

Court Limits Overseas Wiretaps

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The Army cannot wiretap American civilians overseas without prior approval from an American judge, a federal court ruled here yesterday.

The ruling by U.S. District Court Chief Judge William B. Jones is believed to be the first federal court decision on the issue of wiretapping American citizens abroad.

It is a significant expansion of judicial wiretap rulings concerning so-called national security wiretaps that had previously been applied only in the United States, according to lawyers on both sides of the case.

But Jones said the requirement for prior judicial approval for the overseas wiretaps would be waived if the Army has evidence that the person to be wiretapped is collaborating with a foreign power, or if the Army deems it an emergency situation where a tap must be placed immediately.

In the latter case, Jones said the Army must seek judicial authorization "within a reasonable time" after the tap is placed—a period he defined as approximately 48 hours.

The ruling was made in a suit filed in February, 1974, by the American Civil Liberties Union on behalf of American citizens who were actively opposed to the U. S. Vietnam war policy while they were living in Germany in the early 1970s.

They claim in the suit that they were illegally wiretapped and infiltrated and that the Army used information gathered in the surveillance to block them from jobs and other legitimate activities.

ACLU attorney John H. F. Shattuck said the ruling was "a very significant recognition of the application of the U.S. Constitution as it protects the rights of Americans overseas against abuses of the intelligence process."

Assistant U. S. Attorney Royce C. Lamberth, who has represented the Army in the case, said no decision has been made on whether to appeal.

Jones' 30-page opinion did not end the case, but was an interim order that cleared

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the way for the ACLU to investigate further the Army's activities in connection with the surveillance of the 23 plaintiffs in the case.

But Jones denied a request by the plaintiffs that the action be certified as a class suit to apply to all American civilians living in Germany who may have been tapped. He also refused a government request to dismiss the suit.

The opinion also ruled, for the first time, that a person convicted of a crime can sue the government for monetary damages if conversations between himself and his defense attorney are picked up on a wiretap and used by the government against him.

Jones called the issue of whether a judicial warrant is required for wiretaps of

Americans overseas a "novel and critical question."

He analyzed previous appellate court rulings on domestic wiretaps, and said they appeared to apply generally to the persons wiretapped in Germany.

"The delicate situation of the United States Army in Europe, however, requires careful attention to the government's arguments advanced here," Jones said. He pointed out that the case involved "significant foreign-policy concerns" and that the antiwar activities such as those involved "may affect directly and substantially the foreign relations of the United States."

The government had argued that the prior judicial approval requirement should not be applied to Americans overseas because, among other reasons, there are no American judges abroad.

Jones said, however, that Army regulations already require such wiretaps to be approved by the Secretary of the Army in the United States, so there would be little additional effort required to get judicial approval here.