

Ensuring Justice *Post 11/1/66*

If, as a jury concluded, Fred B. Black Jr. was guilty of tax fraud, it is a pity in a way that the Supreme Court has set his conviction aside and ordered that he be given a new trial. The public has a keen interest in the conviction and punishment of tax evaders. But in a rather more important way, it is a piece of great good fortune that the Court has intervened to prevent a blemish on the administration of justice through the use of evidence obtained by violation of the law and by disregard of a defendant's rights. The public has an even keener interest in observance of the law by law enforcement authorities and in an undefiled judicial process.

After Mr. Black's conviction in 1964 and after the Supreme Court had rejected a petition on his behalf for review, the Solicitor General of the United States felt obliged to go before that Court and acknowledge what he had just learned—that FBI agents had "bugged" Mr. Black's hotel suite in Washington and had monitored, among other things, conversations between the defendant and his attorney. The Solicitor General said that no use had been made of the information obtained in this way in the prosecution of Mr. Black and suggested that the case be sent back to the trial judge for hearings on this score. This would be extremely difficult to determine, however. And the Court concluded, wisely and fairly, in our opinion, that Mr. Black was entitled to an entirely new trial, although not to a dismissal of his case as he had requested.

The FBI has scored many victories for justice and has usually acted with a fastidious respect for the law. But it has been stubbornly defiant in regard to electronic eavesdropping, tapping telephones in violation of an act of Congress whenever its director believed he could promote national security by doing so and "bugging" private conversations in violation of rights of privacy. In the Black case, the consequence is merely that the Government is put to the trouble and expense and uncertainty of a new trial. In other cases, the consequence may have been far more serious—conviction of defendants by unlawful means. It ought to be the first business of a new Attorney General when he is appointed to put a firm stop to these practices.