WXPost

8-23-73

PRESIDENT VOWS TO REMAIN IN OFFICE

Previous Breakins Claimed

By David S. Broder

Washington Post Staff Writer

President Nixon triggered a new controversy yesterday with his contention that "burglarizing" on national security suspects was approved "on a very large scale" in the Kennedy and Johnson administrations.

Mr. Nixon told his press conference that the practice "was quite well known" from 1961 to 1966, but Justice Department officials during that period strongly disputed his claim.

Nicholas deB. Katzenbach, who was, successively, assistant attorney general, deputy attorney general, and Attorney General in the years Mr. Nixon referred to, said, "Here's one guy who didn't know of it."

"I have no knowledge of any such burglarizing and I don't believe it ever occurred," Katzenbach said.

White House officials, citing the "sensitivity" of the national security matters that were involved, declined last night to provide specific evidence in support of the President's claim, but insisted he was correct.

In his press conference, the Chief Executive cited the precedents of his two predecessors and a disputed Supreme Court decision to show he had not "violated the oath of office," as a reporter suggested, in approving a 1970 national security plan which authorized illegal breakins and entering at the premises of security suspects.

Mr. Nixon said in May of this year that the plan

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revoked after only five days, because of the opposition of the late FBI Director J. Edgar Hoover, and was never put to use.

In defending the legality of the plan yesterday, the President first contended that the Supreme Court in "an opinion last year . . . indicates inherent power in the presidency to protect the national security in cases like this."

J. Fred Buzhardt, special counsel to the President on Watergate and related matters, said later Mr. Nixon was referring to the case of U.S. vs. U.S. District Court, which was debated at length last month before the Senate Watergate committee.

Former presidential aide John D. Ehrlichman and his lawyer, John J. Wilson, contended that when the Supreme Court unanimously ruled the Nixon administration had exceeded its authority by wiretapping without court order in domestic national security cases, it left open the question of the legality of extraordinary measures directed against "foreign powers or their agents."

Sen. Sam J. Ervin Jr. (D-N.C.) and others on the committee disputed that interpretation.

After citing this case yesterday, Mr. Nixon said: "I should also point out to you that in the three Kennedy years and the three Johnson years through 1966, when burglarizing of this type did take place, when it was authorized on a very large scale, there was no talk of impeachment. And it was quite well known."

The President provided no examples and Buzhardt said in an interview that the "sensitivity of subject is such I would not undertake to spell out the specific instances."

"But I know the President is right," Buzhardt said. "He is right—in spades."

The White House lawyer referred a reporter to the section of the President's May 22 statement in which Mr. Nixon said the 1970 intelligence plan was needed because in 1966 "certain types of undercover FBI operations that had been conducted for many years had been suspended." These, he said, "had included authorization for surreptitious entry—breaking and entering, in effect—on specified categories of targets in specified situations related to national security."

On May 23, a high-ranking current official of the Justice Department told The Washington Post that the suspended activities had included wiretapping, hidden microphones, covert mail covers and "getting things from inside places" that were under surveillance.

But Katzenbach said that in the five years up to 1966, when he was in the Justice Department, "I know of no burglarizing that took place and none that was authorized."

"If the President is going to say things like that," Katzenbach added, "he ought to say who authorized it and who knew about it. The blanket charge is unfair."

Two former assistants to the late Robert F. Kennedy, Katzenbach's predecessor as Attorney General, said in separate interviews that they were skeptical of the President's statement.

"I have no idea at all what he was referring to," said Edwin O. Guthman, now an executive of the Los Angeles Times. "I wish someone had asked him the question."

Another Kennedy aide, John Seigenthaler, now publisher of The Nashville Tennessean, said there was "absolutely nothing" like that, and it would have been "totally impossible" for it to occur.

A fourth official from that era, now a judge, declined to speak on the record but said he had seen no evidence of such activities. But he added that, "if there were any, it would have been in the investigative agencies, and they're certainly never going to put in their reports that information came from a burglary. They'd say it came from a highly confidential source."

In his press conference yesterday, Mr. Nixon also said—as he has previously—that his two Democratic predecessors had used wiretaps more extensively than he has and had installed electronic recording equipment in the White House for secret monitoring of conversations.

Officials of the Johnson administration have said previously that Mr. Johnson recorded phone calls and conversations only occasionally, and not automatically, as Mr. Nixon did for the last two years. Kennedy aides have said they knew of no such practice in his administration.

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to compel production of the tapes in the face of Mr. Nixon's determination that such a step would destroy his right to confidential discussions and cripple the powers of the Presidency.

As for any doubts about the President's "good judgment" on that point or about his conduct in office, Wright told U.S. District Court Chief Judge John J. Sirica:

". . . There is only one court to which the President is answerable for any supposed dereliction of duty and that is a court of impeachment."

Speaking in a courtroom packed with about 350 spectators the special White House counsel also contended that the tapes could not be released piecemeal with irrelevant and sensitive segments deleted by Judge Sirica in secret, as Cox has proposed.

Under the Supreme Court's 1969 Alderman ruling, Wright said, any Watergate defendants indicted with the help of the tapes would be entitled to the complete, unedited recordings of Mr. Nixon's talks with top White House aides and campaign advisers.

In that connection, Wright continued, raising the issue of national security for the first time in the dispute, "the President has told me that in one of the tapes, there is national security material so sensitive that he would not feel free even to mention to me what the nature of the material is."

Judge Sirica praised both lawyers at the end of the 2½-hour hearing for "a masterful exposition of the issues" at stake. He said he hoped to announce a decision next Wednesday. Whatever the ruling, it is expected to wind up before the Supreme Court.

A former solicitor general with a largely independent charter as special prosecutor, Cox acknowledged that the law has long recognized a "qualified and incomplete" privilege against forced disclosure of government policy deliberations and internal documents.

But he said no one, not even the President, has "the absolute power to arbitrarily decide on his own say-so" what will be disclosed to the courts, especially in a case involving conversations that were apparently "poisoned by criminality."

Pointing out that Mr. Nixon has already waived any claim of executive privilege for the personal recollections of his top aides and advisers about White House involvement in the Watergate scandal, Cox said the tape recordings of their

JUDGE JOHN SIRICA
. . . praises both lawyers

talks with the President were critical to resolving their conflicting accounts and plainly the best evidence of who said what.

But the White House, Cox protested, seems to be saying that the privilege can be waived for evidence "only so long as it is open to the defects of human recollection, only so long as it is open to a charge of lying."

The tapes involve nine of the President's discussions about Watergate stretching from June 20, 1972—three days after discovery of the break-ins and bugging at Democratic Party headquarters here—to April 15, 1973. Ousted White House counsel John W. Dean III has quoted Mr. Nixon as acknowledging then a prior discussion of executive clemency for one of the Watergate conspirators.

The hearing before Judge Sirica began promptly at 10 a.m. with Wright, a professor of constitutional law from the University of Texas, leading off for the White House.

Standing at a lectern in the sprawling ceremonial courtroom of the U.S. courthouse here, Wright began by arguing that no American court would have dreamed before the Watergate scandal broke of asserting "the clout to overrule the President" and order his compliance with a subpoena.

The only other subpoena ever directed at a President was one issued to Thomas Jefferson by Chief Justice John Marshall during Aaron Burr's treason trial in 1807. Jefferson produced the letter at issue, but Wright said Justice Marshall avoided the question of what the courts might have done if Jefferson had chosen not to comply.

As a result, Wright said, no court has ever undertaken to compel a President to obey a subpoena that he has rejected, as Mr. Nixon has done.

Wright argued that compulsory production of the tapes would "impair very markedly the ability of the President of the United States—any President—to perform the constitutional duties vested in him.

"Getting to the truth of Watergate is a goal of great worth," the White House lawyer said, but "there may well be times when there are other national interests that are more important than the fullest administration of criminal justice."

At the close of Wright's argument, Judge Sirica asked him, in light of the White House claim that the President "is the sole judge of his own privilege," whether such absolute power were not "contrary to the spirit of checks and balances that we find in the Constitution."

Wright replied that the framers of the Constitution provided a remedy for abuses of presidential power but this, he said, "was the impeachment procedure in the Congress." Only after impeachment, he maintained, can a President "be charged and tried for any crimes he may have committed."

Cox said he thought it particularly unfair for the White House to suggest to the courts that the tapes can be withheld "as a matter of law" while contending at the same time that any prosecutions hinging on them will have to be dismissed if the courts insist on their production.

"That, if I may venture without any disrespect," Cox said, "would seem to me to be almost a deceit which would undermine confidence in the processes of justice."

Both sides accused the other of exaggeration, the White House in discounting Cox's claims that the tapes are essential to his prosecutions, and Cox in disputing the White House's assertion that yielding them would be "merely the first installment" in a parade of court-ordered raids on presidential documents for evidence of criminal conduct.

Cox said he doubted that, but he added that "even if criminal activities are discussed more often, then sure, the need is not for more privilege, better to hide the wrongdoing, but for a rule enabling the people to cleanse the Executive Branch . . ."

Wright took pains to disavow "any contention that Richard M. Nixon is above the law." Nor, he said, was he suggesting, in the special circumstances of the Watergate case, that the President "has the power to direct that any prosecution be dismissed." But he said the Constitution does limit "the extent to which the law can make its force felt against the person who currently holds the office."

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Cox Sees 'Deceit' By Nixon on Tapes

By George Lardner Jr.
Washington Post Staff Writer

Watergate Special Prosecutor Archibald Cox accused the White House yesterday of "almost a deceit" in ostensibly leaving the Watergate case to the courts while refusing to produce evidence crucial to its prosecution.

"The Executive cannot have it both ways," Cox maintained at an [illegible]

If the President intends "to leave the matter to the courts," the special prosecutor added, "then he must leave the matter to the courts to be decided in accordance with rules of law.

"If he wishes to dis[illegible]