

Richardson Doubts Cox's Right to Tape

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Attorney General Elliot L.

Richardson said yesterday that he does not believe special Watergate prosecutor Archibald Cox is necessarily entitled to obtain tape recordings of conversations between President Nixon and members of his staff.

Talking with reporters after a ceremony in his office at the Justice Department, Richardson said that Cox's "investigation of a crime doesn't by itself confer a right of access" to confidential presidential papers.

He pointed out that Cox is officially "in the Justice Department" and thus is ultimately expected to follow the chain of command within the Executive Branch of the federal government.

As a hypothetical parallel, Richardson said that if he, in his previous role as Secretary of Health, Education and Welfare, had wanted to see a White House staff memo on proposals for welfare reform, he would not necessarily be able to obtain it.

The attorney general made his comments after he swore in Benjamin F. Holman for a new term as director of the Community Relations Service.

About an hour later, Richardson issued a statement on the growing constitutional dilemma over whether Cox and the Senate select Watergate committee can legitimately subpoena the tapes and other presi-

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SUBPOENA, From A1

dential papers from the White House.

It read as follows:

"The President's decision to protect the confidentiality of presidential conversations rests, in my view, on substantial legal and constitutional foundations. The separation of powers argument seems to me particularly persuasive with reference to the Ervin committee.

"It is also my view that Mr. Cox, in seeking access to the tapes, is acting in full accord with the requirements of his job. In the interest of justice, it seems to me important to try to work out some practical means to reconciling the competing public interests at stake."

In his conversation with reporters, Richardson explained that the "competing public interests at stake" are "the issue of the confidentiality of communications with the President" and "the public interest in the prosecution of crimes."

The combination of the attorney general's statement and his remarks to the reporters seemed to indicate that he was coming down on Mr. Nixon's side in both confrontations over the tapes.

But he stressed, in talking to the reporters, that "it's hard to visualize at this stage how the thing will evolve."

He predicted that it is possible, at some stage, that several law professors will be arguing against each other before the Supreme Court on the issue—Solicitor General Robert H. Bork on behalf of the Justice Department, Charles Alan Wright on behalf of the White House, and perhaps Cox on behalf of his special prosecution team.

At the White House, deputy press secretary Gerald L. Warren would say only that the subpoenas were being studied by the counsel's office, presumably referring to Leonard Garment, acting counsel, and J. Fred Buzhardt, a special counsel.

That office "will take appropriate action within the time specified in the subpoenas," Warren said. The

subpoenas demand submission of the materials at 10 a.m. Thursday.

Asked whether Mr. Nixon would relinquish the tapes if the courts direct him to do so, Warren replied, "I cannot stand up here and discuss what may or may not happen."

Pressed on the point, Warren said, "The President has abided by court rulings in the past. The President abides by the law." But then he repeated that the subpoenas are being studied and said he could not speculate on hypothetical questions.

Asked about the tapes, Warren said they are "unchanged—they have not been edited."

In the meantime, both Cox and the Watergate committee elaborated in court papers on their demands for presidential documents.

Cox's subpoena, in addition to seeking the eight White House tapes he cited on Monday, also demands any documents relating to the recorded conversations plus a ninth tape—one of a meeting March 21, 1973, in the President's suite in the Executive Office Building from 5:20 to 6:01 p.m. involving Mr. Nixon and aides John W. Dean III, Ronald L. Ziegler, H. R. Haldeman, and John D. Ehrlichman.

The subpoena also seeks the original of a two-paragraph memo written by one White House aide to another on March 30, 1972, about the "termination" of E. Howard Hunt Jr. as a White House consultant and his transfer to "1701," which refers to the Committee for the Re-election of the President, located at 1701 Pennsylvania ave. nw.

The memo was written by Special Assistant W. Richard Howard, who was then an aide to the President's special counsel, Charles W. Colson, to Bruce A. Kehrli, staff secretary who was then a special assistant to Haldeman, then the President's chief of staff.

Cox's affidavit said the memo was signed "Dick," Howard's first name, and contained handwriting at the top and bottom that appeared to belong to Kehrli. Kehrli, who was responsi-

ble for monitoring the White House payroll, told the Senate Watergate committee that Hunt left the White House payroll April 1, 1972.

Hunt had been a member of the White House "plumbers" team created in 1971 to investigate and plug leaks of security matters to the press, particularly Daniel Ellsberg's leak of the Pentagon Papers.

Hunt was convicted last January for his role in the June 17, 1972, bugging and burglary of the Democratic National Committee headquarters at the Watergate office complex.

Kehrli has been identified in court records as the man who emptied Hunt's Executive Office Building safe two days after the break in and turned over the contents to Dean, then counsel to the President.

Cox may be seeking to learn when Kehrli wrote in the Howard memo, why he opened the Hunt safe, and whether Hunt was really off the White House

when he was working for CRP. A copy of the Howard memo was delivered to the FBI Aug. 7, 1972, by James Rogers, a White House personnel officer, Cox's affidavit said.

The special prosecutor also seeks original copies of all "political matters memoranda" and all "tabs" or "attachments" to those memos from former Haldeman aide Gordon C. Strachan to Haldeman between Nov. 1, 1971, and Nov. 7, 1972, election day.

Strachan has told the Watergate committee that the memos described "the current status of pending political matters," including a March 30, 1972, meeting at Key Biscayne during which plans for the Watergate bugging were discussed.

Haldeman has admitted reading some of the material but has said he did not read the tabs, at least one of which reportedly concerned wiretapping.

The Senate committee issued two subpoenas. One asks that Mr. Nixon provide tapes of four conversations that the President had with Dean. The other asks for the

documents, logs, datebooks and other written materials on the Watergate scandal of 25 present and former White House aides and presidential campaign staffers.

The tapes that the committee is seeking, besides those requested by Cox, include recordings of meetings that the President had with Dean on Feb. 28, 1973.

Dean testified that in this meeting he told Mr. Nixon that he (Dean) thought he had "legal problems" and could be cited for obstruction of justice in the handling of the Watergate cover-up, but that the President told him not to worry.

The request by the Senate committee for written materials from the White House include those of Haldeman, Ehrlichman, Dean and press secretary Ziegler.

Also on that list are: Egil (Bud) Krogh, the White House assistant who headed the "plumbers" unit and David Young, G. Gordon Liddy and Hunt, the aides who served in that unit; former Attorney General John N. Mitchell; John Campbell, a former member of Ehrlichman's staff; Larry Higby, and Kehrli Strachan, all from Haldeman's staff; Fred Fielding, Dean's deputy; Howard, Colson's deputy; Dwight Chapin, former appointments secretary for Mr. Nixon; Jack Caulfield, a former aide to Ehrlichman and Dean; Fred LaRue and Jeb Stuart Magruder, officials at the President's campaign organization; DeVan Shumway, public relations director for the President's campaign organization; Richard A. Moore, a special White House public relations assistant; Alexander Butterfield, the former White House aide who revealed the existence of Mr. Nixon's tapes of telephone calls and conversations to the Ervin committee; William Timmons, chief White House lobbyist on Capitol Hill; and Patrick Buchanan, who heads the White House office that prepares daily news digests for Mr. Nixon.

This story is based on the reporting of Sanford Ungar, Herbert Denton and Susanna McBee of The Washington Post staff.