

The Legality of Wiretapping The National Security Staff

by Arthur J. Goldberg

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In 1969, the administration had taken the position that it would wiretap so-called "domestic subversives" without court approval. Many observers, including myself, immediately warned that this position was not consistent with the law and the Constitution and was not likely to stand judicial examination. By January 1971, several federal district courts had ruled that such wiretaps were illegal, and in June, 1972, the Supreme Court unanimously agreed.

In the face of this decision, which held unlawful a wiretap that had been installed during the same period and by the same procedure as those now in controversy [bugging of National Security Council staff members], it simply cannot properly be said that such taps were legal at the time. (The Supreme Court, when it decides a new question such as the status of these wiretaps, does not make illegal what was previously legal; it gives a final authoritative determination of whether an action was legal when it took place.)

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