

U.S. Rejects Disclosure Of Ellsberg Case Wiretap

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LOS ANGELES, Aug. 7 — The Justice Department will accept a long postponement of the Pentagon Papers trial — or perhaps even drop the case — rather than disclose the contents of a "foreign intelligence" wiretap that led to a Supreme Court stay of all proceedings.

A Justice Department spokesman said today that the prosecutors in the controversial case will not seek to force Daniel Ellsberg and Anthony Russo to trial this week by revealing which of their 16 attorneys and consultants was overheard in non-court-authorized electronic surveillance.

With the case stalled until the Supreme Court decides this fall whether to hear a defense appeal over the wiretap, disclosure of its contents was the last way the prosecutors could have made the trial go forward.

But John W. Hushen, public information officer for the Justice Department, said in a telephone interview that there

was "no chance" such a move would be made.

Asked whether the government's insistence on the secrecy of the wiretap could lead to dropping the conspiracy, espionage and theft indictment altogether — if the Supreme Court should eventually require disclosure — Hushen said, "We hope not."

The crisis in the Ellsberg-Russo trial comes as a dramatic example of how a favored law enforcement tool of the Nixon administration, wiretapping, while purportedly successful in some areas, has backfired in another.

According to Hushen, electronic surveillance has been "the single most effective tool to get at organized criminal activity" in the United States.

Pointing to narcotics, bribery and other federal convictions, Republicans in Congress often boast of the administration's willingness to use the statutory authority to wiretap that was allegedly ignored or purposely neglected by the Johnson administration.

The conviction record has been impressive, with wiretap tapes and logs often providing evidence that the government found impossible to obtain otherwise.

But in the past month, government wiretapping was also responsible for the dismissal of at least four federal "political" prosecutions. Over a longer period, it has virtually sabotaged grand jury investigations in the "internal security" area.

If Ellsberg and Russo have their way with a Supreme Court that has already outlawed so-called "national security" wiretaps without a search warrant, the revelation of electronic surveillance could kill a number of other major cases.

A major difference, of course, is that wiretaps which produce evidence in narcotics and other such cases are invariably based on a court order.

In political cases, the surveillance was generally used for what the Justice Department calls "intelligence-gathering" purposes and was backed only by the administration's claim of inherent execu-

tive authority rather than by a court mandate.

Civil libertarians warn, however, that all wiretapping is of the same cloth and that the Fourth Amendment rights of many citizens (against unreasonable search and seizure) have been violated because of general public tolerance of government eavesdropping in organized crime cases.

They point with some concern, for example, to the Justice Department's recent decisions to drop cases rather than reveal to defendants what it has learned about them through bugging.

These are the prosecutions abandoned by federal authorities when faced with a requirement to disclose "national security" wiretaps under the terms of last month's Supreme Court order:

- Abbie Hoffman, the "Yippie" leader, charged with assault during last year's Mayday antiwar demonstrations in Washington.

- Leslie Bacon, the California teenager originally arrested as a material witness in the bombing of the U.S. Capitol last year, who was charged with perjury after her testimony before a federal grand jury in Seattle.

- Lawrence Plamondon, a member of the White Panther Party, who was indicted in Detroit in connection with the bombing of a Central Intelligence Agency office in Ann Arbor.

- Bradford Lyttle, of the People's Coalition for Peace and Justice, who was also charged with assault during the Mayday demonstrations and was prosecuted in D.C. Superior Court by a lawyer from the Justice Department's Internal Security Division.

Since the Supreme Court has declared such taps illegal, disclosure of their contents — in order to determine whether the evidence was tainted — would be necessary for any such case to proceed.

The Supreme Court has never ruled on the legality of "foreign intelligence" wiretaps like the one that has halted the Pentagon Papers case, but Justice William O. Douglas, in granting a stay, said that such distinctions may be a matter of "semantics."