

FBI 'Bugging' Imperils Is Tax Case

U.S. Reveals Eavesdrop in Baker Figure

Lawyers May Ask
Supreme Court to
Kill Black Charges

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Disclosure of FBI eavesdropping may bring a move in the Supreme Court to kill all criminal tax evasion charges against Fred B. Back Jr., a former business associate of Bobby Baker.

Efforts to reopen Black's tax evasion case received a massive boost yesterday when the Justice Department disclosed that agents had bugged Black's Washington hotel suite in early 1963.

Black, a Washington public relations man, was involved in business dealings with Baker, who himself is claiming in U.S. District Court here that "massive wiretapping" requires dismissal of his own criminal case.

The disclosure of the bugging was contained in an unusual

memorandum filed by Solicitor General Hurgood Marshall with the high court, reportedly after a heated exchange between FBI director J. Edgar Hoover and Attorney General Nicholas deB. Katzenbach.

Baker Lawyer Waits

Baker's lawyer, Edward Bennett Williams, would not comment on the impact of the bugging disclosure on Baker's own case. "I'll prove our claims in court when the time comes," Williams said.

Black's lawyer, Hans A. Nathan, wrote Supreme Court clerk John Davis yesterday that Black will ask the justices to reopen his case in a filing tomorrow or Friday.

While Nathan would not discuss the points he will raise, it appeared virtually certain that he will ask the justices to order dismissal of all charges against Back to deter FBI and police eavesdropping generally.

Just three weeks ago, the justices refused to hear an appeal in the tax case by Black, whose name has been linked to Baker, former secretary to Senate Democrats.

But in the wake of Marshall's submission, it appeared today that Black's case could be reopened in U.S. District Court.

Baker himself faces tax evasion and other criminal charges here, and last month his lawyers asked dismissal of these charges on grounds of electronic eavesdropping and prejudicial publicity.

Convicted in 1964

Black, convicted here in 1964 of evading \$91,000 in income taxes for 1956-58, faces a 15-month-to-four-year prison sentence and a \$10,000 fine. Baker has not been tried.

Nathan said that he had planned to bring the bugging issue to the high court's attention himself today or tomorrow.

"The solicitor general beat

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me to it by one day," Nathan said.

In his memorandum, the solicitor general said that an inquiry had led the Justice Department to conclude that the bugging had no effect on the fairness of Black's tax evasion trial.

However, Marshall said, the department believed that under the circumstances Black was entitled to have a court consider the situation and determine the impact of what happened.

The solicitor general said the bugging device, which was not identified but was described as "not a telephone wire-tap," had been used in a criminal investigation "unrelated to the tax evasion case" against Black.

In Use 3 Months

During the three months the device was in use, however, agents overheard among other conversations, exchanges between Black and the lawyer who then represented him in the tax case, Marshall said.

Prior to Black's trial government counsel had access to FBI reports summarizing some of the information obtained, Marshall said, but the reports did not indicate how the information had been collected.

The solicitor general said that the evidence used at Black's trial, however, "was founded solely upon material contained in reports of investigating agents of the Internal Revenue Service."

During preparation and trial of the case, he said, no attorney involved in the prosecution knew that a listening device had been installed by FBI agents in Black's hotel suite here.

At a future hearing, Marshall said, "The government proposes to submit all of the facts upon which a full judicial determination can be made of the impact of the bugging on Black's case."

The solicitor general suggested that the Supreme Court might simply leave standing its refusal to hear Black's earlier appeal "without prejudice to a further hearing" before a lower court on the bugging issue.

Alternatively, Marshall said, the court might vacate the lower court ruling upholding Black's conviction and send the case back for a hearing on whether the conviction now

should stand.

Two weeks ago, Chief Justice Earl Warren stayed issuance of the Supreme Court's order denying Black a hearing to permit him to seek reconsideration of this action. The bugging was not mentioned then.

In seeking the stay, Black's lawyers had claimed only that a recent high court ruling and certain other matters raised new questions in his case about the standard of proof for tax evasion.

Plans Formal Request

Nathan said the new bugging issue would be added to the other questions and presented to the justices shortly with a formal request that the high court reconsider the case.

The Justice Department's disclosure of the FBI bugging could prompt increased debate over electronic eavesdropping practices generally.

The situation recalls the 1962 Mayflower Hotel bugging incident here in which three private detectives were convicted of Federal Communications Act violations and a retired police inspector pleaded guilty of a related charge.

Last summer, President Johnson limited use of mechanical and electronic listening devices to cases involving national security in which the attorney general approves use of the device.

While the issue in bugging cases is legally different from those involved in wire tapping situations, the impact on the privacy of the individual involved is somewhat difficult to distinguish.