

NIXON QUESTIONED FOR A GRAND JURY ABOUT WATERGATE

JUN 28 1975

Former President Testified for About 11 Hours Early in Week on the Coast

AN UNUSUAL PROCEEDING

Inquiries Are Still Open on Wiretaps, Recording Gap and Misuse of Agencies

NY Times

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, June 27—Former President Richard M. Nixon gave about 11 hours of grand jury testimony on a range of subjects under questioning by lawyers from the special Watergate prosecution force in an unusual proceeding last Monday and Tuesday in California. 23, 24 ju ~

While some previous Presidents, including Mr. Nixon, have given testimony in other types of cases in such forms as written statements, this appears to be the first time a President or former President has testified under oath in a grand jury proceeding.

The former President testified voluntarily in response to a request by the special prosecutor. He was not subpoenaed.

The examination of Mr. Nixon—disclosed today at Mr. Nixon's behest by a joint stipulation between his attorney and the special prosecutor Henry S. Ruth Jr.—was conducted in the presence of two members of the one Washington, D.C., Federal grand jury that is still investigating matters in conjunction with the Watergate prosecution.

According to the stipulation, the unusual examination was made "ancillary to and with the consent of" the grand jury because of Mr. Nixon's health and "other legal considerations." It was taken "for presentation" to the grand jury, the stipulation said, and was "to be made part of the minutes" of the grand jury.

Pending Inquiries

The stipulation said only that the examination was conducted "on matters subject to pending grand jury investigations." And additional separate statement today by Mr. Nixon's lawyer, Herbert J. Miller, similarly noted only that the questioning involved a "wide range of subjects."

However, sources familiar with various aspects of the jury's investigations noted today that the jury still had open inquiries into the following matters, among others:

¶The 17 so-called "national security" wiretaps of newsmen and officials between 1969 and 1971, for which Mr. Nixon took responsibility last summer and in whose conduct Secretary of State Kissinger had some involvement.

Continued on Page 15, Column 1

Continued From Page 1, Col. 8

involvement.

¶The transfer of logs of at least some of these taps from the Federal Bureau of Investigation to the White House in the summer of 1972.

¶Illegal campaign contributions.

¶The 18½-minute gap in a crucial White House tape recording.

¶Certain conduct of Charles G. Rebozo, a close friend of Mr. Nixon's.

¶The misuse of Federal agencies such as the Internal Revenue Service.

The special Watergate prosecution is trying to get testimony about the wiretaps from at least some of the former officials convicted in the Watergate cover-up, some sources said today, and it is likely that the prosecution wanted Mr. Nixon's testimony on this subject as well. The cover-up stems from the unsuccessful break-in at Democratic national headquarters in the Watergate complex on June 17, 1972.

The Watergate grand jury ends its term on July 3. However, the prosecution will still be able to present testimony to regular grand juries. It is expected to do so by some observers, and new indictments are considered a distinct possibility.

Mr. Nixon was named an unindicted co-conspirator in the Watergate cover-up by the grand jury that returned the indictment in that case on March 1, 1974, when Mr. Nixon was still in office.

At the time it was reported that a key reason for the designation as an unindicted co-conspirator rather than an indictment was the prosecution's view that there were serious constitutional questions about the indictability of an incumbent President.

Mr. Nixon's resignation last August removed whatever legal bars there may have been to

indictment. However, on Sept. 8 President Ford gave Mr. Nixon a "full, free and absolute pardon" for all Federal crimes that he "committed or may have committed or taken part in" while in office.

The pardon would appear to cover any crimes Mr. Nixon may have committed in connection with the matters that the grand jury is investigating. It would not, however, cover any actions subsequent to his resignation, including his testimony before the grand jury.

Mr. Nixon was subpoenaed once before to appear before a grand jury, when he was still in office. At that time, he declined to appear on what he contended at a press conference were constitutional grounds. The pardon appears to remove the main constitutional barrier to forcing him to testify—the Fifth Amendment protection against self-incrimination.

So, because of the pardon, it has been widely assumed that Mr. Nixon could be forced to testify under subpoena, subject to claims of poor health or executive privilege.

At the Watergate cover-up trial, for instance, Mr. Nixon was subpoenaed by the prosecution and defense. He asked that the subpoena be quashed on grounds of both his poor health, caused by phlebitis, and executive privilege.

Judge John J. Sirica, after sending a team of doctors to examine Mr. Nixon, ultimately declined to enforce the subpoenas, saying that Mr. Nixon was too ill and that the testimony he would be expected to give in the case was of limited value.

Since then Mr. Nixon's health appears to have improved, and some lawyers noted today that it was only a matter of time before the prosecution sought his testimony, either voluntarily or under subpoena.

The stipulation released today said that Mr. Nixon had "voluntarily submitted to an examination under oath." Mr. Miller's statement was even more emphatic, saying:

"Mr. Nixon was not under subpoena. His sworn testimony in California for the District of Columbia grand jury was voluntary and responsive to the expressed desires of the office of the special prosecutor for his testimony relative to the grand jury's ongoing investigations."

The statement went on to say that Mr. Nixon felt that the examination would be "most efficiently conducted in California" in view of his health, the likely length of his testimony and the "complications of travel."

According to the stipulation—filed in United States District Court yesterday and released today by Chief Judge George L. Hart—Mr. Nixon wanted the fact of the examination to be made public if the court agreed because "inquiries have been made concerning this matter."

The examination was held in the Coast Guard's San Mateo Loran station next to Mr. Nixon's home, in what was once the Western White House compound.

Mr. Ruth, the special prosecutor, accompanied the group, and the examination began Monday morning after the Chief Judge of the United States District Court in San Diego, Edward J. Schwartz, administered the oath to the former President.

It was not disclosed what type of record the prosecution made of the examination or exactly how it was conducted.

Since witnesses in grand jury inquiries may not take a lawyer into the grand jury room with them, but may consult with a lawyer only outside the room, it is probable that Mr. Nixon's lawyer was not there at the questioning.

Also, according to some lawyers, the presence of the two grand jurors was not technically necessary, and thus it is possible that they were there to report to their fellow jurors on such things as Mr. Nixon's demeanor and reactions.

The proceeding was described by lawyers today as unusual but not improper, in view of Mr. Nixon's health. Similar proceedings occurred earlier in the Watergate affair when former Commerce Secretary Maurice H. Stans and several other officials were allowed to give their testimony to prosecutors rather than directly to the grand jury. The sessions drew criticism, because, to the critics, there appeared no compelling reason for not requiring a grand jury appearance.

The 17 "national security" wiretaps have been controversial for some time, both because of the placing of the taps and the unclear role played by Mr. Kissinger and because of the transfer of the records of the taps from the Justice Department to the White House. A lawsuit by one of those persons tapped, Morton H. Halperin, has led to much of the controversy.

Mr. Kissinger has denied being the instigator of the taps and has said that his office merely supplied the names of persons to be tapped. The Senate Foreign Relations Committee voted last August to clear Mr. Kissinger of allegations that he misled the committee regarding his role. However, Gen. Alexander M. Haig Jr., Mr. Kissinger's assistant during the time in question, seemed, in testimony to the committee, to describe a more direct role for Mr. Kissinger.

As for the second controversial aspect of the wiretaps—the transfer of records—one chief question is the reason for the removal.

The House Judiciary Committee noted in its final report in the impeachment inquiry that the concealment of the logs was among the factors ultimately leading to the dismissal of the prosecution of

Dr. Daniel J. Ellsberg in the Pentagon papers trial. Dr. Ellsberg had been overheard on the tap of Mr. Halperin, and the Government did not reveal this at the proper time.

One question is whether the records were perhaps removed from the Justice Department so that the Government would be able to prosecute persons overheard on the taps without having to tell them—as legally required—of the existence of the taps.

Robert C. Mardian, former Assistant District Attorney General and one of the defendants convicted in the cover-up trial, was the person who arranged the transfer.

This was at the direction of Mr. Nixon and John D. Ehrlichman, former domestic affairs adviser to Mr. Nixon and another of those convicted in the cover-up case.

The House Judiciary Committee report notes that Mr. Mardian consulted at various times about the transfer with Mr. Kissinger, General Haig and the

two others convicted in the Watergate cover-up case, former Attorney General John N. Mitchell, and the former White House chief of staff, H. R. Haldeman.

Mr. Mardian testified at the Senate Watergate hearings that he then assistant director of the J. Edgar Hoover, wanted the files removed out of fear that J. Edgar Hoover might otherwise use them to pressure the President into letting him remain as director of the F.B.I.