Powell, "especially at a time of worldwide ferment and when civil disorders in this country are more prevalent than in the less turbulent periods of our history."

Powell then went on to reject every administration argument, including the contention that internal security matters are "too subtle and complex" for judges.

"There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases," Powell said, adding:

"If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance."

Powell denied that there was significant danger of compromising intelligence secrets when government lawyers must go secretly to a court for warrants.

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He noted that Congress, in passing wiretapping legislation in 1968, already had imposed a sensitive responsibility on judges by authorizing wiretapping and bugging warrants in espionage, sabotage and treason investigations.

"Although some added burden will be imposed upon the attorney general, this inconvenience is justified in a free society to protect constitutional values . . . By no means of least importance will be the reassurance of the public generally that indiscriminate wiretapping and bugging of law-abiding citizens cannot occur."

Powell said public uneasiness was justified by the "danger to political dissent" inherent in the vague concept of national security, since "the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs."

He added, "The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power."

The reassurance stems from the independent judgment of a neutral and detached magistrate who determines whether there is a reasonable basis for the electronic intrusion upon privacy, Powell said.

He indicated that under appropriate guidelines for such warrants, the government might have been able to obtain approval to eavesdrop on Lawrence (Pun) Plamondon, a leader of the radical White Panther Party accused of conspiring to blow up a Central Intelligence Agency building at Ann Arbor, Mich.

Lower courts ruled that wiretap records in the case must be turned over for defense inspection to see whether the illegal taps produced part of the prosecution's case. Yesterday's decision forces the government to choose between disclosure to the defense and abandoning the prosecution in the Ann Arbor case, the Chicago case now on appeal, and numerous others.

Powell offered a suggestion that Congress might enact special standards for the warrants, perhaps allowing agents to install listening devices for longer periods than provided in the 1968 law for conventional crime investigations.

He totally rejected the government's argument that Congress had immunized domestic radical taps from the warrant requirements.

Attorney General Richard G. Kleindienst said last night that he is terminating all domestic security wiretaps that conflict with the court's opinion. He said his staff would work wth Congress to seek new warrant standards in line with the court's suggestion.

Joining Powell were Justices William O. Douglas, William J. Brennan Jr., Potter Stewart, Thurgood Marshall and Harry A. Blackmun. Burger noted simply that he concurred "in the result" and White based his concurrence on language in the 1968 act.

Justice William H. Rehnquist, who helped shape the government's arguments as a Justice official last year, did not participate.