

HIGH COURT VOIDS DRUG WIRETAPS; 600 MAY BE FREED

Justices Upset '70 Conviction
of Narcotics Sellers, Citing
Invalid Federal Order

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Errors in Gaining Evidence
Under Mitchell Likely to
Embrace Other Cases

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WASHINGTON, May 13—The Supreme Court ruled today that a group of narcotics sellers were illegally convicted in 1970 because the Department of Justice had obtained evidence against them with invalid wiretapping orders.

Although the decision directly involved only one case and a few defendants, it appeared almost certain to wipe out convictions of more than 600 other Federal offenders against whom the same kind of evidence was used.

The high court agreed unanimously that evidence could not be used against a Federal suspect if it was obtained through a wiretap based on an application signed by the Attorney General's executive assistant rather than by the Attorney General himself, then John N. Mitchell.

Some Taps Supported

In a parallel case, however, the Court voted 5 to 4 in support of wiretap applications that were in fact authorized by the Attorney General but appeared to be signed by an Assistant Attorney General who had actually not played any part in their preparation.

The effect of this ruling will be to preserve the convictions of 807 Federal convicts for whom Mr. Mitchell authorized surveillance but whose papers incorrectly indicated that the authorization had come from Assistant Attorney General Will R. Wilson.

In the first case, all nine justices agreed that an initial authorization signed by Sol Lindenbaum, executive assistant to Mr. Mitchell, had not met the requirements for a wiretap order set by the Organized Crime Control Act of 1968.

Four Justices, however, did not agree with the majority that an extension of this order and two related orders to record numbers dialed from a given telephone were also improper. They were Chief Justice Warren E. Burger and Associate Justices Lewis F. Powell Jr., Harry A. Blackmun and William H. Rehnquist.

Dissenters in 2d Case

Dissenting from the decision that the Wilson-signed authorizations did not result in tainted evidence were Associate Justices William O. Douglas, William J. Brennan Jr., Potter Stewart and Thurgood Marshall.

The decision may cost the Justice Department a substantial amount of money, as well as embarrassment at having mishandled 60 cases. Federal law provides that anyone whose telephone is illegally tapped can recover \$100 a day.

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in damages plus unspecified punitive damages and legal expenses.

The principal case involved Dominic N. Giordano, whose telephone was tapped for a month in the fall of 1970 after he had sold narcotics to an undercover agent. The application for the wiretap order was signed by Mr. Lindenbaum rather than by Mr. Mitchell or an Assistant Attorney General designated by Mr. Mitchell.

Writing for the majority, Associate Justice Byron R. White rejected the Government's argument that the Attorney General has broad power to delegate his authority. Justice White maintained instead that Congress had clearly specified that wiretap requests could be signed only by the Attorney General or a designated Assistant Attorney General.

In the second case, Mr. White wrote for the narrow majority that in misidentifying Assistant Attorney General Wilson as the official who authorized the wiretaps, when it was actually Mr. Mitchell, the Justice Department had not made the seizure of evidence unlawful.

SEIZURE OF GOODS

In another decision, the justices upheld by 5 to 4 the validity of a Louisiana statute that permits the seller of installment goods to get a court order to seize them when the buyer falls behind in his payments, without any notice to the buyer or hearing.

The ruling appeared to reverse a 1972 decision by the Court in which a similar Florida statute was invalidated as depriving installment buyers of property without due process of law. Dissenting in today's decision were Associate Justices Stewart, Douglas, Marshall and Brennan.

SUIT BY PRISONER

The high court also declined to review a decision permitting a prisoner to sue prison officers for not protecting him when a fellow inmate attacked him with a knife and caused the loss of his right eye.

PUBLICATION OF OBSCENITY

The Justice also let stand a lower court injunction preventing officials at the University of Mississippi from interfering with the publication of an English Department magazine including articles with words that the administration considered obscene.

Chief Justice Burger added a relatively unusual footnote to the brief court order denying review. He said he was joining his colleagues with the understanding that the university would not be required to finance the magazine.

Women's Dorm Rules

The high court also declined to review a lower court decision upholding the validity of dormitory regulations at Eastern Kentucky University that place more restrictions on female students than on males. A female student, Ruth Robinson, had charged this was unconstitutional discrimination.