

Wright Says Nixon Erred In Tape Case

By Susanna McBee
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AUSTIN—Charles Alan Wright, President Nixon's constitutional lawyer in the Watergate tapes case, says the White House made a "great mistake" in failing to tell him that two of the tapes do not exist.

The President could have told him, Wright said, but did not because of an understandable "failure of communications" during a "hectic" period.

In a six-hour interview Friday, Wright recalled standing before U.S. District Court Chief Judge John J. Sirica Oct. 23 and promising that Mr. Nixon would "comply in full" with a subpoena for tapes and documents relating to nine presidential conversations on Watergate.

Yet on Oct. 31, White House special counsel J. Fred Buzhardt told Sirica that two of the conversations—one by telephone with former Attorney General John N. Mitchell June 20, 1972, and one with former White House counsel John W. Dean III April 15, 1973—had not been recorded after all.

Wright said he first learned of the problem from his White House secretary, who phoned his office here, where he is a law professor at the University of Texas, the same day Buzhardt was revealing it in court.

At first, Wright said, he was surprised, but then he remembered overhearing a conversation at the White House Oct. 25 in which Buzhardt and acting counsel Leonard Garment were discussing a nonexistent tape.

"I heard somebody say something like: 'Well, that tape just doesn't exist. The machine ran out of tape; so

See WRIGHT, A14, Col. 1

WRIGHT, From A1

the conversation was never taped." But Wright said he thought they were talking about a tape in the case of financier Robert L. Vesco, who was indicted in New York on obstruction of justice charges.

"If I had been more alert or more curious," Wright continued, "I suppose I would have said, 'What tape was that? Is that one of the subpoenaed tapes?' I did not." (As it turned out, the nonexistent tape was supposed to have recorded the April 15 conversation with Dean and was subpoenaed in both the Watergate and Vesco cases.)

Wright said he also knew that not all White House telephone conversations were taped, but "I simply never thought to check whether or not that particular telephone conversation (with Mitchell) was taped."

The professor stressed that he perceived his duty as a White House consultant to be solely that of making constitutional arguments about the tapes, not of insuring their security, which he said was Buzhardt's responsibility. "On hindsight, I wish I had asked how many tapes we had," Wright said.

He added that he never heard the tapes and "never had any desire to hear them. I thought the furor about the tapes was an instance of public voyeurism, that everybody in the country would just love to be able to hear what the President of the United States is like when he has his hair down . . .

"My own reaction was to be unvoyeuristic, and the last thing in the world I ever want to hear is a presidential tape," he said.

Wright insisted that he was not upset — as one law school colleague reported him to be — over the failure of the White House to inform him of the tape problem, but he said:

"I think it is a great mistake that I was not alerted to the fact on Oct. 23 or some prior time that they wondered whether two of the tapes existed." Later in the interview Wright said he did not need to know before Oct. 23, but "it would have been much better in a public relations sense" if he had been able to inform Sirica that day.

12-9-73 W Post

"I don't think I was ill used," Wright said. "I think that simply from the point of view of my client, I have been advantageous if I had been told. It would have gone down much better with the public."

Asked if his client, Mr. Nixon, could have told him, Wright said, "He might have, I think it was a simply a failure of communications of sort that I can well understand. The events of that weekend had been very hectic events."

He was referring to Oct. 20, when President Nixon fired Archibald Cox as Watergate special prosecutor and accepted the resignations of Elliot L. Richardson as Attorney General and William D. Ruckelshaus as deputy attorney general.

Cox, who had subpoenaed the tapes July 23 and had won two court battles over them, was fired because he refused to follow Mr. Nixon's order never again to go to court for additional presidential material on Watergate.

He was also fired for opposing a compromise White House plan to let Sen. John C. Stennis (D-Miss.) listen to the subpoenaed tapes and submit authenticated versions of their contents to Sirica's court.

Wright said he could not be sure Sirica would have accepted the Stennis compromise. Cox and Stennis have also expressed doubts.

But Wright said he prepared a "very respectable legal argument" for the Stennis plan on Sunday, Oct. 21. He then returned to Texas to resume teaching, but by Tuesday morning, Oct. 23, was back at the White House. From 9 a.m. until 12:30 p.m. he conferred at various times with Buzhardt, Garment and White House chief of staff Alexander M. Haig Jr.

Wright would not reveal what was discussed because of "client-lawyer privilege," but it is known that the public outcry against Mr. Nixon's actions and calls for his impeachment were considered. It is also known that Wright favored turning over to the court the tapes themselves rather than Stennis' version of them. At 12:30, the professor recalled, "Haig brought back word that the President would comply in full."

Wright discussed his tape

case role while relaxing in his small office lined with law books, autographed pictures of Supreme Court justices, and trophies from the law school football team he coaches, the Legal Eagles.

It was clear from his recollections that the White House had dealt with him as a prestigious constitutional expert and not as a political or tactical adviser. He was not consulted, for example, on the contents of the Stennis proposal or even on the President's decision not to appeal the tape case to the Supreme Court.

Wright's account of the confused events leading to Cox's dismissal contradicted in several major respects the accounts given by Cox and Richardson.

During the first part of the week following the Oct. 12 U.S. Court of Appeals ruling that Mr. Nixon must submit the tapes to Judge Sirica, Wright was in Austin preparing a petition for Supreme Court review at the direction of Buzhardt and Garment.

That Thursday, Oct. 18, he returned to the White House, he said, "and had the feeling that something was happening. But I didn't know what and was not told what." All he knew was that he had read a newspaper account of Richardson-Cox negotiations on a compromise.

But he did not learn of the Stennis proposal until that afternoon when he, Buzhardt, and Garment were summoned to Haig's office to meet with Haig and Richardson.

"Elliot said, 'I have a response from Archie to the compromise,'" Wright recalled. "I said, 'Could I see the proposal that he's responding to?'"

As Wright understood the proposal, which he assumed Richardson, Haig, Buzhardt and Garment had developed, Stennis would receive complete tapes and transcripts of all Watergate-related matters that the tapes contained.

The transcripts would be written in the third person "to avoid pungent language" but would reflect accurately what had been said. Stennis would listen to the full tapes to verify that nothing pertinent had been left out of the transcripts. The verified transcripts would then go to the court.



Associated Press

CHARLES ALAN WRIGHT ... surprised at first

"I was just astonished that the President was willing to go that far," said Wright, who had been anguing in court for three months that the President had an absolute right to keep his conversations with advisers confidential and that no court could force him to make them public.

Wright said he thought Cox's answers amounted to a rejection, but was not sure. Richardson suggested that Wright call Cox and try to persuade him to accept the Stennis plan.

"Some of the others" at the meeting regarded Cox "as unpersuadable," Wright said, "but I wanted to persuade him."

Wright finally reached Cox by phone that night and both agree that the conversation was confused. Cox said at his Oct. 20 news conference that "it was my impression that I was being confronted with things that were drawn in such a way that I could not accept them."

Wright flatly denied that was his intention, but he said he told Cox that four points he had raised "were fundamentally inconsistent with what the President was proposing."

Cox's points were that no "one man operating in secrecy" should have the verifier's job; verifiers should be designated "special masters" by the court; tapes should be submitted for trials if demanded by the court, and the proposal did not allow for court access to other evidence.

Cox has said that Wright told him on the phone he could not have future court access. But Wright insisted, "I'm quite sure the court access question was not mentioned at all at that time."

That night after the phone call, Wright wrote Cox saying of the four points, "we could not accede to them in any form." The next day Cox sent a letter referring to the phone conversation: "Point four was that I must categorically agree not to subpoena any other White House tape, paper, or document."

"Archie's letter to me seemed to suggest that we were cutting him off from future tapes," Wright said. "Our objection was that he wanted an advance commitment on

some future tapes ... and that was a matter that was to be left open ... a matter for negotiation in the future rather than something that we were going to be resolving at this time."

That Thursday, Wright recalled, some White House aides mentioned firing Cox,

but Wright said he did not favor the idea.

The next morning was the first time that the idea was advanced that Cox should be told he could have no further court access, Wright said. He said he does not remember whether it was a plan proposed by Richardson, as Haig

has contended, "but if he (Richardson) didn't say it first, he agreed to it." Richardson has consistently denied either proposing or favoring the idea.

Wright said he was not surprised that "different people have different notions of what happened. During the week after Cox's dismissal, Haig, Garment, Buzhardt and myself . . . were trying to reconstruct the exact course of events, and our recollections then—though obviously no one in that group had any motive whatever to be distorting memory—we could not agree among ourselves whether or not the particular matter had been proposed by Elliot or by Al and Elliot had said, 'Oh, that would be a great idea.' Even that close to the time, we had varying recollections."

Wright denied there was any animosity between him and Cox. He said he had never been close to Cox but had a high regard for him, and understood that "he had a high regard for me, too, at least until Oct. 20."

He said he had no communication with Cox after he wrote the former prosecutor Friday, Oct. 19, that "further discussions . . . would be futile."

That night, after Mr. Nixon announced the Stennis plan and ordered Cox not to go to court again, Wright said, "I was absolutely euphoric. I really thought, this is the end of the Watergate tapes fight. Peace with honor. I'll be able to go back to Austin now and become a full-time law professor again. I thought there would be a national sigh of relief now that we're going to get this information."

When Cox announced the next day he would continue his court fight, "for the first time," Wright said, "I thought he had to go . . . Perhaps in some banana republic you can have this kind of defiance within the executive branch, but not in the greatest country in the world."

Wright said he had assumed Cox would either resign or continue his Watergate investigation while protesting the court restriction. "It simply never entered my mind he would try to remain special prosecutor and ignore a directive from the President of the United States," he said.

During the interview Wright said Mr. Nixon would have obeyed a Supreme Court order saying he must give up the tapes. "That would have been a definitive order. But if the court had said, 'You ought to do it, but because of separation of powers, we can't compel you to,' that would not have been definitive. I don't know what the President would have done in that case."

Wright said he does not believe the House of Representatives will impeach Mr. Nixon "because I have confidence the President has not committed any high crimes or misdemeanors. I have heard the President's version of what happened, and I believe him." Instead, Wright predicted, impeachment calls will cease when "the tapes become public and show the President had no complicity in Watergate."

The professor said he was unaware that a taped conversation between Mr. Nixon and ex-White House aide H. R. (Bob) Haldeman had an 18¼-minute gap obliterating a Watergate discussion June 20, 1972, until it was revealed in court Nov. 26. He does not think the gap was caused deliberately because, he said, "The White House would not 'devise such a clumsy way' of concealing any incriminating evidence."

He also scoffed at rumors that Mr. Nixon decided not to appeal the tape case to the Supreme Court because Chief Justice Warren E. Burger told the President he could not win. "That would be an impeachable offense, and I can't conceive of Burger's doing it," he said.

Wright is still in contact with the White House and receives a daily packet of mail and news clippings that the White House thinks he should read. He said he does not know if he would serve on any defense team defending Mr. Nixon against impeachment charges.

He described the duties of his White House colleagues as follows: Buzhardt's "responsibility is tactical problems and the Watergate hearings themselves. Len (Garment) is worrying about the milk case, the Vesco case as well as a lot of non-Watergate matters, and Haig is a conduit to the President on matters that require handling at the presidential level." Wright said he dealt mostly with Garment and Buzhardt and also with Ronald L.

Ziegler, another adviser who is the President's press secretary.

Asked if he is sorry he became involved in the tape case, Wright answered, "Not at all. It was a very educational experience, and it is no small honor to be asked to represent the President of the United States on a matter of such magnitude."

But he said he feels the country was harmed by the controversy over the litigation. "I think the United States is harmed when the people doubt their President."

Wright said he thinks the country—and perhaps Cox—would have accepted the Stennis plan if it had been offered in July before any litigation began. "If we had been as wise in July as we are in December," he began. Then he laughed and added, "There's no greater wisdom than hindsight."