

Nixon's Bugging Own Phone Held Legal

WXPost

JUL 17 1973

By John Hanrahan

Washington Post Staff Writer

President Nixon's recording of his own conversations, as described in Senate Watergate testimony yesterday by a former White House aide, is legal under a 1971 Supreme Court decision permitting one party to a conversation to record it without the consent of other parties involved, legal authorities said yesterday.

The President's failure to use a beeping device to warn persons to whom he was talking that their telephone conversations were being recorded does, however, constitute an apparent violation of federal communications law.

Spokesmen for the Federal Communications Commission and the local Chesapeake & Potomac Telephone Co. said that the only penalty that could be used against the President would be the removal of his phones—and both agreed this was unlikely to happen.

FCC regulations require telephone companies to file a schedule of their rates and rules with the FCC, and also require the companies to enforce these rules. The C&P schedule includes a provision complying with a 1947 decision recording a telephone conversation to use a beeper tone at 15-second intervals.

In ordinary circum-

stances, said C&P public information director Frederick W. Langbein, a person recording phone conversations without using a beeping device at 15-second intervals would be informed of the violation and would be ordered to cease the activity — and could have his telephone removed.

"In this particular case," Langbein said, "I hesitate to say what action we will take. Certainly, we're not going to disconnect their (White House) phones."

Leonard Weinles, the FCC public information officer, said yesterday that it is the obligation of C&P not FCC to enforce the beeping device provision.

Asked what would happen if C&P failed to notify the White House to cease recording conversations without notifying other parties to the conversations, Weinles said:

"That's an iffy question. It's their (C&P) rule. They're supposed to enforce it. If they don't, the FCC could find they have failed to enforce their tariff (rules) and they (C&P) could be subjected to penalties."

The penalties are set forth in a law that reads:

"Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or im-

posed by the Commission . . . shall . . . be punished, upon conviction thereof, by a fine of not more than \$500 for each and every day during which such offense occurs."

Weinles said the fine is levied against the telephone company, and not against the person recording the conversation. Two attorneys who have handled several electronic surveillance cases disagreed. The attorneys, who did not wish their names used, said they believed the law could be applied to any person, as well as the telephone company.

In testimony before the Senate select committee on the Watergate yesterday, Alexander P. Butterfield, former deputy assistant to the President, said that virtually all of President Nixon's White House conversations — face-to-face as well as telephonic — have been recorded since April, 1971.

Initially, Butterfield told the committee that the recordings had begun in July, 1970, but then agreed to a memo, sent hurriedly to the committee by White House special counsel J. Fred Buzhardt, stating the recordings did not begin until April, 1971.*

April, 1971, was the month in which the Supreme Court ruled that it was legal to record conver-

sations when one party to the conversation had given consent to be recorded. Up until that time, the legality of such recordings was uncertain.

(Committee chief counsel Samuel Dash said yesterday that Mr. Nixon's recordings were legal under the 1971 decision, but probably violated federal communications law on the use of beepers on telephone conversations. Other attorneys noted that if someone other than Mr. Nixon used the phones and was unaware their conversations were being recorded, this would be in violation of the 1971 decision.)

Butterfield, now administrator of the Federal Aviation Administration, said that the phone taps and room bugs at the White House were installed at Mr. Nixon's order, with an eye toward preserving the conversations for history. Butterfield said the President's office phone at Camp David Md., also was equipped to record conversations.

Maryland law prohibits electronic interception of any conversation without a court order. However, Henry R. Lord, deputy attorney general for Maryland, said it was uncertain whether the state law would apply to a federal enclave such as Camp David.

*letter says "spring of 1971" - col. 8, this page.

This apparent error may be the basis for the date of