

NYT

Court Backs Ehrlichman Lawyer's View

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WASHINGTON, Aug. 2—The theory that President Nixon had the right to authorize "national security" wiretaps without a warrant, raised in behalf of John D. Ehrlichman in the Senate Watergate hearings, has been endorsed in a Federal District Court ruling here.

Judge John H. Pratt held that the President's constitutional powers enabled him to order electronic surveillance "relating to foreign affairs and deemed essential to protect this nation and its citizens against hostile acts of a foreign power" without getting court approval, as any other wiretapper must.

A week ago, John J. Wilson, Mr. Ehrlichman's counsel, told Senator Sam J. Ervin Jr., the committee chairman, that the President had the power to break the law if he determined that it was necessary to protect "national security."

Five days earlier, in a decision of which Mr. Wilson was apparently unaware, Judge

Pratt approved electronic surveillance of the Jewish Defense League on the ground that its protest demonstrations threatened "peaceful foreign relations" with the Soviet Union and thus national security.

Clear Threat Seen

"Under the facts of this case, which show a clear threat to this country's future," wrote, "it is the executive and not the judiciary which should determine whether or not an electronic surveillance requires prior judicial authorization."

He contended that a unanimous Supreme Court decision in 1972 prohibiting warrantless wiretaps in the bombing Agency office dealt only with "the domestic aspects of our law" and was not applicable.

Violent protests by the Jewish Defence League against Russian policies, both real and threatened, Judge Pratt concluded, were "obviously detrimental to the continued peaceful relations between the United

States and the Soviet Union and threatened the President's ability and constitutional authority to conduct the foreign relations of this country."

This, the judge maintained, brought the wiretaps within those permitted without a warrant by the omnibus Crime Control Act of 1968, the same authority cited by Mr. Wilson before the Ervin committee.

The case arose when 16 members of the Defense League, including Rabbi Meir Kahane, sued Attorney General Mitchell for damages on the ground that the wiretaps on their headquarters were unlawful because they had been installed without a court order. Judge Pratt dismissed their case, but an appeal is expected.

In his debate with Senator Ervin, Mr. Wilson used a rationale strikingly similar to Judge Pratt's to justify the White House's ordering the burglary of the office of a Los Angeles psychiatrist who had treated Dr. Daniel Ellsberg, the man who made the Pentagon papers available to the press.