

U.S. may use bugs to nail Conspiracy

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By Roger Lowenstein
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Second of two articles

Chicago

When Congress passed the federal anti-riot act last year, law-makers were aiming to imprison riot-provoking "outside agitators," even if they had to infringe upon freedom of speech.

This was clear from the beginning. Not so clear at first was the zealous activity of the Justice Department in pursuing the first prosecution under the new law, of "The Conspiracy," also called the Chicago 8. In creating the legal fiction of a broad conspiracy on the part of many radical organizations to disrupt the Democratic convention in Chicago last August, the Attorney General is seeking in one prosecution to jail what he considers to be leaders of revolutionary activity in the U.S.

The most fascinating example of the lengths the Justice Department is willing to go in order to get a conviction in this case is the controversy surrounding electronic surveillance.

The chronology of events goes back to February when the U.S. Supreme Court decided in the "Alderman" case that where a wiretap is illegal, the government

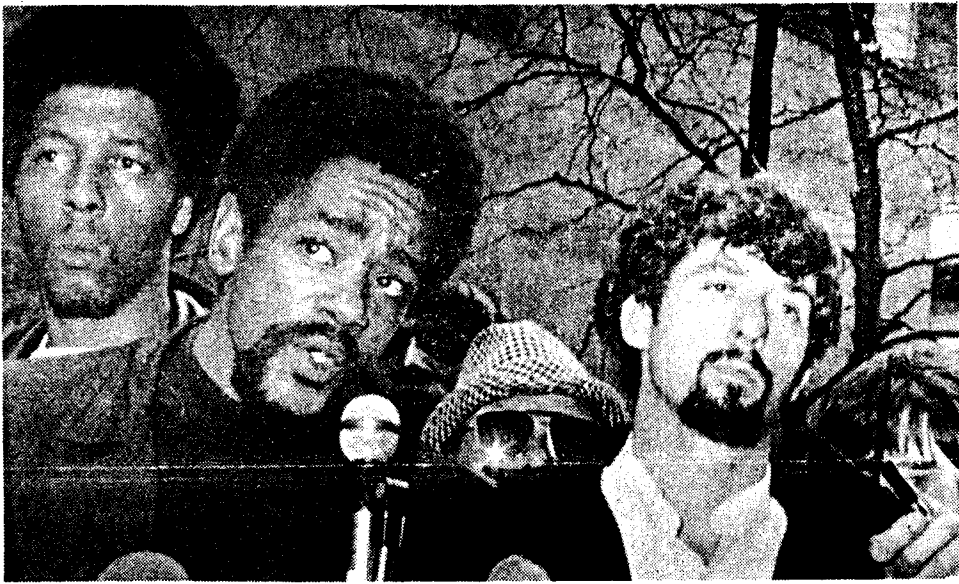
must turn over the results to defense counsel. No longer would the government be permitted to make its own determination as to what the defense can or cannot see. Henceforth a judge is to determine whether a wiretap or electronic eavesdrop has met the procedural requirements set forth in earlier court opinions and required by the Fourth Amendment prohibition against unreasonable search and seizure.

On the day following the "Alderman" decision the Justice Department held an unusual press conference. Deputy Attorney General Will Wilson announced that "Alderman" would seriously prejudice a number of outstanding prosecutions which the administration considered crucial. He mentioned, Hoffa, Spock and Muhammed Ali, all of which had already resulted in convictions. He also mentioned the Chicago convention riot prosecution which was at that time only at the grand jury stage. He said a determination would have to be made whether to continue to seek indictments in that case. Despite this attempt by the Justice Department to rally public opinion against "Alderman," a petition for rehearing was nevertheless denied by the Supreme Court.

In March 1969 the Supreme Court decided the "Giordano" and "Taglionetti" case—and for the first time mention was made of "international affairs" and "internal security" exceptions to the procedural requirements for government wiretapping and electronic eavesdropping. The "Giordano" decision specifically left open the question whether there is such a thing as a "national security" exception, and if so what its scope is.



From left to right:
Atty. Gerald Lefcourt, David Brothers of the N.Y. Black Panthers, Abbie Hoffman and Dave Dellinger of the Conspiracy, Atty. Bill Kuntsler, Jerry Rubin of the Conspiracy and unidentified lawyer.



Bobby Seale and Tom Hayden. Conspiracy trial starts Sept. 24.

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On April 9, Dave Dellinger, Rennie Davis, Tom Hayden, Bobby Seale, Abbie Hoffman, Jerry Rubin, John Froines and Lee Weiner were arraigned in Chicago. On May 6 motions were filed by the defense, one of which asked the government to certify whether or not use had been made of wiretap and electronic eavesdropping information. On May 24 the government answered all the defense motions except that one, saying wiretap and electronic surveillance was the subject of a continuing investigation and that the defense must wait until June 13 for an answer.

On June 11 in Newark, N.J. the federal government made an unprecedented disclosure. At the request of a defense attorney, the U.S. Attorney's office turned over 12 volumes of illegally obtained wiretap and electronically eavesdropped conversations of leading Mafia figures. The transcript read like a Mickey Spillane novel, as Mafia figures are heard discussing an assortment of gang killings. On June 12 federal law enforcement officials held a press conference in Newark and said Supreme Court decisions made it impossible for them to prosecute the Mafia leaders for the crimes admitted in the conversations.

On June 13 in Chicago the government "answered" the Conspiracy defense by sending a news release to the press. The government admitted to having wiretapped or electronically overheard conversations of all but three of the defendants—Froines, Weiner and Hoffman. The taps are admitted to have been made without prior judicial approval and are therefore illegal according to the Fourth Amendment's prohibition against unreasonable searches and seizures. The government argued, however, that the taps and overheard conversations are nevertheless valid due to an exception concerning conversations affecting the "internal security" of the country. The government therefore refused to hand over the intercepted conversations involving "internal

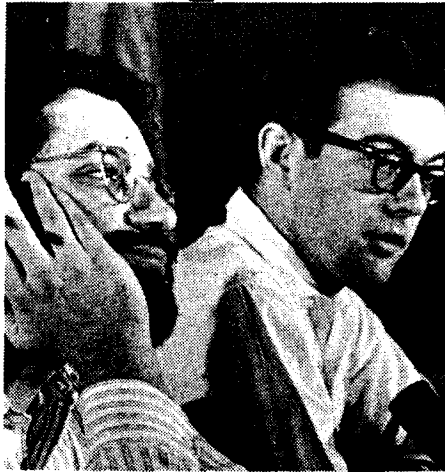
security."

At a hearing July 17, U.S. District Judge Julius Hoffman, assigned to preside at the Conspiracy prosecution, refused to rule on the legality of the controversial conversations. He did not want to define the scope of a national security exception or even to declare that it existed. Instead he said that he would defer the question until after the trial and would only have to reach the legality point if upon examining the conversations he felt that the trial had been "tainted" by them. At this point defense attorneys have no idea what the government intends to produce at trial. The present situation is that the government has confessed error in making illegal interceptions of conversations, arguing nevertheless that a new national security rule should exonerate them, with the result that the judge put the injured party in the position of going to trial without proper preparation.

The Justice Department was badly stung by the "Alderman" decision and

by prior Constitutional decisions which made unregulated wiretapping and electronic surveillance illegal. In particular the department wanted to preserve at all costs their control, without judicial intervention over conversations which they felt crucial to key prosecutions. A national security exception to the new rules, if broad enough, would permit the department to circumvent "Alderman" and to prevent the defense in the Conspiracy case from claiming that the entire indictment and trial were tainted by illegal interceptions. The Newark disclosures and the several department press conferences were part of a concerted publicity effort to rally public support behind an eventual Supreme Court definition of "internal security." The more the public is disgusted over lack of Mafia prosecution, the more likely it is that the Supreme Court will sustain a conviction on the Conspiracy.

A word should be said about the judiciary. It has already become clear to those who have seen Judge Hoffman in action that the chances of fair treatment at trial have been all but precluded. Last week attorneys William Kunstler and Len Weinglass argued for a postponement of the trial, stating that chief defense attor-



Lee Weiner and Rennie Davis.

ney Charles Garry was undergoing surgery at the moment the argument was being made. They said that even if Garry were to recover in time, he had irreconcilable trial conflicts due to his defense of Los Siete de la Raza in San Francisco, all sitting in jail until trial while the defendants in the Conspiracy were out on bail. Kunstler made the same argument with regard to the New York Panther 21. The lawyers also said Bobby Seale's recent arrest for murder created publicity which could prejudice the other defendants, arguing Seale's case should be decided first.

Hoffman denied postponement. The trial date is Sept. 24.

Contributions may be sent to the Conspiracy, 28 E. Jackson, Chicago, Ill. 60604. Funds earmarked for the Chicago Defense Fund will be limited to legal defense.