

scribed classes of situations, only those searches conducted pursuant to warrants were reasonable. The Government's duty to preserve the national security did not override the guarantee that before government could invade the privacy of its citizens it must present to a neutral magistrate evidence sufficient to support issuance of a warrant authorizing that invasion of privacy.⁴⁰⁵ This protection was even more needed in "national security cases" than in cases of "ordinary" crime, the Justice continued, because the tendency of government so often is to regard opponents of its policies as a threat and hence to tread in areas protected by the First Amendment as well as by the Fourth.⁴⁰⁶ Rejected also was the argument that courts could not appreciate the intricacies of investigations in the area of national security or preserve the secrecy which is required.⁴⁰⁷

The question of the scope of the President's constitutional powers, if any, remains judicially unsettled.⁴⁰⁸ Congress has acted, however, providing for a special court to hear requests for warrants for electronic surveillance in foreign intelligence situations, and permitting the President to authorize warrantless surveillance to acquire foreign intelligence information provided that the communications

⁴⁰⁵ The case contains a clear suggestion that the Court would approve a congressional provision for a different standard of probable cause in national security cases. "We recognize that domestic security surveillance may involve different policy and practical considerations from the surveillance of 'ordinary crime.' The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crimes specified in Title III. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some future crisis or emergency. . . . Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens. For the warrant application may vary according to the governmental interest to be enforced and the nature of citizen right deserving protection. . . . It may be that Congress, for example, would judge that the application and affidavit showing probable cause need not follow the exact requirements of § 2518 but should allege other circumstances more appropriate to domestic security cases. . . ." 407 U.S. at 322–23.

⁴⁰⁶ 407 U.S. at 313–24.

⁴⁰⁷ 407 U.S. at 320.

⁴⁰⁸ See *United States v. Butenko*, 494 F.2d 593 (3d Cir.), *cert. denied*, 419 U.S. 881 (1974); *Zweibon v. Mitchell*, 516 F.2d 594 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 944 (1976), *appeal after remand*, 565 F.2d 742 (D.C. Cir. 1977), *on remand*, 444 F. Supp. 1296 (D.D.C. 1978), *aff'd in part, rev'd in part*, 606 F.2d 1172 (D.C. Cir. 1979), *cert. denied*, 453 U.S. 912 (1981); *Smith v. Nixon*, 606 F.2d 1183 (D.C. Cir. 1979), *cert. denied*, 453 U.S. 912 (1981); *United States v. Truong Ding Hung*, 629 F.2d 908 (4th Cir. 1980), *after remand*, 667 F.2d 1105 (4th Cir. 1981); *Halkin v. Helms*, 690 F.2d 977 (D.C. Cir. 1982).