Court Voids Wiretap Data On Hundreds

By John P. MacKenzie 5/14/74
Washington Per Co.

The Supreme Court ruled unanimously yesterday that evidence against several hundred defendants cannot be used because of the way former Attorney General John N. Mitchell administered the 1968 federal wiretapping

Mitchell's failure to approve dozens of wiretap requests

personally or to designate a high-ranking Justice Depart-ment official for the task, was a serious violation of the legal rights safeguarded by the law,

the high court held. The decision brushed aside government arguments that the defective procedures were mere technicalities.

The 9-to-0 ruling upheld the dismissal of a narcotics indict-ment against Dominic N. Giordano of Baltimore, and it is expected to have the same result in at least 60 cases involving 626 defendants.

In a companion case involving a somewhat different Justice Department procedure, a 5-to-4 majority said it did not 'condone" Mitchell's practices but declared their defects were more of a bookkeeping nature. This ruling kept alive prosecutions in 99 cases involving 807 defendants.

Even in declining to sup-press evidence in the 99 cases, however, the court said it is appropriate to suggest that strict adherence by the government to the provisions of [the 1968 law] would nonetheless be more in keeping with the responsibilities Congress has imposed upon it when authority to engage in wiretap-ping or electronic surveillance is sought."

The two decisions were expected to bring further embarrassment to the Nixon administration, which suffered numerous similar reversals in lower courts on the same

Both during and after the

1968 campaign, Mr. Nixon and Mitchell frequently criticized former Attorney General Ramsey Clark for failing to use the court-ordered wiretap authority Congress provided over Clark's protest. Mr. Nixon and Mitchell pledged a vigorous wiretapping program that would bring drug ped-dlers, gamblers and organized crime figures to justice.

The wiretap law provides for criminal and civil penal-

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High court trims protection of law in repossession Page A12. cases:

Justices Curtail Wiretap Evidence

ties for violations. But the court noted that the criminal hard charge to prove.

wiretap targets, most of whom the aide's understanding of were charged with serious Mitchell's policies.

crimes.

Yesterday's ruling enforced specifically rejected by the a section of the controversial court as violating the law. wiretap law that was little noticed in the debates that pre-ing the prosecutions against ceded its passage. It called for 807 defendants was based on suppression of evidence obtained during an "unlawful" wiretap and spelled out procedures for seeking a lawful tap person. order.

The law said that a judge must be satisfied that there was probable cause to suspect that a specific telephone tap would help solve a crime. It also provided that requests for Attorney General or a specially designated assistant attorney general.

Justice Byron R. White, writing for the unanimous latedly and was not borne out court, traced the history of the by the Justice Department's provision and found that it was not a formality. It was designed, he said, "to make doubly sure that the statutory authority be used with re-straint," adding an executive branch check to the judicial safeguard.

"The mature judgment of a particular, responsible Department of Justice official is interposed as a critical precondition to any judicial order,' White said.

White, a deputy attorney general under the late Attor-ney General Robert F. Kennedy, said Justice Department supporters of wiretap laws began asking Congress in 1961 to impose this special safeguard in any wiretap law that might. pass. Congress agreed that the authorizing official should be

WIRETAPS, From A1 | one who was "responsive to the political process" and not merely a staff prosecutor.

Rather than designate a spesanctions apply only to the cific assistant attorney general use of a wiretap order know- as his alternate, Mitchell dele-ing that it was unlawful—a gated to his executive assistant the power to approve wire-Nor are courts expected to tap requests from the criminal award civil damages to the division in accordance with

This "alter ego" theory was

The 5-to-4 decision preservaffidavits filed by Mitchell that in those cases he did authorize the wiretap requests in

The wiretap warrants incor-rectly identified former Assistant Attorney General Will Wilson as the requesting official, the court said.

Dissenting Justices William O. Douglas, William J. Brensuch orders at the federal nan Jr., Potter Stewart and level must be approved by the Attorney General or a Spectrum of the court should not accept at face value Mitchell's version of how these orders were handled. They said Mitc-