

# Nixon Lawyers: Tape Ran Out

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The White House tried to prove yesterday that a tape was never made of a crucial presidential conversation on the Watergate scandal because a recording device ran out of tape.

The tape was all used up by the time President Nixon and his former aide, John W. Dean III, sat down to talk in the President's office last April 15, White House counsel J. Fred Buzhardt maintained in a hearing before U.S. District Court Judge John J. Sirica.

But another development in the courtroom raised the

question of whether there is not another segment of tape, which could contain the Dean-Nixon conversation.

"Part I" was marked on the box which had contained tapes of conversations that preceded the meeting. It raised the possibility of a "Part II" segment, but Buzhardt's witnesses could not explain the marking.

The hearing also produced testimony that White House aides this summer took large batches of tapes of presidential conversations in and out of a storage room in the Executive Office Building.

That testimony tended to

contradict repeated White House assertions that the tapes were securely held. It raised questions, too, about a recent White House statement that the key tapes subpoenaed by prosecutors had been held under the President's personal control in the family residence.

Secret Service technicians testified that, in fact, as many as 26 tapes at a time were released to a White House aide, Stephen Bull. Frequently, the tapes released for the President and White House aides to listen to were logged out by hasty

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notes on old pieces of brown bag paper and in some cases there are no clear notes to show when the tapes were returned to the Secret Service safe.

Nine of the tapes were subpoenaed by the Watergate Special Prosecution force for the grand jury. After weeks of litigation, the White House finally agreed to turn them over, but then disclosed in a private court session Tuesday that two of the tapes thought to exist had never been made.

Sirica called a hearing Wednesday to put the explanations on the record and Buzhardt called three witnesses to help him yesterday.

On Wednesday, Buzhardt and a witness maintained that the April 15 conversation between Dean and Mr. Nixon had not been recorded because of an apparent malfunction in a timing mechanism.

Yesterday, however, Buzhardt told the court that the tape had run out. He and witnesses gave this version of the event:

- The tape recorder was set on Friday, April 13, to run through the weekend on one five-inch reel containing enough tape for six hours of conversation. The machinery was not fixed to switch automatically over to another reel when that one was used up, because Secret

Service technicians had no advance word that there would be much activity in the executive office Building that weekend.

- The tape was nearly used up on Saturday, when Mr. Nixon held meetings in that office lasting up to five hours and 26 minutes. By the time the Nixon-Dean conversation took place there was no more unused tape on the machine and no switch-over mechanism to start a new reel.

- Not until late last week was it discovered that the Dean conversation — in which clemency for convicted Watergate conspirators allegedly was discussed — had not been recorded. Acting White House Counsel Leonard Garment told reporters at the hearing that the April 15 tape "runs out in mid-sentence" on a conversation that took place before Dean's visit.

Garment said the tape will be played for Judge Sirica in his chambers so that

he can determine for himself what it contains. Sirica yesterday invited suggestions for choosing an electronics expert to help him examine the tape.

The possibility that there is another segment of the April 15 tape came out in testimony from two Secret Service men who supervised the tapings of Mr. Nixon's conversations and telephone calls.

Secret Service agent Raymond C. Zumwalt described the markings on the cardboard box that contained the reel, which was removed from the machine on April 16. It was marked "full reel," indicating that the tape had been used up. Another penciled marking was "Part I."

Asked if that meant that there might be a continuation of the weekend's conversation on another tape, Zumwalt said, "That's possible." However, he did not know if one existed and did not know who had marked "Part I" on the box.

His assistant, James G. Baker, who had made other pencil marks on the box, said of the "Part I" marking: "I didn't write it and I don't know who did."

Zumwalt also testified how he checked out from an Executive Office Building safe many tapes sought by White House aides, princi-

pally Stephen Bull. Zumwalt produced his "logs" of the tapes checked out and some of them were written on scraps torn from grocery bags.

His logs also failed to show clearly whether or not some tapes had been returned by White House aides who borrowed them.

One record showed that Bull checked out 26 tapes on June 4, 1973, the day on which Mr. Nixon listened to some of the crucial recordings, it has since been disclosed. Zumwalt said there is no date of the tapes being returned. Asked if he had no record of those ever being brought back, Zumwalt responded, "That's normal."

Another tape of a Sept. 15 conversation also was checked out. Zumwalt said he did not have any return acknowledged on his original records, but his overall access log showed a return date, he said.

That log was put together on July 18, two days after the White House taping system came to light in Senate

Watergate testimony. It was the same day Mr. Nixon announced an end to the tapings.

Zumwalt's records also showed that on July 11 Bull checked out six tapes that spanned the crucial week-end when Dean met with Mr. Nixon. They were returned the next day, his records showed.

Bull is expected to be called as a witness today when the hearing resumes.

Another witness, John Nesbitt, told the court of Mr. Nixon's minute-by-minute movements around the White House and the Executive Office Building on the weekend he met Dean. Nesbitt is assigned by the National Archives to the White House to prepare a daily diary on the President's movements for the benefit of historians.

It was Nesbitt's diary that showed Mr. Nixon had met for more than five hours in the building on Saturday, April 14, thus presumably using up most of the tape on the reel.

Nesbitt provided a log of Mr. Nixon's movements on April 15, then had to admit that it was revised on July 26 after members of his staff found that some details of what people met where with Mr. Nixon that day were inaccurate. July 26 was the day that the Watergate

Special Prosecution Force served its subpoena for the tapes and related documents on the White House. Nesbitt said he believed it was just a coincidence that his revision was done that day.

Nesbitt also produced telephone logs intended to clear up the questions about the second tape the White House says doesn't exist. It had been assumed that there was a tape of a telephone conversation Mr. Nixon had on June 20, 1970, with former Attorney General John Mitchell about the Watergate break-in and burglary.

However, Buzhardt disclosed Wednesday that no tape exists because, he said, Mr. Nixon had spoken from a phone not patched in to the White House recording system.

Nesbitt produced logs showing that Mr. Nixon was on the second floor of the White House residence when he made the call to Mitchell. The phone there is not part of the tape-recording system, according to witnesses.

Mr. Nixon has never made clear how many of the tapes he listened to. White House press secretary Ronald L. Ziegler told The Washington Post that it was "more than two," but he admitted that he did not know how many more.

The President said at his Sept. 5 news conference that "the only time I listened to the tapes, to certain tapes—I didn't listen to all of them, of course—was on June 4."

Mr. Nixon spent most of that day listening to the recordings. According to White House deputy press secretary Gerald L. Warren, the President spent so much time playing them back that Bull listened to one to give Mr. Nixon a rest. Presidential counselor Melvin R. Laird has been quoted as saying that Mr. Nixon had listened to the tapes for "10 to 12 hours" before reaching his decision not to make them public.

During the three months of controversy in the courts that followed, White House lawyers contended steadily that the recordings could not be surrendered because they were laced with "other information of a highly confidential nature not relevant to this [Watergate] inquiry."

Then, in a dramatic turnabout on Oct. 23, the President's chief courtroom lawyer, Charles Alan Wright, told Judge Sirica that the tapes would be surrendered after all and that Mr. Nixon would comply "in all respects" with the court orders demanding their production.

It was not until Wednesday afternoon, Wright said

yesterday in a telephone interview, that he discovered that two of the conversations were missing.

"My secretary at the White House called me so that I wouldn't have to hear it on the radio," Wright said. "Obviously I feel a little bit embarrassed by it . . . Obviously there will be great suspicion in the country. Obviously, there will be many people who are willing to believe the worst."

Wright said he would feel "dreadfully compromised" himself "if I felt the tapes had been destroyed." But he said he had no doubt in his mind that they simply did not exist. By giving Sirica those that do, he said, "I take it we will still be complying in full" with the court orders.

At the same time, Wright confirmed that a tape of Mr. Nixon's recollections of his April 15 talk with Dean, dictated as a memo, was made and would have to be turned over to Sirica "if it still exists."

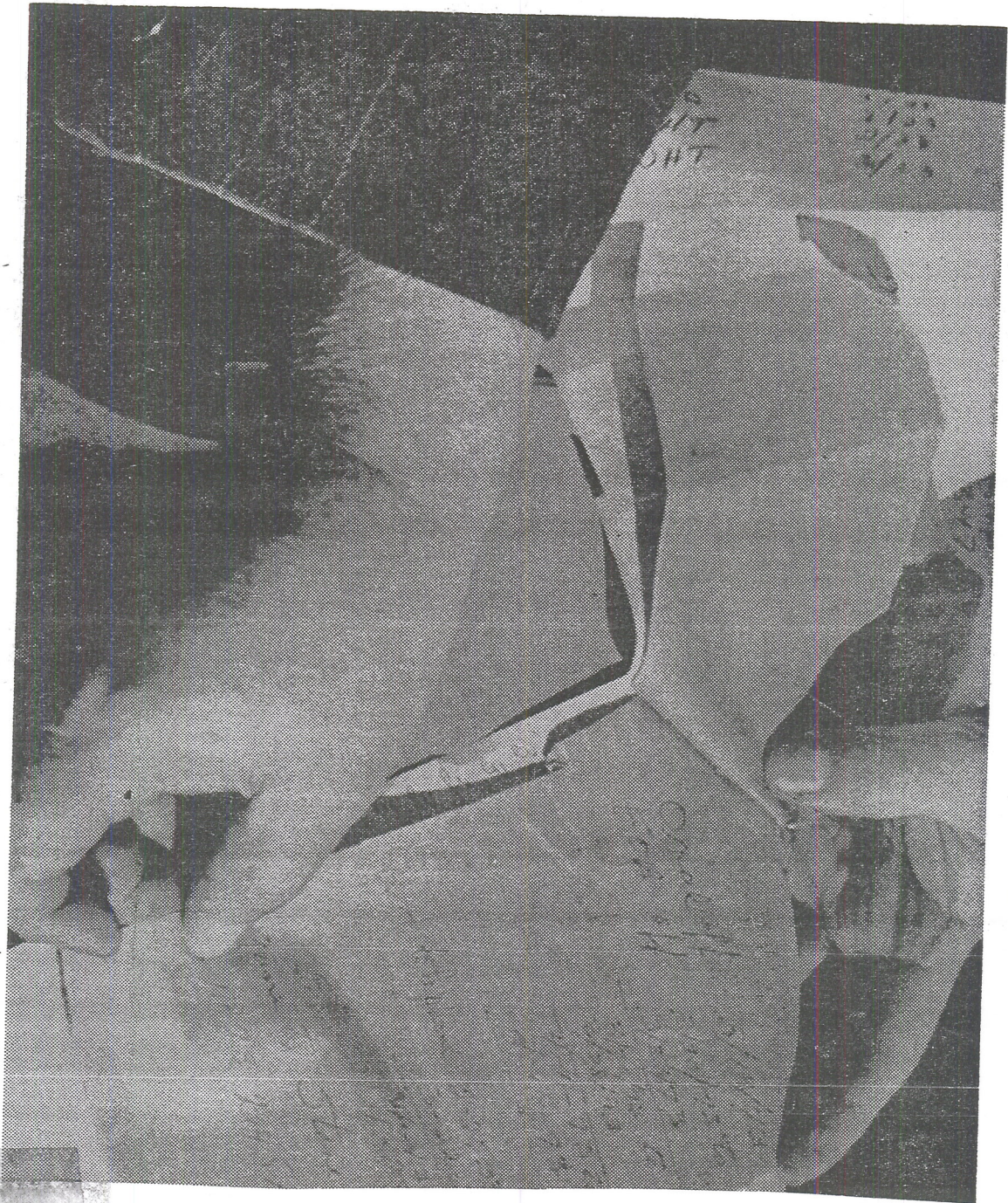
According to Wright, this tape was the one that the President offered to play back for Assistant Attorney General Henry E. Petersen, who conferred with Mr. Nixon after Dean had left. Petersen asked the President what Dean had told him, Wright related, and

Mr. Nixon offered to play back his taped recollections.

It was not entirely clear why the President did not offer instead to play back the actual conversation with Dean. In that way, he presumably would have discovered on the spot whether the recording machine had picked it up or not. One explanation, offered by a White House source, was that there were "problems of retrieval" for any particular conversation on the six-hour tapes and beyond that, the system was at the time still a closely guarded secret. Mr. Nixon, the source suggested, would not have wanted Petersen to know about it.

Another White House source claimed that the recording machine in Mr. Nixon's executive office building office had only a 1-hour and 10 minutes of tape left on it since the President had been there for 3 hours and 30 minutes on Sunday, April 14.

Asked why the White House did not know this weeks ago, the source maintained that "the President's position on the tapes was so firm that he and no one else thought he would ever give them up and so there was no requirement to listen to that one. No one ever tried to listen to that one."



U.S. District Court clerk holds check-out record showing who took out White House tape recordings and while ones they took.

Associated Press