

Bugging Growth Dismays Judge

Gesell Says Courts Can't Stop Trend

By Donald P. Baker
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U.S. District Court Judge Gerhard A. Gesell expressed alarm yesterday at the growing use of electronic surveillance by the government, but said the courts are powerless to stop it when one of the parties, often a police informer, consents to the snooping, usually in return for a favor.

"Whatever incidental good flows from this invasion of privacy is submerged by the growing appearance of police surveillance so typical of totalitarian states," wrote Gesell.

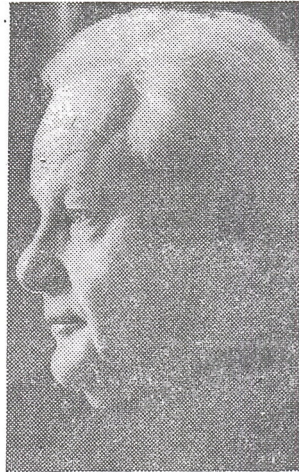
His strong criticism, and an appeal for legislation to make the snooping illegal, were written as he denied a motion to suppress tape recording the government plans to use in pressing perjury and conspiracy charges against Montgomery County businessman Joel Kline and two associates.

Gesell found that the "consensual overhearing in this case does not violate any provision of the Constitution or any statute . . . Only legislation requiring a warrant in these cases can correct the growing intrusions of privacy so central to the Bill of Rights."

Partially on the basis of conversations taped by an FBI informer, the three men were indicted May 18 on charges that they paid at least \$50,000 to witnesses in attempts to influence testimony in a Securities and Exchange Commission investigation into possible



JOEL KLINE



JUDGE GERHARD GESELL

Plea to suppress taped conversations is denied.

stock manipulations among Kline's vast holdings.

Kline, 34, of 4545 Willard Ave., Chevy Chase, once was a leading candidate for the post of Maryland bank commissioner. He became a multimillionaire land developer before the age of 30. He was indicted with Eric A. Baer, 44, of 6908 Nevis Rd., Bethesda, and Donald H. Abrams, 40, of 8707 Yarmouth Ct., Potomac.

In denying the defendants' request to suppress the tapes, Gesell said the practice of informers taping conversations is now routine, as any experienced trial judge knows, and it continues to proliferate without judicial supervision.

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KLINE, From B1

Assistant U. S. Attorney Robert W. Ogren has said that a major witness against the three men will be John G. Lassise, president of Lassise & Co., 7316 Wisconsin Ave., Bethesda. In the indictment, Lassise was named as participating in many of the overt acts allegedly committed by the three indicted men, but was not charged with any crime.

Gesell said that "it is now conclusively established that the Fourth Amendment is not violated where, during an investigation, a government agent consents to record his private conversation with others who are suspect without revealing his true identity or purpose.

"This principle, laboriously and somewhat hesitantly fashioned in the give-and-take of many decisions involving covert overhearing has practical consequences.

"Informers, in return for government promises or hope of favors, are equipped with

recording devices and sent into the homes and offices of their friends and confidants to trap their words on tape and to turn incriminating evidence over to law enforcement agents.

"Many individuals, without any knowledge of the government, secretly tape their own provocative conversations with others for ulterior purposes and use casual remarks to extort or intimidate . . .

"Highly accurate and sensitive devices are available. Conversations with the informer can be heard by the government through walls and even at some distance away, while government agents and others sit concealed and unobserved."

Gesell said that "in this case, the informer was apparently expected to have a lengthy conversation. The equipment carried on the informer's body was not capable of running for the expected duration of the talk.

"Thus, with his consent, he was also wired to a broadcast-

ing device, and the entire conversation was broadcast to an FBI car in the street outside, where it was immediately also recorded and permanently captured for government use.

"Electronic gadgetry thus pushes the rationale of the cases to extreme. A government agent can plant a broadcasting transmitter in a person's home, car or office without court approval and transmit conversation of a consenting informer so long as the informer's presence is known and accepted by the other occupants, even though they are completely unaware of and indeed affirmatively misled as to the informer's purpose."

Gesell noted that an earlier ruling by him that such conversations were illegal was reversed on appeal, with the higher court "noting that the hunter i.e., the prosecutor, should be permitted to pursue the tactics of the hunted, particularly where the hunted is sophisticated."

The government has said it has "crucially incriminating

tapes" of a private conversation at Kline's penthouse office, during the SEC investigation.

While conceding that the admission of the tapes "must be accepted by law," Gesell warned that "this is an enormously dangerous and insidious power to place in the unsupervised hands of the public and the police."

In another District Court criminal action that involves tape recorded conversations by an informer, Judge Oliver Gasch took under advisement yesterday a government motion to dismiss a perjury charge against indicted metropolitan police Lt. Harold F. Crook.

The U.S. attorney first sought to drop the charge last Oct. 21, but Gesell angrily refused, saying the action would make a "travesty of justice." Gesell withdrew from the case a week later.

Since his indictment along with seven other police officers in January, 1972, Crook has been cooperating with

prosecutors, and he is expected to be a key witness in trials beginning this fall against 12 other police officers, including an inspector. Most of the evidence reportedly came from conversations between Crook and the indicted officers.