

'Bugging' Ruling Hit By Mitchell

By John P. MacKenzie
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Attorney General John N. Mitchell said yesterday that his concern about the Supreme Court's recent "bugging" decision is not limited to fears that it threatens to compromise national security intelligence information.

Testifying before the Senate Criminal Laws Subcommittee, Mitchell said he was concerned about the impact of the ruling on the "lives of witnesses" as well as its effect on prosecutions in espionage cases.

Mitchell's complaint, which drew a rebuke from Sen. Philip A. Hart (D-Mich.) for criticizing the Supreme Court, appeared to indicate that his petition for reconsideration, already a week in preparation, may be converted into a wholesale request to set aside most of the March 10 decision.

The Court ruled that transcripts or illegal electronic eavesdropping, even in espionage cases, must be turned over to the defense in criminal cases to permit defense lawyers, rather than the Government or the trial judge, to inspect them for evidence that the prosecution built its case from the tainted source.

It was understood that the Department's prime concern last week was the Court's refusal, by a 5-to-3 vote, to make a special exception for cases of national security" as requested by the Department.

Government lawyers say logs of national security illegal eavesdropping might disclose to a foreign power secrets of American counterintelligence methods and other data, in addition to smoking out the embarrassing disclosure that a foreign embassy had been bugged or wire-tapped.

Organized crime specialists are likewise concerned that bugging records might tell Mafia defendants about the existence of live informants or at least help them figure out the source of non-electronic information they have gathered about the underworld.

In either case the Govern-

ment would have the choice, once the eavesdropping was determined to be illegal, of making full disclosure to the defense or dropping the prosecution.

Mitchell, leadoff witness for hearings on a package of organized crime legislative proposals, stirred different reactions from Hart and Sen. John L. McClellan (D-Ark.) when he spoke of his "great disappointment" at the ruling.

McClellan asked Mitchell whether there was anything Congress could do for him. Mitchell replied that he was not ready to say.

But Hart said he doubted that Mitchell's remarks would "contribute much to the public enlightenment" for the Nation's top law officer merely to say the decision hurt law enforcement.

The question was, rather, whether the Court was right, said Hart. "Why isn't counsel for the accused entitled to see this material?" he added. "I think the Court acted responsibly."

Mitchell said mere criticism of the Court was not helpful "unless the specifics are brought out and evaluated," hinting that the petition, which is expected soon, would do just that.



By Bob Burchette—The Washington Post

Conferring at hearing by Senate Criminal Laws Subcommittee are, from left, Attorney General John N. Mitchell, Henry Petersen, chief of the Justice Department's organized crime section, and Sen. John L. McClellan, chairman of the subcommittee.