

ABA Approves Wiretapping In U.S. Interest

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CHICAGO, Feb. 8—The American Bar Association endorsed today the use in criminal prosecutions of wiretap evidence obtained without warrants by federal agents in "national security" and "foreign intelligence" investigations.

By an overwhelming voice vote, the ABA's 295-member House of Delegates gave full support to the national security exception to the court-order procedure required for electronic eavesdropping under the 1968 federal Crime control act.

Liberals argued that while the President may have extraordinary powers under the Constitution to protect the nation from foreign subversion, an individual defendant also had the right under the Fourth Amendment not to be convicted on evidence gathered without a warrant.

The delegates, who speak for the ABA on policy matters, did not consider the wisdom or constitutionality of Attorney General John N. Mitchell's claim that the government has similar unsupervised power to wiretap and bug in internal subversion cases and to use the evidence in court.

Mitchell is appealing from two U.S. District Court decisions denying him the wide wiretap and evidence rights in domestic cases, but only the foreign intelligence issue was before the House of Delegates today at the ABA's winter meeting.

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Separate Authority

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The federal law, which pro-

hibits private electronic snooping, requires states to enact court warrant procedures if they wish to permit police to plant telephone taps and hidden microphones to catch felons. So far a dozen states, including Maryland, have done so. Congress has given separate authority for wiretap warrants in the nation's capital.

Deputy Attorney General Richard G. Kleindienst told the delegates that the Justice Department obtained 253 surveillance orders in 1969 and 1970 with "productive" results, including the recent conviction of a Washington-New York drug ring.

Georgetown University law professor Samuel Dash, chairman of the ABA's criminal law section, argued that the government's power to preserve itself need not clash with Bill of Rights protections for the accused. He said national security wiretapping could accomplish its main purpose merely by "finding the spies" or "stopping a bombing."

But former ABA President Lewis F. Powell Jr., of Richmond, Va., replied that the liberals' argument was "constitutionally illogical."

Admissible Evidence

If the President has lawful authority to conduct a wiretap, Powell argued, the fruits of the tap must be considered lawfully obtained, admissible evidence.

Liberals came closest to amending the wiretapping standards when they argued for more detailed pre-trial disclosure to the accused and his lawyer of evidence obtained by court-approved eavesdropping.

Judge Jack G. Day of the Ohio Court of Appeals told the delegates that the issue involved the rights of more than "certified villains" and included persons accused of "tax evasion, stock fraud and anti-trust violations—your clients." The amendment was rejected, 127 to 104.