

Sirica Asks Grand Jury To Probe Tape Erasure

New Gaps Revealed

At Hearing

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U.S. District Court Judge John J. Sirica suspended his hearings on President Nixon's Watergate tape recordings yesterday and recommended a grand jury investigation "into the possibility of unlawful destruction of evidence and related offenses."

Sirica made the move following a day-long hearing that disclosed abrupt gaps in two more of Mr. Nixon's subpoenaed recordings.

Issuing a firmly worded, four-page memorandum, the judge said it was his "considered opinion that a distinct possibility of unlawful conduct on the part of one or more persons exists here."

He said a federal grand jury was better equipped "to conduct the sort of investigation now required."

The President's lawyers promptly issued a statement stressing that Sirica's decision "is not a conviction of any individual nor is it even

an indictment."

"It would be wrong to conclude on the basis of Judge Sirica's decision that any individual within the White House is guilty of impropriety or wrongdoing in the handling of the Watergate tapes," said the statement from the office of White House counsel J. Fred Buzhardt.

Sirica thus suspended hearings that began Oct. 31 to seek an explanation of White House claims that two of the subpoenaed tapes of Mr. Nixon's Watergate conversations with aides were nonexistent and that a third contained an inexplicable 18-minute buzzing sound.

The two newest gaps were publicly disclosed at the outset of yesterday's session by Assistant Watergate Special Prosecutor Richard Benveniste.

In one of the recordings, he said, the President's voice breaks off in mid-sen-

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tence while dictating remarks about a series of meetings with White House counsel John W. Dean III on March 21, 1973.

At that point, there is a 57-second blank space before Mr. Nixon can be heard again, speaking on another topic.

In the other recording, Mr. Nixon can be heard talking about a phone call he just had with former Attorney General John N. Mitchell on June 20, 1972, when the tape goes blank. It picks up again 37 seconds later with the President talking

in mid-sentence on another subject.

The panel of technical experts that has been studying the controversial 18½-minute erasure on the Watergate tape that prompted the current round of hearings will be assigned to check these other recordings—one a dictabelt and the other a cassette—for any signs of tampering.

Sirica said that in light of the evidence before him—which covers 2,800 pages of testimony and nearly 200 courtroom exhibits—"It would be a dereliction of duty to terminate the present inquiry without further action of any sort."

The judge emphasized that he did not want his statement construed "as identifying any particular wrongdoer or unlawful act."

"The court refrains absolutely from accusing any person or persons, and refrains as well from a final conclusion that any illegal conduct has occurred."

But, he said, "the court has concluded from the evidence now before it that the possibility of unlawful tampering with or suppression of evidence is sufficiently strong to merit grand jury scrutiny."

As a result, Sirica said, "the court hereby strongly recommends to the special prosecutor that he give immediate and serious consideration to opening a grand jury investigation into the possibility of unlawful destruction of evidence and related offenses."

In a statement last night, Jaworski said, "It is our purpose, in conjunction with the FBI, to conduct an exhaustive investigation into all phases of the matter, and

any relevant information will be referred to the grand jury."

Afterward, a spokesman for the special prosecutor's office refused to say when any grand jury presentation will begin. Sirica said he would not resume his hearing so long as the grand jury investigation is going forward.

The White House, in its statement, stressed that "the American people should bear in mind that the focus of the investigation by the federal grand jury is primarily how the tape may have been erased, not what the tape contained.

"Forgotten in the rhetoric about the lost 18 minutes is

the fact that handwritten notes do exist concerning the President and Mr. Haldeman. Those notes, written contemporaneously by Mr. Haldeman, now in the possession of the special prosecutor, clearly indicate that the President's conversation and concern in the 18-minute segment were directed solely to the negative public relations impact of the Watergate break-in on the campaign of 1972."

Special White House counsel James D. St. Clair, who said he had not been aware of Sirica's decision until it was read in court, said he "concurred quite heartily" with Sirica's comments that the hearing had been inconclusive.

"It reached the point of diminishing returns. The case should go to a grand jury," St. Clair said.

Asked if he had discussed with the President the possibility of Mr. Nixon being served with a grand jury subpoena, St. Clair said, "That's highly hypothetical. If a subpoena is issued to him, then we will deal with it then."

The judge suggested that Jaworski and the grand jury study not only the long weeks of testimony before him but also any forthcoming reports from the technical experts.

In a report that strongly suggested deliberate tampering, the experts told Sirica earlier this week that the 18½-minute gap on the first tape subpoenaed from Mr. Nixon was the result of five

separate erasures, all done manually.

The other gaps reported yesterday were found on supplementary recordings required from the White House as materials "related" to the subpoenaed conversations between Mr. Nixon and top White House aides and 1972 campaign advisers' about the Watergate scandal.

The two new gaps were first reported to Sirica Dec. 12 at a secret conference with opposing lawyers in the case. They were brought out yesterday during questioning of White House counsel Buzhardt.

He professed difficulty in remembering much about either gap, but insisted that neither recording had been erased.

Buzhardt said Mr. Nixon often paused while dictating his thoughts—in effect memos to himself—on a recording machine.

"Can you explain then why it picks up in the middle of a sentence?" Ben-Veniste asked in connection with the President's recorded recollections of his June 20, 1972, phone conversation with Mitchell.

"I don't know that it does," Buzhardt replied. "I have no recollection of being conscious of the precise order of words on the dictaphone."

Ben-Veniste turned to the cassette including the President's recollections about his controversial meetings with Dean last March 21. He

asked how the President could start a thought in mid-sentence.

"It's not that unusual," Buzhardt insisted. "The President frequently would either hold a button (on the recorder) down after he finished, let it go and start talking again before he pushed the button back down again."

Ben Veniste: "Is it also possible that the erase button was pushed?"

Buzhardt: "No."

St. Clair took strong exception to Ben-Veniste's repeated references to a "mid-sentence" gap.

His statement implies the

existence of a sentence that maybe never existed," St. Clair protested at one point. "Let's refer to it as an incomplete sentence."

Grinning broadly, Ben-Veniste agreed.

A tape of the Mitchell phone call itself had also been subpoenaed, but it is one of those that the White House said last fall never existed.

According to court pleadings by former Watergate Special Prosecutor Archibald Cox, the phone call was apparently the first direct contact between Mr. Nixon and Mitchell following the June 17, 1972, break-in and bugging of Democratic National Committee headquarters here.

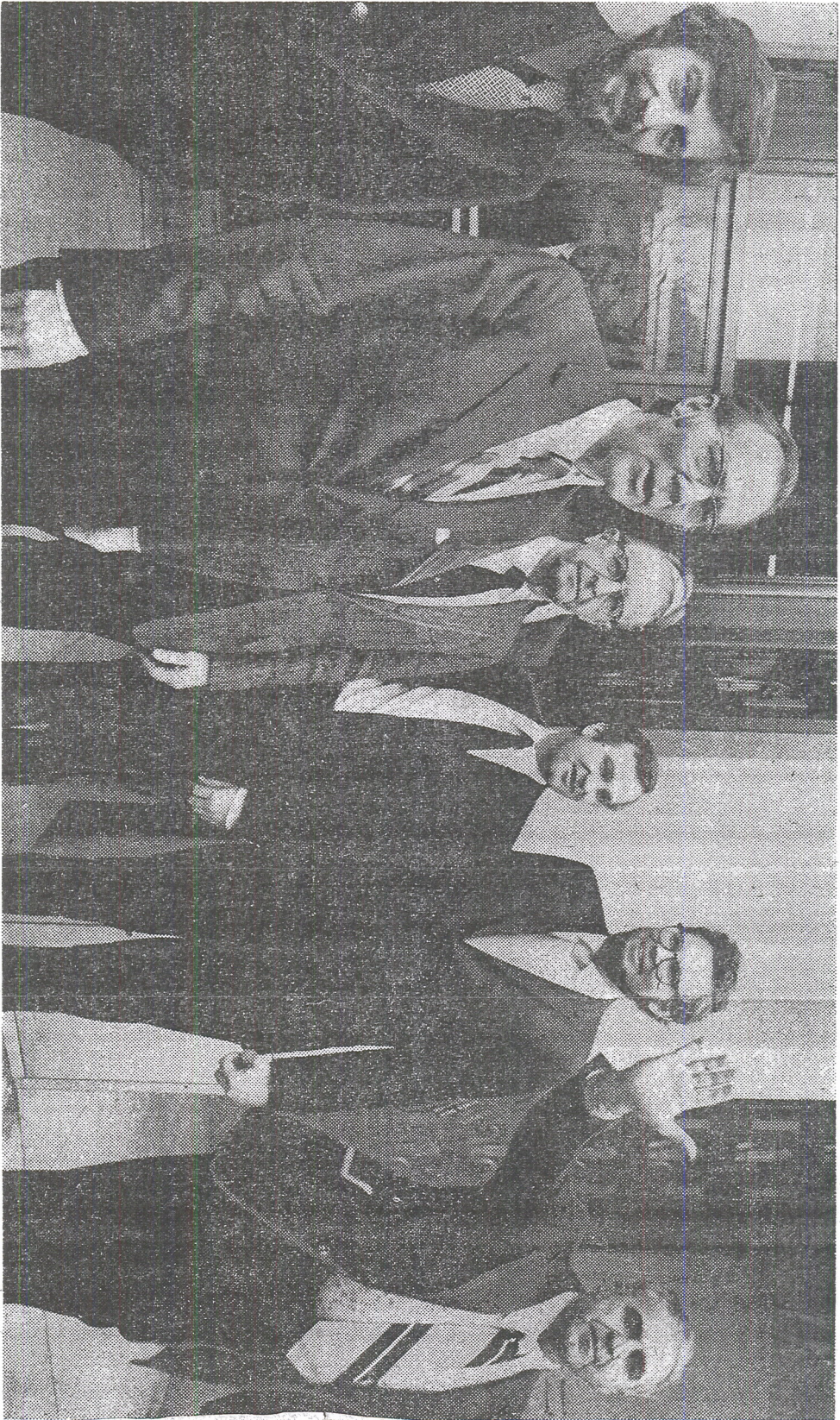
Mitchell has testified he told the President that only the five men arrested at the self—not including subsequently convicted conspirator G. Gordon Liddy—were involved. Watergate prosecutors said a tape of the call would "either tend to confirm Mitchell's version or show a more candid report" to the President.

The phone conversation took place from 6:08 to 6:12 p.m. on June 20, 1972. Mr. Nixon dictated his recollections about it on a Dictabelt at 8:30 that night. The belt contained 23 seconds of the President's remarks, followed by a 38-second blank space. Mr. Nixon can then be heard talking again — part-way into a sentence on another subject.

According to testimony before the Senate Watergate committee, the meetings last March 21 were highlighted by Dean's warning to Mr. Nixon of "a cancer" affecting the presidency. Former White House chief of staff H.R. (Bob) Haldeman also attended those sessions.

According to former prosecutor Cox, all accounts of the morning meeting that day show that there was discussion of Watergate conspirator E. Howard Hunt's threat to expose his "seamy" work for the White House unless he received a considerable sum of money.

Haldeman has testified that the President indicated that \$1 million could easily be raised, but according to Haldeman, Mr. Nixon went on to say that it would not be right to pay the money. Another meeting on Watergate was held between Mr.



A U.S. marshal raises his hand to warn reporters not to question tape experts as they leave

courthouse after hearing before Judge Sirica. The experts are: Mark Weiss, Richard H. Bolt,

Franklin Cooper, James L. Flanagan (behind Cooper), Thomas G. Stockham, John McKnight.

Associated Press

Nixon, Haldeman and Dean later the same day, but Dean has said he went away from it convinced that the cover-up would continue.

Mr. Nixon dictated his recollections of the day's incidents into a cassette recorder at 9 the same night. The cassette recording was turned over to Jaworski for submission to the grand jury along with the White House tapes of the meetings themselves. According to an analysis by Buzhardt, the cassette segment has a playing time of 7 minutes and 25 seconds.

Ben-Veniste said yesterday however, that it actually runs for only 6 minutes and 46 seconds up to mid-sentence.

Buzhardt said he assumed he counted the 57-second gap that follows in making his report to the court.

"In most sequential conversations," he said, "I measured to the next subject."

Reminded that all this added up to more than 7 minutes and 25 seconds, Buzhardt said he might not have timed it correctly.

Sirica's ruling, which was not expected so soon after the conclusion of the hearing, followed repeated attempts by St. Clair to establish that the technical experts may have erred when

they concluded that the erasure "signatures" were caused by at least five separate manual operations on the Uher 5000 recorder that presidential secretary Rose Mary Woods was given on Oct. 1.

Both St. Clair and Charles S. Rhyne, attorney for Miss Woods, continued to press their contention that the operations on the recorder did not coincide with what they termed a normal tape erasure process. This prompted one of the experts, Richard H. Bolt, to observe, "The fundamental conclusion—whether there was a buzzing or not—is that this tape was put in a record mode and taken out five separate times."

None of the witnesses strayed from that conclusion, prompting Sirica to ask, with some annoyance in his voice, "Is there anything you have heard today that has changed your opinion . . .?" The experts said there was not.

When both St. Clair and Rhyne finally abandoned their attempts to impeach the experts' testimony and written, preliminary summary, Sirica said he actually had written his decision in the morning, but waited until the cross-examination of the experts was completed before releasing it.

This story omits what all electronic reporting emphasized. Not without
the discussing it with her. Being hard, in effect of in secret, placed
Rose Mary Woods guilty in the Masada tapes affair. Rinyne make the
charge.