

U.S. Eavesdropping Policy May Be Divulged

Today in Answers to Court

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WASHINGTON, July 12 — New light is expected to be cast tomorrow on the Government's murky eavesdropping policy when the Justice Department discloses details of its bugging of a Washington Lobbyist's hotel suite.

Justice Department officials said today they would respond in writing to a list of questions that Supreme Court Justices posed last month about the Federal Bureau of Investigation's surveillance of Fred B. Black Jr. in the winter of 1962-1963.

The disclosures may give details for the first time of new limitations on bugging by Federal agents that were put into effect in June of 1965.

They may also indicate whether the ultimate blame for the violations of privacy will fall on the F.B.I. director, Edgar Hoover; Senator Robert F. Kennedy of New York, who was Attorney General when the eavesdropping occurred, or someone else.

F.B.I. officials have been upset by the publicity given a statement by Solicitor General Thurgood Marshall that no lawyers in the Justice Department knew of the eavesdropping. They also reportedly objected to Mr. Kennedy's statement that he was not told of the bugging, and his remark last month that he also did not authorize "wire-tapping" by the F.B.I. in Las Vegas.

Magazine Article Cited

Last week U.S. News & World Report published an article quoting "present and former Government officials" as charging that this was "an attempt to put all responsibility for bugging on the F.B.I." They said the use of the word "wiretapping" obscured the fact that the eavesdropping in Las Vegas involved a process known as bugging, which uses a hidden microphone, and not wire-tapping, which involves the interception of a telephone conversation.

Citing these sources, the magazine article said that "on at least two occasions, Mr. Kennedy listened to tape recordings that 'obviously' had been made through the use of concealed microphones."

It also said that telephone company officials were reportedly given evidence of Mr. Kennedy's approval for the F.B.I.'s leasing of telephone lines for microphone surveillance in criminal investigations.

Friends of the Senator here are saying privately that this was "leaked" by bureau officials and that it overstates Mr. Kennedy's knowledge of the agents' activities.

The eavesdropping on Black came to light on May 24 when Mr. Marshall conceded in a

memorandum to the Supreme Court that agents had bugged his suite in the Park Sheraton Hotel at a time when a Federal grand jury in Missouri was investigating him on tax charges.

Black was indicted and convicted in 1964. The High Court declined to review his appeal on May 2 of this year.

Mr. Marshall said the F.B.I. planted the device in the course of an unrelated "criminal investigation of various individuals."

Unsatisfied, the Justices asked who had authorized the device, what kind of apparatus had been installed and when, what records of intercepted conversations had been kept, what use had been made of them, and when the department had learned of it.

When the department files its response tomorrow, it may acknowledge officially for the first time a practice that evolved over the last 30 years, but that was modified by President Johnson last June.

Under this policy, the Government strictly forbade its agents to wiretap, but looked the other way when they eavesdropped by means of bugs or other means short of tapping telephone wires.

Because the Federal Communications Act of 1934 makes wiretapping a crime, a succession of Attorneys General declared publicly that wire-tapping would be allowed by Federal agents only in national security cases and then only with the Attorney General's permission.

This tended to obscure the fact that bugging, which had been declared legal by the Supreme Court if done without a physical trespass, was being done by Federal agents.

In a confidential memorandum to all departments and agencies last June, the President banned all eavesdropping not "fully in accord with the law and with a decent regard for the rights of others." Justice Department sources say this has been construed to rule out all bugging.

It reportedly does not outlaw microphones hidden on an agent's body, since the effect of this is only to preserve a record of remarks the agent could report orally. Officials are vague as to whether it permits directional microphones and other sophisticated new devices that reportedly can pick up conversations in rooms.