

# Judge Rules Wiretap Law Violates 4th Amendment

NYTimes

By The Associated Press JUN 2 1972

PHILADELPHIA, June 1 — The 1968 Federal law allowing wire tapping by the authorities under certain circumstances was held unconstitutional today by a United States district judge.

Judge Joseph S. Lord 3d said that the law was "unconstitutional on its face" because it violated the Fourth Amendment to the Constitution, which protects citizens against "unreasonable searches and seizures."

"The privacy of every citizen is in jeopardy if we become a nation which sanctions the indiscriminate use of secret electronic searches by the Government," the judge said in his ruling.

The judge approved a motion by seven defendants in a gambling case who had asked him to suppress evidence gathered by electronic surveillance.

A wiretap had been placed

on the telephone of Matthew F. Whitaker, who has been described by the police as the gambling czar of Schuylkill County in eastern Pennsylvania.

The tap was authorized by the late Federal District Judge John W. Lord Jr., then chief judge of the district under Title 3 of the Omnibus Crime Control and Safe Streets Act of 1968. The two judges are not related.

The statute, according to the ruling today "conveys the simple impression that effective controls required by the Fourth Amendment have been placed on the Government in its pursuit of evidence through the use of electronic listening devices."

"On closer scrutiny, however, we are convinced that the protections afforded the citizen against unreasonable govern-

Continued on Page 17, Column 1

Amendment's prohibition against general searches."

Judge Lord said that he was "aware of, but not convinced by, the many decisions which hold that Title 3 does not violate the Constitution."

In the matter of postsearch notice to the subject, Lord noted that he was breaking new ground because no other case "has dealt with the question of whether there is any constitutional requirement for postsearch notice."

## Quotes Former Senator

He said that such a notice, which he found not sufficiently protected in the 1968 law, should be required because "the secret search is such an extraordinary procedure under the Fourth Amendment."

The judge's opinion quoted from the book "The Intruders," by former Senator Edward V. Long, Democrat of Missouri. Mr. Long rhetorically asked why privacy was important to a citizen and wrote, "The question answers itself once we look at a society where privacy was systematically attacked and all but eliminated."

"Under Hitler and the Nazis, the destruction of the individual's sense of his own privacy was one of the principal methods used to gain state control over the German people," he wrote. "Wiretapping and electronic eavesdropping were high on the list of techniques used by the Gestapo. No one was safe from the listening ears of the secret police."

If the "secret searches" permitted by the law are upheld, Judge Lord warned, "it may not be long before we hear the same justification for allowing traditional searches to be executed in secret and kept secret if possible."

## Continued From Page 1, Col. 6

mental intrusions are largely illusory," Judge Lord wrote.

United States Attorney Carl J. Melone said that he would consult with the Justice Department before determining whether to appeal the ruling. Mr. Melone said that he had not seen the ruling and could not comment on it.

In Washington, a Justice Department spokesman said that there would be no comment on the ruling until the Criminal Division obtained a copy and studied it.

He added, however, that more than a dozen Federal District Courts and the United States Court of Appeals for the Tenth Circuit, in Denver, had taken the view that the law was constitutional.

## Backed by Administration

Under the Nixon Administration, the Justice Department has defended the wiretap law as a valuable tool in the fight against crime.

The 1968 law has not yet been tested by the United States Supreme Court, but the Court has ruled in several earlier cases that wiretaps are constitutional if authorized by a warrant.

The 1968 law requires that the Attorney General first determine that a wiretap is need-

ed in a case and personally authorize agents to request a warrant from a judge.

Several appellate decisions here have noted that this provision was inserted into the law to put the responsibility for wiretaps into the hands of an official whose appointment was subject to approval by the Senate.

The seven defendants in the case, including Whitaker and his son, James, were arrested in June, 1970, in a series of raids by the Federal Bureau of Investigation. The judge's ruling would not permit the Government to use evidence gathered by wiretapping against the defendants.

## Finds 3 Flaws in Law

Judge Lord's critique of the 1968 law centered on three aspects that he found faulty: It allows continuous searches for too long a period, it gives too much discretion to investigators, and it doesn't require that the subjects of secret surveillance be promptly notified when the surveillance is completed.

There is ample justification in previous Supreme Court decisions, the judge said, for his opinion that the law "permits the Government to conduct lengthy continuous searches with great discretion in the hands of the executing officers, thus violating the Fourth