

U.S. Seeks to Widen Wiretapping Secrecy

By John P. MacKenzie
Washington Post Staff Writer

The Justice Department asked a Federal court yesterday to broaden the category of wiretaps and electronic buggings that it need not disclose.

Attorney General John N. Mitchell, who last month launched a court test of the Government's right to conceal electronic surveillance data in "foreign intelligence" investigations, said taps and bugs in domestic subversion cases also must be kept secret from persons who are overheard on them.

Mitchell took this position in papers filed in the U.S. District Court in Chicago where eight militants face trial Sept. 24 on a charge of conspiring to incite violence at the Democratic National Convention last August.

Defense counsel moved for

production of tapes and logs of illegal eavesdropping on any of the defendants. The Government countered yesterday by declaring that wiretapping conducted before a Supreme Court ruling on Dec. 18, 1967, was both legal and constitutional and its fruits need not be divulged to defendants.

The Justice Department said if any eavesdropping against any of the eight defendants should be declared illegal, its fruits still need not be disclosed because it was conducted "to protect the Nation from attempts by domestic organizations to use unlawful means to attack and subvert the existing structure of Government."

See CHICAGO, A4, Col. 1

Court Asked To Broaden Wiretap Rule

CHICAGO, From A1

In a Washington fraud case and in the Cassius Clay draft prosecution, the Government has previously said a special exemption from disclosure—other than to a trial judge in the secrecy of his chambers—exists for bugs and taps planted in foreign intelligence gathering aimed at protecting the country from espionage.

Mitchell said pre-1967 wiretapping was legal anyway under an interpretation of the Federal Communications Act adopted by every Administration since Franklin D. Roosevelt's. Only in 1967 did the Supreme Court outlaw electronic surveillance without a court order, reversing a 1928 ruling that sustained the practice.

The eight conspiracy defendants are David T. Dellinger, head of the ational Mobilization Committee to End the War in Vietnam; Thomas E. Hayden and Rennie Davis of the Students for a Democratic Society; Lee Weiner; John R. Forines; Black Panther leader Bobby G. Seale and the two founders of the Youth International Party, Abbie Hoffman and Jerry Rubin.

Of eight policemen indicted with the demonstrators on individual charges of brutality, three were acquitted this week in Chicago's Federal Court.

Mitchell said he was willing to disclose some eavesdropping data to certain defendants without arguing over its legality. But he said those defendants should be ordered not to disclose the data further because that could "prejudice the national interest and the rights of third parties."

An affidavit signed by Mitchell said that Dellinger, Davis, Hayden, Rubin and Seale participated in conversations tapped by Government agents acting with "the express approval of the then Attorney General." Records of these wiretaps were submitted as sealed exhibits for private court inspection.