



The tiny wiretapping device is just over an inch.

Marshall 'Confession' Recalled

Wiretapping Dispute Widens Rift Between FBI and Justice Dept.

6/28/66
Second of Three Articles

By Richard Harwood
Washington Post Staff Writer

Thurgood Marshall, the Solicitor General of the United States, submitted an extraordinary confession to the Supreme Court on May 24.

The Federal Bureau of Investigation, he said, was guilty of illicit eavesdropping on an American citizen—Fred B. Black Jr.—for reasons yet to be explained.

Furthermore, Marshall strongly implied, the FBI had acted without any authority from the Attorney General of the United States, whose consent presumably is required in all wiretapping and eavesdropping cases.

Marshall's confession to the Court has had the broadest ramifications.

It has provided a new line of defense for Robert G. (Bobby) Baker, a former friend and political associate of President Johnson. Baker is under indictment as a thief and tax evader.

It has enhanced the possibility that Black, a business associate of Baker, might have his income tax conviction overturned.

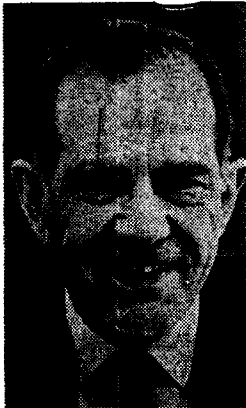
Of even greater significance, perhaps, was the subtle implication in Marshall's memorandum to the Court that the FBI is under uncertain control and that it has been operating in violation of the policies of the Department of Justice.

This, at least, is how the Marshall memorandum was read by allies of FBI Director J. Edgar Hoover, who reportedly filed a bitter protest with Attorney General Nicholas deB. Katzenbach over Marshall's implications to the Court.

It is in any event an open secret that the incident has opened a wide breach between Hoover and his superiors in Justice and that it may produce a collision embarrassing to the reputation of men in high places in the Government.

One potential casualty could be Hoover himself. For years he has reigned over the FBI with a virtually

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free hand. He has been courted and deferred to by every U.S. President of the past quarter century, in part out of respect and in part out of political expediency.

One member of John F. Kennedy's White House staff has said that the late President was appalled at Hoover's obsession with "Reds under every bed" and was unable to carry on a coherent conversation with him. Members of President Johnson's staff toyed with the idea of replacing Hoover in 1964 but backed off out of fear of the political repercussions.

The friction between Hoover and Attorney General Robert Kennedy was ill-concealed. Kennedy went to great lengths to exert his authority over the FBI but with little success. Attorney General Katzenbach once joked in private: "Sure I could fire him on Monday. The only thing I'd have to do on Tuesday would be to find a new job."

When Hoover in 1964 attacked the Rev. Dr. Martin Luther King Jr., the Nobel Prize winner, as "the most notorious liar in the country," he received no public rebuke from the White House. When he testified last year in opposition to the President's proposal for a new consular agreement with the Soviet Union, he escaped reprimand. He has become, Newsweek

magazine said a couple of years ago, "an authentic folk hero," invulnerable to criticism and immune from the dictates of his superiors.

Large Annual Budget

Whatever the merit in this judgment, Hoover in the past 30 years has built a huge investigatory machine with an annual budget approximately as large as the State Department's and more than twice the size of the budget available to the Attorney General.

With a 16,000-man staff at his command, Hoover's FBI has become involved in everything from stolen car recoveries, kidnappings, and civil rights demonstrations, to "national security."

The question of who is to be investigated and on whose authority is one of the crucial issues in the wiretapping and eavesdropping controversy in which the Justice Department is now embroiled.

The FBI, according to the Solicitor General's confession to the Supreme Court, placed a "listening device" in Fred Black's suite in the Sheraton-Carlton Hotel in February, 1963, without the knowledge of "any . . . attorney in the Department of Justice."

On the face of it, this would appear to have been a clear act of insubordination and a clear violation of the stated policies of the Justice Department.

As Attorney General in 1962, Robert Kennedy repeatedly reassured Congress and the public that "at the Fed-

eral level, wiretapping is limited to a small number of cases involving the national security and criminal cases in which the life of a victim is at stake. It is done only with the express approval of the Attorney General."

Extensive Wiretapping

At the very time Kennedy was making these statements, the FBI was engaged in an extensive wiretapping and eavesdropping operation in Las Vegas and apparently in a number of other American cities.

Arthur Brewster, the Division security supervisor of Southwestern Bell Telephone Co., in Kansas City, testified under oath before a Senate subcommittee last year that the FBI leased lines to tap

and eavesdrop on office and residential telephones on at least nine occasions between 1961 and 1965. The most recent of the incidents occurred on Jan. 5, 1965.

William P. Rogers, who served as Attorney General from 1957 until 1961, has said that he authorized no wiretaps during his term in office except in cases involving "the national security." Rogers, however, made a distinction between a "wiretap," by which telephone conversa-

tions are intercepted, and a "bug," or "listening device," which may simply record and broadcast conversations carried on within a room.

This same distinction has likewise been made by FBI men.

Former Agent's Story

There is some evidence, however, that even under Rogers wiretapping in non-security cases was being employed by the FBI. William W. Turner, a former FBI agent, last year described in a magazine article his role in the FBI's "Top Hoodlum" program in 1959.

"I was an inspector's aide to review the program's results in Los Angeles," Turner wrote. "I found that agents had installed wire taps and electronic 'bugs' on hoodlums and foraged through their refuse for clues."

This type of activity—during Rogers' term of office but without Rogers' knowledge—has been independently confirmed by highly placed sources in the Justice Department.

In Black's case, it has been argued that the "bug" placed in his hotel suite in Washington did not qualify technically as a "wiretap." Solicitor General Marshall described it as

a listening device . . . not a telephone wiretap."

Any "listening device," however, will monitor at least one end of a telephone conversation and this in itself was an apparent violation of Justice Department policy in 1963. Sen. Howard Cannon (D-Nev.) wrote to Attorney General Kennedy on Nov. 7 and again on Nov. 15, 1963, for an explanation of the Department's policy on wiretapping and "bugging."

Disclaimed as Policy

Katzenbach, who was then Kennedy's deputy, promptly replied: "As a matter of policy this department does not wiretap, monitor or record telephone communications in any other type of matter except where there is consent of an actual party to the conversation."

At that very time, however, the FBI was not only "bugging" men like Black but was actively "wiretapping" in the traditional meaning of the word.

Thus, a grave question of credibility is involved, not only in the Black affair, but in the Baker case, the "massive wiretapping and eavesdropping" operation in Las Vegas, the wiretapping and eavesdropping operation in

Kansas City, if not in other American cities.	ordered it and if, as he also said it had nothing to do with Black's income tax case?	maintain—why was Marshall's statement submitted to the Court?
Other questions have arisen. Why was the FBI "bugging" a neighbor of Lyndon B. Johnson, who was then Vice President, if, as Marshall said, the Justice Department had not	If on the other hand, the Justice Department was fully aware of the FBI's electronic surveillance campaign—as associates of Hoover flatly	These are questions to which the Court itself has demanded answers.
		Next: The Law and Wire-tapping.