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Nixon Tax Deal Called Fraud

An Expert Testifies

By John P. MacKenzie
Washington Post Staff Writer

The former chief prosecutor of federal tax evaders has told the House Judiciary Committee that if President Nixon were an ordinary taxpayer his case "would be referred out for presentation to a grand jury for prosecution."

This conclusion, disclosed in the committee's summary of impeachment evidence, was given by Fred G. Folsom, who served in the Kennedy, Johnson and Nixon administrations as head of the criminal section of the Justice Department's Tax Division.

Folsom, who retired last year and still serves as a Justice Department consultant, gave the committee his judgment last month in previously secret testimony.

The legal opinion concerned Mr. Nixon's purported 1969 gift of pre-presidential papers to the National Archives and the \$576,000 deduction he claimed for them.

A proposed article of impeachment re-

See **TAX**, A11, Col. 1

'Massacre' Traced

By Jules Witcover
Washington Post Staff Writer

The "Saturday Night Massacre" of last Oct. 20—the firing of Watergate Special Prosecutor Archibald Cox that set impeachment fever burning on Capitol Hill—was the culmination of months of seething at the White House over Cox' unyielding persistence.

Evidence compiled in the House Judiciary Committee's impeachment inquiry into President Nixon's dealings with Cox and his successor, Leon Jaworski, released today, chronicles a long test of wills and tempers between a President determined not to yield White House tapes and two prosecutors determined to make him do so.

Cox particularly irritated Mr. Nixon, who feared Cox was broadening the Watergate investigation into unrelated aspects of the President's activities, Judiciary's 1,069-page documentation of this phase of the impeachment inquiry shows.

See **COX**, A11, Col. 5

Excerpts of evidence and draft articles of impeachment begin on Page A12.

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The evidence is in two thick volumes made public by the committee as part of the material in the case against Mr. Nixon.

As early as July 3, 1973, according to an affidavit by Elliot L. Richardson, who resigned as Attorney General on Oct. 20 rather than fire Cox, Mr. Nixon was transmitting warnings that if Cox persisted he would be thrown out.

The Richardson affidavit recounts how White House chief of staff Alexander M. Haig Jr. called him on July 3 of last year complaining about a newspaper story reporting that Cox was investigating expenditures at Mr. Nixon's San Clemente home. When Richardson checked with Cox and was told Cox merely was having press clippings collected on San Clemente, Haig asked for a statement from Cox that he was not investigating San Clemente.

"General Haig said that he was not sure the President was not going to move on this to discharge Mr. Cox, and that it could not be a matter of Cox' charter to investigate the President of the United States," Richardson said in the affidavit.

Richardson said Cox agreed to make a statement, but it was considered inadequate by Haig, and the President "broke in on the conversation. The President said that he wanted a statement by Mr. Cox making it clear that Mr. Cox was not investigating San Clemente, and he wanted it by 2 o'clock." The statement was produced.

At the time of the calls to Richardson from Haig and Mr. Nixon, the Attorney General was learning for the first time from Baltimore federal prosecutors that then Vice President Spiro T. Agnew was under criminal investigation in a Maryland contract kick-back scandal. Richardson told an aide later that the President's badgering about Cox nearly persuaded him to resign that day.

The Richardson affidavit reports another Haig phone call three weeks later, on July 23, 1973, informing him "that 'the boss' was very 'up tight' about Cox and complaining about some of his activities, including letters to the IRS and the Secret Service from the special prosecutor's office seeking information on guidelines for electronic surveillance.

"General Haig told me that 'if we have to have a confrontation we will have it.' General Haig said that the President wanted 'a tight line drawn with no further mistakes,' and that 'if Cox does not agree, we will get rid of Cox.'" Concerning letters sent to Treasury Department agencies, Richardson said, Cox agreed they "had been over-broadly stated."

Finally, Richardson's affidavit says, "in late September or early October, 1973, I met with the President in regard to the Agnew matter. After we had finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in substance, 'Now that we have disposed of that matter, we can go ahead and get rid of Cox?'"

Richardson told aides later he

told him that in stating three days earlier that he was waiving executive privilege for White House aides giving testimony on Watergate, "his statement did not mean that there would be any such waiver of executive privilege as to documents. I was not aware until then that the word 'testimony' had been used advisedly..."

Five days later, fresh on the job, Cox phoned and then wrote to J. Fred Buzhardt, the President's counsel, and impressed upon him his concern that "all files in the White House affecting the Watergate investigation and other matters within my jurisdiction" be secure.

"I requested you to be sure that steps had been taken to ensure that nothing was put into or taken out of any of those files," Cox wrote in a clearly firm vein. "I would also like to know, as I told you, exactly what security measures are in force... Incidentally, it would be helpful to know when these security measures were put into effect."

Buzhardt replied that the files of H. R. (Bob) Haldeman, John D. Ehrlichman and John W. Dean III, all of whom resigned on April 30, 1973, were placed first under FBI protection and then the Secret Service.

"The foregoing is submitted for your information," Buzhardt replied in the same stiff tone. "The handling, protection and disposition of presidential papers is, of course, a matter for decision of the President." This last obviously was a reassertion of jurisdiction.

Four days later, on June 4, 1973, Cox was back at Buzhardt again: "Your answer to my requests seems a little too vague, although perhaps this results only from a casual difference in choice of words. In any event, we must pin the question down much more precisely."

Buzhardt had written that files of the departed staff members could be examined by them, but only "in the presence of a Secret Service agent." Cox wrote back that such presence "does not guarantee that nothing will be taken out or put into the files, or in any other way altered."

As early as June 27, 1973, Cox zeroed in on the President personally, writing to Buzhardt after John Dean had testified before the Senate Watergate committee and asking Mr. Nixon to furnish "a detailed narrative statement covering the conversations and incidents mentioned in John Dean's testimony."

"The fact that a crucial witness in this investigation is the President does not make his testimony any less important to the administration of justice," Cox wrote. "Nor can I assume that the President is unwilling to contribute all the information he has to the ascertainment of the truth."

By July 10, Cox was really pressing hard, threatening to complain publicly that the White House was inhibiting his efforts by failing to cooperate.

"I am much disturbed by the lack of progress in obtaining answers to my several requests with respect to access to papers in the White House files," he wrote Buzhardt. "... Review of our correspondence shows that I have been very patient—perhaps too patient, in

papers that I shall undoubtedly have occasion to make..."

On July 16, 1973, former White House aide Alexander Butterfield revealed that presidential conversations had been taped in the White House, and two days later Cox wrote to Buzhardt asking for eight of them. It proved to be the beginning of the end for Cox.

On July 20 he wrote asking Buzhardt to "take all necessary steps" to safeguard the tapes. Buzhardt tersely replied: "The President has sole personal control of those tapes and they are being adequately protected under secure conditions."

On July 21, Buzhardt wrote to Cox apologizing for the delays and citing the pressures on Mr. Nixon, who had just met with Soviet Communist Party leader Leonid I. Brezhnev. But within two days, White House special counsel Charles Alan Wright was writing to Cox telling him flatly that the President would not make the tapes available, on grounds that the confidentiality of presidential conversations had to be preserved. This was the same day, the Richardson affidavit says, that Haig phoned Richardson and told him the President was "up tight" about Cox.

But Cox would not back off. On July 25, when Buzhardt wrote him that Mr. Nixon would be making a public statement about Dean's testimony, Cox replied: "Having noted my skepticism, I am willing to wait until the public statement is made—assuming that it comes reasonably soon—before reaching a conclusion or renewing my previous request." On the same day, Mr. Nixon informed U.S. District Court Chief Judge John J. Sirica he would not obey Cox' subpoena for the tapes.

Through August and September the impasse continued, and the tempers mounted as Cox made his requests for information and the White House rebuffed or ignored him. But when Sirica on Aug. 29 ordered the President to submit the subpoenaed tapes for his review in chambers and the White House sought a vacating order, the matter approached a climax.

On Oct. 12 the U.S. Court of Appeals ordered Mr. Nixon to comply; on Oct. 15, after considering a plan to produce a version of the tapes and then fire Cox — rejected by Richardson under threat of resigning — a compromise was offered whereby Sen. John C. Stennis (D-Miss.) would listen to the tapes and verify their accuracy. Richardson agreed, but Cox would not; Mr. Nixon ordered first Richardson and then Ruckelshaus to fire Cox, and all three went out in the "Saturday Night Massacre."

In the ensuing uproar, the President agreed to turn over the tapes three days later, and Cox' successor, Jaworski, was appointed with stronger assurances of independence demanded by the Senate in his confirmation hearings.

But Jaworski's experience was more of the same. He found it necessary on May 20 of this year to write to Chairman James O. Eastland of the Senate Judiciary Committee informing

TAX, From A1

Friday by the committee staff accuses President Nixon of having committed "a fraud upon the United States" by claiming the deductions by means of a deed that was "back-dated" to avoid the effect of a 1969 law disallowing such tax benefits.

The committee's summary of evidence on "willful tax evasion" appeared to support the accusation, which will be debated when the committee takes up the impeachment articles starting Wednesday.

A volume of evidence on which the summary was based will be published in a few days, together with the response of presidential lawyer James D. St.Clair.

According to the summary, "willful evasion of

taxes by a President would be conduct incompatible with his duties of office, which obligate him faithfully to execute the laws." It added:

"A violation of law in the context of the tax system, which relies so heavily on the basic honesty of citizens in dealing with the government, would be particularly serious also if it entailed an abuse of the power and prestige of his office. As chief executive, he might assume that his tax returns were not subject to the same scrutiny as those of other taxpayers."

Both the Internal Revenue Service and the congressional Joint Committee on Internal Revenue Taxation ultimately rejected the deductions. The IRS has assessed a 5 per cent negli-

gence penalty, and has billed Mr. Nixon for \$432,787 plus interest.

At issue in the committee's analysis of tax fraud was whether Mr. Nixon knew, when he signed his 1969 tax return, that the return incorrectly reported a valid gift of papers as of March 27, 1969.

The 1969 Tax Reform Act, which Mr. Nixon signed into law on Dec. 30 of that year, eliminated tax deductions for gifts of papers made after July 25, 1969. The summary said there could be no doubt that Mr. Nixon, an attorney who had practiced tax law, knew what the law was and what claims he was making.

Folsom's conclusion, the summary said, was based on "all the circumstances surrounding the alleged gift," including its use in the 1969 return and "including the lack of a satisfactory response by the taxpayer" to polite inquiries from the joint committee.

The summary said several witnesses "began revising stories which they had been telling for months" during recent inquiries. Among the witnesses were tax attorney Frank DeMarco Jr., former deputy White House counsel Edward L. Morgan and Chicago appraiser Ralph Newman.