

Bill to Curb Wiretaps Splits Congress

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, Oct. 1—A proposal to strip the President of power to order wiretaps in foreign intelligence investigations without advance Federal Court approval is causing sharp divisions in Congress.

The controversy has not only revived the running dispute between law enforcement and civil liberties advocates in the Senate and the House, but has also set the Department of Justice against Congress as a whole on an issue that may finally be resolved by the Supreme Court.

As hearings opened today before two Senate Judiciary subcommittees, Senator Gaylord Nelson, Democrat of Wisconsin, argued that no wiretaps should be permitted without a warrant, in either foreign or domestic cases, so as to avoid the abuses of surveillance such as were uncovered in the Watergate inquiry.

But Senator John L. McClellan, chairman, of one of the subcommittees, questioned in a statement whether Congress had the authority to move into this area. He maintained that in any event, the President should have full discretion to make such national security decisions.

Under a 1972 Supreme Court decision, no Government wiretaps can be made in cases involving domestic subversion or

crime unless a warrant is obtained from a Federal judge upon a demonstration that the surveillance might reasonably produce important evidence.

But the high court has not ruled whether warrantless taps are constitutional when used, as they have been for decades, against foreign agents, both embassy officials and spies. A case turning on this question is scheduled for preliminary consideration by the Justices later this fall.

A group of influential Senators, including Senator Sam J. Ervin Jr., Democrat of North Carolina, are pressing for Congressional action on a wiretapping measure before adjournment in December. However, there are only two weeks left before a scheduled campaign recess, and perhaps a month more of legislating afterward—a short time in which to resolve a major controversy.

If the Supreme Court decides to head the wiretapping case, as both the Government and the defendant have requested, arguments could be heard this winter and a decision could be handed down in the spring, almost certainly before the incoming Congress could act.

The case involves a defendant, Igor A. Ivanov, who was convicted in 1964 of conspiracy to commit espionage and is challenging the constitutionality of the charges because they were based on warrantless wiretaps.

In his statement, Senator McClellan, who was to preside at the hearing but did not appear, suggested that the President's power to gather foreign intelligence was constitutional and thus not subject to alteration by Congress.

Senator Nelson, sponsor of a bill requiring warrants for all wiretaps, emphasized that the measure would not prohibit surveillance aimed at protecting national security, but would merely require law enforcement officers to provide some advance justification to a judge for their eavesdropping.

Under the bill, all United States citizens subjected to wiretaps authorized by warrant would be told of this within 30 days after the last interception, unless a continuing criminal enterprise was involved or the disclosure of the wiretap would endanger national security.