Legal Wiretaps in D.C.: 17 Cases and 20 Taps

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Court-approved wiretapping under the 1970 D.C. Crime Act, seen by civil libertarians as violating District of Columbia resident' constitutional rights to privacy, has been limited to 17 cases involving 20 taps since the law went into effect.

"Like any good tool," says police Inspector Robert N. Dollard, chief of the morals division, "you have to take care of it and not abuse it."

But to Ralph Temple, legal director of the American Civil Liberties Union, court-approved wiretapping remains as threatening as ever, and its limited use means only that officials are "just waiting, biding their time."

Provisions permitting wiretapping, no-knock police raids and pretrial detention of persons adjudged dangerous to the community were the prime targets of opponents to the 1970 D.C. Crime Act. There have been a total of five no knock raids and, since April, about four preventive detention hearings a month, double the previous rate.

According to reports filed

See WIRETAP, A12, Col. 6

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by the U.S. court administrator's office, court-approved wiretaps here have lasted from seven to 35 days, netted from zero to 42 arrests and cost from $1,021 to $25,652 each, mostly for manpower needed to execute them.

In 1972, the last year for which figures are available, court-approved taps here cost $104,949 to execute, four times the amount spent in 1971.

By the end of 1971, according to the federal reports, none of the three taps approved that year (all gambling cases) had resulted in trials or convictions. By the end of last year, two taps approved in 1972 had netted 50 arrests and 11 convictions.

Information regarding the results of either 1972 taps this year, as well as the fruition of 1973 wiretaps, was not available.

Metropolitan police initiate requests for taps and conduct the surveillance after the U.S. Attorney's major crimes unit obtains court approval. In closed hearings, government lawyers must convince a judge they have probable cause to believe a crime is being committed and that other methods have been tried and failed.

The 1970 Crime Act does not allow target of the wiretap to argue against granting the order.

The 27 cases involving the 20 wiretap warrants—in some cases there was more than one wiretap—so far have been for gambling or narcotics. There has been no court-approved wiretapping or political dissidents here.

Police officials say the taps can be effective in fighting crime but that they are expensive and time-consuming, requiring skilled personnel to monitor sometimes thousands of phone calls for a single arrest.

One wiretap, approved by U.S. District Court Judge William B. Jones in 1971, for example, lasted a month. The average daily number of phone calls was 140. Altogether, 60 persons were involved in 2,958 intercepts, of which 97 per cent were considered by police to contain incriminating statements. The cost to the police was $18,750. The result: three arrests for gambling.

Another case, this one for bribery, involved a wiretap approved by U.S. District Court Judge George L. Hart, Jr. last year. The tap lasted 35 days, and covered 2,035 phone conversations, of which only 40 contained information considered incriminating. Total cost: $25,652, the most for any tap so far. There were no arrests.

"Generally," says Geoffrey M. Alprin, police general counsel, "you just don't need it for anything below the level of a widespread conspiracy."

Such a case broke April 17 with the indictment by a federal grand jury here of 23 persons, including 11 present and two former policemen, for an alleged gambling payoff scheme.

Assistant U.S. Attorney Theodore Wieseman said that much of the evidence would come from court-approved wiretaps and other electronic surveillance. The defendants, challenging the legality of the taps, have asked that charges be dismissed. A hearing is set for next month on their motion in U.S. District Court.

The assertion that the

wiretapping violates Fourth Amendment protections against unreasonable search and seizure is based largely on the issue of the closed hearing.

"The statute does not provide for (defense) representation at that time," notes D.C. Superior Court Chief Judge Harold H. Greene, who has approved half a dozen wiretaps in gambling cases. "It's just like (a hearing) for a regular search warrant."

Temple, the civil libertarain, contends, "Any proceeding that is not an adversary proceeding is not worth a damn. I guess that's another way of saying you can't put effective protection on wiretapping."

Temple predicted that the wiretapping provision, in time, would be abused "based on the limited amount of documentation a judge has to have before passing on the (the request), based on reliance on undercover informers and the fact that the probable cause hearing is not an adversary proceeding."

The police regard the courts here as extremely tough on wiretap warrants.

"We don't get permission unless we have tremendous probable cause," says Inspector Dollard. "We've been told four or five times in the last year to go back and get more information. Several (warrants) we never did get . . .

The judges want meat they can see. They want everything to dovetail."

Everything dovetailed to the satisfactions of both Judges Greene and Hart in the case of the Owl & Tortoise Restaurant, 916 19th St. NW, alleged headquarters for a $4.5 million-a-year areawide numbers racket. To get permission to wiretap, Dollard said about 30 pages of affidavits were compiled.

On Feb. 2, 175 police and FBI agents arrested 40 persons at 24 locations in Washington and the suburbs. They also seized $125,000 in cash.

Without the wiretaps, Dollard says, "We could have gotten half a dozen people but not the top ones . . . Gambling lends itself to the use of telephones. To have any large-scale gambling operation, the telephone is your lifeline."

The 1968 federal Safe Streets Act authorized federal investigators to wiretap with court permission, but former Attorney General Ramsey Clark refused to use the power. It was not until July, 1969, in the first year of the Nixon administration, that such a tap was authorized here, in a narcotics case.

Altogether in 1969 and 1970, there were six court-approved wiretaps in federal Dixtrict narcotics cases. In the same period, the FBI executed fewer than half a dozen for gambling here. All warrants were processed through the U.S. Attorney's Office.

The Safe Streets Act also authorize states to pass their own wiretap laws. The D.C. Crime Act's section on wiretapping came under this provision. Since the law's passage, Insp. Dollard says police have done considerably more wiretapping here than federal agencies.

Not covered by either federal or D.C. law are one-party consent wiretaps, permitted under a Supreme Court decision. In such cases, where one party is aware of the tap, court permission is not needed.

It was under such circumstances that President Nixon recorded his own conversations, the tapes of which have become a central focus in the Watergate

"One-party consent recording are relatively common," said Capt. Charles Light, head of the police narcotics branch. "You just hook up your tape recorder." Assistant Chief George R. Donohue, who approves such taps by police, said the number was "rather minimal—eight or 10 in the last seven or eight months, at the most."

As for court-approved taps, Dollard says, "So long as the courts do their best job of keeping us in line, I don't think there's any problem . . . In the District, they do a good job. We don't get any flukers. And they're right. Wiretapping shouldn't be used for every little case. It's not a substititute for good investigation."