

# Justices Refuse to Settle Espionage Wiretap Issue

NYTimes By WARREN WEAVER Jr. OCT 16 1974  
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WASHINGTON, Oct. 15 — A divided Supreme Court declined today an opportunity to resolve the question of whether the President can legally order wiretaps when he finds them necessary to detect and counter foreign espionage.

Three of the eight Justices who participated in the decision voted to hear and decide an 11-year-old controversy that hinges on the question whether the government has an absolute right to intercept private conversations when foreign intelligence is involved. This was one fewer than the number needed to take jurisdiction.

Although the Court's refusal to resolve the question did not establish any national legal precedent, it left standing the lower court decision upholding the Government in the case and several similar ones that have not reached the high court.

## Action on 1,000 Cases

In the case that was declined today, the United States Court of Appeals for the Third Circuit held that foreign intelligence evidence obtained through warrantless wiretaps was admissible in court as long as the search had been "reasonable."

The Justices announced their action on more than 1,000 cases and motions today, the first decision day of the 1974-75 term. They accepted 25 cases for hearing and decision, resolving some of the others without further consideration, but rejecting the great majority.

Two years ago, the high court ruled unanimously that the Justice Department could not conduct surveillance without obtaining a court warrant when the subject was domestic security, but the Justices pointedly refrained from extending

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this doctrine to foreign intelligence cases.

The case that the Court refused to review today, in a routine three-sentence memorandum, involved Igor A. Ivanov, who was convicted in 1964 of conspiracy to commit espionage in passing to the Soviet Government information on the Strategic Air Command.

## Vote on Acceptance

Voting to take the case were Associate Justices William O. Douglas, William J. Brennan Jr. and Potter Stewart. Associate Justice Thurgood Marshall did not participate in the decision, presumably on the ground that he served as Solicitor General for two years while the Ivanov case was pending.

Opposed to accepting the case were Chief Justice Warren E. Burger and Associate Justice Byron R. White, Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist.

Ivanov's conviction went to the Supreme Court on appeal it back down to determine whether there had been illegal wiretaps. The defendant was a chauffeur for the Soviet trading agency, Amtorg, when he was arrested. He was allowed to return to the Soviet after his conviction, upon assurance that he would be returned if his conviction was affirmed on appeal.

## PRIVATE SCHOOL AID

In another case today, the Justices agreed to consider the constitutionality of a Pennsylvania law that authorizes state aid for private parochial schools for auxiliary services including and testing educational materials. The law has been upheld by the Federal District Court.

Last year the Supreme Court ruled that the law was valid.