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Justice Asked to Answer on 'Bugging'

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The Supreme Court has called on the Justice Department to justify its controversial policy of disclosure and non-disclosure in electronic eavesdropping cases.

The Court's order, issued Dec. 4, gave Solicitor General Erwin N. Griswold until Jan. 3 to explain why the Government refuses to tell two Las Vegas gambling figures whether one of them was "bugged" by Federal agents.

The order has emphasized a little understood aspect of Attorney General Ramsey Clark's year-old program of purging the Federal criminal dockets of cases tainted by electronic snooping.

Under the program, Government attorneys have confessed to the Supreme Court and lower tribunals, usually voluntarily, that about two dozen prosecutions contained evidence obtained by eavesdropping and wiretapping techniques that were employed before President Johnson banned the practices in 1965.

The policy has required a painstaking search of investi-

gative files in hundreds of pending court cases and a decision by a committee of high Justice Department officials as to whether each instance of eavesdropping warrants disclosure to a defendant that his conversations have been overheard.

Civil libertarians have applauded the program and conservatives have denounced it, but neither side has paid much attention to the fact that disclosures do not automatically follow each discovery of eavesdropping.

Instead, the Justice Department reserves the power to withhold disclosure when it determines that the bugging of an individual had little or nothing to do with his prosecution.

The issue now before the Supreme Court is whether the Government has the legal right of non-disclosure or whether, as Washington attorney Edward Bennett Williams argues, the bugging victim or a court must be informed in each case.

The dispute arose shortly after the Court refused on Oct. 9 to consider the case of Wil-

lie L. Alderman, Felix A. Alderisio and the late Ruby Kolod, who were convicted of conspiring to extort payments from a Denver lawyer.

Williams promptly informed the Court that he intended to petition for a rehearing based partly on alleged electronic surveillance of Alderisio's "place of business" in Chicago. Alderisio, otherwise known as "Milwaukee Phil," is one of the reputed "enforcers" of Chicago's crime syndicate.

Williams told the Court that he had asked Government lawyers to check their records in line with Clark's disclosure policy. In its answer, the Government neither admitted nor denied the eavesdropping charge.

The Government replied instead that Alderisio's case "did not come within the Department's policy of disclosure."

"The Department will undertake to make disclosures to the courts if it finds (1) that there has been an electronic surveillance which is or may be unlawful and (2) that the Government has

and lower tribunals, usually one which is arguably relevant to the litigation involved."

In his petition for a rehearing Williams called this a "truly extraordinary reply" that claimed the power of the Government to be "judge of its own cause in a field where reputation stands most to be sullied by disclosure of illegality."

Williams said that Alderisio and Alderman were entitled at least to a court hearing and probably a new trial.

The Court then filed its order, which said simply, "The Solicitor General is requested to file a response to the petition for rehearing within 30 days."

The Justices never grant such petitions without giving the Solicitor General the chance to respond.