

# U.S. Wiretaps Without Warrants Ruled Illegal

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LOS ANGELES—Government wiretapping without a warrant in national security cases involving wholly domestic situations was ruled unconstitutional Monday by U.S. District Judge Warren J. Ferguson.

It was the first time any court has struck down the power of the attorney general to authorize electronic eavesdropping on domestic organizations suspected of being subversive. The ruling is expected to be appealed, and Ferguson granted a 30-day stay for that purpose.

Ferguson specifically made no decision on whether there might be an exemption from the warrant requirement in security cases involving foreign relations.

Every U.S. President since Franklin D. Roosevelt has authorized his attorney general to use electronic surveillance, without warrants, in national security cases.

Ferguson ruled in the case of Melvin Carl Smith, 41, alleged Black Panther, who was convicted Oct. 24, 1969, of two counts of being a felon in possession of a firearm. He was sentenced to two years in prison on each count, to run consecutively.

Evidence showed Smith possessed an M-1 rifle and a semiautomatic .22-caliber rifle. His previous conviction in 1957 in Kansas was for interstate transportation of a stolen firearm and ammunition.

Smith was among 13 persons arrested for conspiracy or as-

sault with intent to commit murder after a four-hour gun battle with police Dec. 8, 1969, at the Black Panther headquarters here.

While his 1969 conviction was being appealed, the government discovered that on five occasions Smith's telephone conversations had been overheard by government agents. The government disclosed this to the U.S. 9th Circuit Court of Appeals, which sent the case back to Ferguson for hearings.

Ferguson's ruling, if upheld, means the government must disclose fully to Smith its records of the surveillance and a hearing will be held to determine whether or not illegally obtained evidence was used to convict him. Should the government choose not to make the disclosure, charges against Smith would have to be dropped.

In his written opinion, Ferguson pointed out that in the area of domestic political activity—unlike in foreign affairs—the government can act only in limited ways because of the constitutional guarantees protecting political freedom.

"However, the government seems to approach these dissident domestic organizations in the same fashion as it deals with unfriendly foreign powers," he said.

"The Government cannot act in this manner when only domestic political organizations are involved, even if those organizations espouse views which are inconsistent with our present form of government," he added.

"To do so is to ride roughshod over numerous political freedoms which have long received constitutional protection."

(The U.S. Justice Department in 1969 first claimed the right to eavesdrop electronically without a warrant on persons suspected of domestic

subversion. Its position was upheld in the Chicago Seven conspiracy trial, when Judge Julius J. Hoffman ruled that wiretaps on conversations of several of the defendants were legal and that their contents need not be disclosed in court. That decision is being appealed.)