

President Bars Oral or Written Watergate Quiz

Prosecutors Told to Shun Speculation

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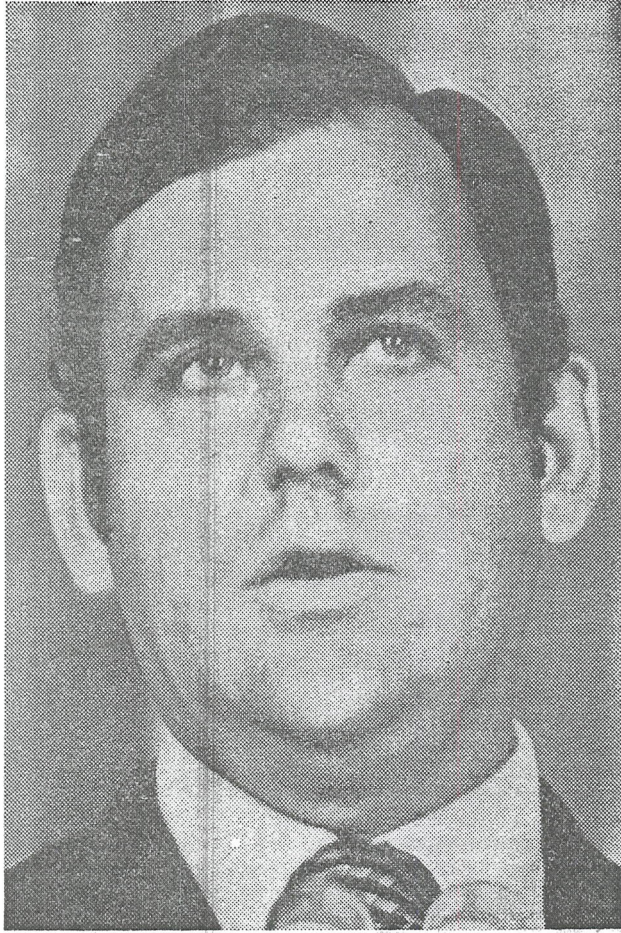
President Nixon will neither talk to federal prosecutors nor answer their questions about the Watergate case because it would be "constitutionally inappropriate," Presidential press secretary Ronald L. Ziegler said yesterday.

Ziegler responded to questions following a report in yesterday's Washington Post that the prosecutors have told the Justice Department that there is justification for calling Mr. Nixon before the federal grand jury investigating the Watergate scandal.

During the regular White House press briefing yesterday, Ziegler was asked whether the President would be willing to talk to the prosecution in the Watergate investigation. "No," Ziegler replied. Asked why not, Ziegler said, "It would be constitutionally inappropriate. It would do violence to the separation of powers."

Asked if Mr. Nixon would respond to written questions from the prosecutor, Ziegler said, "No."

In a related development, Special Watergate Prosecutor Archibald Cox issued a statement yesterday after Ziegler said that Cox would be asked and Attorney General Elliot L. Richardson had been asked to "investigate the circumstance of these anonymous charges against the President of the United States."



By James K. W. Atherton—The Washington Post

Ronald L. Ziegler answers newsmen's questions.

Cox did not mention Ziegler's statement but said, "All decisions about theories of investigation or prosecution, the grant of immunity, the acceptance of pleas in return for testimony, and the conduct of the investigation will be made by me. I have made no such decisions, and authorized none. I have not had time to review the results of the on-going investigation and have neither endorsed nor disapproved any charges or theory of the case."

Cox read his statement, which was distributed by the Justice Department, to reporters after meeting at the department with United States Attorney Harold H. Titus Jr., principal Assistant United States Attorney Earl J. Silbert and Assistant United States Attorneys Seymour Glanzer and Donald Campbell.

Although the statement referred to no one by name, it contained unusually strong language concerning Titus and the prosecution team. "The U.S. attorney and his aides," Cox said, "have been instructed to refrain from any kind of statement, comment or speculation about any aspect of the investigation. All officials in

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the Department of Justice will be so instructed. No previous statement or comment about any aspect of the investigation has been authorized by me."

Cox also announced that James F. Neal, a Nashville lawyer and former aide to Attorney General Robert F. Kennedy, was joining the special prosecutor's staff as a special assistant "for two weeks or longer if he can." Philip E. Heymann and James Vorenberg, who, like Cox, are Harvard law professors, were sworn yesterday as special assistants.

The Watergate prosecutors and their superiors in the Justice Department believe that the Constitution appears to preclude calling an incumbent president before a grand jury, according to reliable government sources.

At least one historical precedent exists for calling a President to testify while he is holding office. During the treason trial of Aaron Burr in 1807, President Thomas Jefferson was subpoenaed by the defense to give testimony.

According to an opinion by Chief Justice John Marshall, sitting on circuit at the time, President Jefferson declined to appear in Richmond to give testimony but agreed to give a deposition in Washington.

Burr plotted with a friend, Gen. James Wilkinson, to invade Mexico and set up an independent government there. In addition, they hoped to encourage a secession movement in the western territories to join with their independent state in Mexico to create an empire with New Orleans as the capital.

Wilkinson ultimately betrayed Burr to President Jefferson and Burr was arrested. Burr was sent to Richmond to be tried for treason before Marshall.

On June 13, 1807, Marshall issued a subpoena to President Jefferson that "commanded" him to appear in Richmond and to bring with him a letter from Wilkinson as well as other documents.

Jefferson responded with a letter to the prosecutor in which he said, "As to our personal attendance at Richmond, I am persuaded the court is sensible that paramount duties to the nation at large control the obligation of compliance with its summons in this case . . ."

"To comply with such calls would leave the nation without an executive branch, whose agency nevertheless is understood to be so constantly necessary that it is the sole branch which the constitution requires to be always in function. It could not, then, intend that it should be withdrawn from its station by any co-ordi-



Associated Press

Special Prosecutor Archibald Cox, left, announces that James F. Neal will join his staff.

nate authority," President Jefferson wrote.

In his opinion on the matter, Marshall noted, that counsel for the United States "admitted . . . a subpoena may issue to the President."

Burr was subsequently acquitted of the charge of treason.

Marshall's opinion in United States v. Burr was cited last June by Justice Byron White in the course of the majority opinion in Branzburg v. Hayes, which upheld the right of a grand jury to compel testimony from a newsmen. In a footnote to the opinion, White noted, "Chief Justice Marshall, sitting on circuit, opined that in proper circumstances a subpoena could be issued to the President of the United States."

Ziegler said that J. Fred Buzhardt, who is serving as a special counsel to Mr. Nixon for the Watergate scandal, had contacted Richardson Monday night about The Washington Post report that prosecutors believe there is justification for calling Mr. Nixon before the grand jury.

The story attributed to Justice Department sources the statement that the President's role in the Watergate case is the one key question that remains to be clarified in the grand jury investigation.

The Post reported that according to these sources, the prosecutors have told their superiors that evidence justified questioning the President about how members of Mr. Nixon's innermost circle could perpetrate a massive obstruction of justice without his knowledge.

Ziegler told The Post Monday that the story "reflects a shocking and irresponsible abuse of authority on the part of federal prosecutors, if in fact, they made the statements attributed to them." Asked yesterday what was irresponsible, Ziegler said it was that alleged proceedings of the grand jury "found their way into newspapers again."

Ziegler said Buzhardt called Cox yesterday and "expressed our severe concern and expressed our view when he said the Justice Department should find out how it happened and make sure it won't happen again."

Ziegler said the White House was concerned because grand jury investigations are "private proceedings."

Jack Hushen, Justice Department director of information, said last night, "The Attorney General believes that all Justice Department officials should observe professional standards of fairness and propriety in carrying out their duties. This policy would certainly apply to the leaking to the press of sensitive information which is harmful to the

proper conduct of a grand jury investigation.

"I think this particular matter falls within the purview of the special prosecutor. He has put out a statement saying he will be the one making the decisions," Hushen said.

Cox's only reference to the matter in his statement came at the conclusion: "I prepared this statement prior to Mr. Buzhardt's telephone call. I gave him the substance of it then and later read it to him, solely to confirm the accuracy of what I had said." Cox declined to answer any questions following the reading of his statement.

Meanwhile, U.S. District Chief Judge John J. Sirica yesterday approved a grant of immunity for Roy H. Sheppard to testify before the Senate committee holding hearings on Watergate.

Attorneys for Sheppard have said in court papers that he was asked to go to the Executive Office Building two days after the Watergate burglary to get eight cartons of material that had been taken from a safe belonging to convicted Watergate conspirator E. Howard Hunt Jr.

Sheppard is now employed by a trucking firm, his attorney said yesterday. He has been identified as a former campaign worker for the Committee for the Re-election of the President.

The attorney for convicted Watergate conspirator James W. McCord Jr. said yesterday that President Nixon's statement last week raises possible grounds for overturning some of the Watergate guilty pleas and convictions.

In the statement, the President cited national security as the reason he established a special intelligence unit within the White House. The unit, which included Hunt and G. Gordon Liddy, also a Watergate conspirator, later burglarized the office of Daniel Ellsberg's psychiatrist. The burglary helped lead to the dismissal of all charges against Ellsberg, who leaked the Pentagon Papers.

McCord's lawyer, Bernard Fensterwald Jr., said he is working on motions, based on the President's statement, which he hopes will reverse McCord's conviction.

Fensterwald said in a telephone interview that he could not specify the grounds for appeal at this time, but referred a reporter to a newspaper column that he said "includes some of the possibilities open to us."

The column, by Tom Dowling in Monday's Star-News, said that the four Cuban-born Watergate defendants could contend that the prosecution failed to provide them with certain exculpatory information, included in Mr. Nixon's state-

ment last week, that might have enabled them to plead innocent on the grounds of national security.

Since Watergate conspirators Hunt and Liddy were part of the White House's national special intelligence unit, it was natural for the defendants to assume that they were acting under the umbrella of national security in the Watergate break-in, the column said.

Only McCord and Liddy stood trial; the other five defendants all pleaded guilty in January.

Cox Names Special

Watergate Assistant

Special Prosecutor Archibald Cox named James F. Neal, a former Justice Department lawyer and U.S. attorney in Nashville, as a special assistant in the Watergate investigation yesterday. Cox said that Neal will be working with the three assistant U.S. attorneys here who have been handling the grand jury probe into the Watergate affair.

The terms and length of Neal's employment were not made clear yesterday, nor was it clear whether he would merely assist the prosecutors here or act as their supervisor. Cox said in a statement that Neal would be on the job "for as long as I can convince him to stay. The present arrangement is that he will work for two weeks or longer if he can."

Neal, 43, has been in private practice in Nashville since 1966. He joined the Justice Department in 1961 as a special assistant to Attorney General Robert F. Kennedy.

Kennedy appointed Neal as chief of the prosecution against then Teamsters President James Hoffa and Neal handled the jury tampering case in which Hoffa was convicted. In 1964 he was named U.S. attorney for the middle district of Tennessee.

Neal becomes the third special assistant handpicked by Cox for the Watergate investigation. The other two are Harvard law professors James Vorenberg and Philip E. Heymann. All three were sworn in yesterday.