

RDAY, JUNE 14, 1969—

U.S. CLAIMS RIGHT OF WIRETAPPING IN SECURITY CASES

Justice Agency Says Court Approval Is Not Needed If Subversion Is Feared

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, June 13—

The Justice Department said today that it had the legal power to eavesdrop without court approval on members of organizations that it believes to be seeking to "attack and subvert the Government by unlawful means."

In court papers filed in Federal District Court in Chicago, the Government disclosed that it had used wiretapping or "bugging" to eavesdrop on some or all of the eight anti-war activists who have been indicted for inciting riots at the Democratic National Convention last summer.

In disclosing the surveillance, the Justice Department said for the first time that it had the power under the Constitution to eavesdrop on domestic groups, free of court supervision and without regard for the Fourth Amendment.

"There can be no doubt that there are today in this country organizations which intend to use force and other illegal means to attack and subvert the existing forms of government," the Government brief argued.

Troop Use Is Cited

"Moreover, in recent years there have been an increasing number of instances in which Federal troops have been called upon by the states to aid in the suppression of riots.

"Faced with such a state of affairs, any President who takes seriously his oath to 'preserve, protect and defend the Constitution' will no doubt determine that it is not 'unreasonable' to utilize electronic surveillance to gather intelligence information concerning those organizations which are committed to the use of illegal methods to bring about changes in our form of government and which may be seeking to foment violent disorders," the document stated.

The latter reference, and others in the 32-page document, made it clear that the Government was saying it had the power to eavesdrop on black militant groups and other radical elements without going through the procedures established by the Crime Control Act that was passed by Congress last year, or those safeguards generally felt to be required by the Fourth Amendment.

These procedures require court approval before any eavesdropping is conducted.

Continued on Page 28, Column 3

THE NEW YORK TIMES, SATURDAY, JUNE 14, 1969

U.S. Says It Has the Legal Right to Bug

Continued From Page 1, Col. 5

They also limit the time of eavesdropping and impose other restrictions on Government surveillance.

Today's assertion by the Government amounts to a statement that Federal agents may legally continue to carry out the kind of unregulated eavesdropping that was used for years against the Rev. Dr. Martin Luther King Jr. and Elijah Muhammad, the Black Muslim leader.

It came to light in court hearings in Houston last week that the two Negro leaders had been "bugged" and tapped for long periods by agents of the Federal Bureau of Investigation.

Arguing today that the Attorney General should not have to obtain court approval before conducting such surveillance, the Government argued.

"The question whether it is appropriate to utilize electronic surveillance to gather intelligence information concerning the activities and plans of such organizations in order to protect the nation against the possible danger which they present is one that properly comes within the competence of the

executive and not the judicial branch."

In the papers filed today the Justice Department also said that some of the defendants had been overheard over listening devices being used in "foreign intelligence" investigations. This is a new term, which is used to designate Government counterespionage activity.

Many lawyers believe that the Supreme Court will eventually uphold the President's authority to wiretap without court approval in "foreign intelligence" situations, but the Government had not said until today that it could use the same methods to keep tabs on American citizens not affiliated with foreign powers.

One of the eight defendants, Jerry C. Rubin, 30 years old, a leader of the Youth International party from New York City, had previously been told by the Government that he was overheard over an electronic listening device.

Attorney General John N. Mitchell said in an affidavit attached to today's brief that four other defendants had also been overheard. He named David T. Dellinger, 53 years old, of Brooklyn, and Rennard C. Davis, 28, of Chicago, co-chairmen of the National Mo-

bilization Committee to end the war in Vietnam; Thomas E. Hayden, 29, a founder of the Students for a Democratic Society organization, who is from New York City, and Bobby G. Seale, 32, a Black Panther leader from Oakland, Calif.

Mr. Mitchell said that these four and Mr. Rubin had been overheard over devices that were being used either in "foreign intelligence" investigations or revolutionary domestic organizations. The court was furnished with sealed copies of transcripts of the conversations.

The other defendants are Abbott H. Hoffman, 32, a Yippie leader from New York City; Lee Weiner, 29, of Chicago, and John R. Froines, 29, of Eugene, Ore.

The brief filed today was signed by Thomas A. Foran, United States Attorney in Chicago. It was a response to a demand by the defendants for complete disclosure to them of all overheard conversations in which they took part. They also took the position that the indictments against them should be dropped if it were found that information obtained by illegal surveillance was used to indict them.

⊗ Jun 69 - Warren Burger's nomination to be Chief Justice confirmed by Senate, 74 to 3. Sworn in 23 Jun 69.