Defeat for Nixon on Wiretap Issue

Top Court Ruling on Radicals

Washington Post Service

Washington

The Supreme Court rejected yesterday the Nixon administration's claim that the executive branch may wiretap suspected "domestic" radicals without a court warrant.

In a major rebuff to an important administration law enforcement policy, the court held that freedom for private dissent "cannot safely be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch."

The blow was delivered by one of President Nixon's own appointees to the court, Lewis F. Powell Jr., writing for himself and five other justices. Concurring separately were Chief Justice Warren E. Burger and Justice Byron R. White.

CASES

Beginning in the 1969 prosecution of the "Chicago Seven" conspiracy defendants, one of many cases affected by yesterday's decision, the Justice Department asserted that judicial supervision is not required when the President and the attorney general deem a specific wiretap necessary for protection from subversion from within.

But Powell, despite past public support for wiretapping and a reputation for concern over national security, said the Justice Department failed to make out a case for "the time - tested means" of judicial warrants for safeguarding Fourth Amendment safeguards against unreasonable searches and seizures.

Presidents since Franklin D. Roosevelt have asserted the power to conduct electronic surveillance against

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suspected foreign agents without permission from a court, but it was not until John Mitchell became attorney general that the government claimed similar unbridled authority concerning home - grown radicals who were not accused of acting as foreign - supported spies or revolutionaries.

ISSUES

Emphasizing that the foreign agent problem was not before the high court, Powell said that even the domestic issues pressed by the department "merit the most careful consideration" when urged "on behalf of the President."

"We do not reject them lightly," said Powell, "especially at a time of worldwide ferment and when civil disorders in this country are more prevalent than in the less turbulent periods of our history."

Powell then went on to reject every administration argument, including the contention that internal security matters are "too subtle and complex" for judges.

JUDGES

"There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases," Powell said, adding:

"If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance."

Powell denied that there is significant danger of compromising intelligence secrets when government lawyers must go secretly to a court for warrants.

The decision does not impede the government's right to eavesdrop without court permission in cases involving foreign threats to U.S. security nor the right provided in the 1968 Safe Streets Law to wiretap in serious federal crimes — such as kidnaping, sabotage, counterfeiting, narcotics violations or gambling — with a court order.

'BURDEN'

"Although some added burden will be imposed upon the attorney general," Powell said, "this inconvenience is justified in a free society to protect constitutional values . . . By no means of least importance will be the reassurance of the public generally that indiscriminate wiretapping and bugging of law-abiding citizens cannot occur."

Powell said public uneasiness is justified by the "danger to political dissent" inherent in the vague concept of national security, because "the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs."

He added, "The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power."

GUIDELINES

He indicated that under appropriate guidelines for such warrants, the government might have been able to obtain approval to eavesdrop on Lawrence (Pun) Plamondon, a leader of the radical White Panther party accused of conspiring to blow up a Central Intelligence Agency building at Ann Arbor, Mich.

Lower courts ruled that wiretap records in the case must be turned over for defense inspection to see whether the illegal taps produced part of the prosecution's case. Yesterday's decision forces the government to choose between disclosure to the defense and abandoning the prosecution in the Ann Arbor case, the Chicago case now on appeal and numerous others.

Joining Powell were Justices William O. Douglas, William J. Brennan Jr., Potter Stewart, Thurgood Marshall and Harry A. Blackman. Burger noted simply that he concurred "in the result," and White based his concurrence on language in the 1968 act.

Justice William H. Rehnquist, who helped shape the government's arguments as a Justice Department official last year, did not participate.