

## California Supreme Court

# All Wiretapping By California Police "Illegal"

The California Supreme Court on April 25 issued a decision which confirms that any wiretapping by California police is illegal, based on the Omnibus Crime Control and Safe Streets Act, passed by the U.S. Congress in 1968.

The case is one handled by the ACLU and the law firm of Friedman and Sloan, involving the arrest for marijuana possession and transportation of Thomas Halpin, his wife Rebecca Halpin and Martin Silva.

Last year, Thomas Halpin was arrested in Orange County with a camper containing 500 pounds of marijuana. While in jail, he made a phone call to his wife in which he made incriminating statements which were recorded by the police, without Halpin's knowledge.

The Court unanimously ruled that the recording of Halpin's statement was an

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illegal seizure and that the evidence thus obtained may not be used against him.

According to Legal Director Paul Halvonik, "the court ruled that the wiretap was illegal because California does not have a statute satisfying federal requirements that police seek a search warrant from a magistrate before making a tap. The Attorney General argued that Congress does not have the authority to restrict the states' power to wire-tap, but the Court has ruled against him. That means that although Kleindienst may be listening on your phone, Evelle Younger won't be."

At the urging of the ACLU's legislative representatives, the California Legislature has consistently refused to adopt a search warrant procedure for eavesdropping, in spite of yearly warrant-eavesdrop bills from the District Attorney and Peace Officers Associations.

A clue to the Legislature's lack of interest in wiretapping is found in the ACLU brief's analysis of the costs and results of the use of wiretap by federal officials and those states which have adopted it. The conclusion is clearly that it has been of "little value to law enforcement." The figures point out that while wiretapping is usually justified by the state as sound precaution against crimes of violence, such as homicide and kidnapping, its use, especially at the state level, normally results in the apprehension of a few small-time book-makers.

The brief was prepared by Paul Halvonik and Coleman Blease, Legislative Director for ACLU of Southern California.

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