THURSDAY, JUNE 29, 1972

Letters to the Ed

Historic Decision on Wiretapping

To the Editor:

The news on June 19 brought us a curious and important coincidence:

The Supreme Court, Justice Rehnquist abstaining, decided unanimously that governmental wiretapping without court authorization is unconstitutional and a certain McCord, in turn an F.B.I. agent, C.I.A. operative and now a "security" consultant for the Committee to Re-Elect the President, was apprehended with four henchmen for breaking into the headquarters of the Democratic National Committee with the alleged purpose, among other things, of installing an illegal wiretap.

John Mitchell, chairman of the committee and until recently our Attorney General, denies knowledge of the latter activities.

While Attorney General, Mr. Mitchell, on the other hand, steadfastly asserted that the President has an "inherent power" to order wiretapping without court order in "national security" cases. Justice Rehnquist, formerly Mitchel's assistant, and Richard Kleindienst, his successor, supported that position. The unanimous decision of the Court is commentary on the legal competence of these men in constitutional matters.

These so-called "law and order" advocates, surely from ignorance rather than malice, used and can still use their positions to erode the First Amendment. The public has no way to discover the extent of Gestapo-type surveillance conducted at their instance.

A series of political prosecutions under their aegis has without exception resulted in acquittals for lack of evidence. They appeared as amicus curiae in litigation initiated by racists precisely to prevent execution of the law. They have apparently failed to advise the President about the unconstitutionality of his proposals on school busing. They directed mass arrests of innocent citizens.

Again, their "legal" actions encountered massive judicial reversals. Their attacks upon freedom of the press resulted in the first prior restraint on publication, contrary to the First Amendment, in the history of the United States. The I.T.T. affair has cast doubt upon the veracity of Kleindienst.

While his appointees were amassing this miserable record the President sought earnestly to elevate to our highest court men of even lower competence and stature.

Let us accept Mr. Mitchell's protestations of innocence *in re* McCord, for who can prove otherwise in the legal jungle he inhabits? To put the best possible face upon his public record, and that of his disciples, the American people have little choice but to dub it forgetful fascism. It is much worse if they know what they are doing.

GLYN JONES

Mount Hermon, Mass., June 20, 1972

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To the Editor:

Over three centuries ago King James, angered by what he regarded as an excessive exercise of judicial authority by the common law courts of England, summoned Chief Justice Coke and inquired of him as to whether he would decide any case that came before him in a way which would disfavor the King; to which Coke answered: "When that time comes, I shall behave in a manner which befits a Judge."

This famous historic declaration of the political principle of judicial independence—a political principle vital to our free form of government—is appropriately called to mind by the decision just announced by the United States Supreme Court holding that the Federal Government's practice of wiretapping without first obtaining court approval, is unconstitutional because it violates the Fourth Amendment.

That this Court which now includes four members appointed by President Nixon would condemn and repudiate (without any dissent) a view strenuously advocated and autocratically practiced by the President's former Attorney General Mitchell and firmly subscribed to by the latter's successor, Attorney General Kleindienst, is something which hardly anyone in this country—and certainly no one who is politically sophisticated—would have thought possible.

What this epoch-making decision surely signifies is that the august nature of the judicial office—especially at its highest level—imbues its occupant with a sense of public responsibility so predominant and compelling as to override the most powerful considerations which can militate against a conscientious exercise of that office's majestic and awesome power over the legal direction of this nation's affairs.

WALTER J. BILDER

Newark, June 21, 1972