

# Alleged Wiretapping Errors Imperil Federal Prosecutions

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Federal prosecutions of more than 1,400 defendants—many of them organized crime figures—are in jeopardy because of alleged paperwork errors in authorizing wiretaps on suspected criminals.

Motions for dismissal or suppression of important evidence are pending in 159 of the cases based on the wiretap law and the manner in which top Justice Department officials, past and present, carried it out.

The main charge is that former Attorney General John N. Mitchell permitted an associate to approve applications for court permission to wiretap a suspect in violation of the 1968 law authorizing electronic surveillance.

The law says that only the Attorney General or a designated assistant attorney general could authorize wiretap requests. Instead, Mitchell for more than a year permitted his executive assistant, Sol Lindenbaum, to act in his place, the government has acknowledged.

In approximately 60 cases, defendants are asking that wiretap-produced evidence be suppressed and charges dismissed because, they contend, Mitchell disregarded the law.

In another series of cases, defendants are complaining of a different paperwork error involving wiretap evidence. In those cases, it is argued that former Assistant Attorney General Will Wilson allowed subordinates—Henry E. Petersen and Harold P. Shapiro—

to send out routine wiretap approvals under his signature.

The cases jeopardized involve a number of organized crime investigations, many of them dealing with interstate gambling and narcotics trafficking. Some involve criminals convicted and now out on bail pending appeal.

The first case is expected to be argued this fall before the Supreme Court. If the government loses, many or all of the other cases could be thrown out, or evidence obtained through wiretapping could be discarded.

The case involves Dominic Nicholas Giordano, who was accused of selling heroin. He was the subject of a government wiretap in 1970. A District Court judge suppressed

See TAPS, A14, Col. 1

## TAPS, From A1

evidence obtained by the wiretap because of the way applications were processed through the Justice Department.

The Justice Department, citing the potential damage to its other criminal prosecutions involving wiretaps, appealed to the Fourth Circuit Court of Appeals, but again lost when the suppression of evidence was upheld. The department now is appealing to the Supreme Court.

Under the 1968 law, permission to wiretap a suspect must be obtained from a judge in regular criminal cases. Before applying to the judge, however, the U.S. attorney must have the approval of either the Attorney General or a designated assistant attorney general.

The government has acknowledged in the Giordano case briefs that Mitchell routinely permitted Lindenbaum to sign papers authorizing applications when Mitchell was out of town. Lindenbaum was permitted to do this from early in 1970 until late in 1971.

The 1968 law specified which officials could authorize wiretaps because of fears that the new power might be misused. Critics argued at the time that the power might be used promiscuously if too many government officials were authorized to wield it.

The Justice Department now contends, in briefs filed in the Giordano case, that the law was not intended to restrict the power to request

wiretaps to the Attorney General, but merely to concentrate the power in his office.

It also argues that Mitchell could delegate this authority to Lindenbaum in keeping with his general authority to assign responsibility in his office.

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The government briefs acknowledge that Mitchell did not put his authority for Lindenbaum in writing, but merely instructed him verbally that he could sign the wiretap papers when Mitchell was away from Washington.

Lindenbaum would always tell Mitchell of the wiretap applications approved in his absence so that he could withdraw them if he considered them improper, the legal briefs say. Sources said Mitchell never withdrew any of the Lindenbaum-authorized papers.

In the second batch of cases, the legal hitch involves the sending out of memorandums to U.S. attorneys around the country.

After Mitchell or Lindenbaum had approved a wiretap application, Wilson was supposed to forward the authorization to the U.S. attorney who had sought it. Wilson was then in charge of the department's Criminal Division, and Shapiro and Petersen were his two top assistants.

The government's briefs say

that in 159 cases Shapiro or Petersen signed Wilson's name to the form letters used to inform the several U.S. attorneys in the field.

Justice contends this involves mere "notification" and does not have anything to do with the power of higher officials to authorize the wiretap requests.

Defendants have argued, however, that this involved another violation of the law.