

Mitchell Defends Wiretaps That Overhear the Innocent

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The Justice Department said yesterday that it is "simply not possible to prevent overhearing innocent participants" in the course of telephone wiretaps aimed at domestic subversion.

But the government, admitting that a Weatherman defendant in a criminal case had been overheard on a warrantless wiretap, said the risk of harm to the innocent does not mean that a court warrant is necessary when domestic radicals are under electronic surveillance.

Attorney General John N. Mitchell told a federal court in Chicago that the "telephonic overhearing" of Judy Clark, one of 12 persons under indictment for the October, 1969, "days of rage" rioting, was based on information supplied by FBI director J. Edgar Hoover.

Hoover's request for permission to wiretap was "considered in conjunction with the entire range of foreign and domestic intelligence available to the executive branch of government," Mitchell said.

Asking the court not to insist on prior court approval for such taps, Mitchell added, "I certify that it would be a practicable impossibility to submit to the court all of the facts, circumstances and other considerations upon which the authorization was based."

In most previous wiretapping briefs, the government has contended that wiretapping logs and other information submitted for the court's private inspection would make clear the need for the surveillance and for secrecy.

While abuses of wiretap discretion are always possible, the government brief said, "we submit that there are sufficient restraints" to preserve privacy without court supervision.

"The first such restraint," said the brief, "lies in the fact that the possessor of the power is the President of the United States," who is sworn to uphold the Constitution.

Other safeguards include the Justice Department's own "strict standards" for deciding when to wiretap, the inspection of the records by the trial courts and "our adversary political system" by which executive branch actions "may become public knowledge."

Federal district judges in two other cases have ruled that the government lacks the "inherent power" to wiretap without warrants in domestic subversion cases even if it has that power to preserve the nation against foreign subversion. Two other judges have upheld the government's view.

"More often than not," the government's secret information "involves both the nation's foreign and domestic affairs inextricably intertwined," the department's brief said.