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'Bugging' Limited By Court

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Officers Must Get Warrant, Justices Rule

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The Supreme Court ruled yesterday that the Constitution forbids electronic eavesdropping by police and Federal agents without a judicial warrant of the kind used to authorize conventional searches and seizures.

The Court ruling appeared to offer some encouragement to proponeents of State and Federal legislation to authorize wiretapping and "bugging" under court order. It said that a judicial warrant was "'a constitutional precondition" to electronic surveillance.

Such warrants are necessary, the Court said, whether law enforcement offficers seek to eavesdrop with microphones planted inside a room or with more powerful listening devices that can pick up conversations through walls.

2 Decisions Overruled

In an opinion by Justice Potter Stewart, the Court specifically overruled two decisions, one written in 1928 by Chief Justice Taft and the other in 1942, holding that oral communication was not protected by the Fourth Amendment's ban on unreasonable searches and seizures.

The Court also said it was discarding any principle that some areas, such as the home or office, are more "constitutionally protected" than others. "The Constitution protects people, not places, "Stewart said, adding, "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures."

Rules on Betting Call

Emphasizing the point, the Court reversed the conviction of a man whose conversations over a public telephone on a crowded Los Angeles street had been "bugged" by FBI agents without a court order.

The man was a small-time handicapper named Charles Katz, who was overheard telephoning basketball betting information to gamblers in Boston and Miami. He was fined $300 for misusing interstate phone facilities.

The Justice Department did not rely heavily on the 1928 and 1942 precedents in seeking to sustain Katz's conviction. Although Justice Hugo L. Black's dissent said he would stick to them, most opponents and supporters of official eavesdropping have agreed that the old decisions were out of date in an era when parabolic microphones can overhear conversations through thick walls.

Taft had held in 1928 that since conversations were not tangible "things to be seized," they were not subject to the warrant requirements of the Fourth Amendment. In 1942 the Court said a detectaphone placed on a room's outer wall did not "search" the room be-

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Court Bars 'Bugging' Without Writ

cause there was no physical trespass.

Justice Stewart said the old cases had been "eroded" and Justice John M. Harlan, in a concurring opinion, agreed that they were "bad physics as well as bad law."

Government lawyers sought to sustain Katz's conviction on two other grounds: that he surrendered his privacy rights when he entered the glass-enclosed booth, and that the FBI behaved reasonably.

Stewart replied that while Katz was visible in the booth, "what he sought to exclude . . . was not the intruding eye —it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen."

Stewart agreed with the Government that the agents had "acted with restraint" in their surveillance, but added, "The inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer."

The agents had noticed Katz using the same phone booth at a regular hour each morning. They traced his calls to numbers listed to known East Coast gamblers. Their microphone, taped to the top of the booth, was wired to recording machines that were activated shortly before Katz entered and turned off when he left.

One innocent telephone user, who was not identified, was overheard despite these precautions but Stewart said the agents "refrained from listening" to his statements.

"Accepting this account of the Government's actions as accurate," Stewart said, "it is clear that this surveillance was so narrowly circumscribed that a duly authorized magistrate, properly notified of the need for such investigation, specifically informed of the basis on which it was to proceed, and clearly apprised of the precise intrusion it would entail, could constitutionally have authorized, with appropriate safeguards, the very limited search and seizure that the Government asserts in fact took place."

But Stewart said the Court had carved out few exceptions to the rule that searches must be justified in advance to an impartial judicial officer and no exception should be made for electronic searches.

In a brief concurring opinion, Justice Byron R. White said he would not require the judicial warrant procedure in national security cases.

This provoked a separate concurrence by Justices William O. Douglas and William J. Brennan Jr., saying White was offering "a wholly unwarranted green light for the Executive Branch" to evade the search warrant requirement "in cases which the Executive Branch itself labels 'national security' matters."

Justice Thurgood Marshall, who was Solicitor General when Katz filed his petition in the Supreme Court, did not take part in yesterday's decision.

The decision gave encouragement to congressional conservatives who seek general wiretapping - bugging legislation and weakened part of the argument that underlies the Johnson Administration's opposition to all but national security eavesdropping. Justice Black's dissent said the majority had eliminated "what appeared to be insuperable obstacles" to the legislation created by language in an eavesdropping decision last June.

Opponents of eavesdropping argue in part that court restrictions would not make the practice worthwhile in prolonged organized crime investigations. Their basic argument, however, has been that bugging is bad policy and should not be linked in legislation aimed at helping local police fight crime.

The Administration had no comment yesterday on a recurring report, circulated by Senate conservatives, that President Johnson had indicated a willingness to accept an eavesdropping section in his "must" crime legislation.