

Judge's Warning On Illegal Wiretap

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Harrisburg, Pa.

A Federal judge told the Government yesterday it cannot use illegal wiretaps to substantiate or gather more evidence in its continuing probe of an alleged plot to kidnap President Nixon's foreign affairs adviser.

The Government said it was doing everything lawfully.

"We are aware of the consequences if we present illegal evidence," William S.

Lynch, the chief Government lawyer in the case, told U.S. District Judge R. Dixon Herman.

An illegal wiretap is one that is not authorized by a court, or not ordered in the interest of National security.

The denial came in oral argument on a defense motion to dismiss subpoenas for more than 30 witnesses summoned to testify before a grand jury on grounds they would be asked questions

based on illegal wiretaps.

Herman rejected the motion. He directed the witnesses must testify first — or at jury—before they can challenge the legality of the subject matter of the questions.

The jury last January 12 indicted six persons, headed by an imprisoned anti-war priest, the Rev. Philip Berigan, on charges of conspiring to kidnap Henry Kissinger, the presidential aide, and to bomb heating tunnels under buildings in Washington, D.C. All pleaded not guilty.