Army Spying On Civilians Faces Probe

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The U.S. Court of Appeals here ruled yesterday that there must be a full-dress hearing in federal court on the constitutionality of the Army's spying on civilians.

Drawing a distinction between civilian and military investigation of private citizens' activities, the court suggested that the Army's domestic intelligence system may have "an inhibiting effect" on the public.

It ordered a determination of whether Army spying is "unrelated" to its "mission as defined by the Constitution."

In an unusual opinion, the three judges raised the prospect that various legal assaults on government surveillance may yet be successful in the courts.

At issue was a suit filed in February, 1970, by the American Civil Liberties Union on behalf of the Central Committee for Conscientious Objectors and individuals who felt they had been spied upon.

U.S. District Court Judge George L. Hart Jr. dismissed the suit at the government's request last year.

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Now he must take it back and accept evidence on the "nature of the Army domestic intelligence system . . . the extent of the system, the methods of gathering the information, its content and substance, the methods of retention and distribution, and the recipients of the information."

Those questions have been posed in s series of controversies involving military inveatigations into the lives of prominent persons.

A fomer Army intellignece agent testified in Chicago last December, for example,t hat his unit mhad ignored a ban on domestic surveillance and reported on such persons as Sen. Adlai E. Stevenson III (D-Ill.) and the Rev. Ralph David Abernathy of the Southern Christian Leadership Conference.

Defense Secretary Melvin R. Laird subsequently declared that military intelligence operations would be reorganized under tight civilian control.

Many of the secret intelligence files on civilian political activities are kept in the Army's "computerized data bank" at Ft. Holabird in Baltimore.

"We' think the Army has a legal basis for the collection of intelligence information relevant to its constitutional and statutory mission," wrote Judge Malcolm R. Wilkey, an appointee of President Nixon, in yesterday's opinion.

He warned, however, of "this country's long-established tradition against military involvement in civilian politics."

Wilkey said that the FBI's surveillance does not pose serious problems, since the bureau "is powerless to imprison anyone or to affect his liberty in any way except through the action of the courts."

In contrast, the judge added, the military services "definitely command their own force to exercise at the will of their own commanders. The military are not accustomed to effecting their will through courts and legal processes."

Wilkey was joined by Judge Edward Allen Tamm, but Judge George E. MacKinnon dissented in part—disagreeing not with the criticisms expressed but on whether this particular case was the appropriate one for a hearing on Army domestic spying.

All the judges appeared to concur in Wilkey's statement that "it is highly important for the safety of the country that . . . a separation of sensitive information and military power be maintained, as a separation of match and powder."