

# Lawyer Implies Nixon Aide Was Overheard in Wiretap on Democrat

By WALTER RUGABER  
Special to The New York Times  
WASHINGTON, Jan. 5—A

lawyer implied in court today that leading Republicans learned through illegal wiretaps about a conversation between one of President Nixon's campaign aides and a Democratic official.

The Nixon aide, Harry S. Flemming, then found his job at the Committee for the Re-Election of the President "altered," the lawyer said, suggesting that the action had been a penalty for the contact with the Democrats.

The lawyer, Charles Morgan Jr. of the American Civil Liberties Union, also asserted that prosecutors of seven men arrested in the break-in at the Democratic national headquarters would contend the accused eavesdroppers had been motivated by blackmail possibilities rather than by politics.

Mr. Morgan's remarks came as he unsuccessfully argued before Chief Judge John J. Sirica of the United States District Court here for suppression of the contents of any Democrats' conversations that were overheard.

## Trial Starts Monday

The seven men are scheduled to go on trial Monday before Judge Sirica on charges that they conspired to bug the Democratic headquarters in the Watergate complex here. Five of the men were arrested inside the party offices on June 17.

Mr. Morgan, representing five Democratic officials who may have been wiretapped, contended that it would be illegal to divulge the contents of the conversations and would be unnecessary in order for the Government to prove its case.

But Earl J. Silbert, the principal Assistant United States Attorney, insisted that the general topics of the conversations

would have to be discussed at the trial to establish that wiretaps had been installed and used.

Mr. Silbert said that the prosecution did not intend to introduce specific details but rather "a general characterization" of the conversations. The defense attorneys made no commitments concerning their cross-examinations.

## Paradox Is Discerned

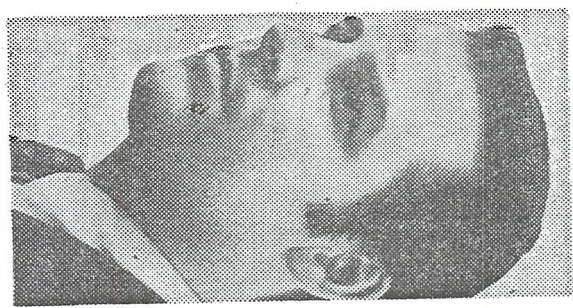
Judge Sirica, noting that the Democrats could file civil suits against anyone who disclosed the contents outside court, agreed with the Government and ruled that holding no discussion of the contents would produce the following paradox: "Persons who have allegedly violated the statute by intercepting communications cannot be prosecuted because the same statute prohibits the Government from disclosing evidence of the unlawful interception."

The judge said that he could not believe Congress intended the law to be thus "self-emancipating" and accepted the Government's argument that "the right of individuals to privacy must yield in some degree to the public interest in prosecuting criminal conduct."

## Declines to Elaborate

Mr. Morgan's comments on Mr. Flemming's contact with the Democrats and on the Government's position concerning the motives of the defendants were made in the midst of the arguments over suppression.

The statement on Mr. Flemming was especially cryptic, and Mr. Morgan refused to elaborate on it afterward. Many persons in the courtroom were unclear even as to what had been said, but the official transcript carried the remark as follows: "I will give you the statement that I have been advised by



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Harry Flemming

my clients that a man named Harry Flemming spoke on this telephone. That Harry Flemming was a Republican official in the Republican party in the Committee to re-elect the President and that he has been advised by other ranking Republicans that his job was altered after these wiretaps. Now that would show a political rather than a blackmail use."

It is widely believed that the telephone alleged to have been tapped was used by R. Spencer Oliver, executive director of the Association of State Democratic Chairmen. He is among Mr. Morgan's clients.

Mr. Oliver and Mr. Flemming are acquainted. They are under board of directors of the American Council of Young Political Leaders, a nonpartisan organization.

Mr. Flemming worked for Mr. Nixon at the White House.

where he concentrated on patronage matters, and in 1971 he became one of the two most prominent officials of the Committee for the Re-election of the President.

## Headed Field Operations

He was responsible for the committee's field organization until former Attorney General John N. Mitchell was replaced on July 1 as Mr. Nixon's campaign director by former Representative Clark MacGregor.

At that point, amid reports that some Republicans were dissatisfied with Mr. Flemming's performance, the 32-year-old Virginian became a "special assistant" to Mr. MacGregor and served until the November elections.

Mr. Flemming was said to be out of town today, and efforts to reach him were not immediately successful.

Mr. Oliver, who has been subpoenaed as a Government witness in the trial, has been cautioned against making public statements on the case.

Republican informants said that Mr. Flemming's change in jobs, which occurred about two weeks after any wiretapping operations presumably were aborted by the June 17 arrests, had nothing to do with any contacts with Democrats.

## Secret Hearing Sought

Mr. Morgan had asked Judge Sirica for a secret hearing. He said he had not meant to indicate Mr. Flemming had done anything improper.

In his statement, Mr. Morgan did not appear to imply that Republican leaders who received information about the Flemming call necessarily knew that the source was an illegal wiretap.

Mr. Morgan raised the issue by observing that the prosecutors had asked him "whether I have any information about anybody higher up any place

who committed any offense or who got this information or anything."

He then said he had "some information I think they could use." Judge Sirica promptly replied that Mr. Morgan could appear before a grand jury immediately, and asked the lawyer what the information was.

Mr. Morgan brought up the "blackmail" question after a defense attorney, Gerald Alich of Boston, voiced concern at the hypothetical possibility that the Government might try to ascribe that motive to the defendants.

## 'Variety' of Motives Seen

"It is not hypothetical," Mr. Morgan rejoined. "That is what the prosecution intends to show was the motive in this case, was blackmail, not politics."

"That's the first time I heard that," Judge Sirica said.

Mr. Silbert did not explicitly deny the statement, but he repeated earlier statements promising that the Government's evidence would suggest the possibility not of a single motive but of "a variety" of motives.

The prosecutor also said that every witness had been asked about the possibility that other persons, "higher-ups" among them, had been involved in the Watergate affair. If there was evidence to substantiate a charge, he asserted, "they would be indicted now with the rest of these defendants."

Mr. Morgan, in his effort to bar all discussion of the contents of any wiretapped conversations, had also asked Judge Sirica to summon a number of prominent Republicans to learn whether any information was in their possession.

The judge rejected this proposal with the rest. Mr. Morgan announced that he would immediately appeal the decision on an emergency basis.