

# 2 Key White House

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## NOV 1 1973 Tapes 'Don't Exist,' Court

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2 Key White House Tapes  
'Don't Exist,' Court Is Told

**Talk With**  
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**Dean and**  
**Mitchell**

### Washington

Two of the Watergate tapes never existed, White House lawyers said yesterday.

Dropping another bombshell in the long legal controversy, White House counsel J. Fred Buzhardt said President Nixon's key conversation April 15 with former aide John W. Dean III was not recorded because of an apparent malfunction of the tape recorder.

The second conversation—a telephone exchange on June 20, 1972, between Mr. Nixon and former Attorney General John N. Mitchell—was not recorded because the President had used a phone not plugged into the White House recording system, Buzhardt said.

### HEARING

Buzhardt made these revelations in the Watergate case in a hearing suddenly scheduled yesterday afternoon by U.S. District Judge John J. Sirica.

The two conversations were part of the nine tapes subpoenaed by the Watergate prosecution team. Throughout the weeks of litigation and public comment, the White House had never indicated that these two tapes do not exist.

Deputy White House press secretary Gerald L. Warren told newsmen that although Mr. Nixon had listened to "a number of the tapes," he had never listened to all of them. He said the President had never requested the two conversations at issue. \*

Sirica said the matter came to his attention only Tuesday when Buzhardt told the court that the recordings had "never been made." He then said he had decided that the facts should be "a matter of public record" and ordered yesterday's hearing.

Warren said that Buzhardt

himself learned only last Saturday, after lengthy searches, that the two tapes did not exist.

Warren also disclosed that the tapes had been kept in a residential portion of the White House.

### CONVERSATIONS

The conversations in question are regarded as crucial to proving how much the President had known about the Watergate case at two different dates since the June 17, 1972, break-in.

On June 20, 1972, Mr. Nix-

Back Page Col. 1

### From Page 1

on held a four-minute telephone conversation with Mitchell, during which the sole subject of conversation, according to Mitchell, was the Watergate break-in and burglary.

Mitchell testified before the Senate Watergate committee that he told Mr. Nixon then only of the involvement of the five burglars and nothing of the involvement of higher-ups.

### IMPORTANT

The second conversation is more important and is regarded by some as the most crucial piece of evidence in the Watergate case.

On the evening of April 15, 1973, Mr. Nixon met in his office with Dean for nearly an hour. Dean testified before the Senate Watergate committee that the subject of executive clemency for the Watergate defendants had been discussed. He quoted Mr. Nixon as saying at that meeting that it probably had been foolish of him (Nixon) to have discussed with White House aide Charles Colson the possibility of clemency for one of the convicted conspirators, E. Howard Hunt.

Dean also said Mr. Nixon had told him he had only been "joking" when, in an earlier conversation, he had approved raising a \$1 million fund for the defendants.

### SUBPOENAS

Nine tapes were the target of subpoenas used by Watergate prosecutors to obtain evidence. They became a subject of bitter dispute and long litigation, with Sirica

and the U.S. Court of Appeals both finally ordering the President to hand them over. Former prosecutor Archibald Cox was fired by President when he refused to accept a summary reviewed by Senator John Stennis (Dem-Miss.) with written versions turned over to Sirica.

Late yesterday Cox was asked by the Senate Judiciary Committee if he had

known of the absence of two tape recordings. He said he had "no prior knowledge" that that was the case.

Buzhardt has assured him that the tapes were in a safe place and never indicated there was trouble with them, Cox said.

Cox said he had had advance indications that there may have been mechanical difficulties with the tapes from a New York prosecutor who wants the tapes for a suit against Mitchell and former Commerce Secretary Maurice Stans. The prosecutor said he was told by Buzhardt that "sometimes there are mechanical problems."

Cox said, however, that he understands another piece of tape recorded evidence exists involving the President's conversation with Dean on April 15. He said that he understands Mr. Nixon dictated a memo about the conversation into a tape recorder after the meeting.

Cox said he assumed that tape exists and would be covered by the subpoena issued by the court.

Dean himself has said he thought that his conversation was being taped. In his testimony to the Senate committee, he said, "The President almost from the outset began asking me a number of leading questions, which made me think that the conversation was being taped and that a record was being made to protect himself."

\* SEE  
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## Is Told

There was no clear explanation given for the failure of machines to record the Dean conversation. Buzhardt attributed it to "a malfunction of the system or the basic inadequacy of the system."

### AGENT

Buzhardt then asked Raymond C. Zumwalt, a Secret Service Agent who supervised installation of the White House recording system, to take the stand.

Zumwalt said he assumed

that the tape recorder had failed that evening because of a malfunction of a "timer" that is supposed to switch on a new tape when another is used up.

Zumwalt said that reels on the tape recorder are checked each day during the week, but that on weekends they are not checked unless he or an aide, James Baker, is informed in advance that the President is expected to use the room. The conversation with Dean took place on a Sunday evening in the President's office in the Executive Office Building between 9:17 p.m. and 10:12 p.m.

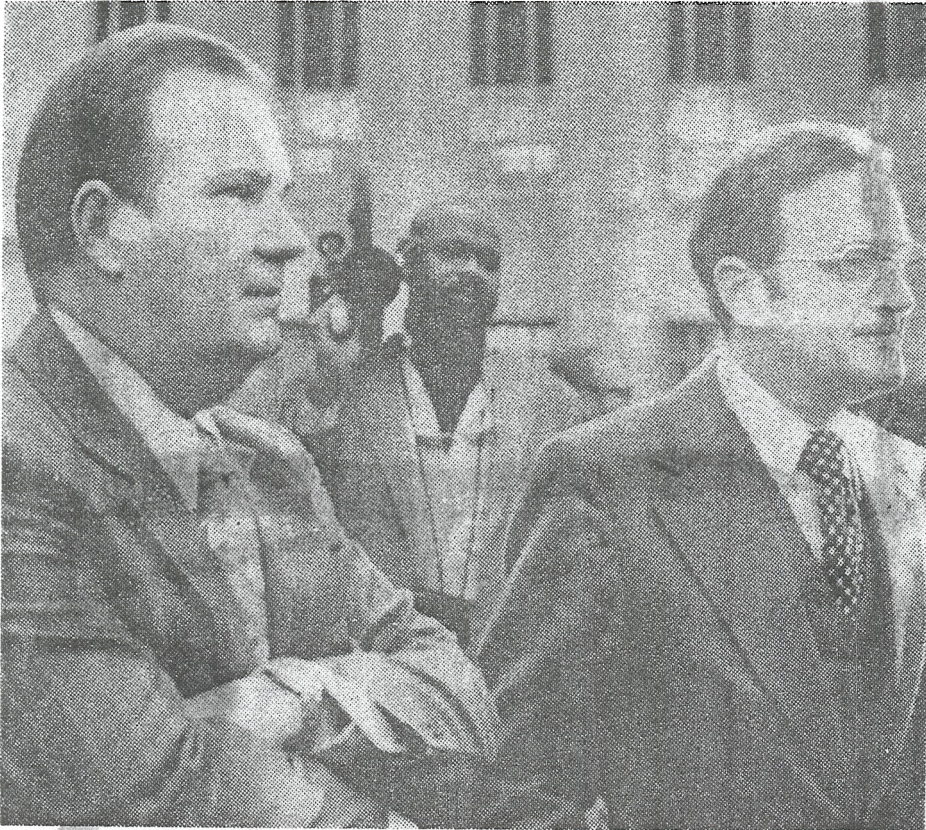
Under cross examination by assistant special prosecutor Richard Ben-Veniste, Zumwalt testified that he had been told by his assistant, Baker, on other occasions that the timer had malfunctioned in that manner.

Ben-Veniste, however, said that Zumwalt had told him earlier in the day that he knew of no instances of the tape recorder malfunctioning. Zumwalt replied that he had become aware of the malfunctioning after a conversation yesterday with Buzhardt.

The hearing is to be continued today.

### REMOVAL

Zumwalt testified that on about a half dozen occasions some tapes were removed by authorized White House personnel from the safe in which he kept them.



AP Wirephoto

Secret Service tapes expert Raymond Zumwalt and White House attorney Fred Buzhardt left court after Zumwalt had testified about tape malfunctions

As many as a dozen tapes could have been removed at one time, he said.

Zumwalt said that the longest time a tape ever was removed from his possession was "about a week."

Mr. Nixon has maintained that the tapes will not settle the major issues raised in the wide-ranging investigation. In a letter to Senate Watergate Committee Chairman Sam Ervin last July, he said:

"Before their existence became publicly known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth."

As he left the U.S. District Courthouse late yesterday afternoon after making the disclosure, Buzhardt was asked, "Do you think the

public will believe this?"

"I don't know," he replied as he headed for a White House limousine.

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