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Approval Of Bugging Unresolved

By John Hanrahan

Washington Post Staff Writer

Special prosecutor Archibald Cox and his staff have been unable thus far to obtain testimony corroborating Jeb Stuart Magruder's allegation that John N. Mitchell approved the Watergate bugging plan at a meeting in late March, 1972.

According to documents received by The Washington Post, the special prosecutor's office is still grappling with sharp conflicts in the testimony of four witnesses as to meeting dates, the number of persons who attended the crucial meeting and whether or not a decision to go ahead with the bugging was actually made at the meeting.

The issue is significant because it holds the key to one of the major, unanswered questions of the Watergate investigation to date: Is Mitchell guilty of approving the bugging as Magruder claims, or is he innocent because he specifically rejected the bugging proposal, as he contends?

The documents obtained by The Post are drafts of two internal memorandums written this week. The memos offer several possibilities as to how the bugging plans were approved in Key Biscayne in meetings on March 29-30, 1972, but at present, there is only one fact from the four witnesses "which is essentially undisputed."

That one undisputed fact, the memo notes, concerns how many meetings were held in late March, 1972, in Key Biscayne involving Harry Flemming, a former White House aide and Nixon campaign official; Frederick C. LaRue, a campaign aide; Mitchell, the former attorney general and campaign

See MITCHELL, A12, Col. 1

President to defend Watergate role next week. A7.

Cox Staff Undecided On Bugging Approval

MITCHELL, From A1

director, and Magruder, the former White House aide and deputy campaign director. Regarding that point, the memo states:

"It would seem that there is more than sufficient evidence to conclude that Magruder, Mitchell and LaRue did meet on March 29, and that the three of them had a second meeting, attended by Flemming, on March 30."

All other allegations regarding the approval of the bugging plans, the memo indicates, are still in dispute.

One memo, written by assistant special prosecutor Kenneth S. Geller for the prosecutor's office files, pertains to an interview he and assistant special prosecutor Jill Volner had last Tuesday with Flemming and his attorney, Jerris Leonard. A later memo, from Geller to Miss Volner, concerns the varying versions of the Key Biscayne meetings.

The memos provide a more complete picture of Flemming's role in one of the Key Biscayne meetings than has heretofore been made public. They indicate that Flemming was not involved in the Watergate affair, but show that he had information that could have assisted the FBI investigation of the matter.

Yet, one memo notes that Flemming was not interviewed by the FBI until May or June of this year, almost a year after the June 17, 1972, break-in at Democratic National Committee headquarters at the Watergate.

Even at that, according to a source familiar with the investigation, Flemming was not asked by the FBI about the Key Biscayne meeting, but was questioned instead about the alleged political espionage and campaign sabotage activities of Donald H. Segretti and the "Gemstone" file, which contained information received from wiretaps at the Democratic headquarters.

The failure of the FBI to interview Flemming until this spring relates to a central issue being studied by the Senate Select Watergate

committee—namely, the thoroughness of the federal investigation of the Watergate affair.

Some of the committee's witnesses, mainly former counsel to the President John W. Dean III, have testified that the FBI's and the prosecutors' investigations were deliberately restrained to cover up White House involvement in the Watergate affair.

For example, Robert Reisner, a campaign aide to Magruder, was not interviewed by the FBI until after the Senate committee let it be known last spring that Reisner was being called as a witness.

Reisner told the committee that he had seen documents labeled "Gemstone" on Magruder's desk on more than one occasion. Just a week or two before the Watergate arrests, he said, Magruder handed him a "Gemstone" document that was to be put in a folder to be given to Mitchell.

The day of the arrests, he said, Magruder told him to remove the "Gemstone" file from Magruder's desk and give it to Robert C. Odle Jr., administrative director of the Nixon campaign committee.

Magruder, Mitchell and LaRue gave conflicting versions of their meetings before the Senate Watergate committee. Magruder said Mitchell had approved the bugging plan in Key Biscayne. Mitchell testified he rejected the plan, telling Magruder:

"We don't need this, I am tired of hearing it, out, let's not discuss it any further." (Other testimony indicated the plan had been discussed at two previous meetings in Washington.)

LaRue quoted Mitchell as saying, following a discussion of the plan: "Well, this is not something that will have to be decided at this meeting." LaRue said this discussion took place after Flemming had been "eased out" of the room.

Flemming has not testified before the Watergate committee, but in his interview with the special prosecutor's staff, the memo notes, Flem-

ming said he does not "recall being in any way 'maneuvered' out of the room." Flemming, the memo said, stated that bugging or intelligence gathering was not discussed at the March 30 meeting and that he was present for the entire meeting, between 9 a.m. and 2 p.m., except "for one very brief occasion . . . when he went to the bathroom."

The memo notes that in his testimony Mitchell did not mention Flemming being present for the meeting with Magruder and LaRue. Instead, Mitchell said he met with Flemming either the day before or the day after the meeting with Magruder and LaRue, the memo says.

Magruder, the memo notes, also never testified about Flemming being present for the crucial meeting. The memo indicates, however, that Magruder has since altered his testimony slightly. In his July 25 interview with the prosecutor's staff, the memo notes, "Magruder for the first time recalled that 'when the time came to consider, LaRue eased Fleming (sic) out.'"

In his interview with the prosecutor's staff this week, the memo says, Flemming also recounted a discussion he had with Magruder during dinner in Key Biscayne.

The memo says Flemming recalled that Magruder "mentioned something about the 'presentation' to Mitchell of a project to get information from the DNC (Democratic National Committee). Flemming is certain that Magruder did not say that Mitchell had already approved the project."

The memo also says Flemming told Cox's staff that he approached Robert C. Mardian, former assistant attorney general and a Nixon campaign aide, on June 20, three days after the break-in, when "he (Flemming) realized that Magruder's off-hand comment to him" about the DNC project "might have some importance."

The memo states in that regard:

"On that day, Flemming went into Mardian's office and said, 'Bob, I want to talk to you about the break-in.' Mardian's response was to ask Flemming for a quarter. Flemming complied, and then Mardian said, 'You've just retained me.' Flemming then told Mardian of Magruder's dinner remark, and asked what he (Flemming) should do if the FBI was to interview him, which he expected. Mardian told Flemming to tell the FBI the truth, but that it would be his (Flemming's) word against Magruder's. As it turned out, the FBI did not interview him until May or June of 1973."

One source close to the investigation said that Mardian's asking Flemming for a quarter could be interpreted either as Mardian wanting to help Flemming by establishing a lawyer-client privilege, or as Mardian wanting to protect himself and others as part of the Watergate cover-up.

The matter of a nominal retainer came up during a court hearing earlier this year. The prosecutor at the time told the court that G. Gordon Liddy, a Nixon campaign aide, had tried to retain a Los Angeles lawyer for \$1 just after the Watergate arrests and had also made an approach to Mardian. Liddy was one of seven persons convicted last January in the break-in and bugging.

Chief U.S. District Court Judge John J. Sirica subsequently ordered Mardian to testify before the Watergate grand jury regarding his contact with Liddy.

In his testimony before the Senate Watergate committee, Mardian said he had told Liddy he could not be Liddy's lawyer because he already represented the Committee for the Re-election of the President. Mardian said he nevertheless assured Liddy that the conversation would be kept confidential.

It had not been previously disclosed that Flemming "retained" Mardian as his attorney after the Watergate arrests.

According to one of the memos obtained by The Post, Flemming also saw Magruder a few days after the Watergate arrests.

"Magruder," the memo states, "appeared to Flemming to be perhaps a little nervous but not overly concerned. Flemming personally suspected Magruder's involvement to some degree in the break-in, and said that as soon as he heard about the break-in and saw who had been captured, he knew that there had to have been more people involved.

"Flemming's supposition is that any discussion about bugging which took place at Key Biscayne occurred before he arrived . . ."