

Illegal Wiretaps Rejected In Ruling on J.D.L. Case

3-Judge Decision Condemns Bombings at 2 Offices Here, but Blocks Efforts to Compel Key Witness to Testify

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Government efforts to compel the key witness to testify in a fatal-bombing case were blocked by the United States Court of Appeals here yesterday in a decision vehemently assailing illegal wiretaps.

The decision severely weakens the Government's case against two Jewish Defense League members accused of the 1972 bombing of the Manhattan offices of Sol Hurok and Columbia Artists, Inc., which resulted in a secretary's death.

In the 34-page decision, written by Chief Judge Irving R. Kaufman with the concurrence of Judges J. Joseph Smith and Frederick vanPelt Bryan, the Second-Circuit Appeals Court condemned "senseless and cowardly" bombings, but it vigorously rejected illegal wiretaps in the case.

"Of course, we all suffer," Judge Kaufman declared, "when, in Cardozo's classic phrase, the criminal goes free because the constable has blundered. The remedy, however, is to help the constable, not to blunder.

"The problem of crime, particularly, the diabolic crimes charged in the indictments here, is of great concern to us. But if we reflect carefully, it becomes abundantly clear that we can never acquiesce in a principle that condones lawlessness by law enforcers in the name of a just end.

"There are those who argue that on occasion illegal methods must be employed to preserve the rule of law. Justice Brandeis responded eloquently to that argument and his words need no embellishment:

"In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The bombings of the Hurok and Columbia offices, which bring Soviet artists to this country, were regarded as protests against the treatment of Jews in the Soviet Union.

'Domestic Security'

Judge Kaufman's attack was especially sharp about illegal wiretaps and other lawless acts by the government, ostensibly in the name of national security.

"In October, 1970," he noted, "acting solely under a direction of then Attorney General John Mitchell, the F.B.I. installed a so-called domestic security wiretap of the New York office of the Jewish Defense League.

"The surveillance, conducted without judicial sanction, continued until July 2, 1971. The Government concedes that these taps were unlawful. It tells us that the tapes of this surveillance were destroyed."

The bombing case against two J.D.L. members, Stuart Cohen and Sheldon Davis, could be dismissed for lack of evidence when their trial resumes in Federal District Court

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here today if two other league members continue to testify against the defendants.

When the trial began on May 30, the first witness was scheduled to be Sheldon Seigel, a J.D.L. member who allegedly took part in the bombing and was granted immunity to testify, but he refused to testify on the ground that the Government's questions were based on information obtained from him by illegal wiretaps.

Two other members of the group, Richard Huss and Jeffrey Smilow, also refused to testify under immunity, although they had not been overheard by the Government on illegal wiretaps.

All three reluctant witnesses were held in civil contempt by District Judge Arnold Bauman, who recessed the bombing trial while the witnesses asked the Court of Appeals to overturn the contempt orders.

The Court of Appeals vacated the contempt order against Mr. Seigel because the Federal Bureau of Investigation had illegally wiretapped his conversations and destroyed the tapes, making it impossible for him to prove that the Government was using illegally obtained information to question him in the bombing trial.

The court's decision affirmed the contempt orders against Mr. Huss and Mr. Smilow, since they had not been illegally wiretapped, and they can face criminal contempt charges if they adhere to their refusal to testify.

2 Defendants in Jail

Mr. Huss and Mr. Smilow have been in jail since June 8 as a result of the civil contempt citation, but Mr. Seigel has re-

mained free on bail during the appeal proceedings.

The tapes of the Seigel conversations could not be turned over to him because they had been destroyed and no transcripts had been made, Judge Kaufman stressed.

"We recall in this connection," the judge said, "that Congress specifically provided that under no circumstances may electronic surveillance tapes—even those obtained illegally—be destroyed for a period of at least 10 years.

"Individual rights, particularly the right of privacy so paramount in the minds of the drafters of the wiretap statute, cannot cavalierly be balanced away by other factors, whether they be concerned for efficient warehouse space management or different undisclosed reasons."