

Saxbe Brief Backs Nixon On Withholding 5 Tapes

MAR 29 1974

Attorney General's First Watergate Intervention Is Scored by Ervin

NYTimes

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, March 28 — Attorney General William B. Saxbe has asked the United States Court of Appeals here to sustain President Nixon's refusal to turn over five White House tape recordings to the Senate Watergate committee.

His request, filed late yesterday afternoon, was his first intervention in a Watergate lawsuit.

It conflicted with the position taken by the special Watergate prosecutor, Leon Jaworski, who filed his own legal memorandum with the court yesterday but declined to advise the court on what to do with the tapes.

The court has ordered the special prosecutor to file a memorandum. It has not ordered or invited Mr. Saxbe's participation.

Justice Department officials said today that the department had submitted its own brief, despite the existence of one filed by the special Watergate prosecution, because it wanted to "protect the principles of executive privilege and the integrity

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Warren Says Court Was Told 10 of 42 Talks of Nixon Are Not on Tape

NYTimes

By JOHN HERBERS

Special to The New York Times

WASHINGTON, March 28—A White House spokesman said today that it was a matter of court record that at least 10 of the 42 Presidential conversations reportedly sought by the House Judiciary Committee had never been recorded. However, he would not say whether others also were not on tape.

The 10 conversations were between President Nixon and some of his aides last April 15 and, if reconstructed, could have a crucial bearing on the committee's impeachment investigation. They occurred when the President and his aides were in a flurry of excitement over the unfolding investigations of the cover-up of the Watergate burglary.

Of the 42 conversations, Ronald L. Ziegler, the White House press secretary, left open the possibility, in response to questions yesterday, that some of the requested tapes might not exist. But he was not specific and, after conferring with White House lawyers, stopped talking about the situation.

This morning, Gerald L. Warren, deputy press secretary, was

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Warren Says a Court Was Told 10 Nixon Talks Are Not on Tape

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asked about a report in The Baltimore Sun that at least 10 of the 42 conversations had not been recorded.

He said that was a matter of court record, but that he was under orders not to discuss other aspects of the committee's request.

Meanwhile, John J. Rhodes of Arizona, the House Republican leader, suggested a new compromise plan for settling the dispute between the committee, which has asked for tape recordings and other documents, and the President, who has refused to turn over the material and termed the committee request a "fishing" expedition.

Mr. Rhodes suggested that White House and committee lawyers jointly screen the materials in question and decide which materials were relevant to the committee's inquiry. In the event of a deadlock, he said, the committee's view would prevail.

Moreover, Mr. Rhodes predicted that the White House would agree to such a mechanism and said that he had a feeling that such an accommodation would be reached. There was no indication, however, that such a proposal was under discussion by the two sides.

In hearings before Judge John J. Sirica last year, the White House submitted an exhibit showing logs of Presidential conversation. On April 15, President Nixon had a number of conversations with his assistants in his office in the Executive Office Building, but White House witnesses said that early in the afternoon the tape recorder ran out of tape and was not resupplied until the following morning.

Could Be Important

It was this breakdown, the White House said, that made it impossible to supply to the Watergate grand jury a conversation between the President and the then White House counsel John W. Dean 3d.

How according to the White House, the committee has asked for recordings of other conversations that took place while the recorder was out of tape. These could be important because they occurred shortly after Richard G. Kleindienst, the Attorney General, and Henry E. Petersen, Assistant Attorney General in charge of the Watergate investigation, informed the President that several of his assistants were involved in the cover-up.

According to White House logs and testimony, the tape ran out while Mr. Nixon was meeting with Mr. Kleindienst, from 1:12 to 2:22 P.M. then there were the following meet-

ings and conversations, while the machine was out of tape:

¶From 2:30 to 3:30 P.M., the President met with Mr. Ehrlichman.

From 3:27 to 3:44 P.M., the President talked by telephone to Mr. Haldeman.

¶From 3:48 to 3:49 P.M., Mr. Kleindienst and the President talked by telephone.

¶From 4 to 5:15 P.M., the President met with Mr. Kleindienst and Mr. Petersen.

¶From 7:50 to 9:15 P.M., Mr. Nixon met with Mr. Ehrlichman and Mr. Haldeman.

¶From 8:14 to 8:18 P.M., the President and Mr. Petersen talked by telephone while Mr. Haldeman and Mr. Ehrlichman were present.

¶From 8:25 to 8:26 P.M., the President and Mr. Petersen talked again by telephone, with Mr. Haldeman and Mr. Ehrlichman still present.

¶From 9:17 to 10:12 P.M., the President met with Mr. Dean.

[It was at this meeting, Mr. Dean testified last summer before the Senate Watergate committee, that the President said that he had not been serious in saying previously that it would be no problem to raise \$1-million for the Watergate burglars.]

¶From 9:39 to 9:41 P.M., the President talked by telephone to Mr. Petersen.

¶From 10:16 to 11:15 P.M., the President met with Mr. Haldeman and Mr. Ehrlichman.

¶From 11:45 to 11:53 P.M., the President talked by telephone to Mr. Petersen. *

Conflicts in Testimony

Some of the testimony about this series of meetings has been conflicting. Mr. Petersen told the Senate Watergate committee that a one of their conversations he succeeded that Mr. Nixon dismiss Mr. Haldeman, but the President rejected the idea, at least until April 30 when Mr. Haldeman resigned because he had been implicated in the cover-up.

According to the logs, the President worked the next morning in his Oval Office, where recording equipment was in place and presumably working.

Representative Rhodes's compromise plan was considered significant because of his close contacts with the White House. He said that if his formula was used, he was that confident the committee could complete its inquiry by mid-May and that the full House could vote on impeachment no later than mid-summer.

Asked if the White House strategy was to try to divide the panel by attacking it, Mr. Rhodes said, "You can make a fair case for the proposition there isn't any strategy. If there is a game plan, it is so subtle I can't understand it."

* Total,
6 hours 17 minutes.
For breakdown, see
chart filed
separately with
memos on tapes.

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of the criminal justice system."

The department was "not sure" that these principles would be cited by any of the others involved, said Irving Jaffe, acting Assistant Attorney General in charge of the Civil Division.

Senator Sam J. Ervin Jr., Democrat of North Carolina, and chairman of the Senate Watergate committee, contended today, however, that Mr. Saxbe had acted improperly in filing his five-page friend-of-the-court brief.

"The Attorney General has violated his solemn agreement that he made before his confirmation that he would leave all matters related to Watergate to special prosecutor Leon Jaworski," Senator Ervin said.

Mr. Ervin brought up the subject during a hearing he was holding about proposed legislation to make the Justice Department more independent of the President. He described Mr. Saxbe's action as both partisan and a violation of the principle of separation of powers.

"They're not supposed to be the lawyers for the White House," he said of the Justice Department, during a recess later.

The office of the special Watergate prosecution declined to comment on the matter.

The doctrine of executive privilege holds that the President has the authority to keep internal documents secret to protect the orderly function of the Government.

Mr. Jaffe, whose office prepared the brief and whose name was listed on the document with Mr. Saxbe's and two other department lawyers, said that he had "anticipated" that there would be criticism of the department's action. But, he said, the department had decided that its statutory duty to "represent the interests of the United States" required it to take a position in the Senate committee case.

Advice From Bork

Mr. Jaffe also said that he knew of no communication between the department and the White House regarding the decision to file the brief. He said the decision was made on Monday at a meeting called by Deputy Attorney General Lawrence Silberman, Mr. Saxbe did not attend.

Jack W. Hushen, the chief spokesman for the department, said that the Solicitor General, Robert H. Bork, had advised Mr. Saxbe earlier of what he called the necessity of "ensuring that the department's position regarding separation of powers" be "included in the record."

The Senate Watergate committee asked for the five tapes last summer. Mr. Nixon refused, citing executive privilege; the committee then went to court to try to enforce its subpoena. In February, after protracted litigation regarding the Federal court's jurisdiction in such matters, Federal District Judge Gerhard A. Gesell declined to enforce the subpoena.