

# New Problems on Taps

## Nixon and Kissinger May Face Queries On Bugging of 2 Ex-White House Aides

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The disclosure that two White House officials without access to secret foreign policy information were the targets of wiretaps that President Nixon said that he had authorized to protect national security seems certain to raise new legal and political problems for both Mr. Nixon and Henry A. Kissinger, his

### News Analysis

nominee for Secretary of State. Mr. Nixon has defended the wiretaps, 17 in all, which were placed without court orders between May, 1969, and February, 1971, as necessary to find and stop leaks to newsmen about "highly sensitive foreign policy initiatives" begun in the early days of his first Administration.

The leaks about which the President and Mr. Kissinger were most concerned, Administration sources say, disclosed the secret bombing by American planes of Cambodia in 1969 and elements of the American negotiating position at the Strategic Arms Limitation Talks later that year. Although most of the wiretaps were directed at four of the newsmen who had reported such details and at Government officials who knew them, no serious breaches of security are said to have been discovered.

### Rogers Criticism Recalled

The wiretap operation had been criticized before yesterday by the outgoing Secretary of State, William P. Rogers. And Mr. Kissinger, whose role in its inception is not entirely clear, has said that he found the procedure distasteful but necessary.

But now that two former White House aides whose jobs had nothing to do with foreign policy have been added to the list of those whose telephones were monitored, something more serious and consequential than expressions of distaste for an unpleasant but necessary business is likely to result.

The President insisted in his statement May 22 that all of the wiretaps were "legal under the authorities then existing," but there are serious doubts in the minds of some wiretap experts that the President properly—or legally—invoked the rationale of "national security" in these two cases.

Friends of one of the men, John P. Sears, a former member of the President's old New York law firm, describe Mr. Sears as "strictly a political type" whose job of deputy White House counsel involved patronage and relations with local and state Republican leaders.

Mr. Sears combined his work at the Nixon law firm with early advance efforts for the President's 1968 campaign, and in the process made close friends among a number of political reporters, often chatting about politics with them until late into the night.

"That habit of life made him automatically a suspect character," one friend said today. Another friend said that when leaks of "internal political stuff" began to seep from the cloistered Nixon White House, "the ruling triumvirate of Haldeman, Mitchell and Ehrlichman naturally thought of John Sears . . ."

It is known that John N. Mitchell, as Attorney General, personally approved the authorizations for the 17 wiretaps, including Mr. Sears, and the animosity that arose between the two men in the 1968 Nixon campaign has led some people to conclude that the Sears wiretap perhaps was part of a personal and political vendetta rather than a legitimate national security surveillance.

Mr. Sears has been unreachable since the disclosure that his telephone was tapped during his last two stormy months at the White House in 1969.

Another White House official who was tapped, James W. McLane, now the deputy director of the Cost of Living Council, said yesterday that he was unable to explain his inclusion on the list. "I knew absolutely nothing about national security," said Mr. McLane, who was monitored while he was head of the White House Domestic Council's Committee on Aging.

Presidents since Franklin D. Roosevelt have asserted the inherent constitutional power to tap telephones without court orders in national security cases where foreign governments are involved, and neither Congress nor the Supreme Court has ever affirmed or denied the existence of such powers.

But Congress, in the Omnibus Crime Control Act of 1968, did stipulate that court orders must be obtained for domestic wiretaps, while leaving open the question of whether warrants were also required in cases involving foreign intelligence information, protection of the nation from hostile attack or other "clear and present danger" to the Government's existence.

Lawyers familiar with the statute said today that they believed the taps on Mr. Sears and Mr. McLane did not fall into the gray area of "warrantless" surveillance, and that those responsible for tapping them may have violated the law and left themselves open to civil penalties as well.

"If it was me, I'd sue Nixon,

Kissinger and everybody else involved" one said.

A former official of the Department of Health, Education and Welfare with no background in foreign affairs, Mr. McLane assumed his White House post in December, 1970, following a leave of absence to work in the campaign of Gov. Francis W. Sargent of Massachusetts, a liberal Republican. Mr. Sears is married to his daughter.

A central question as the story unfolds will be who determined which names were to go on the wiretap list. So far, no one has been willing to take that responsibility.

Mr. Nixon has said that the names were selected through "coordination" among J. Edgar Hoover, the late director of the Federal Bureau of Investigation, whose agents installed and monitored the taps; former Attorney General Mitchell, and Mr. Kissinger.

Mr. Hoover's associates have said, however, that he refused to sign the requests for wiretap authorization but demanded instead that Mr. Mitchell send him the signed authorizations.

Mr. Mitchell has denied that he knew anything about the operation or that he ever signed such authorizations, but there is evidence that he did. Mr. Kissinger has said that he never requested wiretaps on members of his National Security Council staff or anyone else, but simply provided names of individuals who had access to the information that was being leaked.

### More Questions Likely

The best available evidence indicates, however, that the names of those tapped were sent directly from Mr. Kissinger's office to the F.B.I., and it is known that the bureau's reports on the conversations overheard were directed both to the President and to his national security adviser.

Mr. Kissinger is certain to be asked for more information by the Senate Foreign Relations Committee, which begins consideration of his nomination next week. One question that may arise could have to do with the wiretapping of two other individuals besides Mr. Sears and Mr. McLane.

One is Richard F. Pedersen, the former State Department counselor, now Ambassador to Hungary, who was closely associated for years with Secretary Rogers. One diplomat asserted recently that the tap on Mr. Pedersen "was a top on Rogers; Pedersen was his right-hand man."

The second is Lieut. Gen. Robert E. Pursley, who was senior military assistant to Melvin R. Laird when Mr. Laird was Secretary of Defense, and who was said to have been closer to Mr. Laird on a day-to-day basis than anyone else.

Those who know both men insist that although both had access to top-secret foreign policy information, neither had a reputation as a source for newsmen.

Some Administration insiders, noting that taps on Mr. Pedersen and General Pursley were placed a few days after the invasion of Cambodia by American ground forces in May, 1970, have speculated that Mr. Kissinger might have wanted to keep track indirectly of Mr. Rogers and Mr. Laird, both less enthusiastic about the Cambodian operation than he, to learn what they were thinking during that critical period.