

# Court to Review Mitchell Wiretap Use

By John P. MacKenzie  
Washington Post Staff Writer

The Supreme Court agreed yesterday to decide whether the government will lose hundreds of serious criminal cases because of the way former Attorney General John N. Mitchell administered the 1968 federal wiretap law.

Set for argument in the fall is a Baltimore gambling case which was thrown out by lower courts on grounds that the application for court-ordered wiretapping was not signed by the Attorney General as required by law. The high court also:

- Agreed to decide whether a West Virginia man who lacks both money and property can be denied the right to appeal a \$300 creditor judgment by a justice of the peace because he can't raise the necessary \$600 bond—double the amount of the judgment.

- Refused, with only Justice William O. Douglas dissenting, to review the contempt citation against Harvard University Professor Samuel Popkin for refusing to answer grand jury questions about the Pentagon papers. Popkin was released after seven days in prison, making his case moot.

- Ruled unanimously that the Treasury Department's decision against permitting a new national bank in a given area is not to be overturned by the courts unless the administrative record shows the decision was arbitrary and capricious.

Most of the 500 wiretap warrants issued by federal judges between 1969 and 1971 will be invalidated unless the Justice Department persuades the Supreme Court that Mitchell's signature on the government's wiretapping requests is merely a "technical" requirement.

Lower courts have split on the issue. The Fourth U.S. Circuit Court of Appeals ruled that the signature was essential, even when a judge issued the order without it, because Congress wanted the added safeguard for privacy that was afforded by requiring the Attorney General's personal attention.

That court quashed the evidence gathered by wiretaps against a Baltimore-based East Coast gambling and narcotics operation. Last week U.S. District Judge William Mehrkens

issued a similar ruling in a drug smuggling case, denouncing the Justice Department for "ghost-written and false and misleading memoranda and data."

Government lawyers have told the court that the department's procedures have been changed so that wiretap evidence obtained after 1971 is not in jeopardy.

The West Virginia appeal bond case will test whether the court has called a complete halt to the line of decisions expanding access to courts by the poor as well as those able to afford legal costs.

Clover Patterson, a 38-year-old father of five on welfare, is trying to appeal an award made by a justice of the peace to the Graham Motor Co. of Charleston for defaulted payments on a 1959 station wagon which Patterson claimed was

defective. Anti-poverty lawyers then tried to appeal to the court of common pleas, but were blocked for failure to post double bond.

The U.S. District Court held that the bond was valid to protect creditors against unfounded appeals.