

Hearing Recessed

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U.S. District Court Judge John J. Sirica abruptly adjourned his hearings on the Watergate tapes yesterday when a White House lawyer was asked whether President Nixon knew last June that a crucial recording did not exist.

White House special counsel J. Fred Buzhardt was on the witness stand when the questioning was cut off by a hurried bench conference with Sirica, apparently touching on the question of an attorney-client privilege.

Sirica ordered the transcript of the bench conference sealed from the public. He indicated that he would rule Monday on whether Buzhardt will be required to answer.

The dispute arose after Watergate special prosecutors disclosed in court that their former chief, Archibald Cox, had asked the White House late last spring for access to a reported recording of the President's April 15, 1973, conversation with then-White House counsel John W. Dean III.

The request was addressed to Buzhardt and dated June 11, weeks before public disclosure of the secret system for recording presidential conversations.

White House lawyers, including Buzhardt, told Sirica last week that they had "determined" only a few days earlier that two of the tapes Cox finally subpoenaed, including the April 15 talk with Dean, did not exist.

See TAPES, A13, Col. 8

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Even before issuing his subpoena on behalf of the Watergate grand jury, however, Cox had apparently been told that by Assistant Attorney General Henry E. Petersen the session with Dean might have been recorded.

In his June 11 letter to Buzhardt, Cox said he had been "informed that the President had a conversation with John Dean on the night of April 15 which was recorded on tape. My understanding is that there was either a personal meeting or a telephone conversation. I request access to the tape, to hear it and to have a transcript made for use in our investigation."

Buzhardt replied on June 16 in a letter stating that "the tape to which the President referred in his discussion with Mr. Petersen was a tape on which the President dictated his own recollections of that conversation after it was finished. It

would, of course, not be appropriate to produce that tape."

Under cross-examination by assistant Watergate special prosecutor Richard Ben-Veniste, Buzhardt said he checked with the President before composing his reply.

Ben-Veniste then demanded:

"Did the President indicate to you, in words or substance, that there was no tape of a conversation between him and Mr. Dean on April 15?"

The President's chief courtroom lawyer, Samuel J. Powers, quickly asked for a bench conference with Sirica and opposing lawyers before Buzhardt could answer.

A few moments later the hearings were adjourned until Monday. Ben-Veniste asked Buzhardt whether he had ever requested to see the recording of the President's recollections of the Dean meeting, but Powers objected that the hearing was dragging on too long, and Buzhardt was not required to answer that question either.

Earlier in the afternoon, before Buzhardt took the witness stand, Sirica had another conference in his chambers, prompted at least in part by the problems that the White House special counsel's testimony might pose.

Assistant Attorney General Petersen was told by Mr. Nixon himself on April 18 of a tape involving Dean's remarks three days

earlier.

Petersen told the Senate Watergate committee in August that the President offered to play it back for him, but Petersen, who had been in charge of the Watergate investigation, said he declined because he did not want "to get anything except what we are getting from John Dean directly."

The assistant attorney general told the Watergate committee that he did not know whether Mr. Nixon was alluding to a direct tape of the conversation with Dean or simply a tape of the President's recollections. He said the subject came up when the President told him over the phone April 18 that Dean had been granted immunity from prosecution.

Petersen said he told the President this was not correct. He said Mr. Nixon insisted that it was and stated, "I have it on tape if you want to hear it."

Earlier in his testimony, Buzhardt said he did not learn of the White House taping system even for phone conversations until last June 25 when White House chief of staff Alexander M. Haig Jr. asked him to listen to a recording that had been made in March.

Subsequently, Buzhardt said, White House aide Lawrence Higby asked him if Higby should invoke executive privilege in case he should be asked to testify about the overall system. "At that point," Buzhardt said, "I deduced there was such a system."