

High Court Rebukes Mitchell on Wiretaps

Washington

A unanimous Supreme Court rebuked former Attorney General John N. Mitchell yesterday, ruling that he violated federal law by delegating to his executive assistant responsibility for approving organized crime wiretaps.

The decision will probably lead to dismissal of 60 pending federal prosecutions involving 626 defendants, all of whom were wiretapped under the procedure held illegal by the Supreme Court.

They were charged with various narcotics, gambling and racketeering offenses.

Despite this setback to the Justice Department, the Supreme Court salvaged an additional 807 federal prosecutions in a companion case decided yesterday. The justices ruled, 5 to 4, that because Mitchell personally authorized this second set of wiretaps, irregularities in the procedures he followed did not technically break the law and would be overlooked.

Although violation of the federal wiretap statute is punishable by a \$10,000 fine and five years' imprisonment, no punitive action is expected against Mitchell or his executive assistant.

The law immunizes officials whose wiretaps are later ruled illegal if they acted in "good faith."

Both cases were brought to the high court by the Justice Department after evidence gathered in the disputed wiretaps was ordered suppressed by U.S. Courts of Appeals in Richmond and San Francisco. Solicitor general Robert H. Bork, representing the department, conceded that without this evidence, the cases would wash out.

In his appeals, Bork defended the procedures used under Mitchell as "at most minor and technical departures"

from the requirements of the 1968 Omnibus Crime Control and Safe Streets Act.

The law sets up strict procedures for the processing of wiretaps. It says that wiretap applications, which originate with federal attorneys in the field, must be authorized by "the attorney general or any assistant attorney general designated by the attorney general." Then they go back to federal district court judges, who must approve them before the surveillance can begin.

Mitchell never deputized an assistant attorney general for this task, but instead let his executive assistant, Sol Lindenbaum, act in his place. For more than a year, Lindenbaum approved all wiretaps and signed Mitchell's

Back Page Col. 8

From Page 1

ell's initials to memoranda later sent to federal courts.

Justice Byron R. White, a former assistant attorney general, wrote both opinions yesterday. He rejected the argument that Mitchell never violated the spirit of the law because Lindenbaum functioned as an "alter ego" and knew wiretap criteria as well as the attorney general.

White said the legislative history of the 1968 act, as well as its wording, make clear that Congress sought to minimize government intrusions on personal privacy by keeping tight controls over wiretapping and limiting those officials who could authorize telephone interceptions.

The ruling threw out evidence against Dominic N. Giordano and several other suspected Baltimore heroin peddlers. It is conceivable that Giordano, who was considered a major East Coast narcotics dealer, could be prosecuted on lesser charges stemming from a pre-wiretap sale of heroin to an undercover agent.

The second case decided yesterday turned on another

section of the 1968 law, requiring that the Justice Department official approving each interception be precisely identified in the formal application to the judge for the wiretap order.

Under Mitchell, judges were told by mail that this approval had come from Assistant Attorney General Will Wilson, head of the criminal division. In fact, either Mitchell or Lindenbaum actually authorized the wiretapping, and Wilson played no part.

The U.S. court of appeals in San Francisco, in a case involving Umberto Chavez, James Fernandez and ten other suspected Alameda county heroin dealers, said these "Will Wilson letters" amounted to "deliberate deception of the courts by the highest law officers in the land."

But the high court partially disagreed. The majority conceded that the Fernandez tap was illegal because Lindenbaum okayed it, but they upheld the Chavez tap on the ground that Mitchell's approval of it was exactly what the wiretap law required.

Los Angeles Times