

# Excerpts From White House Analysis

Special to The New York Times

WASHINGTON, Nov. 26—Following are excerpts from the White House analysis and claims of executive privilege for subpoenaed tape recordings, submitted today to United States District Judge John J. Siricas

## PART I

Item 1 (A) of the subpoena relates to meeting of June 20, 1972, in the President's Executive Office Building ("EOB") office involving Richard Nixon, John Ehrlichman and H. R. Haldeman from 10:30 A.M. to noon (time approximate).

The President's daily diary log for June 20, 1972 (Exhibit 13), shows that the President met alone with his assistant John D. Ehrlichman, from 10:25 to 11:30 A.M. in his "EOB" office. Subsequently, the President met with his assistant, H. R. Haldeman from 11:26 A.M. to 12:45 P.M. in his "EOB" office.

Conversation between the President and John D. Ehrlichman, from 10:25 to 11:20 A.M. in the President's "EOB" office.

This conversation relates primarily to the higher education bill then under consideration by the Congress. Other subjects discussed include school busing, the Supreme Court decision (U. S. v. U. S. District Court) on national security wiretapping, press conferences and press formats, legislative action on proposals for welfare reform and the Stockholm conference on environment. During the conversation, the President conversed on the telephone with a deputy assistant, Edward L. Morgan, about the higher education legislation.

There is no discussion or comment which relates, either directly or indirectly, to the incident at the Democratic National Committee offices at Watergate which occurred a few days prior to the conversation.

### Nothing Relates to Watergate

The conversation recorded on this tape consists of advice to the President by his then senior assistant for domestic affairs on official policy decisions then pending before the President, and the conveyance to the President by his assistant of the advice of other identified persons within the Administration on the same matters. Nothing in the conversation relates to Watergate or anything connected therewith.

The President believes that the conversation is subject in its entirety to a claim of executive privilege in order to protect the confidentiality of advice given to the President. There is nothing in this conversation "concerning possible criminal conduct or discussions of possible criminal conduct" as to testimony

concerning which the President announced he would not invoke executive privilege on May 22, 1973.

### Haldeman-Nixon

Conversation between the President and his assistant, H. R. Haldeman, from 11:26 A.M. to 12:45 P.M. in the President's "EOB" office.

This conversation was recorded on tape by the sound-actuated recording system described in testimony in the evidentiary hearing held by this court, and the tape recording is being submitted as Item 1.B.1. covered by the subpoena.

This conversation relates primarily to scheduling and travel. For a portion of this recording, in lieu of any audible conversation, there is a constant hum. (See "B.1. (c), below). At one point during the meeting the President spoke on the telephone to his daughter, Julie. None of the recorded conversation relates to Watergate.

There is a lapsed playing time on the tape of approximately 3 minutes and 10 seconds, during which the President requests consommé and speaks to the steward about minor administrative matters. The tape records various noises of movement. The playing of the tape recording from the point where H. R. Haldeman enters the office to his departure is approximately 54 minutes and 49 seconds. The playing time of the tape preceding significant portions of the conversation are as follows:

EVENT—Playing time from beginning of recording of this conversation.

Start of "hum" signal: 3 minutes 40 seconds.

End of "hum" signal: 21 minutes 55 seconds.

Telephone conversation: 47 minutes 0 seconds.

It is believed that the hum which occurs approximately 3 minutes and 40 seconds from the beginning of this conversation between President Nixon and H. R. Haldeman, and which continues for approximately 18 minutes and 15 seconds, was caused by the depression of a record button during the process of reviewing the tape, possibly while the recorder was in the proximity of an electric typewriter and a high intensity lamp.

The incident was detected and reported when made to the President, and shortly thereafter to White House counsel, J. Fred Buzhardt, as having occurred on a portion of the tape recording subsequent to that of the meeting between the President and John Ehrlichman, which at that time and until November 14, 1973, was believed to be the only part of that recording subpoenaed. The incident

was therefore believed to be inconsequential.

The delay in discovering that the incident affected a portion of the tape containing a subpoenaed conversation was due to the ambiguity of the language of the subpoena. The applicable portion of the subpoena, dated July 23, 1973, is:

"1. All tapes and other electronic and/or mechanical recordings or reproductions, and any memoranda, papers, transcripts and other writings, relating to:

"(A) Meeting of June 20, 1972, in the President's Executive Office Building ("EOB") office involving Richard Nixon, John Ehrlichman and H. R. Haldeman from 10:30 A.M. to noon (time approximate.)"

In the remainder of the subpoena applicable to tape recordings, each separate meeting is subpoenaed as a separate item. Accordingly, Item (a) of the subpoena was initially assumed to be applicable to only one meeting.

An examination of the President's daily log revealed that there was no meeting with the President on the morning of June 20, 1972, in which both Mr. Ehrlichman and Mr. Haldeman participated.

Mr. Ehrlichman, however, met with the President from 10:25 A.M. to 11:20 A.M. This meeting most nearly coincided with the time specified in the subpoenas.

### Testimony by 2 Aides

In addition, the public testimony given by Messrs. Haldeman and Ehrlichman indicated that it was Mr. Ehrlichman's conversation in which the special prosecutor would have an interest.

White House counsel is not aware of any testimony given by Mr. Haldeman relating to a meeting with the President on June 20, 1972.

Mr. Ehrlichman, however, was examined in some detail by the Senate Select Committee on his meeting with the President on June 20. On July 24, 1973, Mr. Ehrlichman testified, in answer to questions by Senator Baker, that he had no recollection or notes of having discussed Watergate at this meeting with the President, but rather, met with the President because he "needed some decisions and some marching orders" on a particular legislative subsequently, on July 30, 1973, Mr. Ehrlichman testified:

"I told Senator Baker, I believe, the other day that Watergate was not discussed at the meeting and since then I have rechecked what sketchy notes I have and I find I was in error on that. I am sure there must have been some dis-

ussion of the Watergate with the President on that occasion on the 20th."

### Memorandum of Prosecutor

It was not until the evening of Wednesday, November 14, 1973, when copies of the subpoenaed tapes were provided for White House counsel's use in preparing the index and analysis required under the court's direction, that all materials remotely relating to the subpoenaed conversations were reviewed to assist in preparing the analysis. Among the materials then reviewed was the opinion of the United States Court of Appeals for the District of Columbia, Nixon v. Sirica, decided October 12, 1973. Appendix II, beginning at page 48 of the opinion is a memorandum filed by the special prosecutor with this court on August 13, 1973. The first numbered item of that memorandum is as follows:

"1. Meeting of June 20, 1972. Respondent met with John D. Ehrlichman and H. R. Haldeman in his old Executive Office Building office on June 20, 1972, from 10:30 A.M. until approximately 12:45 P.M. There is every reason to infer that the meeting included discussion of the Watergate incident. The break-in had occurred on June 17—just three days earlier. Dean did not return to Washington until June 18. Mitchell, Haldeman and LaRue had also been out of town and did not return until late on June 19.

"Early on the morning of June 20, Haldeman, Ehrlichman, Mitchell, Dean and Attorney General Kleindienst met in the White House. This was their first opportunity for full discussion of how to handle the Watergate incident, and Ehrlichman has testified that Watergate was indeed the primary subject of the meeting. From there, Ehrlichman and then Haldeman went to see the President. The inference that they reported on Watergate, and may well have received instructions, is almost irresistible. The inference is confirmed by Ehrlichman's public testimony that the discussion with respondent included both Watergate and Government wiretapping. The contemporary evidence of that meeting should show the extent of the knowledge of the illegal activity by the par-

# and Executive Privilege Claims for Tapes

ticipants or any effort to conceal the truth from the respondent."

Only the most careful reading of even this memorandum discloses that the special prosecutor seeks a recording of more than one meeting on June 20, 1972. Only two indicators are present. First, the ending time of the "meeting" in the memorandum is 12:45 P.M., rather than the approximation of "noon" as specified in the subpoena. Second, the word "then" in the sentence "From there, Ehrlichman and then Haldeman went to see the President" indicated the special prosecutor sought recordings of two sequential meetings.

## Inquiry to Buzhardt

White House special counsel J. Fred Buzhardt received an inquiry on September 23, 1973, as to the conversation covered by the first item of the subpoena, to which he replied that the conversation at the meeting with Ehrlichman was what was involved, and that the special prosecutor must have been mistaken in assuming that Haldeman also was in the meeting. This response was relayed to the President and to Mr. Steve Bull.

The conversation on the tape recording of the meeting between H. R. Haldeman and the President consists of advice to the President by a senior adviser on official decisions then pending before the President. None of the conversation recorded related to Watergate.

The President believes that the conversation is subject in its entirety to a claim of executive privilege in order to protect the confidentiality of advice given to the President. There is nothing in this conversation "concerning possible criminal conduct or discussions of possible criminal conduct" as to testimony concerning which the President announced he would not invoke executive privilege on May 22, 1973.

A file search has disclosed handwritten notes of H. R. Haldeman, which from the identifying marks and the content indicate the notes were made by H. R. Haldeman during the meeting with the President on June 20, 1972, between 11:26 A.M. and 12:45 P.M. The notes are on two pages of paper from a yellow legal pad. These notes are being submitted. The notes reflect that the President gave instructions to Mr. Haldeman to take certain actions of a pub-

lic relations character which related to the Watergate incident.

## PART II Mitchell Phone Conversation

Item 1 (b) of the subpoena relates to "telephone conversation of June 20, 1972, between Richard Nixon and John N. Mitchell from 6:08 to 6:12 P.M."

The only material relating to this conversation is a dictating belt of his recollections dictated by the President as a part of his personal diary on June 20, 1972, at 8:30 P.M., in which the President referred to his telephone conversation with John N. Mitchell. That portion of the dictating belt to and including the reference to the telephone conversation with John N. Mitchell is being submitted.

That portion of the dictating belt on which the President dictated recollections of the conversation with John N. Mitchell does contain references to Watergate.

The President's comments relating to the Mitchell conversation begin at 2 minutes 22 seconds playing time from the beginning of the dictating belt and end at 2 minutes 45 seconds playing time from the beginning of the dictation.

## PART III

### June 30 Meeting

Item 1(c) of the subpoena related to a "meeting of June 30, 1972, in the President's 'EOB' office, involving Messrs. Nixon, Haldeman and Mitchell from 12:55 to 2:10 P.M."

This conversation, recorded on tape, occurred at a luncheon in the President's "EOB" office, attended by President Nixon, John N. Mitchell and H. R. Haldeman, on June 30, 1972, immediately prior to the announcement of the resignation of John N. Mitchell as chairman of the Committee to Re-elect the President and the appointment of Clark MacGregor as his successor.

There are a few passing and collateral references to Watergate which are not substantive. There is an incoming telephone call just prior to the conversation. At the end of the conversation, the President indicates his intention to take a short nap.

The playing time for the tape recording of this con-

versation is approximately 1 hour 9 minutes and 44 seconds.

The conversation recorded consists of advice to the President by his senior staff assistant and his former Attorney General relating to matters which had a direct bearing on the President's ability to operate his office and conduct his official business at that time. The conversation includes discussions of highly personal matters.

The President believes that the conversation is subject in its entirety to a valid claim of executive privilege in order to protect the confidentiality of the matters discussed. There is nothing in this conversation "concerning possible criminal conduct" as to testimony concerning which the President announced he would not invoke executive privilege on May 22, 1973.

## PART IV

Item 1 (d) of the subpoena relates to a "meeting of September 15, 1972, in the President's Oval Office involving Mr. Nixon, Mr. Haldeman and John W. Dean 3d from 5:27 to 6:17 P.M."

This conversation was recorded on tape. John W. Dean 3d, then counsel to the President, entered the President's Oval Office at approximately 5:27 P.M. On September 15, 1972, during a meeting then in progress between the President and his assistant, H.R. Haldeman. He remained in the Oval Office, as did the President and Mr. Haldeman, until approximately 6:17 P.M., at which time the President left by automobile for the Washington Navy Yard.

Earlier in the day, the grand jury had returned indictments on seven persons in connection with the entry into the Democratic National Committee offices at the Watergate apartments.

For the first approximately 33 minutes and 9 seconds after Dean entered the Oval Office, the conversation involves subjects directly or indirectly related to the Watergate matter. Included are discussions of the indictments, the time of the pending trials, the civil cases connected with the incident and potential Congressional committee inquiries into the matter, as well as press coverage of the matter. After the first approximately 33 minutes and 9 seconds of the conversation, the conversation turns to other subjects within the President's official

cognizance not directly or indirectly related to the Watergate matter.

The playing time for the tape recording of this conversation is approximately 48 minutes 44 seconds. The only significant event is the end of discussion of Watergate related matters approximately 33 minutes and 9 seconds playing time from the beginning of the recording.

The President believes that the conversation recorded following the first 33 minutes 9 seconds of playing time is subject to a claim of executive privilege in order to protect the confidentiality of the advice and counsel provided to the President.

## PART V

### March 13 Meeting

Item 1(e) of the subpoena relates to a "meeting of March 13, 1973, in the President's Oval Office involving Messrs. Nixon, Dean and Haldeman from 12:42 to 2:00 P.M."