

Limits of Power . . .

A Federal judge has scuttled the Nixon Administration's claim that the powers of the Presidency are virtually unlimited. In ruling on preliminary matters in the trial of those accused of violating the civil rights of Dr. Lewis Fielding, Daniel Ellsberg's psychiatrist, Judge Gerhard A. Gesell has rejected the claim that a burglary committed by the White House plumbers was consonant with the Constitution under a vague delegation of national security powers by the President.

After noting that no evidence had been produced to show that Mr. Nixon had ever specifically sanctioned the break-in, Judge Gesell ruled that the President's inherent powers to conduct foreign affairs do not include the right to authorize the warrantless entering of the homes and offices of innocent American citizens.

There is nothing quite so threatening to the security of a free people as the notion that their basic freedoms can be suspended in order to deal with perceived exigencies of the moment. Yet, from the illegal Huston plan of White House counter-intelligence, to the Justice Department's stubborn insistence on the constitutionality of warrantless wiretaps, and, finally, to the assertion that the Constitution allowed the burglarizing of Dr. Fielding's office, these abuses of power had become the Nixon Administration's standard operating procedures.

In applying the doctrine of inherent Presidential powers to an undefined area of national security during his testimony before the Senate Watergate Committee last summer, John Ehrlichman even declined to draw the line at possible murder ordered for such purposes.

Judge Gesell, finding no such difficulty in defining the Constitution's mandate, wrote: "The Fourth Amendment protects the privacy of citizens against unreasonable and unrestrained intrusion by government officials and their agents. It is not theoretical. It lies at the heart of our free society." The point is as simple as it is basic. It concerns fundamental freedoms which cannot be ignored or suspended if democratic government under law is to endure.

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