

White House Says That Tapes
Were Not Made of 2 of Talks
It Pledged to Let Sirica Hear

COURT INFORMED

The Talks Were Those
President Had With
Mitchell and Dean

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WASHINGTON, Oct. 31 — Two White House conversations that were believed to contain evidence critically important to the Watergate criminal investigation were never recorded at all, President Nixon's special counsel said in court today.

J. Fred Buzhardt Jr., the White House lawyer, told Federal District Judge John J. Sirica at a special hearing that Mr. Nixon would be unable to deliver tape recordings of the two conversations to the judge for his inspection, as the court had ordered, because they did not exist.

In one instance, the President's counsel said, Mr. Nixon's telephone had not been "hooked into" the system designed to record for history his important conversations. In the other, a tape recorder in the President's hideaway in the Executive Office Building had malfunctioned.

Two Conversations Cited

Government prosecutors had sought recordings believed to have been made of a telephone conversation between President Nixon and his campaign manager, John N. Mitchell, on June 20, 1972, three days after the Watergate burglary, and of a meeting between the President and John W. Dean 3d, then his counsel, on April 15, 1973.

Because of testimony by Mr. Mitchell and Mr. Dean before the Senate Watergate committee, investigators believed that the two conversations would shed light on the President's possible involvement in the cover-up of the break-in at the headquarters of the Democratic National Committee at the Watergate hotel complex.

Today, for the first time in public, President Nixon's lawyer said that tapes of the two conversations had never existed during the entire legal con-

troversy.

President Nixon had refused to deliver nine tapes, believed to include these two, sought by Archibald Cox, then the special Watergate prosecutor, on three separate occasions. When they were subpoenaed by the court, when Judge Sirica ordered him to surrender them and when the United States Court of Appeals upheld Judge Sirica's order.

Then, a week ago, the President reversed his position and announced that he would comply with the court orders and submit the nine tapes for a judicial screening.

Tonight, when asked why no announcement of the non-existence of the tapes had been

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made previously, Geratd L. Warren, the White House deputy press secretary, said that no effort had been made to find the recordings until last weekend.

Mr. Warren said that Mr. Buzhardt had discovered that the two conversations were not in the tapes when he ordered a search for them over the weekend.

Mr. Warren said that when Mr. Buzhardt was told the tapes did not exist, he asked experts in the Technical Security Division of the Secret Service to find out why.

Mr. Buzhardt's statement appeared to conflict with testimony given to Senate Watergate committee investigators in closed session by Stephen B. Bull, a special assistant to the President, in August.

Mr. Bull reportedly said that President Nixon had ordered the April 15 tape of his conversation with Mr. Dean flown to his home at San Clemente, Calif., on June 27, but that no courier flight from Washington could be arranged.

as an alternative, the Senate

investigators were told, Mr. Bull was instructed to make arrangements with the Secret Service to have Mr. Buzhardt listen to the tape and then brief Mr. Nixon on its contents by telephone. Whether those instructions were ever carried out could not be determined.

Judge Sirica first learned of the nonexistence of the two tapes in a closed meeting yesterday morning with Mr. Buzhardt and representatives of the Watergate Special Prosecution Force, the group that Mr. Cox formerly headed.

The judge then summoned both sides to an open court

hearing this afternoon. He said there "the facts and circumstances" of the new White House statement "should be made a matter of public record."

After an opening statement, Mr. Buzhardt began calling witnesses for sworn testimony on the White House recording system, how it functioned and occasionally did not. The first witness, Raymond C. Zumwalt, a White House Secret Service agent, was cross-examined by Richard Ben-Veniste, assistant special prosecutor of the Special Prosecuting Force.

At 4:30 P.M., Judge Sirica recessed the hearing until tomorrow morning and ordered Mr. Buzhardt to bring with him a log showing who had had access to all the White House tape recordings and on what days they had withdrawn specific tapes from the file.

Judge Sirica gave no hint of what action he might take when both sides had completed submitting evidence on the matter of the missing tapes. Legally, they are under his jurisdiction—if they exist—since they are among the material that he has specifically ordered the White House to submit to him.

Under the Court of Appeals decision, President Nixon may delete national security material from the tapes, subject to later challenge by the Watergate prosecutors, and the judge will

decide what portions of the conversations should be passed along to the grand jury as possible criminal evidence.

Mr. Cox, who was testifying today before the Senate Judiciary Committee on the circumstances of his dismissal as special prosecutor, said that he had been given a hint of today's White House disclosure a few days before his dismissal.

Mr. Cox said that an Assistant United States Attorney in New York, otherwise unidentified, had told him that Mr. Buzhardt, when questioned about the availability of other White House tapes, had said, "We sometimes had mechanical problems."

Mr. Zumwalt, the White House Secret Service agent, testified that there were two tape recorders in the Presi-

dent's suite in the Executive Office Building, just west of the White House. They were used on alternate days, with an automatic control activating the idle machine about midnight every night.

"I assume it failed to switch the machines" the night before the Sunday meeting between the President and Mr. Dean, Mr. Zumwalt said. "Evidently, the contacts did not work."

Mr. Warren said tonight that the call to Mr. Mitchell on June 20 was made by Mr. Nixon on a phone in the West Hall of the White House that was not connected with the recording sys-

tem. The tapes operated only on calls from the Oval Office, the Lincoln Room on the second floor and the executive Office Building hideway.