

## EVIDENCE IN BANK THEFT RULED OUT

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in the apartment of a friend, the FBI agents should have obtained a search warrant before ever setting foot on the premises.

Agents entered the apartment of Don Wolfson in Carlsbad after Wolfson, since arrested on suspicion of harboring a fugitive, told them he did not know if Rifkin was on the premises.

Miss Stoltz attempted to convince Byrne that the agents had the right to enter the apartment to arrest Rifkin for four reasons:

—Family members had told the FBI that Rifkin had suicidal tendencies.

—The agents feared that Rifkin might hold Wolfson hostage.

—There was concern Rifkin might attempt to escape.

—Agents feared the suspect might flush the \$8.1 million in diamonds allegedly bought with the stolen money down a toilet.

The judge said none of the four reasons qualified as "exigent" circumstances justifying immediate action by the FBI.

Even though agents entering the apartment read Rifkin his constitutional rights, Byrne held that the statements by Rifkin and a subsequent brief search that turned up the diamonds bought by Rifkin in Switzerland could not be used as evidence against him.

Because the arrest warrant and first search were unconstitutional, the judge continued, so was a second search the next day that was performed after a search warrant was obtained.

The search warrant used the second day was illegal, Byrne said, because it was based on statements contained in the earlier arrest warrant.

Accordingly, in any prosecution of Rifkin, the government could not use the incriminating statements he made after his arrest, the diamonds bought with the allegedly stolen money, his passport or hotel receipts that reflected some of his travels.

Though the diamonds could not be used as evidence because they were seized by way of an illegal search warrant, they will not be returned to Rifkin because they allegedly were smuggled into the country and are therefore subject to seizure by customs authorities as contraband.

Further, officials of Security Pacific National Bank believe they have a right to the diamonds because the jewels allegedly were purchased with money stolen from the bank.

The judge will allow the government to use certain statements Rifkin made when he came into the Los Angeles FBI office shortly before Christmas seeking permission to copy some addresses out of his telephone

book so he could send out Christmas cards.

On that Dec. 11, Rifkin told two FBI agents he wanted to instruct the FBI and local law enforcement agencies about "computer fraud."

According to an FBI summary of that conversation entered into the court record, Rifkin also asked if there had been any personnel changes at the Security Pacific National Bank since the incident.

The two agents who wrote the summary also said Rifkin asked whether a particular employe had been promoted and said that she "ought to be highly commended for her efforts at security."

Evidence that still could be used to prosecute Rifkin includes a tape recording of his allegedly calling the bank, supplying a secret code and transferring the \$10.2 million to a bank account in New York.

That recording, along with documentary evidence tracing the flow of the money, could be used, as well as testimony from persons like Wolfson and others who had dealings with Rifkin.

However, defense attorney Robert Talcott indicated he plans to object if the government attempts to elicit testimony from two former attorneys for Rifkin known to have talked to the FBI, on grounds that any conversa-

tions between Rifkin and the two men would be protected by the attorney-client privilege.

Talcott was obviously pleased about Byrne's ruling Tuesday, describing them as "well thought-out and consistent with the law."

Rifkin, who showed no emotion as the judge rendered his decision, said he had no comment when asked for his reaction outside the courtroom.

If the government does not appeal Byrne's ruling, the case would be tried before the judge without a jury and based on stipulations agreed to by the defense and the prosecution.

Prosecutor Stoltz said the stipulations would likely total about 100 pages and that oral arguments in the case by both sides are expected to last half a day.

### 2 Auxiliary Bishops for Miami Appointed by Pope

WASHINGTON (AP)—The apostolic delegate to the United States announced Tuesday that Pope John Paul II had appointed two new auxiliary bishops to Archbishop Edward A. McCarthy of Miami.

Archbishop Jean Jadot identified the pair as Monsignor John J. Nevins, now rector of St. John Vianney Minor Seminary in Miami, and Monsignor Augustin Roman, currently episcopal vicar for the Spanish-speaking and director of the Shrine of Our Lady of Charity in Miami.

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