

# Key Mitchell, Dean Sirica Told by White

By William Chapman  
Washington Post Staff Writer

Two of the Watergate tape recordings 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 last April 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. Buzhardt made these revelations in

the Watergate case in a hearing scheduled suddenly yesterday afternoon by U.S. District Court Chief 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 tapes of the Dean and Mitchell conversations do not exist.

Deputy White House press secretary Gerald L. Warren told newsmen that while 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, as Buzhardt and prosecution lawyers began dis-

cussing procedures for turning the White House tapes over to the grand jury.

Buzhardt told the court then that the recordings had "never been made," Sirica said. The judge then explained that he had decided that the facts should be "a matter of public record" and ordered yesterday's hearing.

Buzhardt did not indicate yesterday why the non-existence of two widely discussed tape recordings was not divulged by the White House earlier.

Warren said last night that Buzhardt learned only last Saturday after lengthy searches that the two tapes did not exist.

Warren said Buzhardt was searching then for the tapes to turn them over to Sirica. After White House aides had searched for an unspecified time, Buz-

## Tapes Don't Exist, House Counsel

hardt determined on Saturday "that these two conversations could not be found," Warren added.

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

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. Nixon held a brief, 4-minute telephone conversation with Mitchell, during which the sole subject of conversation, according to Mitchell, was the Watergate break-in. 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.

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 was discussed. He quoted Mr. Nixon as saying at that meeting that it probably had been foolish of him 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 ap-

proved raising a \$1 million fund for the defendants.

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 finally both ordering the President to hand them over. Former Watergate Special Prosecutor Archibald Cox was fired by the President when he refused to accept a compromise calling for the tapes to be reviewed by Sen. John Stennis (D-Miss.) and then written versions turned over to Sirica.

Cox's subpoenas and the record of the case in court decisions refer, uncontradicted by White House counsel, to the existence of nine tapes.

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## TAPES, From A1

The White House has said that the tapes—never specifying the number—were being held by the President.

"They're under his personal physical control," Warren told reporters Monday. He did not mention that two of them did not exist.

After the news was disclosed late yesterday afternoon, 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 had assured him that the tapes were in a safe place and never indicated there was trouble with them, Cox said. He added, "I'd be awfully surprised if he knew" that two recordings never existed.

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 H. 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, 1973. 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 still exists and would be covered by the subpoena issued by the court.

Dean 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."

Buzhardt, explaining the absence of the tapes yesterday, said no recording was made of Mr. Nixon's talk with Mitchell because the President used a phone in



JUDGE JOHN J. SIRICA  
... ordered hearing

the residential part of the White House. The phone was not plugged into the White House tape system, he said.

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."

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. But he said this was only a hypothetical example of what may have happened to prevent the recording.

Zumwalt explained 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, are 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 occa-

sions 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 said he had become aware of the malfunctioning after a conversation yesterday with Buzhardt. He went on to say that he counted even excess "noise" on the tape as a malfunction.

Warren said later that there had been "extensive conversations" in Mr. Nixon's office and on the telephone there earlier during April 15, which was a Sunday. The tape on the voice-activated recorder, Warren said, had filled up and the machine had stopped running when Dean came in to talk.

Warren said there was a second recorder installed in the office but, he said, it "would not have been activated until late that night or early the next morning by a timer unless manually activated." He said no one manually activated it.

Warren said that Buzhardt asked the Secret Service's Technical Security Division to give him a written explanation of why the conversations were not on the tapes when "it was determined" last weekend that they were missing.

Buzhardt's first chance to mention the discovery to Sirica, Warren said, was at a closed hearing Tuesday. At that time, Warren related, it was agreed that the issue should be brought out in open court.

The hearing is to be continued this morning, with prosecutors moving to have logs of presidential conversations and logs telling when tapes had been removed from Zumwalt's storage safe brought into court.

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.

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

It has been previously revealed that H. R. (Bob) Haldeman, former White House chief of staff, re-

moved some of the tapes from the White House to hear what they contained. Haldeman has testified that he listened only to tapes of conversations occurring on Sept. 15, 1972, and March 21, 1973.

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

There were two tape-recording systems installed in the White House under Zumwalt's supervision. One was a system linked to three telephones in the Oval Office, the Executive Office Building and the Lincoln Room.

A separate system consisted of room microphones in the Oval Office, the Executive Office Building office, and in the Cabinet Room.

Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Watergate committee, and Sen. Howard Baker (R-Tenn.), the vice chairman, talked with Mr. Nixon 10 days ago about the five tapes that committee is still seeking to subpoena. Ervin said yesterday Mr. Nixon told him the tapes were available. A spokesman for Baker said that Mr. Nixon was talking then only about the five tapes, none of them having to do with the two conversations for which there are no tapes.

Mr. Nixon has maintained that the tapes will not settle the major issues raised in the wide-ranging investigation. In a letter to 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."

The President said that "as in any verbatim recording of informal conversations, they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways."

As he left the U.S. 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.