

U.S. Vs. Chavez

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U.S. v. CHAVEZ - 416 U.S. 580 (1974)

U.S. Supreme Court U.S. v. CHAVEZ , 416 U.S. 580 (1974)

416 U.S. 580

UNITED STATES, Petitioner,

v.

Umberto Jose CHAVEZ et al.

UNITED STATES, Petitioner,

v.

Dominic Nicholas GIORDANO et al.

Nos. 72-1319, 72-1057.

Supreme Court of the United States

May 13, 1974

Mr. Justice DOUGLAS, with whom Mr. Justice BRENNAN, Mr. Justice STEWART, and Mr. Justice MARSHALL join, concurring in part and dissenting in part in No. 72-1319, *United States v. Chavez*, [416 U.S. 562](#) , and concurring in No. 72-1057, *United States v. Giordano*, [416 U.S. 505](#) .

The Court deals with two different Justice Department violations of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which imposes express limitations on the use of electronic surveillance. In *United States v. Giordano*, the Court correctly finds that the violation of 18 U.S.C. 2516(1) is a violation of a statutory requirement which 'directly and substantially implement(s) the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device.' The Court also properly finds that a violation of such a statutory requirement mandates suppression of the evidence seized by the unlawful interception. I join the opinion of the Court in *Giordano*. The same violation of 2516(1) is also involved in the Fernandez wiretap in *United States v. Chavez*, and I therefore concur in the Court's suppression of the

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evidence seized in that wiretap. In *Chavez*, however, the Court finds that suppression is not warranted for the violations of 18 U.S.C. 2518(1)(a) and 2518(4)(d) which the Court admits occurred in the *Chavez* wiretap itself. I dissent from this conclusion, hereinafter referred to as the holding of *Chavez*.

I

Title III permits electronic surveillance to be employed only pursuant to a court order. It requires, inter alia, that a federal trial attorney desiring to apply to the District Court for such a wiretap order must first secure authorization from one of a group of specified officials in the Justice Department. *Giordano* represents a class of cases in which authorization for electronic surveillance was given by Sol

Lindenbaum, the Executive Assistant to Attorney General John Mitchell, in violation of the 'authorization requirement' of 2516(1) of Title III. This section provides that a wiretap order may be applied for only after authorization by '(t)he Attorney General, or any Assistant Attorney General specially designated by the Attorney General.' Chavez, on the other hand, represents a class of cases where the Justice Department violated the 'identification requirement' of 2518(1)(a) of Title III, which requires that each application made to the District Court for a wiretap order 'shall include . . . the identity of . . . the officer authorizing the application.' Because the District Courts in this class of cases were supplied with misinformation as to the identity of the person who authorized the applications made to them, the orders they entered approving the use of electronic surveillance violated 2518(4)(d) of Title III, which provides that such orders 'shall specify . . . the identity

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of . . . the person authorizing the application.' (Emphasis added.)

In the Justice Department between 1969 and 1972, a request from a federal trial attorney for authorization to apply for a wiretap order was reviewed in the Criminal Division before being sent to Attorney General Mitchell. According to the Solicitor General, in Chavez Attorney General Mitchell made the operative decision to authorize the wiretap application and signified this by sending a memorandum to Assistant Attorney General Will Wilson directing Wilson to authorize the trial attorney to submit the application to the District Court. The memorandum,¹ the Solicitor General admits, does not make clear that the operative decision was made in the Attorney General's Office; rather, it indicates that Wilson himself was designated to review and authorize the application.

At this point, a letter of authorization was sent to the trial attorney, which clearly identified Assistant Attorney General Wilson, and not Mitchell, as the person who had made the operative decision to authorize the wiretap. [[Footnote 2](#)] Wilson, however, neither saw nor authorized

the Chavez wiretap application or any others; his signature was affixed to the authorization letters by a Deputy Assistant Attorney General, either Harold P. Shapiro or Henry E. Petersen. [[Footnote 3](#)]

When the trial attorney applied for a wiretap order in the District Court, he attached the letter of authorization purportedly signed by Wilson, and naturally misidentified Wilson as the person who had authorized the application to be made,⁴ in violation of the identification

requirement of 2518(1) (a). As a result, the District Court's order identified Wilson, and not Mitchell, as the Justice Department official who had authorized the trial attorney to apply for the Chavez wiretap order,⁵ in violation of the identification requirement of 2518(4)(d).

In Chavez, Mitchell first acknowledged responsibility for authorizing the wire-tap application in an affidavit filed with the District Court only after respondents had made a motion to suppress the evidence in the tap. Similar affidavits stating that Mitchell had authorized the application, rather than Wilson, were filed by Lindenbaum and Petersen. The courts below, on the strength of these affidavits, have held that Mitchell did in fact authorize the application to be made. Both, however, ordered the evidence which was seized by the surveillance to be suppressed, since the application misidentified Wilson as the responsible official. This Court reverses the Court of Appeals.

II

Deciding a question not reached in Giordano, the Court in Chavez holds that suppression is not dictated when there has been a violation of a provision of Title III which does not, in the view of the courts, 'directly and substantially implement the congressional intention to limit the use of intercept procedures' to cases clearly calling for electronic surveillance. I cannot agree that Title III, fairly read,

authorizes the courts to pick and choose among various statutory provisions, suppressing

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evidence only when they determine that a provision is 'substantive,' 'central,' or 'directly and substantially' related to the congressional scheme.

Section 2515 of Title III unambiguously provides that no evidence derived from any intercepted communication may be received 'in any trial . . . in or before any court . . . if the disclosure of that information would be in violation of this chapter.' The Court acknowledges this provision in Chavez, 416 U.S., at 575, but disregards two sections of Title III explicitly dealing with disclosure in determining when disclosure is in fact 'in violation of' Title III. Section 2511(1), which provides criminal penalties for willful violations of Title III, prohibits in 2511(1)(c) knowing disclosure of communications intercepted in violation of subsection (1) and the subsection prohibits interception '(e)xcept as otherwise specifically provided in this chapter.' Section 2517(3) authorizes the disclosure in a criminal proceeding of information received 'by any means authorized by this chapter' or of evidence derived from a communication 'intercepted in accordance with the provisions of this chapter.' The statute does not distinguish between the various provisions of the Title, and it seems evident that disclosure is 'in violation of' Title III when there has not been compliance with any of its requirements.

The Court fixes on 2518(10)(a), which defines the class of persons who may move to suppress the admission of evidence. This section provides that any aggrieved person may move to suppress evidence on the grounds that

'(i) the communication was unlawfully intercepted;

'(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

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'(iii) the interception was not made in conformity with the order of authorization or approval.'

Since paragraphs (ii) and (iii) reach some statutory violations, reasons the Court, paragraph (i) cannot reach all statutory violations or else paragraphs (ii) and (iii) would be 'drained of all meaning.'

The choice seems to be between attributing to Congress a degree of excessive cautiousness which led to some redundancy in drafting the protective provisions of 2518(10)(a), or foolishness which led Congress to enact statutory provisions for law enforcement officials to scurry about satisfying when it did not consider the provisions significant enough to enforce by suppression. In view of the express prohibition by 2515 of disclosure of information 'in violation of' the chapter, I would opt for the conclusion that Congress was excessively cautious, and that 'unlawfully intercepted' means what it says.

Congress could easily have given the judiciary discretion to apply the suppression remedy only for violations of 'central' statutory provisions by using language such as 'unlawfully intercepted in violation of important requirements of this chapter' in 2518(10)(a). But no such limitation appears. Further, the legislative history of Title III emphasizes Congress' intent to enforce every provision of the Title with the remedy provided in 2515 and 2518(10)(a). The Senate Report which accompanied Title III to the Congress states that 'Section 2515 . . . imposes an evidentiary sanction to compel compliance with the other prohibitions of the chapter,' and that 2518(10)(a) together with 2515 'applies to suppress evidence directly . . . or indirectly obtained in violation of the chapter.' S.Rep.No.1097, 90th Cong., 2d Sess., 96 (1968) U.S.Code Cong. & Admin.News, pp. 2112, 2184, 2185.

Again, no distinction supports the conclusion that Congress considered any provision of Title III more

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important than any other in the applications of the suppression remedy. Congress at no point indicated that it intended to give the courts the discretion to distinguish

various provisions of Title III, never suppressing evidence for violations of some—such as 2518(1)(a) and (4)(d)—deemed not 'directly and substantially' related to the congressional intent to limit the use of electronic surveillance. No matter how egregious or willful the violation of these provisions, it seems that suppression will not follow, and the Court opens the door to the creation of other non-'central' statutory requirements. This breadth of discretion is not part of the congressional scheme, and the Court oversteps its judicial role when it arrogates such discretion to itself.

III

Moreover, even under the test the Court defines in *Chavez*, that violations of only those statutory provisions 'directly and substantially' limiting the use of electronic surveillance will warrant suppression, the violation of the identification requirements of 2518(1)(a) and (4)(d) mandates suppression in *Chavez*. For the requirement of 2518(1)(a) that the application for a wiretap 'shall include . . . the identity of . . . the officer authorizing the application' together with that of 2518(4)(d) that the wiretap order contain the same information significantly implements the congressional intention to limit the use of electronic surveillance procedures.

In support of its conclusion that suppression is not mandated by the 2518(1)(a) and 2518(4)(d) violations in *Chavez*, the Court states that while Congress expressed the intent that these provisions 'fix responsibility' on the person who authorized the employment of electronic surveillance, '(w)here it is established that responsibility for approval of the application is fixed

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in the Attorney General, however, compliance with the screening requirements of Title III (2516) is assured, and there is no justification for suppression.' *Supra*, at 572. To the Court, the provisions '(do) not establish a substantive role to be played in the regulatory system. . . . No role more significant than a reporting function designed to establish on paper that one of the major procedural protections of Title

III (the authorization requirement of 2516) had been properly accomplished is apparent.' *Supra*, at 578, 579, 1858.

The Court reduces the statement of Congress that the identification provisions were created to 'fix responsibility' for a wiretap authorization to meaning only that the provisions were drafted to assure the courts that there had been compliance with the authorization requirement of 2516. And the Court finds it satisfactory that this responsibility is established by an *ex post facto* affidavit of the Attorney General, stating that he in fact authorized the Chavez surveillance.

It seems to me a complete misreading of Congress' attempt to 'fix responsibility' in the application and order to reach these conclusions. Sections 2518(1)(a) and 2518(4)(d) are not part of the detailed and stringent guidelines of Title III through legislative inadvertence. They were not present in early proposals to regulate wiretapping, but were carefully inserted in later proposals, culminating in the draft which became Title III. A 1961 proposal to allow wiretapping under regulated conditions did not contain any identification requirement, although it contained provisions designating those who could authorize surveillance. [[Footnote 6](#)] S. 675, introduced in the 90th Con-

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gress by Senator McClellan on January 25, 1967, 113 Cong.Rec. 1491, did not require either the application or the court order to identify the person who authorized the surveillance application. [[Footnote 7](#)] S. 2050, introduced five months later by Senator Hruska, 113 Cong.Rec. 18007, expressly required that the application to the court set forth 'the identity of the person who authorized the application,' but did not require the court order to contain this information. 8 H.R. 13482, introduced in the House on October 12, 1967, 113 Cong.Rec. 28792, not only required that the application identify the person authorizing it, but also that the court order contain this information. Six months later, on April 29, 1968, the Senate Judiciary Committee reported S. 917, whose provisions ultimately were enacted as Title III, accompanying the bill with an extended explanation of every provision. [[Footnote 9](#)] Though it noted that Title III is 'essentially a combination'

of S. 675 and S. 2050,¹⁰ the Judiciary Committee went beyond either of those bills as to the identification requirements, mandating that both the application and the order identify the person who authorized the application.

In its discussion of the authorization requirement of 2516, the Senate Report states:

'This provision centralizes in a publicly responsible official subject to the political process the formulation of law enforcement policy on the use of electronic surveillance techniques. Centralization will

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avoid the possibility that divergent practices might develop. Should abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guaranteeing that no abuses will happen.' S.Rep.No.1097, 90th Cong., 2d Sess., 97 (1968); 1968 U.S.Code Cong. & Admin.News, p. 2185.

But this alone was not sufficient. The Report continues:

'The application must be made to a Federal judge of competent jurisdiction, as defined in section 2510(9), discussed above. The application must conform to section 2518, discussed below.' Ibid. (Emphasis added.)

The Committee's discussion of 2518 states:

'Section 2518 of the new chapter sets out in detail the procedure to be followed in the interception of wire or oral communications.

'Subparagraph (2518(1)(a)) requires the identity of the person who makes, and the person who authorized the application to be set out. This fixes responsibility.

'Subparagraph (2518(4)(d)) requires that the order note the agency authorized to make the interception and the person who authorized the application so that responsibility will be fixed.' *Id.*, at 100, 101, 103. (Emphasis added.)

The crucial concept is Congress' expression of intention that 2518(1)(a) and (4)(d) should be complied with, so that the application and order would fix responsibility.

Clearly, no such responsibility was fixed on Mitchell,

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the authorizing official, in Chavez. As the Court of Appeals noted, [478 F.2d 512](#) , 515, 516, there

'was a misrepresentation, in circumstantial and carefully phrased detail, all pointing to Wilson as the officer authorizing the application, when in fact he did no such thing.

'. . . The Wilson letter and the Mitchell memorandum . . . create the illusion of compliance with the Act. Without Mitchell's affidavit, the lines of responsibility lead to Wilson, not to Mitchell.'

Yet Wilson never saw the application for which Mitchell now accepts responsibility. Before the affidavits submitted to the District Court in response to the motion to suppress, about one year after the application was initially authorized, responsibility pointed directly at Wilson, and no document implicated Mitchell.

It is simply not enough that Mitchell's responsibility is established only after a prosecution is under way and a motion to suppress filed. After-the-fact acceptance for the Chavez surveillance was made at no cost. The surveillance was productive and was directed against an alleged drug trafficker, a pariah of society. Accepting responsibility at this point, further, helped Mitchell and the Justice Department avoid the acute embarrassment of losing this prosecution. But this was not the

scheme created by the Congress. By creating the identification provisions, which required the authorizing official to be made known at the time of an application, it established a mechanism by which a person's responsibility was to be acknowledged immediately, not a device by which the identity of the person authorizing the application would remain hidden until it was discovered that an instance of electronic surveillance had been productive and not offensive to public sensibilities.

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Immediate acknowledgment of responsibility for authorizing electronic surveillance is not an idle gesture. It lessens or eliminates the ability of officials to later disavow their responsibility for surveillance. By adding the identification provisions of 2518, Congress took a step toward stripping from responsible officials the ability to choose after the fact whether to accept or deny that responsibility by coming forward and filing an affidavit. 'Fixing' of responsibility in the application and order can have no other meaning; it simply does not comprehend a situation where responsibility is concealed or unsettled. Had Congress been content with compliance with 2516 being proved and responsibility for surveillance being established by later testimony and affidavits, it could easily have left the legislation in its early form without adding the express requirements of 2518(1)(a) and (4)(d) to the Act. [[Footnote 11](#)]

The Court's treatment of the identification requirements trivializes Congress' efforts in adding them to Title III. In *Giordano*, the Court relies on Congress' clearly expressed desire that an official, responsible to the political process, should make the decisions authorizing electronic surveillance and bear the scrutiny of Congress and the public for that decision. As noted, the Senate Report which accompanied Title III to Congress stated that 2516 'centralizes in a publicly responsible official subject to the political process' the formulation of electronic surveillance policy so that '(s)hould abuses occur, the lines of responsibility lead to an identifiable person. This provision in itself should go a long way toward guar-

anteeing that no abuses will happen.' S.Rep.No.1097, 90th Cong., 2d Sess., 97 (1968), U.S.Code Cong. & Admin.News, p. 2185. Similarly, Senator Long, in support of the bill, read from a report which stated: 'We agree that responsibility should be focused on those public officials who will be principally accountable to the courts and the public for their actions.'¹² Speaking to a related provision requiring that politically responsible state prosecuting officials authorize state applications, Professor Blakey of Notre Dame, instrumental in the drafting of Title III, stated.

'Now, the reason (for this requirement) is that unless we involve someone in the process of using this equipment who is politically responsible, that is, someone who must return to the people periodically and be reelected, it seems to me we miss a significant check on possible abuse. As a practical matter, if there is police abuse, the remedies that we can take against them are limited. If we involve the responsible judgment of a political official in the use of this equipment, and it is then abused, the people have a very quick and effective remedy at the next election.'¹³

But it is clear that this personal responsibility and political accountability, relied on by Congress to check the reckless use of electronic surveillance, is rendered a mere chimera when the official actually authorizing a wiretap application is not identified until years after the

tap has occurred, when he might already be out of office, when the usefulness of the tap is already established, when it is clear that the surveillance was not abusive, and then only through voluntary admissions or the sifting of potentially contradictory affidavits. Responsibility is hardly 'focused,' and the 'lines of responsibility' are gossamer at best. This is why Congress added the demand that responsibility be immediately fixed. The procedures which the Court sanctions in Chavez stretch the unequivocally expressed desire of Congress to fix

responsibility in the application and order well beyond the breaking point.

In eviscerating Congress' intent to fix responsibility in the application and order, the Court destroys a significant deterrent to reckless or needless electronic surveillance. It allows the official authorizing a wiretap to remain out of the harsh light of public scrutiny at the crucial beginning of the wiretap process, only to emerge later when he chooses to identify himself. Knowledge that personal responsibility would be immediately focused and immutably fixed, whatever the outcome of surveillance, be it profitable or profligate, successful or embarrassing, forces an official to be circumspect in initially authorizing an electronic invasion of privacy. This is why Title III requires more than a judicial determination of probable cause; it also requires an accountable political official to exercise political judgment, and it requires that the political official be immediately identified and his responsibility fixed when an application is filed. The identification procedures, by fixing responsibility, obviously serve to 'limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device,' thereby requiring suppression even under the test the Court adopts in Chavez.

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IV

The Court mentions in passing the reporting requirements of Title III, noting the information furnished the judge pursuant to 2518(1)(a) is useful in making the reports required of him under 2519. This section requires the judge to report, inter alia, the name of the party who authorized each wiretap application made to him to the Administrative Office of the United States Courts within 30 days after surveillance has been completed. 2519(1)(f). At the same time, 2519(2) requires the authorizing prosecuting officials designated in 2516 to file a report in January of each year, which also must include the name of the person who authorized applications made during the previous calendar year. In reliance on this information, the Administrative Office is to report such information to the Congress for public scrutiny. 2519(3). Like the applications and wiretap orders themselves,

this report is to include the names of those persons responsible for authorizing electronic surveillance.

In the set of cases represented by Chavez, of course, the person actually authorizing the applications, Mitchell, was not made known to the courts which approved them, and so the reports filed with the Administrative Office by the judiciary did not identify him as the responsible official. The potential for public accountability through this channel was foreclosed by the misinformation given the courts. While the report filed by the office of the Attorney General in January 1970 did state that the 1969 applications filed in Wilson's name had been personally approved by Mitchell, the Solicitor General informs us that the reports filed by the Attorney General regarding instances of electronic surveillance for 1970 and after, including the Giordano wiretap (1970) and the Chavez tap (1971), did not acknowledge that

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Mitchell had personally authorized the surveillance attributed to his subordinates. [[Footnote 14](#)] The failure of the Attorney General's office to document the actual personal responsibility of Mitchell for surveillance authorizations occurred as those authorizations proliferated: there were only 34 instances of federal surveillance reported under Title III for 1969, but that number rose to 183 in 1970 and 228 in 1971. 15 Ex post facto acknowledgment of responsibility by Mitchell in the annual reports filed pursuant to 2519(2) could not, of course, cure the violation of the express congressional mandate of 2518(1)(a), any more than did Mitchell's filing of an affidavit. Nevertheless, not even these reports for years after 1969 provided documentation that Mitchell was the Justice Department official actually responsible for authorizing electronic surveillance. While Congress demanded the openness of political accountability, Justice Department documents drew a veil of secrecy, and no personal responsibility was attributed in any documents to Mitchell, the person actually responsible for authorizing the electronic surveillance.

As the Court recognized in *Gelbard v. United States*, [408 U.S. 41, 48](#) , 2361, the protection of privacy was an overriding concern of Congress when it established the requirements of Title III in 1968:

'The need for comprehensive, fair and effective reform setting uniform standards is obvious. New

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protections for privacy must be enacted.' S.Rep.No.1097, 90th Cong., 2d Sess., 69, 1968 U.S.Code Cong. & Admin.News, p. 2156.

Electronic surveillance was a serious political issue, and these detailed and comprehensive requirements are not portions of a hastily conceived piece of legislation. As noted above, electronic surveillance legislation was introduced long before 1968, and the provisions of Title III are the culmination of a long evolutionary process. The Title was accompanied by an exhaustive and studied report in which the Senate Judiciary Committee offered an explanation and justification for each clause of the bill. I cannot believe that Congress perversely required law enforcement officials to jump through statutory hoops it considered unnecessary to the goal of protecting individual privacy from unwarranted electronic invasions.

On the contrary, the history of Title III reflects a desire that its provisions be strictly construed. Senator McClellan, sponsor of S. 675, one of the bases for Title III, and chairman of the committee which reported Title III to Congress, stated during hearings on his bill:

'I would not want any loose administration of this law.

'But (I would) have it very strictly observed. It is not to become a catchall for promiscuous use. I want to see this law strictly observed with the courts adhering to the spirit and intent of it in granting the orders.

'I think it ought to be tight, very definitely as free from loopholes as it can possibly be made . . . '16

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Subsequently, McClellan's committee closed yet another loophole in the law by inserting the identification requirements of Title III, attempting thereby to fix responsibility at the time of the application for a wiretap order, requirements which this Court now nullifies.

Mr. Justice Holmes observed in dissent 70 years ago:

'Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.'
Northern Securities Co. v. United States, [193 U.S. 197, 400](#) -401, 468.

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The Solicitor General reminds us that substantial effort on the part of the Organized Crime Section of the Criminal Division of the Department of Justice is implicated, for the violations of Title III reflected in these two cases are not isolated occurrences. The failure of Attorney General Mitchell properly to authorize applications involves 60 cases and 626 defendants. The failure of surveillance applications to fix responsibility on Mitchell, when he did in fact authorize the applications, involves an additional 99 cases and 807 defendants. Yet the magnitude of the effect of suppression of unlawfully obtained evidence for these violations of Title III does not vitiate our duty to enforce the congressional scheme as written. The failure of a prosecution in a particular case pales in comparison with the duty of this Court to nourish and enhance respect for the evenhanded application of the law. I accordingly dissent in part in Chavez. Footnotes

[Footnote 1](#) The form memorandum employed by Mitchell stated in part: 'This is with regard to your recommendation that authorization be given to (the particular trial attorney) to make application for an Order of the Court under Title 18, United States Code, Section 2518, permitting the interception of wire communications for a (particular) period to and from telephone number (the listed telephone numbers of the particular criminal investigation) 'Pursuant to the powers conferred on me by Section 2516 of Title 18, United States Code, you are hereby specially designated to exercise those powers for the purpose of authorizing (the particular trial attorney) to make the above-described application.' (Emphasis added.)

[Footnote 2](#) The letter sent over Wilson's signature in Chavez read: 'This is with regard to your request for authorization to make application pursuant to the provisions of Section 2518 of Title 18, United States Code, for an Order of the Court authorizing the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs (to intercept wire communications at the particular number involved) 'I have reviewed your request and the facts and circumstances detailed therein and have determined that there exists probable cause to believe that (named individuals were committing certain offenses) I have further determined that there exists probable cause to believe that the above persons make use of the described facility in connection with those offenses, that wire communications concerning the offenses will be intercepted, and that normal investigative procedures reasonably appear to be unlikely to succeed if tried. 'Accordingly, you are hereby authorized under the power specially delegated to me in this proceeding by the Attorney General of the United States, the Honorable John N. Mitchell, pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, to make application to a judge of competent jurisdiction for an Order of the Court pursuant to Section 2518 of Title 18, United States Code (to intercept the described wire communications)' (Emphasis added.)

[Footnote 3](#) In Chavez, the letter was signed by Petersen.

[Footnote 4](#) The application stated:

'(T)he Honorable John N. Mitchell, has specially designated in the proceeding the Assistant Attorney General for the Criminal Division of the United States Department of Justice, The Honorable Will Wilson, to authorize affiant to make this application for an Order authorizing the interception of wire communications. This letter of authorization signed by the Assistant Attorney General is attached to this application as Exhibit A.'

[Footnote 5](#) The order read in part:

'Special Agents . . . are authorized, pursuant to the application authorized by the Assistant Attorney General for the Criminal Division of the United States Department of Justice, the Honorable Will Wilson, (to intercept wire communications) . . .'

[Footnote 6](#) S. 1495, 87th Cong., 1st Sess., 4(b), printed in Hearings on Wiretapping and Eavesdropping Legislation before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 87th Cong., 1st Sess., 4, 5 (1961).

[Footnote 7](#) Printed in Hearings on Controlling Crime Through More Effective Law Enforcement before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 1st Sess., 75 (1967).

[Footnote 8](#) Printed in Hearings, *supra*, n. 7, at 1006.

[Footnote 9](#) S.Rep.No.1097, 90th Cong., 2d Sess. (1968), U.S.Code Cong. and Admin.News, p. 2112.

[Footnote 10](#) *Id.*, at 66.

[Footnote 11](#) The Court in Chavez finds some guidance in the fact that 'no real debate surrounded' the adoption of the identification requirements. This is not

surprising, in that the provisions were added to wiretapping legislation in committee, and justified in the Judiciary Committee's report.

[Footnote 12](#) 114 Cong.Rec. 14474. The Report was by the Association of the Bar of the City of New York, Committee on Federal Legislation, Committee on Civil Rights, entitled 'Proposed Legislation on Wiretapping and Eavesdropping after Berger v. New York and Katz v. United States.'

[Footnote 13](#) Hearings on Anti-Crime Program before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess., 1380 (1967).

[Footnote 14](#) The Administrative Office, nonetheless, repeated the statement made for 1969 that Mitchell had 'personally' authorized the applications.

[Footnote 15](#) See Administrative Office of United States Courts, Reports on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications, 1969, 1970, 1971.

[Footnote 16](#) Hearings on Controlling Crime Through More Effective Law Enforcement before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 90th Cong., 1st Sess., 508, 869. In addition, in reporting to the Senate in 1969 on the operation of Title III during its first year, Senator McClellan stated: 'I do, however, want to admonish every law enforcement officer, prosecutor, and judge involved in this area that the only way this legislation will be effective in combating crime is by strict adherence to the standards it contains. . . . This is an invaluable and powerful tool that must not be subjected to abuse. Those who violate the standards can and must either be punished and if they cannot learn to follow the law they must face loss of this law enforcement tool. . . . 'Mr. President, my purpose in making these remarks has been to help assure that this legislation will be, in fact, followed to the strictest letter of the law-both bringing criminals to book and protecting citizens' privacy. That is the only way in which it can be utilized as an effective tool in reducing crime. . . . Let us make sure that none of those who may be convicted can ask for

a reversal because the law was not strictly followed.' 115 Cong.Rec. 23241-23242.

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