

Malfunction reported

NOV 1 1973

Washington Bureau of The Sun

Washington—Two tapes of presidential conversations sought by federal prosecutors to determine the extent of the Watergate coverup do not in fact exist, a White House lawyer asserted in federal court here yesterday.

J. Fred Buzhardt, counsel to the President, announced that the April 15, 1973, conversation between President Nixon and John W. Dean 3d, the ousted presidential counsel, "was not recorded due to a malfunction of the system" of electronic listening devices installed in the White House.

Another conversation between the President and John N. Mitchell, the former attorney general, is not on any tape, Mr. Buzhardt reported, because the extension on which the President was talking was not hooked into the telephone recording system.

Pointed cross-examination

The latest surprise development in the tapes controversy, which led 10 days ago to the firing of Archibald Cox, the special Watergate prosecutor, came late yesterday afternoon in a hearing called by Chief District Judge John J. Sirica.

Mr. Buzhardt put on the witness stand Raymond Zumwalt, a Secret Service technician who, the lawyer said, is the first of several witnesses to be called to explain the reason the tapes are missing.

Richard Ben-Veniste, one of the special force's lawyers, made it clear by his pointed cross-examination of the witness that the prosecutors will not let the White House version of the tapes' absence go unchallenged.

Judge Sirica recessed the hearing after an hour's time before Mr. Ben-Veniste finished. But it was clear from the thrust of the prosecutor's questioning that he was trying to establish the possibility that the tapes could have been altered or removed by someone who checked them out of a White House cabinet overseen by Mr. Zumwalt and other

Secret Service personnel.

The press was told of the hearing yesterday only a half hour before it began, and the several dozen reporters in the courtroom were not aware of the reason for it.

Judge Sirica, speaking in his usual dry courtroom voice, made the dramatic announcement that he and the Watergate prosecutors had been informed that two of the nine tapes subpoenaed "do not exist." He, counsel for the President and the prosecutors had agreed to make the White House contention public, he said.

Mr. Buzhardt then offered his explanation that the Mitchell-Nixon telephone call of June 20 was "apparently made from one of the numbers which was not hooked into the recording system" and that the "malfunction" had prevented the recording of the Dean-Nixon conversation.

Consistently, and as late as a weekend ago, White House officials talked about the tapes in ways that indicated they thought they all existed and contained the conversations now said to be missing.

The Mitchell-Nixon telephone call followed by three days the Watergate break-in. Mr. Mitchell has testified that he gave the President a short account of what he knew about the break-in during the four-min-

ute conversation—but not anything that would implicate the President or himself in a coverup.

In asking for access to the tape, Mr. Cox had argued that what Mr. Mitchell reported to the President "may be highly material."

The tape of the Dean conversation with the President in the Executive Office Building. Mr. Nixon's Executive Office Building office was regarded by the Watergate prosecutors as particularly crucial in establishing whether President Nixon might have been involved in the coverup.

Dean, the former presidential counsel, gave the strongest indications of possible presidential involvement of any of the witnesses who appeared before the Senate Watergate committee. He testified that it was at the April 15 meeting that the President seemed to be asking Dean leading questions, as if the conversation were being taped.

Dean testified that the President also made a point of saying that the President's remark in an earlier conversation about the ease with which \$1 million could be raised for the original Watergate defendants had been a joke. Dean also said that at one point the

President, speaking in a very quiet voice away from his desk, confided that he had been "foolish" to talk with Charles W. Colson, former presidential counsel, about possible clemency for E. Howard Hunt, Jr.

Mr. Zumwalt, who said he installed and for a time supervised the telephone recording system and the electronic surveillance devices, offered no concrete corroboration of the White House version.

Under questioning by Mr. Buzhardt, he said that the two-recorder system used to tape conversations in the Executive Office Building office could have malfunctioned because of faulty contacts in the switchover device. The recorders were voice-activated—set up to turn on automatically when someone began speaking in the room, and each had six hours of recording time, he said.

During the week, he said,

the recorders were checked daily and the tapes replaced if they were nearly full. But on weekends, he said, the tape recorders were not normally checked between Friday afternoon and Monday. An automatic timer switched one recorder off and the other on after a day's interval to provide fresh tape.

"I assume," he said, "it failed to switch" April 15, a Sunday. Gerald L. Warren, deputy White House press secretary, said in explaining the "malfunction" yesterday that "the first recorder had run out, filled up," and the other recorder had not activated.

Mr. Zumwalt conceded under questioning by Mr. Ben Veniste that he had no personal knowledge that this account was anything more than a hypothesis.

Mr. Ben-Veniste also drew from Mr. Zumwalt the admission that he had not recalled any malfunctioning of the sys-

tem until after talking yesterday with Mr. Buzhardt and James Baker, another Secret Service man who took over supervision of the electronic surveillance system from Mr. Zumwalt.

Mr. Ben-Veniste said that in a private conference with the prosecutors, Mr. Zumwalt had said he "could not recall a single instance of a malfunction."

The three telephone extensions plugged into the system, Mr. Zumwalt said in describing the installation, were in the Oval Office, the President's Executive Office Building office and the Lincoln Room of the White House.

Alexander P. Butterfield, a former White House deputy assistant, first revealed the existence of the presidential tapes at the Watergate hearings July 16. He testified then that the President had been recording all conversations in his White House for 2½ years.