

Post 11/17/71

# Wiretaps Ruled Unauthorized, 6 Freed

NEW ORLEANS Jan. 13 (UPI)—Six members of a reputed nationwide narcotics gang based in Florida have been freed by the Fifth U.S. Circuit Court of Appeals because Attorney General John N. Mitchell did not personally authorize wiretaps used to convict them.

The six released included Mario Escandar, described by the Miami Herald as "a flamboyant South Florida leader of a nationwide cocaine and heroin ring."

Escandar was freed Wednesday along with J.W. Robinson, Carlos Escandar, Aleida Jiminz, Georgins Lafont-Escandar and Margarita Arce de Armas.

They were convicted after being arrested in June with 40 other South Floridians during "Operation Eagle," a top-secret justice department crackdown on dope traffic. The appeals court said:

"Our decision is reached with full recognition that the statute burdens the Attorney General, who is required to give his individual attention to many affairs of great importance. However, if the load of this office is to be lessened, such relief must come from the Congress."

The defendants were convicted solely upon evidence from two wiretaps conducted under the authority of Title

III of the Omnibus Crime Control and Safe Streets Act of 1968, which permits wiretaps and other electronic surveillance methods as crime detection aids.

Escandar and the others challenged a process in which Sol Lindenbaum, Mitchell's executive assistant, acting under authority delegated by Mitchell, "approved actions" specially designation an assistant attorney general to authorize application to a federal judge for the two wiretaps.

The proxy commission routinely was executed in letters of May 19, June 10 and June 12, 1970, to the U.S. attorney

for the Southern District of Florida, empowering him to seek an application for a wiretap on telephones in Miami used by Mario Escandar, Juan Restoy and others. Restoy later was shot to death in a gun battle with narcotics agents.

The court said that "by expressing its intention that only a 'publicly responsible official, subject to the political process' could initiate a wiretap application, Congress wanted to make certain that every such matter would have the personal attention of an individual appointed by the president and confirmed by the Senate."

This, said the court, would "establish a unitary policy in the use of the awesome power conferred, and require that power to be exercised with a circumspection reinforced by ready identification of he who was responsible for its use, thus maximizing the guarantee that abuses would not occur."

An examination of the case, said the court, "shows this congressional scheme was severely undercut in the case at bar."

A Justice Department spokesman said last night the Attorney General has not delegated his authority to authorize wiretaps. But he said that in several instances a request for a wiretap has been made when Mitchell was out of town and that Lindenbaum has contacted him by telephone to secure his approval.

In addition, the spokesman said, there have been a few cases, such as the Florida wiretaps, when Mitchell could not be contacted and "there was a great need to move quickly," causing Lindenbaum to authorize the taps and then subsequently obtain Mitchell's approval.

The court said that since the evidence used to convict the five came from improperly authorized wiretaps, such evidence could be suppressed. Without the wiretaps evidence, the government has no case, it said, and the Miami federal court was directed to dismiss the indictment.