

Nixon Denies Admits Abuses

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Role in Cover-up, by Subordinates

Pocket Veto In Recess Ruled Illegal

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By Donald P. Baker

Washington Post Staff Writer

A pocket veto by President Nixon during a congressional Christmas recess in 1970 was ruled unconstitutional yesterday by U.S. District Court Judge Joseph C. Waddy.

The President's action had been challenged by Sen. Edward M. Kennedy (D-Mass.), who personally argued the case before Judge Waddy last Feb. 28.

Waddy ruled on the narrow question of whether the President has the right to pocket-veto (refuse to sign) a measure during a brief congressional recess. Kennedy successfully argued that the President's action deprived Congress of a chance to override the veto when it returned from the holiday.

"I'm delighted with Judge Waddy's ruling, and I see it as a strong new example of the vindication of the rights of Congress against the encroachment of the Executive Branch," Kennedy said last night.

The bill in question authorized Congress to appropriate \$225 million during Fiscal Years 1971, 1972 and 1973 for grants to help hospitals and medical schools set up departments to encourage the practice of family medicine.

It was approved in the Senate by a vote of 64 to 1 and in the House by 346 to 2 and presented to the President on Dec. 14, 1970. On Dec. 22, Congress adjourned for five days for the Christmas holiday. Two days later, Mr. Nixon issued a memorandum of disapproval, announcing that he was withholding his signature.

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VETO, From A1

Waddy ruled that the President's action did not fall within the bounds of Article I, Section 7, Clause 2 of the Constitution, which provides for a so-called pocket veto. The

pocket veto is intended to permit a President to reject a bill during an adjournment of Congress, when he is "prevented" from using the normal veto which calls for the bill to be returned to Congress with his objections within 10 days of its passage.

The effect of Waddy's ruling was to order the Family Practice of Medicine Act into law, by requiring the General Services Administration to publish it.

Because of the presidential action, Congress appropriated only a token \$100,000 for the measure, but a spokesman for Sen. Kennedy said last night that he will seek to get the full amount included in the next Senate appropriations bill.

Waddy gave the Executive Branch until Sept. 19 to comply with the order, during which time the ruling also could be appealed.

Kennedy, chairman of the Senate Subcommittee on Health and a co-sponsor of the bill, had indicated earlier that he was prepared to carry his argument to the Supreme Court if necessary.

He had called the bill "the most important piece of legislation" ever to be pocket-vetoed, and the five-day recess the shortest in which a pocket veto had been used.

In arguing his own case, Kennedy said Presidents have exercised their pocket veto authority approximately 70 times, and that 90 per cent of them have occurred since World War II, and then primarily for private or minor bills.

Waddy, saying his court "declines to swim in waters that the Supreme Court pointedly avoided" in two previous rulings that overturned pocket vetoes, did not address the question of how long a recess must be before a President may invoke a pocket veto.

The judge rejected the government's arguments concerning Kennedy's right to pursue the matter through the courts.

Justice Department attorneys had contended that Kennedy, who was the plaintiff, had no legal basis for bringing the suit.

But Waddy agreed with Kennedy's contention that as a senator he had been deprived of his constitutional right to vote to override a presidential veto.

The government also sought

to make the President an "indispensable party" to the suit, and thereby challenge the court's jurisdiction, under the separation-of-powers doctrine, over the President. But Waddy also rejected that, saying the order sought by Ken-

neddy "requires no action by the President."

Named as defendants in the action were Arthur F. Sampson, acting administration of the GSA, and Thomas M.

Jones, chief of White House records. The court's order requires Jones to turn over to Sampson the papers necessary for GSA to publish the bill as law.

U.S. Argues Powers Issue In Milk Case

By George Lardner Jr.
Washington Post Staff Writer

Post 8/11/73

The Nixon administration contended yesterday that inspection of White House papers by the judiciary—even in secret—would “do irreparable injury to the principle of the separation of powers.”

Moving to protect the White House's flanks on the contested doctrine of executive privilege, Justice De-

partment lawyers made the argument in a last-minute effort to block production of 67 official memos concerning the dairy industry and the government's controversial 1971 increase in milk price supports.

U.S. District Court Judge William B. Jones had ordered the government to submit the documents today for his private inspection. The papers are being sought by consumer groups who charged in a lawsuit filed last year that the higher price supports were a payoff for early contributions to Mr. Nixon's 1972 re-election campaign.

The government asked for a stay of Judge Jones' order so that the decision could be contested before the U.S. Circuit Court of Appeals here.

Citing what they described as the White House viewpoint, the Justice Department asserted that “the mere production of these documents *in camera* (in chambers) creates a substantial breach in the constitutional doctrine of separation of powers.”

Compliance with Judge Jones' ruling, the government lawyers suggested, could also compromise the President's claims of executive privilege in the face of subpoenas by Special Watergate Prosecutor Archibald Cox and the Senate Watergate investigating committee.

“In view of the related questions of executive privilege now being adjudicated . . . in several other cases of great

public importance, the subject is obviously one which should be preserved for appellate consideration without the necessity for interim compliance,” the Justice Department contended in asking for the stay.

Overriding White House protests in the milk fund case after a July 27 hearing, Judge Jones ruled that the documents involving the dairy industry should be submitted to him so that he could determine which ones, if any, should be handed over to the

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consumer groups pressing the lawsuit.

A similar solution has been proposed by Special Watergate Prosecutor Cox, who is seeking a court order directing Mr. Nixon to turn over tapes of his conversations with White House aides about the Watergate scandal to a federal grand jury here.

The President has asserted that he “is not subject to compulsory process from the courts.” Cox maintains that “no man is above the law.” Chief U.S. District Court Judge John J. Sirica has scheduled a hearing on that dispute for Aug. 22.

William A. Dobrovir, the attorney for Ralph Nader's Public Citizen, Inc., and the other consumer groups contesting the 1971 milk price supports, said he would have no objection to a stay of Judge Jones' order so long as the government would agree to seek a quick resolution of the issue in the appellate courts.

“This is going to the Supreme Court, along with Cox and along with Sen. Ervin's committee, I think,” he said yesterday. “It raises the issue of executive privilege in a different but equally important context. We've been trying to get these documents for

months. It's high time we get them or don't get them."

The Justice Department lawyers seeking to keep the dairy industry documents secret—Acting Assistant Attorney General Irving Jaffe and Civil Division attorneys Irwin Goldbloom and David J. Anderson—maintained they had a good chance of winning the case on appeal.

They cited what they called "a settled line of judicial authority" capped by a Supreme Court decision last January growing out of the controversial 1971 nuclear blast on Amchitka Island in Alaska. That ruling, government lawyers maintained, "recognized that a privilege, based on the constitutional doctrine of separation of powers, attaches to internal governmental communications containing opinions, recommendations, considerations and deliberations which are involved in the processes by which governmental decisions and policies are formulated and carried out."

Special Prosecutor Cox, however, has said that the high court's 5-to-3 ruling in that case, brought by Rep. Patsy Mink (D-Hawaii) and 32 other congressmen under the 1967 Freedom of Information Act, explicitly recognized that the government carried the burden of establishing "to the satisfaction of the District

Court" that the documents were exempt from disclosure.

"Neither in Mink nor in any other decision has any doubt been expressed about the constitutional power of the courts to enter mandatory orders for the production of evidence," Cox said in a brief filed Monday with Judge Sirica.

A ruling favorable to Mr. Nixon, who personally ordered the lid kept on the 67 dairy industry memos, would also seem to run counter to the course followed by the government in the first court test of a subpoena for presidential papers.

In that case, growing out of Aaron Burr's conspiracy trial in 1807, Chief Justice John Marshall issued a subpoena for a letter in the possession of President Thomas Jefferson.

The President turned over the letter, leaving it to the government lawyer in that case, George Hay, "to withhold communication of any parts of the letter which are not directly material for the purposes of justice." Hay, in turn, excised certain portions, but at the same time offered to let the court have the entire letter and decide for itself what should be withheld.

The controversy over the 1971 increase in milk price supports revolves around

\$422,500 in Nixon campaign contributions by the political arms of three big dairy farm co-operatives which won the higher government subsidies after a March 23, 1971, meeting with Mr. Nixon at the White House.

The consumer groups are demanding a rollback of the increase, which dairy co-op leaders have said added roughly \$500 million to \$700 million to dairy farmers' income.

The Justice Department contended in yesterday's pleadings that the case "is now essentially moot" since current milk price supports are at the minimum fixed by law.

Secretary of Agriculture Earl Butz raised the supports this week by 32 cents a hundredweight, from \$5.29 to \$5.61, in line with the new legislation, which Mr. Nixon signed last Friday, fixing the subsidies at 80 per cent of parity. The increase from \$5.29, which represented 75 per cent of parity, will raise the price of milk by nearly 3 cents a gallon.

The contested 1971 increase sent milk price supports from \$4.66 to \$4.93 a hundredweight under old legislation permitting the Agriculture Department to fix the payments at 75 to 90 per cent of parity.

Pledges to Improve Political Atmosphere

From News Dispatches

President Nixon last night firmly denied he was involved in any way in the Watergate scandal but acknowledged that some of his overzealous subordinates took part in attempts to cover it up and in other election-year abuses in 1972.

In his long-awaited defense of suggestions he was implicated in the bugging and break-in at Democratic Party national headquarters, the President pledged he would improve the political atmosphere so that such abuses would never occur again.

The President in a televised speech did not name officials involved in the cover-up of the Watergate affair, and he did not give a point-by-point reply to the weeks of testimony taken by the Senate Watergate Committee, which adjourned its hearings Aug. 7.

He repeated a statement he made on May 22 that "I had no prior knowledge of the Watergate operation; I neither took part in it nor

knew about any of the subsequent cover-up activities; I neither authorized nor encouraged subordinates to engage in illegal or improper campaign activities.

"That was and is the simple truth," he declared last night.

Mr. Nixon said that in all the millions of words taken by the Senate committee, "there is not the slightest suggestion that I had any knowledge of the planning for the Watergate break-in."

And referring to ousted White House counsel John W. Dean III, though not by name, he said: "As for the cover-up, my statement has been challenged by only one of the 35 witnesses who appeared—a witness who offered no evidence beyond his own impressions, and whose testimony has been contradicted by every other witness in a position to know the facts."

Mr. Nixon appealed to Americans to put Watergate behind them and let him get on with the numerous and

serious problems at home and abroad that demand his attention.

"We have reached a point at which a continued, backward-looking obsession with Watergate is causing this nation to neglect matters of far greater importance to all of the American people," he said.

The President made no mention of several important questions raised during the Senate committee's hearings.

Among them were how key aides could be allegedly involved in the bugging and subsequent cover-up without his knowledge; a claim by L. Patrick Gray, former acting FBI director, that he warned Mr. Nixon that members of his staff were trying to mortally wound him; his decision to let H. R. (Bob) Haldeman, his former chief of staff, listen to two tape recordings of conversations in the White House—tapes he has denied to the Senate.

See PRESIDENT, A16, Col. 6



Washington Post Photo from television screen

President Nixon: "I pressed repeatedly to know the facts..."

PRESIDENT, From A1

committee and Archibald Cox, the special Watergate prosecutor.

The President, in a low-key speech which did not go into specifics, said he accepted full responsibility for the presidential election-year abuses committed by members of his administration and he regretted that such events took place.

"However, it is my constitutional responsibility to defend the integrity of this great office against false charges," he said.

Mr. Nixon's televised evening speech from the White House Oval Office, the most important in his tempestuous, 27-year political career, was accompanied by a written statement prepared by the President's lawyers rebutting allegations of White House wrongdoings heard by the Senate Watergate committee in 37 days of televised hearings.

It was the President's fifth major statement on Watergate since last Aug. 29 and the first since he issued a 4,000-word paper May 22, five days after the Senate hearings began.

The President has consistently denied any advance knowledge of the plot to bug the Democratic headquarters at the Watergate complex June 17, 1972, and said he knew nothing of the subsequent high-level cover-up until late March. He has acknowledged acting to restrict the FBI's initial Watergate investigation on the ground it might have uncovered national security secrets.

The White House said Mr. Nixon will hold a news conference — his first since March 15—some time during his vacation stay in San Clemente, Calif. The President leaves Washington next week and is expected to stay in California through Labor Day.

In advance of the President's address, the Gallup Poll reported that in the first week of August, only 31 per cent of Americans ap-

proved the way Mr. Nixon is handling his job—down from 68 per cent only last January and the lowest popularity rating for any American President in more than 20 years.

The 31 per cent rating matched that of President Harry S. Truman in January, 1953, his last month in office, and was lower even than the 35 per cent score received by President Lyndon B. Johnson in August, 1968, during his worst days

in the national furor over Vietnam.

In addition, a poll conducted by Oliver Quayle for the National Broadcasting Co. and reported Tuesday night indicated that if the 1972 election were repeated today, Sen. George McGovern (D-S.D.), who lost to Mr. Nixon in a landslide, might beat the President.

During his nationwide survey conducted the last week in July and the first week in August, Quayle said, 49 per cent of those polled said they would vote for Mr. Nixon if another election were held "right now," and 51 per cent said they would vote for Sen. McGovern.

Gallup, whose survey was conducted Aug. 3-6, said inflation, Watergate and the bombing in Cambodia were "key factors" in Mr. Nixon's dramatic loss of public support.

The President spent most of the past two weeks isolated at Camp David, his mountaintop retreat, working with speech writers, legal counselors and other staff aides in preparing his speech about the scandal that has caused widespread resignations, shattered his White House staff and led

to a constitutional confrontation between him and the Senate and federal investigators who are suing for access to White House papers and tapes they believe contain crucial evidence about who is telling the truth.

The Wednesday night speech was widely considered Mr. Nixon's most crucial politically since his famed "Checkers" speech during the 1952 presidential campaign. After accusing Democrats of corruption in government, Mr. Nixon went on television to deny any impropriety in using an \$18,000 fund provided him by California supporters with business interests.

The emotional speech was credited with keeping Mr. Nixon on the Republican ticket that year as Dwight D. Eisenhower's vice presidential running mate, and both later won election over the Democratic team of Adlai E. Stevenson and John J. Sparkman.

In recent weeks, without speaking to specific allegations in the Watergate affair, Mr. Nixon has made it clear he did not intend to "wallow in Watergate" but was determined to finish the remaining three years of his second term.

Airman Hospitalized After Accusing Nixon

Associated Press

M. Sgt. Grant A. Schulke has been placed in a psychiatric ward by the Air Force apparently after he said he wanted to file court-martial charges against President Nixon in the Watergate case.

An Air Force spokesman said Schulke "was asked and he agreed" to undergo 72 hours of psychiatric examination at Fitzsimmons General Hospital, Denver.

Schulke, a 43-year-old career Air Force non-commissioned officer, told a reporter in a telephone interview Tuesday that he had discussed with a legal officer at Lowry Air Force Base, Denver, his desire to file charges against Mr. Nixon alleging obstruction of justice and withholding of evidence.

"I figured somebody should make the commander-in-chief stand to justice," Schulke said.

He quoted the legal officer as saying the sergeant could not bring charges against Mr. Nixon under the Uniform Code of Military Justice, because the Presi-

dent was not subject to military law even though he is commander-in-chief of the armed forces.

The telephone interview was brief because Schulke said he had been summoned to the Office of Special Investigation at the air base.

When a reporter called Schulke's home last evening the sergeant's wife said he was in the psychiatric ward at Fitzsimmons Hospital. A Chilean native with a limited command of English, Mrs. Regina Schulke sounded bewildered by what had happened.

Asked about the situation, the Air Force spokesman here checked and confirmed that Schulke was undergoing psychiatric observation.

The spokesman said he was not aware of any mental disorders in Schulke's past.

Mrs. Schulke said her husband is a Vietnam war veteran. He is currently assigned to a communications squadron at Lowry. The Schulkes have been married for five years. They have no children.