



Department of Justice

U. F.
Wiretapping

LIBRARY
DRUG ENFORCEMENT ADMINISTRATION

FOR IMMEDIATE RELEASE
WEDNESDAY, JULY 9, 1975

AG

Attorney General Edward H. Levi today issued the following statement concerning the Department of Justice's position with respect to wiretapping and electronic surveillance in view of the recent decision of the Court of Appeals for the District of Columbia in Zweibon v. Mitchell (the Jewish Defense League case):

The Court of Appeals for the District of Columbia in the Zweibon case decided that a warrant was required for surveillance of the Jewish Defense League inasmuch as that organization was not an agent of or collaborator with a foreign power. The practice of the Department of Justice already accords with that position.

The Zweibon case involved a surveillance occurring prior to the decision of the Supreme Court in the Keith case in 1972. In the Keith case, the Court held that in the field of internal security, if there was no foreign involvement, a judicial warrant was required. The Department has conformed to that decision.

The holding of the Zweibon case, as the several opinions emphasize, did not reach the question of surveillance without a judicial warrant where the subject of the surveillance is a foreign agent or collaborator. In two previous cases, two federal courts of appeals (the Third Circuit in United States v. Butenko; the Fifth Circuit in United States v. Brown) upheld surveillance

without judicial warrant for purposes of foreign intelligence. In both cases, the subject of the surveillance asked the Supreme Court to review the decision and in both cases the Supreme Court declined. In Butenko the Department of Justice, although it had won in the appeals court, also sought review in the interest of securing an authoritative decision. The Supreme Court's refusal to review these cases left in force the two courts of appeals decisions.

In the Zweibon case there are expressions in the opinion for four members of the eight-member court suggesting that a warrant might be constitutionally required even in the case of an agent or collaborator with a foreign government. These expressions are not authoritative because, as the opinions themselves emphasize, the issue was not involved in the case. The expressions also are not authoritative because the issue was expressly left open by the Supreme Court in the Keith case, and because two courts of appeals -- the Third and Fifth -- have ruled to the contrary. In addition, throughout the several opinions in the Zweibon case, there are suggestions that warrantless surveillance under Presidential authority may be constitutionally valid where the subject of the surveillance is in fact a foreign agent or collaborator.

There are also expressions in the plurality opinion to the effect that the special procedures for obtaining a warrant set out in Title III of the Safe Streets Act of 1968 are applicable where the Fourth Amendment, as distinguished from that

statute, may require a warrant. It is the position of the Department of Justice, which I believe to be in accord with the Supreme Court's opinion in the Keith case, that such surveillance is not regulated by the special procedural provisions of Title III.

Because neither the authority of the Executive in the case of foreign powers, their agents and collaborators, nor the applicability of the procedures in Title III was an issue involved in or decided by the Zweibon case, that case may not offer a means of seeking definitive Supreme Court review on these two important issues. These issues, however, are under active study in the Department not only to determine how they may be authoritatively settled, but also to determine what procedures will best serve the national interest, including, of course, the protection of constitutional rights.

In the meantime, it can be said that there are no outstanding instances of warrantless wiretaps or electronic surveillance directed against American citizens and none will be authorized by me except in cases where the target of surveillance is an agent or collaborator of a foreign power.

#