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# Court Requires a Warrant for Domestic Wiretaps

By STEVEN V. ROBERTS

LOS ANGELES, Jan. 12—A Federal District Court judge has ruled that it is unconstitutional for the Government to wiretap without a warrant in domestic cases, even if they involve the national security.

In a decision handed down yesterday, Judge Warren J. Ferguson said that the current eavesdropping policies of the Justice Department "ride roughshod over numerous political freedoms which have long received constitutional protection."

The case is almost certain to be appealed by the Federal Government and Judge Ferguson stayed his ruling for 30 days to allow for such an appeal.

Legal experts here believe that if the ruling is upheld it could place an important limit on the Government's power to prosecute domestic radicals.

Judge Ferguson made his decision in the case of Melvin Carl Smith, a 41-year-old Black Panther, who was convicted in October, 1969, on two counts of being a felon and possessing firearms. While that conviction

was being appealed, Government agents revealed that they had overheard Smith's telephone conversations on five occasions.

The United States Court of Appeals for the Ninth Circuit then returned the case to Judge Ferguson for rehearing. If the wiretaps are ultimately judged to be illegal, the Government has two choices. It can reveal its records to Smith in order to prove that no illegal evidence was used against him, or it can drop the case.

The Smith case is considered important because it bears directly on an unsettled area of the law. In 1968, Congress passed a statute that said the Government must obtain a warrant before it places a bug or wiretap in a criminal case. At the same time, the Government has long asserted the right to eavesdrop without a warrant in cases involving foreign subversives.

That leaves the middle

ground of domestic cases that the Government believes are a threat to national security. In the spring of 1969, Attorney General John N. Mitchell, in connection with the Chicago conspiracy trial, said that the Government had the right to wiretap in such cases and could ignore the requirement to obtain a warrant.

Judge Julius J. Hoffman upheld Mr. Mitchell's contention in the Chicago case, which is now on appeal. Judge Ferguson, in effect, ruled the other way yesterday.

In his opinion, the judge noted that domestic political activity enjoys much stricter constitutional safeguards than activity involving foreigners.

"However," he added, "the Government seems to approach these dissident domestic organizations in the same fashion as it deals with unfriendly foreign powers." He continued:

"The Government cannot act

in this manner when only domestic political organizations are involved, even if these organizations espouse views which are inconsistent with our present form of government. To do so is to ride roughshod over numerous political freedoms which have long received constitutional protection.

"National security," Judge Ferguson asserted, cannot be invoked to abridge basic rights.

"The Constitution," he said, "in response to the dilemma posed by James Madison, was written so as to strike a balance between the protection of political freedom and the protection of the national security interest.

"To guarantee political freedom, our forefathers agreed to take certain risks which are inherent in a free democracy. It is unthinkable that we should now be required to sacrifice those freedoms in order to defend them."