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Domestic Taps Vital —Mitchell

By Ken W. Clawson
Washington Post Staff Writer

Attorney General John N. Mitchell said last night that the same rules should apply in moving against domestic as against foreign subversives and that domestic threats currently pose a greater danger to the nation's security.

Bristling under widespread criticism of alleged government wiretapping, eavesdropping and surveillance, the Attorney General defended wiretapping—without a court order—in domestic national security cases.

He also attacked Rep. Hale Boggs (D-La.) and Sen. Edmund S. Muskie (D-Maine), demanding they retract recent criticism of the FBI and apologize to Director J. Edgar Hoover. He said Boggs was afflicted with a new type of paranoia called "tapanoia—the belief that your telephone is being tapped."

The Attorney General chose Cincinnati, where the Sixth District Court of Appeals recently ruled that wiretapping in domestic national security cases requires a court order, to detail his contention that the government has a right to protect itself from all subversives under inherent presidential power. He spoke at a meeting of the Kentucky Bar Association.

When national security is threatened, Mitchell said, "prevention is the first consideration. We first need intelligence on the movements of suspected conspirators, not formal evidence on which to convict them."

At that early stage in an investigation, the government may not have enough evidence to show probable cause for a court order to wiretap, he added.

In discussing domestic subversion, the Attorney General noted that persons responsible

for four presidential assassinations and attempted murders of Presidents Franklin D. Roosevelt and Harry Truman would have to be classified as domestic subversives.

"At least two of them—the cases of Lincoln and Truman—were conspiracies. The question is, if it would have been possible to uncover these conspiracies and prevent them through wiretapping, should the government have done so?"

"I would answer this with another question: Are we to stand by and let the plot unfold, so we can say, 'Yes, it was a true-blue American bullet.'"

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Two federal district courts have ruled that domestic security wiretapping is unconstitutional without a court order, while two other federal district courts have judged such wiretapping constitutional. The appeals court in Cincinnati is the highest tribunal contending domestic national security wiretapping requires a court order.

In a question-and-answer session with himself, Mitchell asked: "Does a national security wiretap without court order conflict with the individual's right of privacy, and must it give way before the right?"

"Privacy is a precious right," he answered, "but it is never absolute to the exclusion of other rights. The Fourth Amendment, which protects privacy, does not prohibit all searches and seizures. It prohibits only unreasonable searches and seizures . . . on the other hand, what about the right . . . of the public to protect itself and to preserve the government it has created. This right is implicit in the Constitution's very existence, and in the political theory on which it is based."

Mitchell said the privacy issue must be considered in a dual context. Where these two rights appear in conflict, he said, then "we must do what we can to preserve both as fully as possible."

On April 14, Sen. Muskie charged that the FBI conducted political surveillance on senators and produced an FBI document showing that agents attended last year's Earth Day rally in Washing-

ton.

Mitchell said last night that the FBI was watching persons with known backgrounds of violence, not Sen. Muskie.

"The plain fact is that the senator was not under surveillance and he knew he was not under surveillance. Yet he twisted the facts to make a political headline, and he owes

an apology and a retraction to the FBI and Mr. Hoover."

On Rep. Boggs, who charged that the FBI tapped telephones of members of Congress, Mitchell said that Boggs' House floor speech Thursday "was full of adjectives, but not one iota of proof of the reckless charges he had made." He said Boggs should also retract his charges and apologize.

The Attorney General acknowledged that there have been criminal investigations of congressmen where a federal crime was believed to have been committed.

"On rare occasions over the years, a member of Congress has indeed been the subject of normal investigative procedures—but not wiretapping—when the evidence indicated that such procedures were appropriate and necessary."