

Court to Abandon Issuing Warrants For Black-Bag Jobs

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A special federal court, acting at the request of the Reagan administration, has decided to abandon issuing secret warrants for "black-bag jobs" in foreign-intelligence cases.

In a six-page ruling released yesterday, Judge George L. Hart Jr. of the U.S. Foreign Intelligence Surveillance Court said he and his colleagues have agreed that they have no authority to issue such orders for surreptitious property searches.

Justice Department officials welcomed the ruling and said they would return to the practice of claiming "inherent authority" within the executive branch to conduct secret entries in national security cases, without court approval.

Hart said his seven-member court, created by Congress in 1978, clearly is limited to reviewing requests for electronic surveillance in foreign intelligence cases in this country and, where necessary, physical entries to install surveillance devices.

Last year, however, the Carter administration began seeking the court's approval for black-bag jobs as well, on the grounds that this would provide "maximum protection for individual rights" and still be consistent with national security interests.

A black-bag job traditionally is defined as a warrantless, surreptitious entry into a home, office or other premises for the purpose of physical search, photographing or seizing documents. Entries made to install a microphone or for repair or removal of microphones are not considered black-bag jobs.

The special court approved three such searches in line with the Carter policy, but the practice drew fire from the right and the left.

Conservatives viewed it as an unwarranted intrusion on the powers of the executive branch in the national security field. Liberals maintained that a regular search warrant, issued on a finding of probable cause that a crime was about to be committed, was required constitutionally.

"Apparently, by the third round, the court itself was beginning to have some questions about its jurisdiction," Justice Department spokesman Tom DeCair said yesterday. "Our options were to stop going to the court [for such warrants] or to seek the court's guidance. We asked for guidance."

Richard K. Willard, the Justice Department's new counsel for intelligence policy, made the request June 3 in a memorandum submitted to the court with an application for a surreptitious FBI search.

The black-bag job in question, evidently to be

aided by someone inside, was aimed at "nonresidential premises under the direction and control of a foreign power and . . . personal property of agents of a foreign power on those premises."

This could have been a search of a foreign embassy, a consulate or even business offices occupied by U.S. citizens regarded as "agents of a foreign power" and thus under its direction and control.

Willard argued in his memo that "There is no constitutional necessity to obtain a judicial warrant for the government to engage in a properly authorized intelligence search."

He submitted that the president, and by delegation the attorney general, already have the authority as a result of "the president's constitutional powers as commander-in-chief and as the principal instrument for U.S. foreign affairs."

Hart stopped short of affirming such claims, but agreed that his court "has no jurisdiction in the area of physical searches."

"In view of the clearly expressed intent of Congress to withhold authority to issue orders approving physical searches," Hart said, "it would be idle to consider whether a judge of the FISC nevertheless has some implied or inherent authority to do so."