

HIGH COURT TO GET WIRETAP APPEALS

LEGIS

Justice Department Accused
of Procedural Errors

By JOHN M. CREWASON

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WASHINGTON, Oct. 7—The Supreme Court is expected to hear arguments this fall on the first of several appeals growing out of alleged improprieties in the authorizing of wiretaps by the Justice Department that first came to light nearly two years ago.

Should the high court uphold lower court decisions to suppress evidence produced by the wiretaps, the Government concedes that its efforts in scores of pending prosecutions, chiefly in organized crime, may be seriously threatened.

On of the three appeals that the Court has thus far agreed to hear, that of Dominic Giordano, whom the Justice Department has accused of selling heroin, embraces both of the complaints of procedural error that have been raised in other cases.

Potentially the most serious of these errors, according to some legal experts, concerns former Attorney General John N. Mitchell's decision to allow his executive assistant, Sol Lindenbaum, to approve in his absence requests from the department's field offices for permission to seek court orders authorizing wiretaps in criminal cases.

1968 Law Cited

The controversy arises from the language in Title III of the Omnibus Crime Control and Safe Streets Act of 1968 which for the first time permitted information gleaned from wiretaps accompanied by court orders to be introduced as evidence in criminal cases.

The law specifies, however, that any request to a court for such an order must be approved by the Attorney General or by an Assistant Attorney General whom he has designated to perform that function.

Ramsey Clark, President Johnson's last Attorney General, refused to use the new law. But the Nixon Administration began almost immediately to seek increasing numbers of wiretap warrants from the Federal courts, in line with the President's campaign promises to use whatever law enforcement methods were available to combat crime.

According to the Government's brief in the Giordano case, it was in the spring of 1970 that Mr. Lindenbaum began to make determinations on his own that certain wiretap requests were "consistent with the Attorney General's policy," and to place Mr. Mitchell's initials on the application forms without consulting him.

He did this, the brief concedes, in about 60 instances, and it notes that the wiretaps thus approved figured in the persecution of 626 criminal defendants whose cases are pending in various Federal courts.

Within Authority

Furthermore, the Justice Department maintains, Mr. Mitchell's transfer of his statutory authority in this area to Mr. Lindenbaum, a career official, was within his authority to delegate some of his powers to subordinates.

The Justice Department notes in its brief that Mr. Mitchell's authorization to his assistant was never put into writing. But it adds that the Attorney General was always informed upon his return of what actions Mr. Lindenbaum had taken in his absence.

The United States Court of Appeals for the Fourth Circuit disagreed, however, when it upheld last year a lower court order to suppress the conversations overheard in the Giordano wiretap on the ground that Mr. Lindenbaum could not validly exercise such powers, even if so delegated by the Attorney General.

The issue upon which the appeals court decided the case, however, differs from that cited by the Federal District Court in Baltimore in its order that the Giordano material be excluded from introduction as evidence.

The objection raised by the district court involves the second alleged procedural error committed by the Justice Department, which is presumed to be less compelling than the question of Mr. Lindenbaum's participation in the authorization process.

Authorization Made

In 159 cases involving 1,433 defendants, including Mr. Giordano, the Government acknowledges that the decision to permit the seeking of a court order was communicated to officials in the field by a form letter from Will W. Wilson, a former Assistant Attorney General in charge of the Criminal Division.

Though Mr. Wilson could have been designated under the law to authorize such applications, the form letters were sent out after Mr. Mitchell or Mr. Lindenbaum had themselves authorized the wiretap applications. The Government's argument in the Giordano case concedes that the letters failed to "make clear that the operative decision [to allow the application] was made in the Attorney General's office and that the Assistant Attorney General's function was simply one of notification."

In addition, Mr. Wilson's signature was not affixed to these letters by him but by one of his two principal assistants, Henry E. Petersen and Harold P. Shapiro.