U.S. to Defend Warrantless Taps

GRIFFIN BELL
. . . ready to testify

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The Justice Department said yesterday it would strongly defend its use of warrantless electronic surveillance in national security cases and, if necessary, would call Attorney General Griffin Bell ot testify in a Vietnamese espionage trial in Alexandria.

Justice Department attorneys told the U.S. District Court in Alexandria that they would vigorously defend the use of a wiretap and a listening device in the apartment of David Truong, the former Vietnamese antiwar activist now accused of spying for Hanoi, against a constitutional challenge.

The Justice Department said it does not plan to use evidence from the warrantless videotape surveillance of Truong's codefendant, the American USIA employe Ronald Louis Humphrey, even though the use of the television camera was personally approved by President Jimmy Carter.

"It's not conceivable that the videotapes could influence the case," said assistant U.S. Attorney James R. Hubbard. "They're just not useful. They're not even intelligible."

Lawyers for Truong and Humphrey argued yesterday that they needed to subpoena President Carter, Bell, and other high Justice Department officials to testify next week on whether the wiretap and television evidence was usable in court.

But as the court session began yesterday morning—with a smiling David Truong and a newly shaven Ronald Humphrey in attendance—the government's position was not clear.

A government motion filed Thursday argued that the testimony of Carter, Bell and the others would be irrelevant because the government did not plan to use the 58 reels of sound tape and several hundred hours of videotape gathered in the case.

That statement was filed, however, without consulting Bell. According to high Justice Department officials, he had been completely wrapped up in issues related to the coal strike.

When he found out what had happened he told the prosecutors on the case that the Justice Department would indeed defend its use of the wiretaps.

Defense lawyers for Truong and Humphrey maintain that the vast majority of the government's evidence is related to the wiretaps and as such is "tainted" if the wiretaps are ruled inadmissible.

Judge Albert V. Bryan Jr. ruled yesterday that the subpoenas requested by the defense would not be issued to Carter or Justice Department officials Benjamin Civiletti and John Davitt. Bryan said that Bell could submit an affidavit instead of testifying personally, though he may be asked to appear later if his written account of the events and decisions leading to the wiretap authorizations prove inadequate.

Bryan also ordered that all communications between Bell and President Carter relating to the case be made available to the defense lawyers.

The government agreed to comply, but said a separate protective order would be needed. "Some of the information might be of such sensitivity," said an assistant U.S. attorney, that the president might not allow its release without such an order.

The controversy over this type of evidence has been heightened by the formation of defense committees for Truong around the country. They are largely composed of people who were active in the antiwar movement and who say the case has overtones of tactics once used by J. Edgar Hoover and Richard Nixon under the egis of national security.

The case also comes as the Senate attempts to revise standards for the use of electronic surveillance.

Government spokesmen have said the case against Truong and Humphrey is strong enough without the wiretaps, because scores of FBI agents were used to make first-hand observations of Truong and Humphrey's meetings, and there will be testimony from a woman who acted as an FBI informer and was directly involved in several of the alleged transactions between Truong and representatives of the Socialist Republic of Vietnam.

According to a Justice Department affidavit used to obtain search warrants, the informant had worked for the FBI for some time before the investigation of Truong began, and was personally acquainted with several high-ranking Vietnamese diplomats in France, as well as the United States.

Revelation of her identity may cause further problems in the already strained relations between the U.S. and Vietnam, according to State Department sources.