

The Restraint of Law

The Supreme Court has delivered a sharp rebuke to those ideologues of the executive branch who consider the President's "inherent powers" superior to the Constitution. In an 8-to-0 decision the Court has rejected the assertion that the Government has the right without court orders, to tap the wires of "dangerous" radical groups. Justice Lewis F. Powell Jr., who wrote the opinion, said: "The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power."

Former Attorney General Mitchell's position that the Republic would be in danger if the Justice Department could not tap wires without court orders has now, fortunately, been completely demolished by this unanimous vote of the "Nixon court," in which only Justice William H. Rehnquist, who was an advocate of the Government's case while he was in the Justice Department, did not join. The Government claimed that in order to get the court's permission to tap wires, it would have to submit too much concrete evidence. But this fear of disclosure—even to the courts—goes to the heart of the matter: The Constitution means to protect all citizens against vague fishing expeditions by the executive.

It was Mr. Mitchell's view that civil liberties would be safe so long as it was he who had to give personal approval in each instance of electronic surveillance. Fortunately, the Court was not persuaded by a system of constitutional safeguards dependent on the Attorney General's, or even the President's, infallibility or, as Mr. Mitchell put it, on the "self-discipline of the executive branch." Moreover, there has been growing evidence that there is far more domestic spying than has been authorized by the Attorney General.

The Supreme Court understood the historic lesson that a blank check of official powers is the prelude to their abuse. "Vigorous citizen dissent and discussion of Government action in private conversation," Justice Powell warned, must not be deterred by fear that unauthorized Government monitors are listening. Those who argued the Government's case admitted that they were asking for an "awesome power" but pledged to use it with "discretion."

The Supreme Court, ignoring the usual division between "liberal" and "conservative," has now reminded the Government that it is just because its powers are so awesome that their exercise cannot be left to the discretion of men without precise restraint of law, under the Constitution.