

Nixon Document Defends Surveillance

Secret Diplomatic Talks And News Leaks Cited

By LESLEY OELSNER

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President Nixon cited newspaper leaks, secret negotiations with foreign powers and Secretary of State Kissinger's concern about United States "credibility with its allies" in an effort to persuade the House Judiciary Committee that White House surveillance activities did not add up to an impeachable offense.

He argued to the committee, in a 225-page document submitted by his lawyers and made public today—as he had argued to the public for months—that the surveillance carried on by the White House was designed to stop the leaks of confidential information to the press that he and his aides thought were endangering the nation's foreign policy and security.

The President repeated to the committee his contention that the wiretaps he authorized, some on journalists and some on Government officials, were legal.

He repeated his statement of last August that "he did not authorize the use of illegal means" by the so-called "plumbers" group, set up in the White House to investigate leaks.

Gap in Tape Recording

He cited the controversy over the 18½-minute gap in a crucial White House tape recording of a conversation

Mr. Nixon held three days after the Watergate break-in. He noted, in his "statement of information" to the committee, that some technical experts felt that the gap might have been partially caused by a malfunctioning machine, rather than by manual erasures, as the court-appointed experts concluded.

The reference to the gap was included toward the end of the Nixon statement and was not accompanied by any explanation. But it was apparently included to rebut a seeming inference by the Judiciary Committee report that the Watergate cover-up had been designed to conceal not just the Watergate break-in but the whole program of domestic surveillance that the Nixon White House began in 1971.

As in his defense, released last week, to committee evidence regarding Watergate and the cover-up, Mr. Nixon again gave the committee a far briefer "statement" than it had compiled against him. He submitted only 31 items in his statement, to the committee's 133.

More significant, perhaps, Mr. Nixon's statement ignored a number of areas included in the committee's evidence.

Plan to Search Mail

His lawyers made no mention of the evidence in the committee volumes regarding

President Nixon's initial approval of the so-called "Huston plan," which called among other things for illegal searches of first-class mail.

There also was no mention of the suggestion to Federal Judge William Matthew Byrne, Jr., while he was presiding over the Daniel Ellsberg trial, that the President might nominate Judge Byrne to be director of the Federal Bureau of Investigation.

The committee's "statement" refers to the increasing use of the plumbers for political purposes. It also refers to the use of material gained on the wiretaps for political purposes. The Nixon statement refers to neither.

The committee volumes described evidence about Donald H. Segretti and others hired by White House aides to obstruct Democratic campaign activities; the Nixon volume left Mr. Segretti out.

There were other differences as well. The statements in the committee's list of 133 items appeared generally to be statements of fact. Some of the statements in Mr. Nixon's volume had a conclusive tone, and were followed by notations that a committee member had objected to them on the grounds that they were conclusions rather than "a statement of information within the rules of procedure of the committee."

Mr. Nixon's lawyers appeared to be following the strategy they have indicated all along, that of trying to limit the area of the impeachment inquiry.

Under what is apparently the prevailing view in legal circles of impeachable offenses, the President can be impeached for serious though not necessarily indictable misconduct that tends to pervert or damage the political or governmental system.

Under the President's view of an impeachable offense, though, only serious and government-related indictable crimes can be grounds for impeachment.

Surveillance Called Legal

The President's response to the committee is keyed to that theory. It discusses only some of the White-House sponsored surveillance that was described in the committee volumes. It specifically described as legal the surveillance such as the wiretaps and parts of the plumbers operation.

To back up this contention, the Nixon document cites, among other things, several court decisions as well as a letter from Elliot L. Richardson, the Attorney General. This citation prompted John F.

Seiberling, Democrat of Ohio, that Mr. Nixon was offering a "conclusion" rather than a statement of fact.

A for the items mentioned in the committee volumes but not mentioned in the Nixon volume, the President's lawyers appear to be following the usual defense lawyer practice of ignoring any allegations they think they can, as if to say that those allegations are unimportant.

The President's volume, aside from the brief portion regarding the 18½ minute gap, says the White House was justified on national security grounds or not.

Buttressing their case with internal White House memorandums, copies of newspaper articles and a previously confidential affidavit by Mr. Kissinger, the President's lawyers argue that the surveillance was justified.

Two Periods; Two Actions

Two time periods and two sets of surveillance figure in the argument. The first, chronologically, is 1969 to 1971, when wiretaps were placed on 17 persons. The second begins in the summer of 1971, with the creation of the plumbers.

Mr. Kissinger, in an affidavit submitted last fall in the United States District Court here, described the first period thus:

"The early months of this Administration were particularly sensitive time with regard to the formulation of this country's foreign policies and the establishment of our future relations with other nations."

Important policies were being considered, he said.

"The secrecy of each was of vital importance and the success or failure of each program turned in many instances upon the maintenance of the necessary security. However, notwithstanding the critical need for such security during this period, we were confronted with leaks to the press of information of the greatest importance to the national security."

Mr. Kissinger went on to list a number of examples, citing several articles in *The New York Times* and one article in *The Washington Evening Star*, concerning Vietnam, the Cambodian bombing and the strategic arms limitations talks.

Diplomat Harm Feared

"Each of the above disclosures," he said in the affidavit, "was extremely damaging with respect to this Government's relationship and credibility with its allies."

Then, repeating a point that he and others in the Administration had made before, Mr. Kissinger said that the appropriate legal authorities had assured Mr. Nixon that wiretaps designed to ferret out those responsible for the leaks would be legal.

And, he said, without giving documentation, such procedures had been used in other Administrations.

The Nixon volume of evidence gives a similar picture of the next period, the summer of 1971. The Pentagon papers had just appeared in the na-

and Denies It Was an Impeachable Offense

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tional press, the volume recounts, and Mr. Nixon and others were concerned lest additional and more damaging secrets be leaked.

The President, faced with a threat to the national security, was obligated to take action, according to the Nixon argument.

This statement is implicit throughout Mr. Nixon's response to the committee. But lest it be missed, the President's chief defense lawyer, James D. St. Clair, said it explicitly at a briefing today: "If Mr. Nixon hadn't done something, he would have been subject to criticism."