

Sweeping 'Bugging' Rule Looms

Bart J. Smith, 12/2/67

By ADAM CLEYMER

Washington Bureau of The Sun

Washington, Dec. 21—Critics of the Justice Department who charged Government handling of the Robert G. Baker case was like throwing the Bobby out with the bathwater have been somewhat silenced by a Federal judge's ruling.

The critics said revelations of FBI "bugging" were unnecessary frank, and hinted—usually not for personal attribution—these confessions were made to throw the case against the one-time aide to President Johnson.

In United States District Court, Judge Oliver Gasch vindicated the department's stand when he said Baker's lawyers had failed to show any connection between the electronic eavesdropping and the nine-count indictment.

Had Pleaded Innocent

Baker has pleaded innocent to charges of tax evasion, larceny, fraud and conspiracy and the trial will begin January 9. If he should be convicted, he would appeal.

But on the bugging issue—the most sensational element in pre-trial hearings—it now appears certain the Supreme Court would have to establish new rules of law before the admitted eavesdropping would void a conviction.

Suspensions about the zeal of the attack are likely to continue, despite the intensity of William O. Bittman, prosecutor, and to be stilled only if Baker is convicted and the verdict upheld on appeal.

In this case, the constitutional presumption of innocence appears

not to be operating outside the courtroom, either for Baker or his accusers.

The department's concern about bugging in this case was first demonstrated in the fall of 1965, shortly before the grand jury voted the 9-count indictment. Attorneys carefully screened the case against him to determine if any charges were tainted by illegally obtained evidence.

(Department officials refused again today to say if any lines of prosecution were then dropped because of being foreclosed by bugging.)

Changed Court's Mind

Then the department admitted last May the FBI had eavesdropped on Fred B. Black, Jr., a Baker associate whose office Baker used. This information had been turned up in the Baker review, but bureaucratically languished until the Supreme Court refused to review Black's conviction of tax evasion. The department's voluntary admission changed the court's mind. It was this admission that first drew criticism of Nicholas Katzenbach, Attorney General, and accusations, spread by annoyed FBI officials, of throwing the case.

Two Justices Complained

The high court, obviously annoyed with the department's longstanding bugging practices, this fall went one step further than Thurgood Marshall, solicitor general, had recommended. It ordered a new trial for Black instead of just a hearing to inquire into the bugging.

Two justices complained, say-

ing this ruling could be justified only by deciding that bugging activity "automatically violates" a conviction.

But lower courts, considering the Baker case and four other similar admissions in tax cases, have so far refused to adopt such a broad exclusionary rule. And the department's statement last month that it was energetically reinvestigating is prosecutions to disinfect them may persuade the Supreme Court such a broad rule is unnecessary in the future.

Department officials fear the strongest argument for such a sweeping rule—that any unconstitutional Government surveillance bars any prosecution—would be the experience of cases like Baker's, where lengthy pre-trial hearings have been necessary to establish the constitutional propriety of the Government's evidence.

Remains In Baker Case

If courts routinely have to conduct two trials, one of the Government's methods and the second of the accused, the high court may eventually decide this is too much of a burden.

But electronic recording does remain in the Baker case, of a sort consistently upheld by the courts until now. A Government "agent," presumably former Baker associate Wayne L. Bromley, recorded his own conversations with Baker, and these will apparently be used to corroborate the witness's testimony against Baker.