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# U.S. Judge Rules FBI Search Of Detective's Office Illegal

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A federal judge ruled yesterday that a FBI warrant to search the offices of a local private detective was illegally obtained and that evidence seized during the search cannot be used.

The effect of the ruling by U.S. District Court Judge John Lewis Smith Jr. was to throw into doubt the prosecution's entire case against Richard Lee Bast, charged with illegally advertising and selling electronic equipment.

Bast's lawyer, Philip J. Hirschkop, had argued Sept. 14 before Smith that FBI agent Daniel C. Mahan and Assistant U.S. Attorney John E. Drury had committed perjury while preparing an affidavit that was the basis for a U.S. magistrate's issuing a search warrant.

Smith said he found "no willfull misrepresentation of fact anywhere in the affidavit." The judge agreed with Hirschkop, however, that the affidavit failed to establish legal grounds for issuing the search grounds for issuing the search warrant.

As a result, Smith ruled, all evidence obtained in the search must be suppressed. Although the evidence obtained related to only four counts of a six-count indictment, other language in Smith's ruling was interpreted by Assistant U.S. Attorney Guy H. Cunningham III to mean that if the government tried to prosecute the other two charges, Lewis would throw them out as well.

"For all practical purposes,"

Cunningham said, Lewis' ruling destroys the government's case, unless the ruling is overturned on appeal. Cunningham said that no decision has been made about whether to appeal.

Bast is president of Redex Corporation, which sells electronic equipment by mail, including a miniature tape-recorder. An advertisement mailed by Bast describes the recorder as one that "secretly tapes a conversation, interview, conference or lecture in your shirt pocket . . ."

Bast sent that advertisement through the mail, a violation of federal law, according to the government, which contended that the recorder would be used for "surreptitious interception of oral and wire communication."

On Dec. 21, an FBI informant in California who had received one of Bast's advertisements, spoke with Bast on the telephone and asked him to send a sample of the tape-recorder.

The FBI informant, according to court papers, asked Bast if the recorder could be adapted so that it could be ac-

tivated when someone spoke. Bast replied that the only use for such an adapted recorder would be if it were to be "dropped" (secretly placed somewhere "and that this would be illegal.")

According to Mahan's affidavit, Bast was described as having refused to discuss the legality or illegality of the tape-recorder.

Even if Bast had refused to discuss the legality or illegality, Smith ruled, "The court disagrees with the government's position that this mere fact supports a reasonable inference that Bast knew his activity to be unlawful as required by the statute."

Similarly, Smith rejected the government's argument that the recorder was to be used for "surreptitious," and therefore, illegal, interception of conversations.

"The recorder in this case is advertised as one designed to be used primarily by a party to the taped conversation and therefore falls outside the designation 'surreptitious,'" Smith ruled.