



Department of Justice

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INTERVIEW

OF

THE HONORABLE WILLIAM B. SAXBE  
ATTORNEY GENERAL OF THE UNITED STATES

WITH

GEORGE WILL

OF

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ANNOUNCER: William B. Saxbe, Attorney General of the United States. Tonight on "Washington Straight Talk," Attorney General William Saxbe, former Republican senator from Ohio and the fourth Attorney General in the Nixon administrations. Attorney General Saxbe answers questions from syndicated columnist and Washington editor for the National Review, George Will.

GEORGE WILL: Attorney General Saxbe, we're now celebrating, if that's the word, the second anniversary of the Watergate break-in. Yesterday, former Acting Director of the FBI William Ruckelshaus suggested that there would be more surprises coming regarding Watergate. Do you know any of those?

ATTORNEY GENERAL WILLIAM B. SAXBE: Well, I don't think I do. As you know, this has been turned over to the Special Prosecutor in the Justice Department. I don't follow it as closely as I might, because with the other press of duties and having no responsibility in this, I leave it up to the Special Prosecutor. And then, of course, we have the Judiciary Committee in the House now. But the surprises that keep coming are, I think, going to continue. I agree with him on that.

WILL: You wouldn't be surprised at the surprises, in other words?

ATTORNEY GENERAL SAXBE: No. No.

WILL: You do have, however, a lot to do with one of the continuing issues that was involved in Watergate, and that's the whole subject of wiretapping. Secretary of State Kissinger's now been touched by this. You recently said "No American citizen can be wiretapped without approval from me." What does it take to get Attorney General Saxbe's approval for a wiretap?

ATTORNEY GENERAL SAXBE: There are two types of wiretaps. Well, there're really three. One's a consensual where you agree to be tapped, and this is not illegal in any way. The second is a criminal wiretap where they go into a judge; we apply and

receive authority, just as you receive a warrant to search a house. This is the more customary type, and we do this when the situation indicates...

WILL: This is for domestic wiretaps.

ATTORNEY GENERAL SAXBE: This is domestic wiretaps. And this applies to all Americans, because under the Keith decision of 1971, there is no way -- or 1972 -- there is no way that you can tap an American citizen domestically without going to a judge and getting a warrant. And this is what's done.

Now, this only leaves the foreign security wiretaps, and these are warrantless.

WILL: If I understand you correctly then, the 1971 decision, and perhaps subsequent decisions, mean that the wiretaps that the President, with or without Secretary Kissinger's consent, or whatever, ordered on the thirteen government officials and the four newspapermen would not now be legal.

ATTORNEY GENERAL SAXBE: They would not now be legal. Well, that isn't exactly true, because this was foreign security. That is, this was the reason for it. However, the conditions that I imposed on this -- they would not meet the standard. And I have to sign these. And the standard that I imply is that the activity first must be controlled, directed, paid for by a foreign power. It must be genuine national security, not something that we would guess might be, but a reason to believe because of certain circumstances.

Now I read the other day where the telephone company said they had ten thousand people call up and said that they thought they'd been wiretapped. Two percent of these people had, mostly, as I could discern from the piece, illegally. In other words, a husband taps a wife's phone for a domestic problem; a car dealer taps a waiting room so he can hear what people are saying about buying their car. There were some of these. Or business secrets. But all of our domestic taps, with the exception of definitely tied foreign security [sic], are run through a court and reported annually as to number.

WILL: So if General Haig called up today with -- asking the same wiretaps that the White House got in 1969, Attorney General Saxbe would turn him down?

ATTORNEY GENERAL SAXBE: That's correct.

WILL: I see.

On about January 15th of this year when you'd just been in office about a week, you reported that you had authorized three national security wiretaps...

ATTORNEY GENERAL SAXBE: Right.

WILL: How many have you authorized since becoming Attorney General?

ATTORNEY GENERAL SAXBE: I can't give you the number, although we have given a number to Senate and will give it to House committees. This is the only restricted part of it. However, in 1972, it was leaked out I think by certain senators, and it was authentic, that we had about ninety in a year.

WILL: What public purpose is served by keeping the number of wiretaps secret?

ATTORNEY GENERAL SAXBE: Well, I think the big problem is -- is the scarcity of them. In other words, the people, our foreign people involved in this wouldn't believe us any way, because they just couldn't believe that this great country didn't have more resources in trying to determine what they're doing in the way of intelligence.

Now, first, this is not mere snooping; this is trying to counteract organized espionage being carried on in this country by foreign powers, not necessarily hostile to this country, but certainly trying to get espionage on us. There are covers over people in this country who are spies. Now we go through a period like the McCarthy period when we're greatly alarmed about spies, and it's turned full circle now where we say, "Well, we shouldn't have any secrets. If they want to find out anything about our nuclear installations, about our security for our warheads, give it to 'em." Well, I don't think that's right either. I think that we have to have secrets, because, in this world, there are people who are hostile to this country.

WILL: But concentrating just on domestic wiretaps, I believe...

ATTORNEY GENERAL SAXBE: Right.

WILL: ...I believe you said a few days ago, not long ago, that you could live with a ban, if Congress wanted to ban wiretapping.

ATTORNEY GENERAL SAXBE: Yes. And the reason for this is that they were trying to put me on the defensive up in Congress,

that I was the one that was wanting to keep these secrets and that I was the one that wanted to snoop around the world for no reason. And I simply told them that we have a job laid on us in the Justice Department and the FBI to do this. If you don't want us to do it, all you have to do is pass a law.

WILL: Well, how -- how would...

ATTORNEY GENERAL SAXBE: And we can live with it. But I wouldn't advise it.

WILL: How would law enforcement be seriously compromised if there were a ban on domestic -- wiretapping for domestic purposes, unrelated to foreign...?

ATTORNEY GENERAL SAXBE: Well, now you're talking about on the national security...

WILL: Now I'm talking not national security.

ATTORNEY GENERAL SAXBE: Oh, you're talking about -- well, for instance, on your domestic -- this is all organized crime. It's gambling; it's extortion. In a kidnaping, it's essential to be able to tap in on suspects or on the victim's phone. We have to have this. To deprive law enforcement people of the right to use this instrument would be hurting ourselves. And the damage that results we don't think is that great. Right now there's a great fear of it. But really...

WILL: Do you think that fear is exaggerated, that Americans fear this so much?

ATTORNEY GENERAL SAXBE: Why, I think that fear is exaggerated, because unless they're in some criminal activity they're never going to be tapped any way. We don't tap citizens casually. It's only done after you will out a warrant. You take it in to a judge; the judge looks it over and says, yes, here a warrant should be issued, and this bookie operation that is working down here in organized crime should have surveillance, because those people should be arrested. They're violating the law.

WILL: Have you used wiretapping in the Hearst kidnaping case?

ATTORNEY GENERAL SAXBE: No. Now, this is one of the instances that is complicated and some think that new legislation is necessary. This is because unless we are working towards a definite arrest, you can't go in and make an allegation.

The Fourth Amendment protects you from any kind of wiretapping unless there is proximate cause. And if you don't have the cause, you can't go in and ask for a warrant. And that's one of the reasons that we are unprotected against domestic terrorist organizations in this country, because if all we want is information on their operation, we can't go in and get it because it's not for the purpose of making an arrest. All of these others -- the only reason to have them is to make an arrest -- and prosecution.

Now this -- this is a little bit confusing to the average person. But I think if you just realize that on domestic wiretaps it must be tied into making an arrest and a prosecution. It's not for intelligence; it's not for any reason but trying to prosecute somebody.

WILL: Attorney General Saxbe, you've been making a lot of very forceful speeches around the country. In a recent speech, you said that there have been "men of finely distilled evil in public life." And you spoke of "would-be tyrants in Brooks Brothers suits." Who did you have in mind?

ATTORNEY GENERAL SAXBE: Well, I think that it's easy for us to think that criminals are the muggers and the sneak thieves and the bank robbers, and so on. There's a lot of rip-off in this country by big business, by bunco artists, by swindlers. I just read today of an allegation on another poncie (?) deal. We have these all the time. And...

WILL: What is a poncie deal?

ATTORNEY GENERAL SAXBE: A poncie deal is a con game whereby I tell you I'll pay you fifty percent on your investment, that is a month maybe, a year -- it's insignificant. Then I tell another chap that I'll pay him. I take his money and pay you...

WILL: I see.

ATTORNEY GENERAL SAXBE: It's a pyramiding thing and was started by a man in Boston, of, I guess over fifty years ago.

WILL: Well, what you're talking about then is white collar crime.

ATTORNEY GENERAL SAXBE: White collar crime.

WILL: That really bothers you, I gather, reading your speeches.

ATTORNEY GENERAL SAXBE: It bothers me because I don't

want people to think that only the poor, the black, those people are the criminals that we're after.

WILL: Well, in another speech on this subject, you said that you thought we were moving toward two systems of justice in this country, one for the affluent and one for the poor. And you quoted with approval a tough sentence done by a judge in a price fixing case. And the judge emphasized that the men involved knew the illegality of their actions. They were neither cold nor hungry, and they had had the best educational and material benefits of American life, and therefore a tough sentence seemed to meet with your approval. With that in mind, and returning to topic A, do you think that the sentences imposed in the Watergate case, done by men who were educated, enjoyed material benefits of American life, were neither cold nor hungry: do you believe these men have been treated too leniently, as some people are saying?

ATTORNEY GENERAL SAXBE: I can't second-guess a judge on the reasons for his sentencing. But I do know this, that Richard Harris wrote a piece that was in The New Yorker a week ago. And in his comment on this I thought he did a pretty good job in saying that we are running the danger at the present time of cutting the cloth to fit on these cases and that we're using extralegal means, the threat of disbarment, the threat of exposure. Well, these are not legal and have no part in the proceedings in justice. We're using these to smoke people out and that we're using light sentences and we're using all kinds of inducements to make cases, and that we're walking the narrow line between really running a Justice Department or a justice system in this country and running a kind of a kangaroo court where any ends -- any means justify the ends.

WILL: Well, Mr. Harris -- it was an interesting article. And Mr. Harris focused on the Kleindienst case...

ATTORNEY GENERAL SAXBE: Yes.

WILL: He said that justice to be done must be seen to be done, and, to the average American, that didn't look like justice. A former Attorney General of the United States lied to a Senate committee...

ATTORNEY GENERAL SAXBE: The first one ever convicted of a general charge.

WILL: Yes. Do you think that -- that sentence, a suspended sentence, was...?

ATTORNEY GENERAL SAXBE: Well, again for me to try

to second-guess the judge on -- and Judge Hart is a respected and honored judge and the senior judge. For me to second-guess him on his reasons would serve no useful purpose. But what I do say is that we must beware that we don't fall into the trap of using all kinds of gimmicks, copping pleas, plea bargaining, of getting people to rat on each other, all of these means, because we're going to wreck our system of justice...

WILL: Do you think there's too much plea bargaining...

ATTORNEY GENERAL SAXBE: ...and the respect of the people.

WILL: ...in the United States?

ATTORNEY GENERAL SAXBE: Well...

WILL: Let me give a statistic. Ninety percent of the criminal convictions result from guilty pleas, and a substantial portion of those guilty pleas result from plea bargaining. Do you think that this is covering up some -- and I don't mean that in the normal Washington sense -- but that that covers a kind of violation perhaps of constitutional rights to a fair trial?

ATTORNEY GENERAL SAXBE: I think that we walk that narrow line. And I have mentioned before that this idea of circumventing the Fifth Amendment by offering immunity and then trying to make them testify and then to prosecute them when they don't is a device that we should re-examine.

Now, I think that we have adopted a rather pragmatic approach on the plea bargaining simply because of our overloaded courts and the system that we have. If every case that we had went to trial, with the lengthy trial that we have today and the ridiculous time spent on picking juries -- and which we could correct -- we'd never get to them. We couldn't hold them indefinitely. They'd be out on the streets on bond for maybe three, four, five years.

Now at the same time that the Congress is bellyaching about plea bargaining and all of these devices that are used by U. S. attorneys and others down at the state and county level, at the same time they refuse to increase the number of federal judges. And as a result, we're loaded up and forced into what I think is a damn bad situation; that is having to dispose of cases other than before a magistrate.

Now on the jury -- there's no reason that we shouldn't select and seat a jury within three or four hours. They do it every day in Britain. And yet we have permitted as high as thirty or forty peremptory challenges -- that's for no reason

at all -- unlimited challenges for cause. We've got situations where defense and prosecution make a study of sociological and psychological means.

WILL: On the subject of juries now. The grand jury, I know, raises definite issues. But recently the White House has made much of the fact that the grand jury that heard the evidence concerning Mr. Nixon and named him an unindicted co-conspirator was predominately Democrat, contained more blacks than are representative of the American population, contained only one Republican and, therefore, the White House seems to be implying was inherently an unfair device. Do you think that is evidence that it was an unfair device, this grand jury?

ATTORNEY GENERAL SAXBE: No. This is often raised, and I don't think that you could ever get a jury that would satisfy both the defendant and the prosecution, and especially after the fact. I think that the jury system being limited in what it determines, which is a matter of -- the questions of fact -- especially a grand jury being extremely limited as to what the prosecution puts before it -- I don't think that you can tailor a jury to exactly duplicate the community. I think you just have to take it with its disabilities as well as its advantages.

WILL: [Attorney] General Saxbe, on January 27th of this year, right after you came into your current position, you said that you did not think the House would impeach the President on the basis of the evidence it had then. Since then it has received transcripts and it has the evidence, such as it is, of the President's noncompliance with various subpoenas. Would you still make that assessment?

ATTORNEY GENERAL SAXBE: No, I wouldn't. I wouldn't make any assessment now because I'm not close to what they are hearing. I haven't heard one transcript. I don't know what they've received. And I hope that I've learned since January 27th to keep my mouth shut a little more, not to make such guesses.

WILL: Have you read the transcripts?

ATTORNEY GENERAL SAXBE: No. Oh, yes, I've read them, not in their entirety, but I read the parts that I was interested in.

WILL: Some people reading them have said that the transcripts call into question the role played by Assistant Attorney General Henry Petersen, who, during April, particularly, of 1973, was in close contact with the President...

ATTORNEY GENERAL SAXBE: Yes, I read that.

WILL: What do you have to say about that? Do you think they compromise Mr. Petersen at all?

ATTORNEY GENERAL SAXBE: Well, I'm sure that if Mr. Petersen knew that his conversations with the President were being relayed, he would not have made them. But Petersen's only boss at that time was the President of the United States, and he had to look to someone. If you will recall, Attorney General Kleindienst at that time had recused himself from this investigation. It was proceeding in an orderly manner. Mr. Petersen was assured that the President was interested in following through, on seeing that the guilty were prosecuted. And so Petersen, as he does now with me, looked to the President as his superior and the man to report to, which he did.

WILL: But you think had he known he was being taped he would have done something differently. What would he have done?

ATTORNEY GENERAL SAXBE: Well, I don't think the taping was important. I think what...

WILL: Well, taping and subsequently released.

ATTORNEY GENERAL SAXBE: Yeah. Well, that isn't what's important. What would have been important to Mr. Petersen would have been had he known that what he was talking to the President in the privacy of the room and the secrecy that befits a grand jury prosecution -- if he'd known that, that would have turned him off [sic], that it was thereafter immediately discussed with numerous people and leaked all over.

WILL: Who was then discussing it? I mean who was doing something wrong?

ATTORNEY GENERAL SAXBE: Well, the President in discussing this grand jury material with Mr. Haldeman and Mr. Ehrlichman, or whoever came in the office.

WILL: So your reading of the transcripts is that they call into question not the behavior of Mr. Petersen, but the behavior of Mr. Nixon.

ATTORNEY GENERAL SAXBE: That's right. Mr. Petersen is a pro. And yet in working with the grand jury, he knows that he is not to discuss those matters, except with his group of lawyers and as he can in the Justice Department, those people working on the case with him. He presumed that the President was working on the case with him. He was his only superior.

There was no Attorney General in this matter...

WILL: Was that, you say...

ATTORNEY GENERAL SAXBE: ...to discuss it with him and said that this will never go outside the room [sic]. But it did.

WILL: So the President lied to him?

ATTORNEY GENERAL SAXBE: I don't know whether he lied to him or not. All I know is that after the discussions, there were further discussions within that room on matters that Mr. Petersen had brought in about what was happening before the grand jury. And this was wrong.

WILL: Does this, do you think, reflect a kind of casual attitude toward seeing that the laws are enforced on the part of the President?

ATTORNEY GENERAL SAXBE: Either that or a lack of knowledge about a grand jury proceeding.

WILL: [Attorney] General Saxbe, you've said that not only is Watergate the greatest cloud on our country in its history, but that it must be resolved, "and not with a cosmetic process." That's the phrase you used...

ATTORNEY GENERAL SAXBE: Well...

WILL: What were you afraid of when you mentioned "a cosmetic...?"

ATTORNEY GENERAL SAXBE: It could be swept under the rug; Congress will get tired of it and people will get tired of it, and it'll be business as usual and we'll be back in a campaign and money will be floating around -- all of these things. I think that if we don't want just a cosmetic effect, we're going to have to have tough campaigning laws. I believe that we're going to have to make people realize that you just can't get away with things that they were doing. I don't mean just this administration. I don't mean the Nixon administration. I mean previous practices that had grown up over the years.

Now one thing that I don't want to see happen is that we get so wrought up over this that we make institutional changes. And you'll notice I talked about this. In other words that if we would set up a permanent special prosecutor beyond the reach of the electorate, if we were to have an elective Attorney

General, if we would so weaken the presidency, or if we just said, well, this system isn't working and we'll go to a parliamentary system where we can have a vote of confidence: I think we'd be wrong, because if there's a failure in this, it's a failure of men. It's not of our -- of our system. And the one thing that I'm interested in in this is that I can operate the Justice Department in my stay there to show people that the Justice Department can operate fairly, firmly and without falling into these traps of institutional change and to follow false trails and...

WILL: Well, you mentioned the Special Prosecutor...

ATTORNEY GENERAL SAXBE: Right.

WILL: Now, that's an example of patching something onto our normal system. And it seems to me it puts you in a *curious* position, and let me explain why. St. Clair says -- the President's lawyer says that Jaworski is an employee of the President and therefore should not go to court to sue him. Judge Sirica says that that looks like an attempt to compromise the independence of the Special Prosecutor that is guaranteed him in his charter. During Attorney General Saxbe's confirmation, he swears that he will fight for Jaworski's right to proceed as he sees fit.

ATTORNEY GENERAL SAXBE: Right.

WILL: Now, do you have a job to do now to fight for Jaworski's right to proceed as he sees fit, which is suing the President in court? What are you doing for Jaworski is what I'm asking.

ATTORNEY GENERAL SAXBE: All right, I'm doing this. I'm telling Mr. Jaworski that nobody can fire him but me and to take it easy and to cool it, because I'm not going to fire him. He's going to stay there and do his job. Now the question of whether there is a conflict between the executive department itself is something that Mr. Jaworski's very alarmed about, because he says that this will knock him out of the ball game. And it very well could. But there's nothing that we can do about that, because it's a question to be determined in the Supreme Court. And the Supreme Court has this before it.

Now, I think that having been raised, it will be backed away from. I don't think that we're going to push the Supreme Court to make this decision. I don't think it was raised in bad faith, but, at the same time, I think it was raised rather casually. I don't think it was any great plan that we're going

to knock him out of the box with this plan, because the Special Prosecutor was recognized by the President, by the Attorney General, by the Congress as coming in for a specific purpose. We all knew this. And that's why I say I can help Mr. Jaworski by saying to him "Relax. Nobody can fire you but me, and I'm not going to." And I assure you that if the President wanted to get rid of him so bad that he'd fire me, he'd have to go pretty far down the line in the Justice Department.

WILL: Would you have fired Archibald Cox?

ATTORNEY GENERAL SAXBE: No.

WILL: Why not?

ATTORNEY GENERAL SAXBE: I don't -- I don't think there was good cause to fire Archibald Cox. And I was frankly disappointed that Mr. Richardson saw fit to fire him, or to resign. He could have -- it seems to me, he could have stood his ground and say "Mr. Cox stays."

WILL: Did Mr. Bork then do something wrong in firing Special Prosecutor Cox?

ATTORNEY GENERAL SAXBE: No, I think Mr. Bork performed a service in that it had to stop someplace. And he was -- he's a genuine guy interested in the Justice Department, and he was determined to see that it continued to operate. And that was the only way he could see to do it.

WILL: [Attorney] General Saxbe, we're out of time. Thanks for coming.

ATTORNEY GENERAL SAXBE: Thank you.

ANNOUNCER: From Washington, NPACT has brought you "Washington Straight Talk" with Attorney General William Saxbe and syndicated columnist George Will. Next week on "Washington Straight Talk," Senate Majority Leader Mike Mansfield with NPACT correspondent Paul Duke.

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