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Secret tape sparks legal wrangling

Green lawyers insist it is immaterial

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Of the 100,000 or so secret FBI recordings in Operation Wrinkled Robe, a single video, known as Call 2046, has proven to be the most divisive in the prosecution of state Judge Alan Green.

A week before the trial began, Green's attorneys and federal prosecutors began arguing in court filings over the government's plans to play the video for jurors. The wrangling continued right up until Thursday morning, when the jury was finally shown a version -- edited by orders of the presiding judge -- in which Green appears to place his hand on the clothed breast of former bail bonds executive Lori Marcotte.

Green's attorneys asked U.S. District Judge Lance Africk on June 13 to stop prosecutors from "showing, mentioning or alluding to in any way" two sections of Call 2046, according to court records. Without describing the video's contents, they said the controversial fragments included "highly prejudicial and sensitive material that is absolutely unrelated to the allegations" in Green's indictment.

The government countered June 16 with its reasons for showing the disputed segments, for the first time publicly describing it as a recording from Green's chambers of an exchange between the judge and Marcotte, the former Bail Bonds Unlimited vice president who had admitted to bribing the judge.

"When Green gets personal with Lori Marcotte, it is a very vivid reminder of the fact that he is in charge and holds power over her and can influence whether her business makes money," the prosecutors wrote. "Lori repeatedly attempts to steer the conversation to 'business' however illegitimate, while Green steers it to the personal realm."

Africk split his ruling, setting one portion off limits to jurors but allowing the government to play the other part.

As late as Thursday morning, according to court records, defense lawyers again tried to have the approved section tossed out, saying it included a "personal, closed-door conversation between Alan Green and Lori Marcotte (that) is separate and distinct" from discussion about bail bonds.

But jurors saw a video with only one piece removed, not two as the defense wanted. In the version played in court, Marcotte and Green discuss bail bonds. Then Marcotte solicits advice from Green about troubles in her love life. And at the end, Green appears to cup Marcotte's right breast as she exits his private chambers.

Debate over Call 2046 was not the only behind-the-scenes development in the docket of federal criminal action No. 04-295, U.S.A. v. Alan Green. Africk also has ruled that Green may not see

any complaints filed with the Louisiana Judiciary Commission against state Judge Martha Sassone, Green's colleague at the 24th District Court in Gretna.

Africk sided with the commission Wednesday when he quashed Green's subpoena of "all complaints founded or unfounded" related to Sassone, who has been summoned as a witness by both the prosecution and the defense.

Green's request said Sassone "provided the government investigatory assistance" in its 6 -year inquiry into Jefferson Parish Courthouse corruption.

But Africk said the request was "seriously lacking in specificity" and was not a " 'good faith effort' to obtain evidence." The Judiciary Commission had objected to the subpoena for complaints against Sassone, saying Green was on a "fishing expedition" for records classified as "confidential" under state law.

Green's attorneys, Frank DeSalvo and Hardy Vieux, said the government already possessed at least one anonymous complaint that could expose Sassone's "character for telling the truth." Africk refused that plea.

Sassone was identified two years ago by lawyers familiar with Wrinkled Robe as the judge who, according to a 2001 FBI affidavit, wore a concealed wire to record meetings in 1999 with Marcotte's brother, Louis Marcotte III, who has admitted running the courthouse racket.

Also at issue in the Green case, according to court records, is whether the news media will be given copies of the videos that prosecutors are playing at trial. In a memo to the court Wednesday, The Times-Picayune said the government had agreed to provide copies as the video is admitted at trial but that Green "apparently raised an objection to the release of the evidence to the public." Africk asked the prosecution and defense for their arguments on releasing the video but has not ruled on the matter.

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