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Democracy Dies in Darkness

Jack Mitchell, federal investigator who 'broke open' tobacco industry, dies at 69

By **Harrison Smith**

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Jack Mitchell, a muckraking journalist who became a federal investigator for the Senate and the Food and Drug Administration, helping to pave the way for government regulation of the tobacco industry by securing the cooperation of a key whistleblower, died Dec. 5 at a hospital in Washington. He was 69.

The cause was non-Hodgkin's lymphoma, said his wife, Patty Davis.

After working for the investigative columnist Jack Anderson, Mr. Mitchell became a Washington correspondent for one of CNN's first investigative teams; a Senate investigator for more than a decade; and a special assistant to FDA Commissioner David A. Kessler, whose crusading effort to regulate tobacco companies culminated in a 2000 Supreme Court case and subsequent action by Congress.

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Mr. Mitchell was also a top adviser to officials at the Health and Human Services Department, the National Science Foundation and the Office of the Special Inspector General for Afghanistan Reconstruction, a federal agency created to root out waste and corruption related to the longest war in American history. For the past three years, he was the director of health policy at the National Center for Health Research, a Washington nonprofit organization.

"He had a passion for the little guy, for decency," said his wife, the press secretary of the U.S. Consumer Product Safety Commission. "He wanted to right wrongs and hold people accountable."

Among his most audacious exploits was a 1980 expedition to the Colombian jungle, where he delivered a \$250,000 ransom to a group of leftist guerrillas to free Richard Starr, a Peace Corps volunteer who had been kidnapped three years earlier. Mr. Mitchell negotiated his release with help from Anderson, his boss at the time, and said the State Department played no role in the episode.

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More than a decade later, he joined the FDA and helped establish the Office of Special Investigations, where he was tasked with investigating the purchase of human body parts from largely unregulated foreign sources. He soon obtained audio recordings from a front operation in Pennsylvania, where a Russian-born tissue broker offered \$5,000 for a body, with a discount for one infected with hepatitis B.

“It was as if they were negotiating for furs or something,” said Kessler, the former FDA commissioner. “There is now infectious-disease testing of these organs because of Jack,” he added. “Literally overnight the regulations got approved.”

In an interview Monday, Kessler likened Mr. Mitchell to Walter Sheridan, the prominent government investigator who played a key role in the prosecution of labor leader Jimmy Hoffa. Although he remained almost entirely outside the public eye, Kessler said, “he broke open tobacco,” helping build the case that cigarettes — previously manufactured and sold with few restrictions from the states and Congress — should be regulated by the FDA.

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Crucially, Mr. Mitchell was able to win the trust of whistleblower Jeffrey Wigand, the former head of research and development at Brown & Williamson. After being fired from the Louisville tobacco giant in 1993 amid a dispute over the making of a “safer cigarette,” Wigand began working with journalists under the condition of anonymity, helping reporters make sense of the addictive properties and health hazards of cigarettes.

He eventually went public in a 1996 segment on “60 Minutes” — later dramatized in the Michael Mann film “The Insider,” starring Russell Crowe — while noting that he and his children had faced anonymous death threats.

By then, Mr. Mitchell and Wigand had been working together for about two years. In a phone interview, Wigand recalled being cold-called by Mr. Mitchell, who said he “got my name from a journalist”; soon after, Wigand flew to Washington, traveling under an assumed name, and was picked up by Mr. Mitchell, who parked away from the office and directed him “through unmarked entrances up to the commissioner’s office.”

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“He got a whole soup-to-nuts description of cigarette design and addiction,” Wigand said.

Mr. Mitchell maintained such secrecy that Wigand’s identity was initially unknown even to Kessler, who addressed him using the code name Research. The three men sat together amid piles of tobacco company documents that were explained by Wigand, who outlined ways in which cigarettes were made more addictive through manipulating nicotine levels.

Perhaps most significantly, he directed them toward the existence of Y-1, a genetically engineered Brown & Williamson tobacco strain that was grown in Brazil and contained twice the nicotine of ordinary tobacco. In 1994, Kessler testified before a House subcommittee that Y-1, and the use of certain ammonia compounds in cigarettes, did away with “any notion that there is no manipulation and control of nicotine undertaken in the tobacco industry.”

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Kessler went on to push for the FDA to regulate tobacco, an effort that was put on hold in 2000, when the Supreme Court ruled 5 to 4 that the agency did not have the authority to do so. Finally, in 2009, President Barack Obama signed the Family Smoking Prevention and Tobacco Control Act, broadening the FDA's authority to include tobacco manufacturing, advertising and marketing.

Mr. Mitchell's work at the FDA coincided with a raft of lawsuits filed by states against the tobacco industry, which culminated in a \$206 billion settlement in 1998. And while Mr. Mitchell initially viewed the 2009 legislation as a victory of his earlier work, friends said, it proved to be a disappointment, as he sought vigorous regulatory actions that never seemed to occur.

"Ultimately," Wigand said, "he felt that the FDA did not use its teeth at all."

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In 2014, a surgeon general's report estimated that more than 480,000 Americans are killed by cigarette smoking each year and cited tobacco use as the country's "single largest preventable cause of death and disease."

John Howard Mitchell was born in Rochester, Penn., on Sept. 29, 1950, and raised in nearby Beaver. His father was the editor of the local newspaper, and his mother was a homemaker.

Mr. Mitchell studied government at the College of William & Mary, graduating in 1972. He soon joined Anderson in Washington, covering congressional issues as well as the FBI Abscam sting operation that snared several members of Congress for influence peddling.

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He later worked for CNN, reporting on safety standards at nuclear power plants, and in 1992 published two books, "Executive Privilege: Two Centuries of White House Scandals" and "How to Get Elected: An Anecdotal History of Mudslinging, Red-Baiting, Vote-Stealing and Dirty Tricks in American Politics."

In 1987, Mr. Mitchell joined what was then the Senate Governmental Affairs subcommittee on oversight of government management, where he worked as a staff member under Sen. Carl Levin (D-Mich.).

Mr. Mitchell returned to the Senate in 2007 as chief investigator for the Special Committee on Aging and contributed to an Affordable Care Act provision known as the Physician Payments Sunshine Act, which requires doctors and medical companies to disclose their financial relationships.

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While Mr. Mitchell left the FDA in 1999 to join HHS, as a senior adviser to the assistant secretary for legislation, he maintained a close relationship with Wigand.

"Jack, at every turn, was there to protect me," he recalled.

In addition to his wife of 24 years, survivors include a daughter, Hailey Mitchell, also of Silver Spring, Md.; and a brother.

Mr. Mitchell had never expected his work on tobacco issues to result in a Supreme Court case and a battle over FDA oversight, Kessler said. "But because of Jack and others, we had all this evidence," which he credited with shifting public opinion. "In some ways, that was more important than any court case. You're manipulating the level of nicotine, and that's going to keep kids hooked? That changed how this country views tobacco."

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