

Mitchell's 60-Case Mistake

What the U.S. needed, Richard Nixon said again and again during his 1968 campaign, was "a new Attorney General." When Bond Lawyer John Mitchell moved into the Justice Department after the election, he went all out to make good on Nixon's implied promise that the country's top legal officer would know how to use wiretaps to fight organized crime. Last week that promise, like so many others from the law-and-order Nixon Administration, collapsed dramatically. The Supreme Court ruled that a sizable chunk of Mitchell's taps were improper and illegal. At one stroke, the decision wiped out nearly two years of dogged work by federal investigators, and imperiled at least 60 cases involving no fewer than 626 accused gamblers, narcotics dealers and other racketeers.

The devastating decision was handed down in a federal case against Dominic N. Giordano, a Baltimore drug dealer who was indicted in 1970 on narcotics charges. The Justices ruled 9-0 that a lower court had properly dismissed Giordano's indictment because the evidence against him had been obtained in an unlawful wiretap. The 1968 Omnibus Crime Control and Safe Streets Act gave federal investigators vastly expanded authority to use taps—as long as they were personally approved by the Attorney General or a specially designated assistant. But dozens of authorizations, including those in the Giordano case, were simply initialed "JNM" by an obscure Mitchell aide named Sol Lindenbaum, or sometimes by Lindenbaum's secretary. That irregularity, the court concluded, was no mere technicality. Congress plainly meant to "narrowly confine" the use of electronic eavesdropping, wrote Justice Byron White in the unanimous opinion. Thus Congress had been careful to require that "the mature judgment of a particular, responsible official" would be involved in any decision to tap.

How could the Attorney General have overlooked such a clearly stated legal responsibility? Though Mitchell himself was saying nothing, others have not been so reticent. Aide Lindenbaum bluntly blames the foul-up on Mitchell's overwhelming preoccupation with political concerns—particularly with promoting the Administration's law-and-order image. As Lindenbaum has been telling it, Mitchell never bothered to authorize any one of his eight Assistant Attorneys General to sign wiretap

requests; he apparently wanted to sign them himself—the better to enhance his chosen political pose as a tough, sleeves-up crime fighter. So, at first, Lindenbaum would prepare the necessary papers, which Mitchell would hurriedly sign. After a while, Lindenbaum took to signing Mitchell's initials on the tap requests when Mitchell was out of town—often without even discussing the request with his boss on the telephone. The procedure was patently improper. It clearly threatened the work of investigators in 22 federal anticrime "strike forces" around the nation; yet it continued for 20 months between April 1970 and November 1971.

The Mitchell Justice Department's slapdash approach to wiretaps first came

ing are concentrated in the Midwest and East. Officials reckon that the bungled taps will wreck more than a third of the 89 federal crime cases pending in Massachusetts alone. Crestfallen investigators were still assessing the nationwide damage at week's end, but it was clear that some important defendants will get away:

► In Chicago, the ruling has bollixed a major gambling case involving 28 defendants charged with operating a Mob-controlled betting network that handled \$70,000 a week in six states.

► In Detroit, the decision could free 151 defendants in one massive case; it was developed by taps that led to a 1971 raid by 400 FBI agents who successfully broke up a gambling ring grossing \$15 million a year in 36 cities.

► In the District of Columbia, the main casualty is a painstakingly constructed case against Gambling Kingpin Louis Mantello and some 26 other defendants indicted in 1971 in the biggest criminal action against gambling ever brought in the capital. The Mantello wiretap led to a roundup of 1,000 assorted hoodlums in gambling raids in Florida, Oregon, New Jersey, Maryland, Virginia, Pennsylvania and New York, plus the break-up of a Manhattan-based Mafia operation that handled up to \$60 million a year in illegal wagers. The fate of the related cases is uncertain, but Assistant U.S. Attorney Donald Campbell has no doubt about the future of the Mantello indictments. "That's it," he said angrily last week. "There is no more case."



BUST OF MITCHELL WEARING EARPHONES FOR A TAP
Prosecutors were crestfallen.

to light when a defense attorney spotted a different irregularity. Two Justice officials had also been signing an Assistant Attorney General's name to various wiretap authorizations that the Assistant A.G. had not approved. The court considered those cases too last week and decided by a narrow 5-4 majority that that evidence should not be thrown out because Mitchell filed an affidavit saying that he had actually authorized the surveillance—even though the Assistant A.G.'s name was the one on the documents. The practice was sloppy, said the court, but not legally disabling.

But in cases like Giordano's, where Lindenbaum did the okaying, the evidence resulting from the taps may not be used even though the taps may have been otherwise legal. The prosecutions that appear to be damaged by the rul-