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Mitchell Aide Tells of Call On 2 Justices

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A former Justice Department official said yesterday he secretly called on two Supreme Court justices in 1969 to convey Attorney General John N. Mitchell's dismay at a high court wiretap decision.

The disclosure, which Solicitor General Erwin N. Griswold said was "shocking" if true, was made by Jack C. Landau, information chief at Justice in 1969 and 1970—and promptly denied by Mitchell.

"I don't know what the hell he is talking about," Mitchell said. Landau, now a Washington-based reporter for the Newhouse newspaper chain, said he stood by his statement.

Such ex parte or one-sided private contacts with a court are strictly forbidden by ethical rules governing lawyers' conduct.

Landau would not name the justices he approached, but it was learned that they were William J. Brennan Jr. and then Chief Justice Earl Warren. Neither jurist would respond to inquiries.

Landau, a lawyer, acknowledged that his March, 1969, visit to the high court occurred at a time when the department, stunned by what it considered the damaging effects of the court's decision, was actively considering the rare step of asking the justices for another hearing.

See LANDAU, A8, Col. 1
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He said, however, that he did not consider such a step likely when he obeyed Mitchell's instructions to deliver "some detailed and highly classified national defense information to the Supreme Court." Since he thought the case was over, he thought the ethical strictures did not apply, Landau said.

The message conveyed orally by Landau was that the court's ruling, which required federal prosecutors to divulge the contents of illegal wiretaps to defendants overheard on them, would jeopardize numerous electronic eavesdropping installations designed to protect the nation's security.

Much the same message had been delivered in oral arguments by the government, but the court ruled on March 10, 1969, that accused persons were entitled to see records of illegal surveillance against them so their lawyers could check for possible tainted evidence the government might seek to introduce.

By a 5-to-3 majority the

court rejected the government's bid for limited disclosure of the eavesdrop data to a trial judge in chambers, with the judge censoring material not relevant to the case before turning it over to the defense.

In the government's view the Supreme Court decision left prosecutors with a difficult choice: either disclose the data and risk breach of secret and sensitive wiretap installations, or abandon the prosecution. The high court said the government could not have it both ways.

The impact of the visit on the court could not be ascertained. On March 24 the justices denied the government's petition for a rehearing but issued opinions which some observers viewed as softening the earlier ruling.

CBS News reported last night that Warren called an immediate conference of the justices to discuss the visit, but one justice, Potter Stewart, told The Washington Post that at no time in 1969 was he ever told of any Justice Department contacts with the court.

Justice William O. Douglas would say only that he was not personally approached and had known nothing of the matter. Justice Byron R. White, author of the controversial opinion, said no attempt was made to contact him. Justice Thurgood Marshall, who had disqualified himself in the wiretap cases, andn former Justice Abe Fortas could not be reached. The other members of the 1969 court, Justices Hugo L. Black and John M. Harlan, died in 1971.

Landau said he was making the disclosure at this time because the matter had worked on his conscience since last week, when Eric Sevareid of CBS reported that Mitchell had sent an emissary to influence pending wiretap cases.

Landau said that based on instructions he received from Mitchell, he believed that his role "was in good faith, was in the interest of protecting a highly sensitive area of national security and was not detrimental to the fair administration of justice."

He said that his visit to one justice was for the purpose of inquiring how best to convey the information to the court. That justice then took him to see the second justice, he said. He added that he left after 15 minutes with the second justice, satisfied that he had complied with Mitchell's orders to communicate with the Supreme Court.

Mitchell, reached in New York, said through an intermediary of Landau's charges: "I don't know what the hell he's talking about. While I was Attorney General my dealings with the Supreme Court were always through the Solicitor General or his office, as appropriate, except on one well publicized occasion with Chief Justice Warren on the Abe Fortas matter."

This was a reference to Mitchell's controversial visit to Warren telling him that the department had "certain information" bearing on Justice Fortas's relationship with convicted financier Louis Wolfson. Fortas resigned shortly thereafter.