

Democrats Lose Bid for Ban on Watergate Tapes

11/13
By Lawrence Meyer
Washington Post Staff Writer

Chief U.S. District Judge John J. Sirica denied a motion yesterday filed by several Democratic Party officials seeking to bar from the Watergate bugging trial any disclosure of what was said in illegally wiretapped telephone conversations.

Sirica's ruling came after the chief prosecutor in the trial, which is scheduled to begin Monday, argued that some disclosure of the substance and participants in the conversations would be necessary for the government to prove its case.

In the course of a 90-minute hearing on the motion, Charles Morgan Jr., the lawyer representing the Democrats who filed the motion said:

- The prosecution intends to show that the motive for the alleged bugging of the Democratic National Committee's Watergate headquarters "was blackmail, not politics."

- Harry Fleming, a former White House aide who worked for the Committee for the Re-Election of the President, was shifted from one committee position to another after speaking over one of the phones that was allegedly bugged. Morgan said Fleming "has been advised by other ranking Republicans that his job was altered after these wiretaps."

Morgan, who said he was bound by Sirica's order forbidding out-of-court statements by anyone involved in the case, provided virtually no amplification or clarification of what he said during the hearings.

Morgan declined to say how he knew what the prosecution would try to establish as the motive for the break-in and alleged bugging of the Democratic Party headquarters. Morgan said during the hearing that he had conferred with the prosecution prior to filing the motion.

After the hearing, Morgan told reporters that by "blackmail" he meant the traditional meaning of the term—that is, extortion for money—rather than "political" blackmail.

Earl J. Silbert, the chief prosecutor for the Watergate trial, countered Morgan's assertion that the prosecution would try to prove the motive was blackmail. The government, Silbert said, will introduce evidence "not as to one single motive" but to a variety of motives, which the jury may infer from the evidence "if it chooses to do so."

Silbert said at an earlier hearing, on Dec. 19, while discussing possible motives for the break-in and alleged bugging, that "the government can't read any person's mind" and that the jury would have to draw its own conclusions about the motive behind the alleged crime.

Morgan's statement about Fleming came as Sirica questioned Morgan about what he knew concerning the alleged wiretaps and how the information was used.

Morgan said he could not discuss what he knew without a release from his clients. Morgan said later that any statement he made in court

was made with a proper release from his clients.

R. Spencer Oliver, one of the Democratic officials whose phone was allegedly tapped and one of Morgan's clients, told the Washington Post in an interview on Sept. 29 that he had spoken over the phone to Fleming concerning the American Council of Young Political Leaders, a bipartisan group with which both men were involved.

According to Oliver, Fleming discussed a Republican Party dispute that escalated into a lawsuit over what Republican Party faction in the group would send some 16 persons abroad.

According to sources in the Nixon campaign, Fleming's role did diminish during the first half of 1972. One of several coordinators of the re-election committee, Fleming—known as a loyalist to former Attorney General John N. Mitchell—was reportedly eclipsed in importance by other campaign aides who dealt directly with H. R. Haldeman, the White House chief of staff.

The re-election organization, according to several campaign officials, often was divided along lines of loyalty to either Haldeman or Mitchell, who resigned his Cabinet post to run the Nixon campaign.

According to these sources, the decline of Fleming's influence on the re-election committee preceded the alleged bugging incident.

During yesterday's hearing, Silbert argued that the government had to produce some testimony about what was overheard in the alleged wiretaps in order to prove that information was stolen and to prove the conspiracy alleged in the indictment of the seven defendants.

"We do not intend to go into the specific content, the specific detail, of any matter that could be considered sensitive during our examination (of witnesses)," Silbert said.

Sirica, who has been pressing for a full airing of the purpose of the break-in, commended Silbert during the prosecutor's argument.

"I'm glad to see, Mr. Silbert, that you're taking this position," Sirica said. "It may be that some of these conversations are important and relevant," the judge said. "Let's find out what the motive was . . . On the question of motive, this evidence might be—I don't say will be—might be relevant."

Sirica said later that if any information comes out of the trial that should go before the grand jury for further investigation, he would issue an appropriate order. "I don't care who it involves," Sirica said.

Silbert said at the conclusion of the hearing that every person interviewed during the three-month investigation had been asked if he or she knew about anyone else involved.

"If there were evidence that would substantiate a charge against anyone else, then they would be indicted along with these defendants," Silbert said.

Following Sirica's denial of the motion, Morgan filed a notice indicating that he would ask the Court of Appeals to review Sirica's ruling.