

JUN 12 1971

THE NEW YORK TIMES,

## Mitchell Upholds Wiretap Of 'Dangerous' Radicals

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, June 11 — Attorney General John N. Mitchell said today that "never in our history has this country been confronted with so many revolutionary elements determined to destroy by force the Government and the society it stands for."

In a speech in support of the Nixon Administration's contention that it can wiretap "dangerous" radicals without court approval, Mr. Mitchell declared that "the threat to our society from so-called 'domestic' subversion is as serious as any threat from abroad."

He made the statements as he gave his most detailed legal argument thus far in support of the Administration's assertion that the threat from foreign and domestic elements was indivisible, and that the President had the authority to wiretap both without court authority.

Lawyers inside the Government and out expressed surprise that Mr. Mitchell would take this legal issue to the people as he did today in a speech and a press release, because the question is now before the Supreme Court in the form of an appeal by the Justice Department.

### Rejected by Appeals Court

The United States Court of Appeals for the Sixth Circuit rejected the Administration's argument last April, ruling that when the Government wished to wiretap domestic groups, it must obtain judicial approval. Asserting that that decision was wrong, the Justice Department has asked the Supreme Court to review it.

In the past, when matters have been pending before the Supreme Court, Justice Department officials have avoided making statements that might be regarded as exerting pressure upon the justices.

Mr. Mitchell's statements were made in a 15-page speech prepared for delivery tonight before the Virginia Bar Association in Roanoke. It was released this afternoon by the Justice Department's press office, together with a three-page press release that quoted Mr. Mitchell as specifically disputing the Appeals Court ruling.

The press release characterized Mr. Mitchell's speech as asserting that such wiretapping "meets the constitutional test of reasonable search and seizure" and that such surveillance is necessary to permit the President to fulfill the obligations of his office.

### President's Duty

In his speech, Mr. Mitchell based his case on the President's constitutional duty to protect the country.

"Were the President to permit the overthrow of [the] Government by unconstitutional means, he would be violating his constitutional oath," he said.

"The Constitution of the United States cannot possibly be construed as containing provisions inconsistent with its own survival. It is the charter for a viable government system, not a suicide pact."

He asserted that there was no dividing line between hostile foreign forces and domestic elements seeking to overthrow the Government. Domestic subversives are "ideologically and in many instances directly" connected with foreign interests, he said. If it were possible to separate the two, he added, "history has shown greater danger from the domestic variety."

Mr. Mitchell said that sur-

veillance of such groups was not affected by a 1967 Supreme Court decision, *Katz v. United States*, that held that wiretapping was covered by the Fourth Amendment's prohibition against unreasonable searches and seizures, and that the police must obtain wiretap warrants before using eavesdropping devices.

He argued that it was not unreasonable to wiretap subversives or suspected bombers. The distinction to be drawn, he said, is not whether the subjects are foreign or domestic, but whether the wiretaps are used for "intelligence" or prosecution purposes.

When they are used to gather intelligence, and the information is not to be used in court, he said the President and his officials were in a far better position to know if a device should be installed than the Federal judges across the country.

"You cannot separate foreign from domestic threats to the Government and say that we should meet one less decisively than the other," Mr. Mitchell said. "Either we have a constitutional Government that can defend itself against illegal attack, or in the last analysis we have anarchy."