

investigations

A Mystery About Two Tapes

FOR MORE than three months, President Nixon had fought on the grounds of executive privilege to deny the courts access to the Watergate tapes.

In the wake of his firing of special Watergate prosecutor Archibald Cox and the subsequent national uproar, Mr. Nixon two weeks ago said he would surrender the tapes, which reportedly would answer whether the White House had knowledge of the scandal.

But last Wednesday U.S. District Judge John J. Sirica called a special hearing to announce that the White House had informed him that two of the key tapes never existed.

'A Malfunction'

The hour-long meeting between Mr. Nixon and former White House counsel John W. Dean on April 15, 1973—two weeks before the President fired him—was not recorded, according to White House lawyer J. Fred Buzhardt, "due to a malfunction of recording system."

Dean had testified to Senate investigators that he told Mr. Nixon during that meeting the coverup of the Watergate scandal could not be contained indefinitely.

The second tape said not to exist concerned a four-minute conversation between Mr. Nixon and former campaign director John N. Mitchell on June 20, 1972, just three days after the Watergate break-in.

Buzhardt said the conversation "apparently was made from a phone extension (in the White House) not hooked into the recording system."

'Curious'

Mitchell had testified before the Watergate committee that he had never volunteered—and the President had never asked for—information about the Watergate break-in.

The White House said the President didn't discover absence of the tapes until last weekend.

Watergate committee chairman, Senator Sam Ervin (Dem.-N.C.) called the development "curious" and Senator Lowell Weicker (Rep.-Conn.) said it was "obvious that pretty important stuff is missing."

Matter of Prosecutor

The President, meanwhile, was also having problems finding a new Watergate prosecutor. When Mr. Nixon appointed Cox last May, he had vowed that the investigator would have a free hand.

Last weekend, the Presi-

dent was using almost the same words. "The special prosecutor," he said at a news conference, "will have independence. He will have total cooperation from the executive branch."

Once again the Justice Department, operating under Robert H. Bork after the resignation of Attorney General Elliot Richardson and the firing of Assistant Attorney General William Ruckelshaus Jr., would name another special prosecutor.

But, said the President, "we will not provide presidential documents to a special prosecutor." And he would not have the authority to go to court if necessary to

Talks with Dean, Mitchell were 'not recorded'

obtain evidence from the President—an act that led to Cox's dismissal.

"I would anticipate that that would not be necessary," Mr. Nixon said. "These are matters that can be worked out, and should be worked out in cooperation."

The Hill's Reluctance

Both Houses of Congress, jarred by one crisis after another and worried about the growing lack of confidence in the government, appeared reluctant to accept the President's solution.

"If that course is pursued," said Senator Birch Bayh (Dem.-Ind.), "we will again be in a situation in which a person or persons charged with the investigation of the executive branch would beholden to the executive branch and subject to

dismissal by the President.

More than half the Senate—53 members including seven Republicans—as well as 106 Representatives had indicated support for a bill that would direct the courts to name a new Watergate prosecutor independent of the President.

Acting Attorney General Robert H. Bork, meanwhile, did not seem in total agreement with the President's ideas.

Apparently putting his job on the line, Bork, who was reported to be considering five or six names and "a couple of them Democrats," said that "nobody at the White House is going to dictate any names to me" and reported to be demanding guarantees of independence for his appointee. If not, "I would feel my position would be . . . morally untenable."

Then on Thursday President Nixon announced two appointments: For Attorney General, Senator William B. Saxbe (Rep.-Ohio); for new Watergate prosecutor, conservative Democratic lawyer Leon Jaworski of Houston.

Cox, testifying before the Senate Judiciary Committee, said his work was far from complete.

Among documents that Cox said he had asked for but failed to get were logs of phone calls made by former White House aides between June 19 and December 13 of 1971 in connection with the "plumbers" activities, logs of meetings between the aides and the President and records involving the "plumbers" investigation of the Pentagon Papers.

Cox also sought records removed from White House



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aide Egil Krogh Jr., involved with the breakin of the offices of Daniel Ellsberg's psychiatrist, and Cox said that President Nixon had blocked the release of White House documents bearing on a controversial 1971 increase in milk support.

More News

It was also a busy week for related Watergate developments:

- Former U.S. Attorney General Richard G. Kleindienst, according to a New York Times report, had told the Watergate prosecutors that President Nixon in 1971 personally ordered him not to press a series of antitrust actions against the International Telephone and Telegraph Corp. The White House confirmed the story but said The Times had distorted its meaning. ITT eventually settled out of court, and ITT agreed to help finance the 1972 Republican National Convention with a gift reported at \$100,000 to \$400,000.

- Judge Sirica, on the request by Watergate prosecutors, took control of the voluminous evidence compiled by Cox and forbade anyone to remove anything from the files except attorneys from Cox's former prosecution force. The move came after President Nixon ordered the FBI agents to seal the files after Cox' dismissal.