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FROM THE EDITORS

An Unpardonable Pardon

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”

The Fourth Amendment, which embodies one of the most basic of American freedoms, has been dealt a serious blow. On April 15, 1981, Ronald Reagan pardoned two former top level FBI officials convicted of conspiring to violate individual civil rights by authorizing warrantless searches of American citizens' homes. The victims of the illegal searches were friends and relatives of Weather Underground fugitives. Reagan could have waited, allowing the judiciary the chance to reverse the convictions. This would have made the pardons unnecessary. However, an appellate reversal and an executive pardon say very different things. Reversal on appeal usually casts doubt on the integrity of the conviction by pointing to a procedural error or a lack of evidence. However, Reagan's pardon casts no doubt on the defendants' guilt; indeed, he did not deem it necessary to review the record. Moreover, the defendants freely admitted their guilt. What Reagan's pardon actually says is: “You did what you have been accused and convicted of, but it is alright — you did not do anything wrong.”

Reagan said in his announcement that these men acted on “high principle” when they authorized these illegal break-ins. Reagan failed to mention, however, what “high principle” would justify the violation of an amendment which has been one of the foundations of our society. The Founding Fathers of this country considered warrantless searches and searches under general warrants to be so offensive that they were among the causes for the Revolution. They subsequently immortalized their concern in the Fourth Amendment. Ostensibly, the rationale for maintaining so-called intelligence agencies is to guard our freedoms. Indeed, these convicted officials were sworn to uphold the Constitution. However, as is so often the case during turbulent times, the supposed defenders of freedom actually led the assault. They (and others like them) should not be told that they have done no wrong.

Reagan went on to say that these men followed procedures that *they* believed essential. However, the Fourth Amendment has long been interpreted to require that a *court*, not law enforcement officials, must decide the necessity of a search or seizure. That is the significance of the Warrant Clause of the Fourth Amendment and is part of the system of checks and balances built into the system.

Reagan attempted to justify the ignoring to these considerations by stating that “America was at war” and that these two men acted to “preserve national security.” Aside from the fact that no war had been declared, neither the fighting in Vietnam nor the activities of Weather Underground (much less the friends and relatives of fugitives), represented a substantial threat to national security. Nor is there any indication of the existence of other exigent circumstances which, according to Supreme Court decisions, would justify a warrantless search. The biggest threat at that time was from the government, which in its effort to impose “freedom” on the people of Vietnam, found it necessary to ignore the freedoms of its own people.

On another level, this case illustrates the inequities in our society and tends to breed cynicism about the equality of the law. Initially, these men violated one of the most fundamental American freedoms and, when convicted, were given slap-on-the-wrist fines. Even that was considered to be too harsh. As Griffin Bell, the attorney general who initiated the case, said:

“The government made its point when we prosecuted and convicted these men. Not to pardon them would be harsh. They were convicted of a felony and you can't get that off your record.”

One never hears such sentiments when the defendant is poor, black, hispanic, et cetera, even when the crime is far less serious and the punishment more severe. Cases such as this make it apparent that there exists a different set of laws for the rich and powerful than for the poor and powerless.

The future implications of these pardons should give us all pause. One of the recipients of the pardons, Edward Miller, characterized the pardons as the “biggest shot in the arm (to the intelligence community) in a long time.” He went on to say that the pardons may remove some reluctance of FBI agents “to do the job 100 percent.” The only reluctance the pardons will remove is the reluctance to conduct illegal, warrantless searches; searches conducted pursuant to properly obtained search warrants were in no way inhibited by these convictions. Moreover, these pardons indicate that the Reagan Administration will be somewhat less than enthusiastic in protecting our Fourth Amendment rights. The American public in general and the legal community in particular should unequivocally denounce this assault on our freedom, lest our long-time foreign policy of supporting dictatorial regimes abroad comes home to roost.

