

The U.S. Department of Justice filed a memorandum in the U.S. District Court in Chicago today regarding its policy in reference to electronic surveillance, and specifically to wiretaps, of people who are deemed to pose a threat to national security.

The memorandum was filed in response to a request by an attorney for Judith Clark, a member of the Weather Underground who is charged with conspiring to cross state lines to incite a riot during the "Days of Rage" <sup>in Chicago</sup> in October 1969. She was apprehended by FBI agents in New York last December. The memorandum was written by Attorney <sup>General</sup> John Mitchell and presents arguments as to why the Justice Department should not be required to seek approval of a judge before it engages in wiretapping or other forms of electronic surveillance in the interests of national security.

Mr. Mitchell acknowledged that some of Miss Clark's telephone conversations had been monitored by the FBI. He said that a tap was not placed on her phone but on "a telephone installation to which she initiated calls or from which calls were initiated to her." He said that the Director of the FBI, J. Edgar Hoover, had come to him with a request to set up the wiretap and that he had approved it. The wiretap was not authorized by a court but Attorney General Mitchell said that it was nevertheless legal. ¶ Under the Omnibus Crime Control Act of 1968, the Attorney General is required to get a court's approval before permitting electronic surveillance of individuals suspected of committing a crime, but Mr. Mitchell maintained in his memorandum that the wiretap in question "was one deemed necessary and essential to protect against a clear and present danger to the security of the United States of America," and therefore different from one designed to convict a person of a crime. He said that "the Constitution of the United States gives the President and his Attorney General the right to use whatever means are necessary to protect national security." Mr. Mitchell argued that the courts do not have sufficient knowledge or expertise to determine whether or not a wiretap should be installed, and that in fact only the President and his Attorney General have sufficient facts and discretion to make that determination. The memorandum says, "A decision <sup>as to</sup> whether or not particular circumstances necessitate the conduct of a surveillance to safeguard the national security is, we submit, a judgment that must rest on considerations of policy, on decisions as to comparative risks, and on a wide range of information - not all of a factual nature - which are known by, and are appropriate solely to the Executive."

Attorney General Mitchell also presented a second argument, that, by being required to seek court approval of electronic surveillance, the government is jeopardizing chances that the surveillance will remain secret. The memorandum says that <sup>the</sup> disclosure of a wiretap while seeking a warrant could "in itself prejudice the

national interest." The memorandum continues, "Certainly the disclosure of the fact of the surveillance would render it ineffective."

The AP says that for the first time the Justice Department put forth a third argument for not being required to seek court approval for electronic surveillance of domestic political groups, that such surveillance is necessary to prevent a crime from happening. The memorandum says, "This is so because the serious interests of national security cannot be adequately protected by criminal prosecution." Mr. Mitchell went on to explain, "The harm that could result to national security from a single criminal act could very well be irreparable and, even if the harm ~~could be~~<sup>were</sup> quantifiable, the incarceration of the perpetrator of the particular/<sup>criminal</sup> act hardly compensates the nation for the resulting damage." The memorandum continues, "Thus, when the President, acting through the Attorney General, authorizes electronic surveillance in the interests of national security, the primary purpose of such surveillance is necessarily to gather information so that the Executive may prevent such irreparable damage to the national security from occurring."

The memorandum from Attorney General Mitchell says that the arguments in it are given special weight by "the fact that the power to authorize such surveillance as this one has been sanctioned and exercised for a period of at least thirty years by succeeding presidents and their attorneys general."

The AP says that two federal judges have challenged the right of the government to conduct electronic surveillance without court orders in the interests of national security, but that neither of the challenges has been resolved. The only other case we know of is that of three leaders of the White Panther Party in Detroit who are on trial for allegedly conspiring to blow up an office of the Central Intelligence Agency in Ann Arbor. The judge in that case ordered the government to turn over its records of wiretaps and other electronic surveillance to defense attorneys. The Justice Department has appealed the ruling but it hasn't been resolved.

Only two of the twelve people indicted in connection with the "Days of Rage" in Chicago have been apprehended. Besides Judith Clark, Linda Sue Evans has also been taken into custody. Last July the Justice Department acknowledged that it had monitored telephone conversations by Miss Evans also.

-----