

Nixon Counsel Meet Haig On Eve of Tapes Hearing

President Reportedly Briefed—Lawyers Warned by Sirica to Expect Tough Query on Nonexistent Recordings

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WASHINGTON, Nov. 5—

Two of President Nixon's chief legal advisers met again with Alexander M. Haig to discuss the White House's attempt to prove that two of the disputed Watergate conversations were never recorded. It was the third meeting in two days between the two lawyers and Mr. Nixon's chief of staff, according to a White House source.

The lawyers—Leonard Garment, the President's counsel, and J. Fred Buzhardt Jr., special counsel—met with Mr. Haig at Key Biscayne, Fla., and according to the President's deputy press spokesman, Gerald L. Warren, Mr. Haig briefed Mr. Nixon on what the lawyers had said.

The White House press office had previously announced that the lawyers would meet with the President himself. This afternoon, however, Mr. Warren said that the lawyers had simply "been available" if the President wanted to talk to them.

The President spent most of the day on the energy conservation decisions that he is to announce this week, Mr. Warren said.

The lawyers' meeting came on the eve of their scheduled appearance in Federal Court here before Judge John J. Sirica. Last Friday afternoon, Judge Sirica warned them that they could expect tough questioning this week on their contention.

Judge Sirica began holding a fact-finding hearing on the matter last Wednesday, a day after the White House lawyers told him privately that two of the nine Presidential conversations involved in the legal battle over the tape recordings had not been recorded. The judge had previously ordered the President to comply with a subpoena by the special Watergate prosecution calling for tape recordings of all nine conversations.

'No Missing Tapes'

There has been speculation

on the possibility that the White House might change its stance this week. According to Mr. Warren, however, Mr. Garment and Mr. Buzhardt will continue to present evidence to back up their statement that the so-called "missing tapes" never existed.

"We are convinced the proceedings will show that there are no missing tapes," Mr. Warren said, and that the two conversations were never recorded.

The type of evidence to be presented is apparently in large part technical, showing how the existing tape recordings were made and stored.

One of the two conversations said not to have been recorded is a telephone call between Mr. Nixon and John N. Mitchell, his former Attorney General and campaign director, on June 20, 1972. According to the special Watergate prosecution, that telephone call—just three days after the break-in at Democratic party headquarters at the Watergate complex here—may provide crucial evidence regarding what Mr. Nixon knew or did not know of the crime.

Last week, Mr. Buzhardt said that this conversation was not recorded because it was made on a telephone that was not hooked into the White House recording system.

The second conversation took place last April 15 between President Nixon and John W. Dean 3d, his dismissed counsel.

Dean has since pleaded guilty to a charge of obstruction of justice for his role in the Watergate cover-up and has agreed to testify for the Watergate prosecution. He testified

this summer that on April 15 he sent a message to Mr. Nixon regarding his, Dean's discussions with Federal prosecutors regarding the Watergate cover-up. In the message, Dean testified, he told the President that he would be willing to meet with him to talk over the matter.

'Leading Questions'

The President summoned him to a meeting that evening, Dean said. And at the meeting, the President's former counsel went on, Mr. Nixon made certain statements and asked certain "leading questions" that, he said, gave him the impression that the President might be taping the meeting.

Last week Mr. Buzhardt said that this conversation had not been recorded because the tape-recording machine had malfunctioned. On Thursday, the White House revised its explanation to some extent: They said that the machine had been working, but that it had run out of tape.

There was also some confusion last week about the White House position regarding the date that the non-existence of the two tape recordings first became known. At first, Mr. Warren said that Mr. Buzhardt learned only the weekend before that the tapes did not exist.

But Friday, a special assistant to the President testified before Judge Sirica that he arranged on Sept. 29 for Mr. Nixon to listen to a series of tapes.

Told by President

"At that time it was apparent that two conversations that had been requested were not on the tapes provided to me," said the assistant, Stephen B. Bull.

A White House attorney, Douglas Parker, asked Mr. Bull who had told him the conversations were not there.

"Ultimately, the President," Mr. Bull replied.

The developments last week cast increased public doubt on the credibility of the White House, because throughout the long legal battle over access to the tapes, the White House had never once suggested that any of them were nonexistent.

Its basic position, in the face of the aWatergate prosecution's subpoena calling for the nine tapes, was that under the doctrine of executive privilege, the President need not turn the tapes over to the courts.

'Comply in All Respects'

And even when the President reversed his position two weeks ago and agreed to obey the court order to comply with the subpoena, he did not mention nonexistence of the two tapes. His lawyer, Charles Alan Wright, told Judge Sirica then that the President would comply with the subpoena in all respects.

The existence of the White House system of tape-recording all Presidential conversations became known last July 16, through the testimony of a former White House assistant named Alexander P. Butterfield. Both Archibald Cox, the special Watergate prosecutor, and the Senate Watergate committee immediately began to move for the disclosure of tape recordings of certain conversations bearing on Watergate-related crimes.

On July 23, in a letter to the chairman of the Senate committee, Sam J. Ervin Jr., the President declined to give the committee the tapes, saying, "The fact is that the tapes would not finally settle the central issues before your committee."

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thought it was "the day before."

Whichever date is correct, Higby's testimony indicated that Haldeman—himself a target of grand jury inquiry—learned of the gap almost as quickly as White House lawyers discovered it, and perhaps even earlier.

White House special counsel J. Fred Buzhardt Jr. has said that he did not discover the long erasure until the evening of Nov. 14, when he was reviewing a copy of the subpoenaed recording. Buzhardt said he told current White House chief of staff Alexander M. Haig Jr. and then Mr. Nixon about it the next day, Nov. 15.

The White House lawyer has said that Mr. Nixon was "baffled" by the report.

Haldeman's notes of the June 20, 1972, conversation between him and the President show that a discussion of the Watergate scandal had been obliterated from Mr. Nixon's tape recording of the session.

Higby's testimony yesterday indicated that Haldeman still had control of his files at the White House seven months after his resignation as the President's chief of staff.

After chatting with Halde-

man at noon on Nov. 14, Higby said, he got another call from his old boss the next evening while Higby was getting a quick shave in the White House gym.

"I think he indicated I was to get only one document—his June 20 (1972) notes," Higby said. He said Haldeman told him to see Haig first, but Haldeman gave him strict instructions not to give White House officials any of his notes without first reporting back to Haldeman with a summary of what they contained.

Higby said he gave Haig that message, unearthed the notes from Room 522 at the Executive Office Building, where they are being kept under Secret Service guard with other sensitive Watergate-related files, and placed another call to Haldeman in California. "I just read the notes off the him," Higby said.

Asked the reaction he got, Higby recalled Haldeman's saying, "Oh... Hm... Hm..." and finally, "That's no problem."

Higby said he took Haldeman's enigmatic "Hm... Hm..." to mean, "They'll probably try to make a big deal of that."

The June 20, 1972, recording was erased for an 18¼-minute interval that included what Haldeman jotted down as a

discussion of a "PR offensive" to counter publicity over the Watergate break-in and bugging, which had been discussed just three days earlier.

"We should be on the attack for diversion," Haldeman wrote of his missing chat with the President.

After getting the go-ahead from Haldeman, Higby said, he turned over the two pages of notes to Haig and Buzhardt, who by then had anxiously turned up at Room 522.

"I think there was some pressure to get these notes (to the President) as quickly as possible," Higby said.

Miss Woods has said that Haig brought the two pages from a yellow legal-sized pad to the President in the Oval Office on the evening of Nov. 15, just as she was leaving. She said she had just finished telling the President that she did not see how she could have caused the entire 18¼-minute gap.

Higby, meanwhile, was on his way home, where, he said, he talked with Haldeman by phone once again, around 9:30 p.m. He said it may have been then, rather than at noon the day before, that Haldeman told him of the "gap."

Asked who told Haldeman, Higby said that he wasn't sure, but he indicated that he thought it was Haig.

Haig could not be reached for comment. He is expected to be called to the witness stand today.

Other witnesses at yesterday's hearing were the President's chief courtroom lawyer, Samuel J. Powers, and the keeper of the tapes, deputy presidential assistant John C. Bennett, an aide to Haig.

Bennett testified about handing Miss Woods a fresh batch of original White House tapes, at Haig's direction, on Nov. 19. He said Haig told him Mr. Nixon wanted Miss Woods to get the "highlights" of these new recordings. They had been requested, but not subpoenaed, by Watergate Special Prosecutor Leon Jaworski on Nov. 15.

White House lawyers have said they were not told, and were surprised to learn last week, that Miss Woods was still handling original tapes—rather than copies—after disclosure of the 18¼-minute erasure.

Powers, who was stricken with viral pneumonia on Nov. 18 but has now recovered, said he learned of the 18¼-minute obliteration on the evening of Nov. 14, when he and Buzhardt were reviewing it together.

Buzhardt has said he did not realize until that reviewing session that the tape of the Nixon-Haldeman discussion was required by the Watergate grand jury's subpoena. The White House special counsel has maintained that "only the most careful reading" of a court memo filed by former Watergate Special Prosecutor Archibald Cox showed that the tape was covered by the subpoena.

Powers, however, testified that he had no such difficulty. He said Buzhardt did tell him on Nov. 14 that the subpoena was ambiguous, but Powers said he read it over and concluded on the spot that it called for the disputed recording.

"I said that, in my judgment, this (the Nixon-Haldeman meeting) was includable,"

Powers told Sirica. "I didn't know anything about the clarification (in Cox' memo). I saw that later."

The White House's explanation of its belated discovery of the 18¼-minute erasure rests heavily on the notion that the recording was not clearly covered by the subpoena. Mr. Nixon knew of at least a 5-minute gap in the recording in early October, when Miss Woods has said she first told him of pushing the wrong button while she was reviewing it on her recording machine. She said the President told her not to worry since it was not a subpoenaed tape.

Judge Sirica told reporters that he did not know what the outcome of the current hearings would be, at least until audio experts complete their tests of the suspect recording.