

SF Examiner NOV 16 1971

Court OKs Appeal On Army Spying

WASHINGTON — (AP) — The Supreme Court gave the government a chance today to head off a full-dress hearing into Army surveillance of civilians.

The court agreed to consider an appeal by the Justice Department aimed at suits by civilians who object to surveillance but cannot prove that they were hurt by it.

The justices will consider the appeal later in the term. This delays, and may ultimately prevent, a spying hearing ordered last April by the U.S. Circuit Court for the District of Columbia.

Other Decisions

In other actions today, the court:

- Granted a hearing to an Army reservist seeking discharge as a conscientious objector in a case that could establish rules for processing CO claims.

- Agreed to decide whether discharged railroad workers can sue for damages instead of placing their grievances before the National Railroad Adjustment Board.

At issue in the surveillance case is a suit filed last year by the American Civil Liberties Union in behalf of the Central Committee for Conscientious Objectors and individuals who felt they had been spied upon.

Judge Reversed

The suit was dismissed by U.S. District Court Judge George Hart Jr., but he was reversed by the Circuit Court, which ordered him to find out whether Army surveillance was "unrelated" to the Army's mission "as defined by the Constitution."

The Justice Department's appeal, filed in August, doubted that the Constitution gives federal courts authority to hold such hearings.

The suit, the department argued, offers no evidence that surveillance has caused any injury to those who filed it.

"The threat of the 'unknown' is not sufficient to invoke the judicial process," said a group of government lawyers headed by Solicitor General Erwin N. Griswold and Assistant Attorney General Robert C. Mardian.

The Supreme Court could kill the suit if it decides to over-rule the Circuit Court.