

5/16/69

Bid for New Wolfson Trial Is Studied

By EDWARD RANZAL

The United States Court of Appeals for the Second Circuit took under advisement here yesterday a motion for a new trial for Louis E. Wolfson, the Florida financier now in jail, who is a key figure in the resignation of Supreme Court Justice Abe Fortas.

Wolfson, who never made an application to remain free pending the outcome of the new trial motion, surrendered last April 25 to begin a one-year term. He is incarcerated at the minimum security Federal prison at Eglin Air Force Base, Fla.

The motion was filed in connection with his first trial, held in 1967, in which he was convicted of selling unregistered shares of Continental Enterprises, Inc., a small Florida company that he controlled.

Following the first trial, in which he was also fined \$100,000, Wolfson was tried last year on an indictment charging a conspiracy to obstruct the Securities and Exchange Commission investigation into sales and purchases of stock of the Merritt-Chapam & Scott Corporation.

A Second Conviction

The second trial also ended in a conviction and Wolfson was sentenced to 18 months in prison and fined \$32,000, the prison terms in the two cases to run consecutively. The Appeals Court will hear the appeal from this conviction next month.

Federal Judge Edmund L. Palmieri presided at both Wolfson trials. Wolfson's wife, who had been ill with cancer, died several days after he was sentenced on the second indictment.



Louis E. Wolfson

Associated Press

A telegram, signed Louis Wolfson and sent to Judge Palmieri, blamed the judge for Mrs. Wolfson's death and vowed that either Wolfson or members of his family would not rest until the score had been evened.

The evidence in the Continental case was turned over to the office of United States Attorney Robert M. Morgenthau by the S.E.C. The second indictment was developed by members of Mr. Morgenthau's staff.

Exhibit Attacked

Wolfson's lawyer, William O. Bittman, attacked the Government's key exhibit in the Continental trial as not authentic and argued that a new trial should therefore be ordered.

The trial evidence showed that in 1950 Wolfson was interviewed in Washington by the regional administrator for the Security and Exchange Commission, the late Russell Kelly.

The Government introduced as an exhibit a memorandum by Mr. Kelly following the interview in which it was demonstrated that provisions of the S.E.C. Act of 1933 had been explained to Wolfson.

Wolfson's trial defense was that he was so busy with the press of work that he was never aware that he had violated S.E.C. regulations.

Mr. Bittman told the Appeals Court that last June he received information from a lawyer that the memorandum was spurious. He refused to identify the original source, but Douglas S. Liebhafsky, assistant United States attorney, told the court it was an employe of the commission.

Mr. Bittman recalled that he then asked Judge Palmieri for a new trial and the judge held a six-day evidentiary hearing. The defense produced two expert witnesses who testified that a watermark on the exhibit did not exist in 1950, that the earliest it appeared was in 1952.

The Government made exhaustive tests of the memorandum paper and its witnesses concluded that such a watermark did exist in 1950. But Judge Palmieri was most impressed with the testimony of Mr. Kelly's secretary, no longer in Government service, who testified that she had transcribed the memorandum for Mr. Kelly.

Judge Palmieri refused to grant a new trial and Mr. Bittman took the case to the Appeals Court.