

# High Court Eases Curb On Bugging

4/11/77 By John P. MacKenzie  
Washington Post Staff Writer

The Supreme Court ruled yesterday that police and federal agents do not need a warrant when they wire an informer for sound so that he broadcasts or records incriminating conversations with suspects who are under surveillance.

By a vote of 5 to 4, the court adhered to a rule, laid down before its 1967 decision that electronic eavesdropping was subject to constitutional restraints, that no right of privacy is involved when an undercover agent—even one equipped with a miniphone—is the conduit by which law enforcement officers listen in on suspects.

The decision, one of a dozen significant actions by the deeply divided court, was made possible by the vote of the newest justice, Harry A. Blackmun, and by the concurring vote of Justice Hugo L. Black, who alone on the court maintains that wiretapping and bugging can never violate anyone's rights.

Four members of the court—Justice Byron R. White, Chief Justice Warren E. Burger, Justice Potter Stewart and Blackmun—said that an individual has no right to expect privacy when he talks to another person, since conversation always entails a risk that a confidence will be violated.

But four justices, including the usually conservative John M. Harlan, argued that the right to privacy requires at least that agents obtain a search warrant from a court based on probable cause to believe that the suspect has committed a crime.

Harlan argued that warrantless "third-party bugging" is bound to "undermine that confidence and sense of security in dealing with one another that is characteristic of individual relationships between citizens and society." He added:

"Were third-party bugging a prevalent practice, it might well smother that spontaneity—reflected in frivolous, impetuous, sacrilegious and defiant discourse—that liberates daily life."

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Without the protection of warrants, said Harlan, it is not only criminals who run the risk of treachery by informants. Such eavesdropping "subjects each and every law-abiding member of society to that risk."

Separate dissents were filed also by Justices William O. Douglas, William J. Brennan Jr. and Thurgood Marshall.

### Conviction Reinstated

The opinion of four justices, delivered by Justice White, reinstated the narcotics conviction and 25-year prison sentence of James A. White of Chicago. The Seventh U.S. Circuit Court of Appeals had reversed the 1966 conviction of White, saying the Supreme Court itself had buried a 1952 precedent that sustained the use of a wired informer without court authorization.

The 1952 decision was handed down at a time when the Supreme Court had not yet ruled that wiretapping and bugging constituted a "search" within the meaning of the

Fourth Amendment, a finding it made in 1967 in the case of Katz v. U.S. But Justice White said the 1952 decision was "still good law" because the use of a microphone strapped to a cooperating informer was not the kind of unreasonable search that is forbidden by the Fourth Amendment.

The case was argued twice. After the first argument last term, the court was unable to deliver a decision. At that time, the court was one man short.

### In other actions:

#### Housing

The court refused to consider the petition of the City of Lackawanna, N.Y., which is under orders from lower courts to stop blocking a residential development for Negroes. The lower court decision was a victory for the NAACP Legal Defense Fund in its drive to strike down local zoning and other laws that are used to fence out blacks.

#### Prayer

The court refused to creex-

amine its eight-year-old decision against officially sponsored prayers and Bible readings in the public schools.

With only Justices White and Stewart voting for a hearing the court left undisturbed a ruling that school officials in Netcong, N.J., unconstitutionally promoted religion by selecting devotional readings from the Congressional Record for reading to students during pre-school hours without requiring their attendance.

One New Jersey judge said officials were trying "to peddle religion in a very cheap manner under an assumed name" by calling the readings "remarks" rather than prayers and added, "This type of subterfuge is degrading to all religions."

#### Weapons

The court ruled, 9 to 0, that the 1968 federal gun control law, which requires registration of firearms and other weapons, is constitutional. Justice Douglas said Congress had cured the defects in old