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WHITE HOUSE VIE OF WIRETAP RIGH DENIED ON APPEAL

U.S. Court Finds No Inherent Power to Eavesdrop on **Radical Organizations**

By FRED P. GRAHAM Special to The New York Times

WASHINGTON, April 8-Federal Court of Appeals rejected today the Nixon Administration's assertion that Federal agents may legally wiretap radical groups without court approval.

Declaring that there was not "one written phrase" in the Constitution or statutes to support the Justice Department's view, the United States Court of Appeals for the Sixth Circuit in Cincinnati ruled that Government wiretapping of such groups without warrants violates the Constitution.

The ruling was the first one by a Federal appellate court on Attorney General John N. Mitchell's contention that the executive branch has the inherent power to evesdrop on "dangerous" groups that he considers a threat to the Government.

Appeal to Top Likely

The Justice Department is expected to appeal the decision to the Supreme Court. It has conceded in several prosecutions involving militants that

eavesdropping was used with-out court approval. However, a spokesman said that no final decision could be made today because there had not been sufficient time to study the decision.

Today's ruling upheld a decision made by Federal District Judge Damon J. Keith in Detroit, in the trial of three members of the White Panther party who were accused of conspiracy in the bombing of a Central Intelligence Agency office in Ann Arbor.

The Government conceded that it had overheard conversations of one of the defendants, Lawrence R. Plamondon, over a wiretap that was approved by the Attorney General but not by any court.

Implied Power Alleged

In an affidavit, Mr. Mitchell made the assertion, which had not been made by any previous Attorney General, that the executive branch had the inherent power to use wiretapping "to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of government."

He said that this authority was implicit in the President's constitutional duty to wage war and protect the country. Thus he said that the wiretap had been a legal one and that the Justice Department did not have to disclose the overheard conversations to Mr. Plamondon.

Judge Keith ordered the Government to disclose the material or drop the case. The Justice Department asked the Sixth Circuit count to overturn that de-

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See NYTimes, 22 Jun 71, this file.

Judge Edwards cited the "historic role of the judiciary to see that in periods of crisis, when the challenge to constitu-WHITE HOUSE VIEW steel mills in the Korean War William M. Kunstler, cor period. menting on the ruling, said: The court noted, however, **ON WIRETAP UPSET** that it did not decide one way tional freedoms is greatest, the Constitution of the United Stator the other as to the Presiwiretapping powers attacks, espionage or continued From Page 1, Col. 5 theland." dent's where attacks, espionage or sabotage by a foreign power or its agents were involved. Continued From Page 1, Col. 5 theland." Cision, which it refused to do assertion that the "awesome today by a 2-to-1 vote. The majority opinion was General will always be used by Judge George C. Edwards with discretion," but he said Jr. and was joined by Chief that "even in very recent days" Judge Harry Phillips, it held this has not always been the that the Fourth Amendment's case chells, the Hoovers and the other high and low place snoopers." In his discussion of the invertee and C. Weick said that the President had the sworn duty "to pro-tect and defend the nation from attempts of domestic subver-ives, as well as foreign enemies, to destroy it by force and violence." He said that the threat to the Government was as great when mounted by a domestic group and that me day. Judge Harry Phillips, it held this has not always been the attempts of domestic subver-that the Fourth Amendment's case. The opinion dismissed the destroy it by force and violence." He said that the guires covernment agents to claim, stating that the Supreme domestic radicals, just as in any other criminal investiga-the land."

"I hope that this decisic means that the Federal cour are going to stand in the wa of the wholesale erosion of th Fourth amendment by the Mi

> Mr. Kunstler, the New Yoi lawyer, represented Mr. Plan ondon in the case decided to