

Prosecutors Told to Keep All Evidence

11/30/77

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The U.S. Court of Appeals, asserting that criminal trials must be "more a quest for truth than a sporting event," ordered government prosecutors and investigators yesterday to preserve all evidence that might potentially be useful to defendants.

Filing a harshly worded opinion by Judge J. Skelly Wright, the court complained of "a dark no-man's-land of unreviewed bureaucratic and discretionary decision making" that endangers the rights of those on trial.

In sharp contrast to the "carefully safeguarded fairness of the courtroom," he said, pretrial procedures often involve the destruction or "loss" of evidence subject to full disclosure.

"Too often, what the process purports to secure in its formal stages can be subverted or diluted in its more informal stages," Wright wrote at the beginning of a 21-page opinion.

Joined by Judge Carl McGowan, he called upon federal investigative agencies such as the Bureau of Narcotics and Dangerous Drugs to formulate "rules, systematically applied and systematically enforced... for preserving evidence."

The opinion came on an appeal of the conviction of two men, Carlton E. Bryant and William E. Turner, for their alleged part in the sale of a large quantity of heroin at a Washington motel.

See EVIDENCE, A6, Col. 1

Judge Wright Rules Prosecutors Must Keep Evidence Until Trial

EVIDENCE, From A1

They were convicted in U.S. District Court, primarily on the basis of testimony by a bureau undercover agent who said he bought the heroin while his colleagues eavesdropped from an adjoining room.

At issue in the case was a tape recording of the transaction, never made available to the government prosecutor or defense lawyers and, according to the bureau, "lost" before the case ever came to trial.

Relying solely on its agents' recollections, the investigative agency took the position that the tape recording was not essential for the trial. For months, it refused to admit the existence of the tape.

'Court in Dark'

"We are entirely in the dark," Wright complained. "We have no idea what may have been on the tape. For all we know, the tape would have corroborated (the agent's) story perfectly; or, for all we know, it might have completely undercut the government's case."

"What we do know," the judge continued, "is that the conversations recorded on the tape were absolutely crucial to the question of (the men's) guilt or innocence."

He also scolded District Judge Leonard P. Walsh for ruling during the trial that the "important fact" was whether the prosecutor had the tape recording available to him.

Case Remanded

"It should be clear that that is not the most important fact; suppression of evidence by investigative officials, no less than by the prosecution, corrupts the truth-seeking function of the trial," Wright said.

The opinion stopped short of reversing the conviction, but remanded the case to District Court for further inquiry into "the degree of negligence, and possibly of bad faith, involved" in the bureau's loss of the tape.

A source in the U.S. attorney's office said yesterday that the opinion was likely to have little effect on the metro-

politan police department, which "has pretty good record-keeping practices."

It could have a substantial impact, however, on federal investigative services headquartered here, such as the FBI, BNDD, and the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service.

Issue in Drug Trial

Recently, the availability of internal documents, reports and notes became an issue in the trial of six men in District Court on charges of conspiracy to violate federal narcotics laws.

Defense lawyers in that case repeatedly questioned the ability of narcotics bureau agents to remember accurately details of investigations they had conducted more than a year earlier.

The agent most severely criticized in yesterday's opinion, who supervised the surveillance and tape recording of the transaction, also testified in the conspiracy case.