

Part
5/16/74

Mr. Nixon's Inadmissible Evidence

WHEN PRESIDENT NIXON went over the heads of the members of the House Judiciary Committee and the House to make public his now-famous transcripts, he obviously wasn't counting on the sort of intense scrutiny by the public that has turned these turgid and sometimes inscrutable documents into best-selling paperbacks. But you would think he would have been aware, first, of the perils of providing transcripts that omitted and altered material present in those tapes which were in the hands of the Special Prosecutor and the House Judiciary Committee. And you would think he'd also have been aware that sloppy transcription of what he *did* intend to make available to the public at large presented similar perils to his position. Mr. Nixon's position, after all, is that the White House edited and transcribed versions of the tapes qualify as suitable evidence for the Judiciary Committee's proceedings. Yet, as the news account today of the more reliable transcription of Mr. Nixon's Sept. 15, 1972, conversations demonstrates, those White House edited best-selling transcripts can hardly be taken as reliable evidence at all. The same point is made by some passages from those White House transcripts which we reprint elsewhere on this page today.

We intend to return to the subject of the discrepancies between the more and less complete transcriptions of the Sept. 15, 1972, conversations. Today we would just explore the meaning of the two passages called to the attention of this newspaper earlier in the week by a very keen transcript reader, John B. Northrup, of Huntington, N.Y. The White House has acknowledged that the passages we are presenting in parallel today, and which actually appeared one right after the other in the transcripts, in fact represent two versions of the same fragmentary exchange of conversation between the President and Assistant Attorney General Henry E. Petersen on April 16, 1973.

Apparently they are the result of successive efforts by White House secretaries to decipher this particular passage; the two versions were inadvertently run in sequence in the scramble to prepare the transcripts for

publication in time to meet the deadline of the House Committee's subpoena.

Now, the President has consistently argued that there were "ambiguities" in the tapes, and that people could interpret them in different ways. But we have always assumed that he was talking in terms of nuance and tone and meaning, whereas what these parallel versions tell us is something else—namely, that two different listeners, with no particular expertise in these matters, can actually *hear* the less audible or intelligible passages in different ways. And that is just the point: in the difficult business of transcribing recordings of conversations in which the participants are either unaware of, or unwilling to admit the existence of, hidden microphones, it comes down, in large measure, to a matter of expertise and to the quality of advanced technology that has been brought to bear in the transcription process. That is one reason (the Sept. 15 transcript is surely another) that it would be helpful to know in greater detail who did the transcribing at the White House and with what modern electronic techniques and devices at their disposal. So far, the White House hasn't really said. That is what was so important about Mr. Northrup's discovery. For it reveals rather conclusively that the White House transcriptions are in some key respects almost certainly the work of amateurs—and that the President was incapable, with the resources available to him, of coming up with even an agreed upon version of those passages which purport to be audible and intelligible, not to mention those segments which he claims cannot be heard or understood at all.

The lesson is even clearer now than it was when the transcripts first appeared. It is that these documents, which the Judiciary Committee did not ask for or ask to have made public, are no substitute as reliable evidence for the tapes, which the committee is well equipped to submit to inspection and transcription by acknowledged experts using sophisticated electronic techniques. Only in this fashion can those who are charged by the Constitution with sitting in judgment of the President make a valid judgment about the reliability of the "evidence" submitted by the President.