

United States Senate

WASHINGTON, D.C. 20510

Morganton, North Carolina 28655

June 26, 1975

Professor Louis Menand, III
 Department of Political Science
 Room 3-234
 Massachusetts Institute of Technology
 Cambridge, Massachusetts 02139

LOUIS MENAND, III ROOM 3-234
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Dear Professor Menand:

This is to thank you for your letter of June 19, 1975, and the copy of your letter to the Senate Subcommittee on Constitutional Rights which accompanied it.

I have never been able to understand why Chief Justice Burger said so much about the destruction of the surveillance records acquired by the Army during its spying on civilians in his opinion in Laird v. Tatum. The only question before the Supreme Court in that case was the sufficiency of the complaint to state a cause of action. Four of the Justices combined with Justice Rehnquist, who ought to have disqualified himself from participating in the case because he had acted as Counsel for the Defense Department in the hearing before the Senate Subcommittee on Constitutional Rights, held the complaint to be insufficient.

Solicitor General Griswold argued the case for the Defense Department, and repeatedly invoked affidavits which had been offered by the government in the District Court in opposition to a motion of the plaintiff for a temporary restraining order although these affidavits had no relevancy whatsoever to the point being considered by the Supreme Court, as I pointed out to the Supreme Court. Nevertheless, the Solicitor General got away with this, and Chief Justice Burger's opinion is based in large part on what the government said and not on what the complaint alleged.

The suit was a suit for an injunction to prevent threatened injuries. The Chief Justice treated it as if it was a suit for damages, and held that the plaintiff could not maintain the suit unless he could show he had suffered an injury -- instead of the threatened injury which was sought to be averted. I am glad that you have asked for an investigation.

Sincerely yours,

Sam J. Ervin, Jr.

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