

U.S. Claims Right

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To Tap Alien Spies

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WASHINGTON — (NNS) — The Justice Department has told the Supreme Court that the federal government has the right to wiretap for “foreign intelligence” purposes without obtaining a court-approved search warrant.

The department made the claim in a petition to the court seeking to overrule the injunction, issued by Justice William O. Douglas, stopping — until the wiretap issue is solved — the prosecution of Daniel Ellsberg and Anthony Russo for stealing the Pentagon Papers.

The Justice Department argument — supporting the absolute wiretapping authority of the President for “foreign” subversion — comes only six weeks after the Supreme Court ruled that the department must obtain a court-approved search warrant to wiretap for information about “domestic” subversives.

Unanimous Decision

In its unanimous decision of last June 20 on “domestic” subversives, the court specifically left open the constitutional question now tying up the Ellsberg prosecution by noting:

“We have not addressed . . . the issues which may

be involved with respect to activities of foreign powers or their agents.”

While there has been no public disclosure of the circumstances surrounding the intercepted conversation of one of the “lawyers or consultations” involved in the Ellsberg case, the government has said that the surveillance “did not involve . . . the attorney or the consultant himself.”

Embassy Tap Seen

It is widely supposed that the surveillance involved wiretapping of some foreign embassy official who placed a telephone call to the “lawyer” or “consultant.”

The basic claim being made by Ellsberg’s attorneys is that they should be permitted to inspect the log of the wiretapped conversation on the grounds that the government surveillance may have violated the confidentiality privilege between an attorney and his client.

The Justice Department argues that the Supreme Court decision June 20 did not outlaw “foreign intelligence” wiretapping and therefore the government should not be forced to show the “lawyer” or “consultant” his overheard conversation.