

STUDY ON BUGGING BY N.S.A. REPORTED

Justice Department 'Project'
Said to Treat Legal Aspect
of Actions by the Agency

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WASHINGTON, Oct. 25 —

The Department of Justice is conducting a top secret "special project" to wrestle with the legal questions raised by the National Security Agency's domestic and international electronic eavesdropping, according to law enforcement sources.

The department, these sources said, is faced with sorting out nearly a decade of illegal eavesdropping by the security agency as well as trying to come up with laws to permit some of the agency's foreign intelligence gathering to continue within the law.

The special project team, a small hand-picked group of Justice Department lawyers, has been given complete entrée to the super-secret techniques of the security agency.

Continued on Page 42, Column 4 to discover how the vital intelligence flow can continue without the statute and constitutional violations that now exist. This is the first time that Justice Department lawyers have been fully informed on the National Security Agency's activities, the sources said.

At the same time, these sources said, the criminal division of the department, is investigating the agency's operations over the last 10 years, particularly during the Nixon Administration, to establish how much illegal domestic eavesdropping took place, whether those involved can be prosecuted and to what degree some previous convictions may be endangered.

Both these inquiries are focusing on several areas of investigation.

From possibly as early as 1970, N.S.A. and later the central intelligence Agency were eavesdropping on long distance

calls between the United States and Latin America in hopes of picking up and recording conversations of narcotics traffickers.

There is no evidence, senior legal sources said, that the program was ever formally approved by either John N. Mitchell, Attorney General from 1969 until 1972, or Richard G. Kleindienst, who succeeded him. The program ended in Mr. Kleindienst's term.

No Evidence of Orders

Nor is there any evidence that any court orders were obtained in these cases, as is required by law. It is also unclear, these sources said, who actually ordered the security agency to get involved in the activity at all.

During one period, according to two former law enforcement officials familiar with the program. The agency supplied intelligence to William Sullivan, a former official of the Federal Bureau of Investigation, then head of the Office of Narcotics Intelligence, on a "friendship basis." Indeed, two N.S.A. employees were hired to work in Mr. Sullivan's Justice Department offices.

In another period the N.S.A. intelligence was channeled to narcotics agents in a disguised form through White House officials, the sources say. According to an article in The Atlanta Journal and Constitution the electronic eavesdropping was done from a secret facility of the security agency in Southern Virginia.

Senior law enforcement officials have said that intelligence from this program was "instrumental" in helping agents break several major drug cases from 1971 to 1973, but, they said, the convictions may be endangered because the courts were never told, as required by the rules of disclosure in criminal cases, that there had been electronic surveillance.

"N.S.A. never made a report to the Justice Department as other agencies with a

wiretap capability do," one source said, "so Government lawyers unknowingly may have misled the court."

The same problems arose where intelligence gathered by the security agency was utilized by the F.B.I. in domestic security investigations, these sources said.

These sources could give no exact figure on how many cases might be marred by either "tainted evidence," that is evidence obtained from illegal electronic surveillance, or from the defense's being denied knowledge that the Government had used this technique. One source said "numerous" cases, another suggested "it could run to a couple of hundred."

"The entire thing is confused by the methods N.S.A. uses. Is it illegal, for instance, to listen to a telephone call in the airspace over the United States? Is it illegal to pick up an American making a call overseas? Or listen to a foreign national calling here?" one source inquired.

These same questions applied to whether employees of the National Security Agency or the Central Intelligence Agency could be prosecuted for illegal electronic surveillance under the 1968 Omnibus Crime Act.

"There's another point here," said one source, "if there was no proper authorization for N.S.A. to get into these areas then they [officials of the agency] have made an illegal dissemination of signal intelligence and endangered their true national security assignment."

Two Investigations

At the same time that criminal division lawyers are looking into the security agency's past acts, the special project team is surveying the agency's techniques of intelligence collection. The agency, according to authoritative Government and intelligence sources, has the facilities to monitor virtu-

ally every long distance call placed in this country.

It also can monitor all overseas calls and scans with a computer nearly every cable or other data transmission made abroad. Testimony prepared for presentation to a House subcommittee last week, said that the National Security Agency, directly or through the Federal Bureau of Investigation, was obtaining cable traffic from several of the major cable carriers without apparent resistance.

There are specified laws against the intrusion on cable traffic and eavesdropping on telephone calls without either a court order or the authority of the Attorney General where the case involves foreign espionage. Moreover, Federal courts have recently narrowed the authority of the Attorney General in national security cases. From a constitutional standpoint, unauthorized intrusions can violate the protection against searches without a warrant.