

THE WHITE HOUSE/COVER STORY

The Battle for Nixon's Tapes

If President Nixon does not release tapes of Watergate conversations recorded in his offices, Senate Select Committee Chairman Sam J. Ervin Jr. told TIME last week, "I would inform the President that the committee was going to hold him guilty."

As the Watergate scandal grows more incredible almost weekly, it now seems probable that an ironic twist of fate could prove decisive in determining how the President's involvement is finally perceived. The controversy that arose from the secret bugging of Democratic Party headquarters might possibly be resolved through the secret bugging of the White House, ordered by the President himself.

As he has so often done in his convoluted conduct throughout the Watergate revelations, the President might change his mind. But, recovered from pneumonia and working over the weekend in the solitude of Camp David, Nixon was, according to close aides, drafting a letter rejecting Ervin's request that he turn over tapes of conversations in which he discussed Watergate with his key associates and any other relevant presidential papers or documents.

If so, Nixon might well be acting from the loftiest of motives—to protect the principle of Executive privilege for both his own presidency and future ones. But he probably cannot succeed, either in the courts of law or, more significantly, in the court of public opinion. Ervin is undoubtedly correct in arguing that a refusal by Nixon to produce the relevant recordings will be taken to mean that they probably do not support his protestations of innocence in all of the wrongdoing related to Watergate.

The revelation last week that Nixon had ordered the automatic and covert recording of all of his office talks and most of his telephone conversations since the spring of 1971 cast a startling new light on the astonishing affair. A case against the President that had seemed destined to rest ambiguously on the often credible but thus far wholly uncorroborated testimony of Nixon's fired counsel, John W. Dean III, now might have a clear-cut resolution.

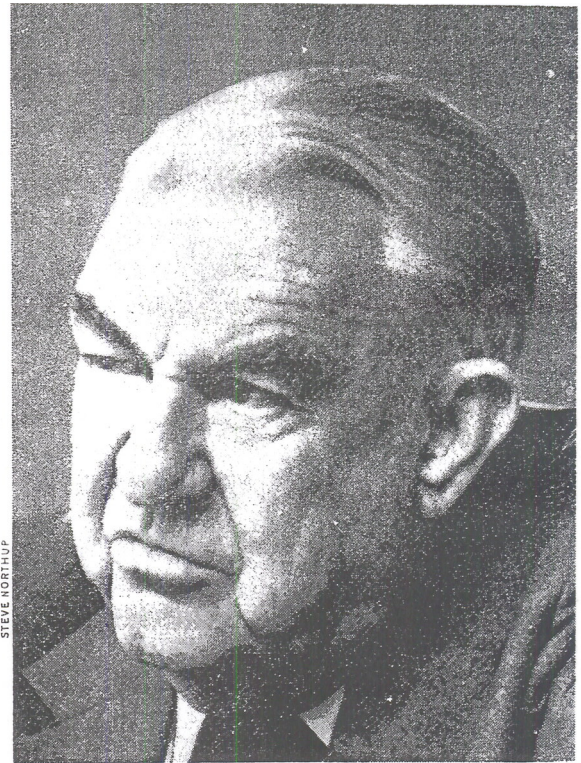
To be sure, the taped conversations,

if they do become public, could turn out to be just as ambiguous as all of the conflicting testimony. It seems unlikely that a President who knew his words were being recorded would engage in any self-incriminating conversations—unless he felt certain that his words would not be revealed until years later, if at all. Even with the tapes, the answer to Senator Howard Baker's celebrated question, "What did the President know and when did he know it?," could center on semantic shadings, conversational contexts and inconclusive interpretations of what the participants in the presidential dialogues really meant.

Ultimate Evidence. Another possibility: the tapes might clearly exonerate Nixon. John Ehrlichman, who is scheduled to testify this week before the Ervin committee's television cameras, thinks so and predicted last week that the tapes "will be the ultimate evidence." Ehrlichman, the President's former Chief Domestic Affairs Adviser, confirmed that he had been completely unaware that his conversations with his boss had been recorded. He said that the tapes ought to be produced by the President. Although Ehrlichman thought he himself "may have said some things about some people to the President that were very frank and candid," he was "delighted" that the recordings exist.

Yet the knowledge that their past conversations with the President could eventually become public will undoubtedly make Ehrlichman and H.R. Haldeman, who is expected to take his turn under the TV lights next week, especially careful of what they tell the Senators. The last major figures on the committee's witness list, the two men have been implicated by others in the conspiracy to conceal the full implications of the Watergate crimes. As Nixon's Chief of Staff, Haldeman, who was aware of the taping all along, tightly controlled access to the President. He will undoubtedly be grilled about key Nixon conversations with anyone linked with Watergate so that the Senators can seek specific tapes.

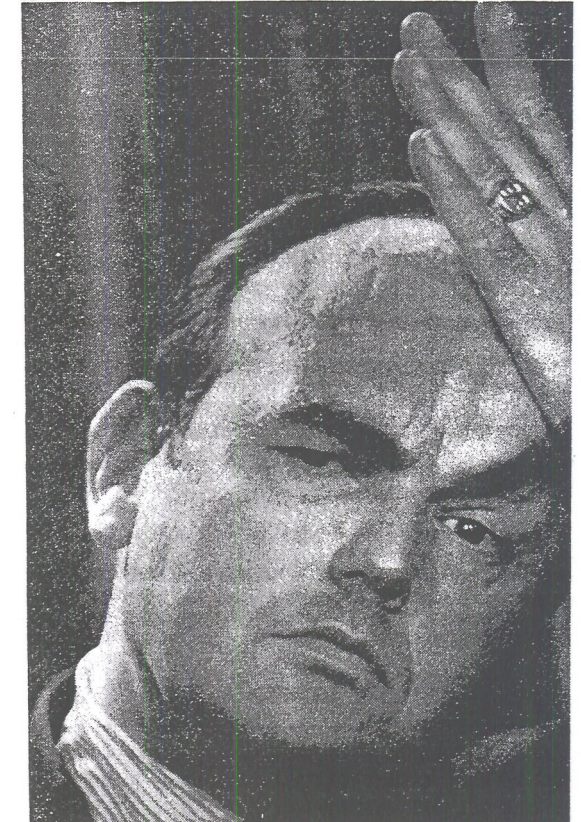
Looking physically fit, Nixon emerged last week from the National Naval Medical Center at Bethesda and his brief bout with viral pneumonia. This week George Gallup reported that



CHAIRMAN ERVIN AT WATERGATE HEARINGS
Praying for a rational White House.

only 39.6% of the public approve of the way Nixon is handling the presidency; this is the lowest popularity rating of Nixon's tenure in the White House and one of the lowest for any postwar President (see chart page 12). But Nixon seemed to be in a confident and spirited mood. He told a gathering of White House employees in the Rose Garden: "Let others wallow in Watergate. We're going to do our job." He dismissed all talk of his possible resignation as "just plain poppycock—we're going to stay on this job." While doctors were urging him to slow down, he

BLACK STAR



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NIXON WITH GIRL SCOUTS ALONG HIGHWAY NEAR CAMP DAVID
A time to go full tilt, not to quit or slow down.

said that he was going to work "at full tilt all the way. No one in this great office at this time in the world's history can slow down."

The brave words masked what must be an acute dilemma posed by the tapes for Nixon, whether innocent or guilty of Watergate crimes. His press spokesmen have put the tapes in the same category as "the presidential papers," which Nixon on July 7 described to Ervin as documents he must withhold from the Senate committee. His refusal to release them, he wrote, was "based on my constitutional obligation to pre-

serve intact the powers and prerogatives of the presidency and not upon any desire to withhold information relevant to your inquiry." Yet the White House has already given the committee the times and topics of some of the conversations, as well as its version of the general content. To refuse a more complete examination of those talks seems, at the least, legally inconsistent. Moreover, in his May 22 written statement, Nixon declared: "Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussion of possible criminal conduct."

Both the Watergate wiretapping and various acts to conceal it—including payoffs to keep the seven Watergate defendants quiet, promises of Executive clemency for the same purpose, and attempts to hide the involvement of anyone other than the original burglary squad—are, of course, crimes. No matter what the White House tapes may or may not disclose about Nixon, at the least, they would have to contain evidence of some of his advisers' illegally covering up Watergate. Dean, of course, contends that all those cover-up acts were discussed with the President.

Beyond those grounds for disclosure, Chairman Ervin argues that neither political activities, such as the President's re-election campaign, nor the maintaining of records for historical purposes—the ostensible aim of Nixon's taping program—is among the President's constitutional duties. Therefore they cannot be protected by Executive privilege. Nixon's legal position is weak (*see following story*).

The Cox Demand. Any attempt by Nixon to withhold the recordings from the staff of Special Watergate Prosecutor Archibald Cox would be even less defensible. Cox is charged with investigating crimes, and his office was created by the Executive Branch; thus there is no separation-of-powers reason for denying the tapes to his staff. Cox has already formally requested tapes relevant to his investigations, but at week's end had not yet received a re-

ply. If his request is refused, Cox is expected to protest publicly, creating more pressure on the President.

If Cox does obtain the tapes, the Ervin committee could be stymied in its desire to see them speedily, since Cox apparently, if he would use them publicly at all, would do so only in the trials of indicted former Nixon aides. Such trials could be months away. If the President will not voluntarily give the tapes to Ervin, the committee will undoubtedly try to subpoena them. If that is resisted by the White House, it could take months for the committee to fight the issue through all the courts.

In the end, the practical question of whether Nixon can withstand the political pressure to release the tapes seems far more crucial than the legal issue. Says Ervin: "I think the American people are not so much concerned with the constitutional arguments as they are in the willingness of the President to assist the committee in its search for truth."

By all accounts, the sudden and dramatic injection of the controversy over the Nixon tapes came about almost accidentally. As the Watergate committee's chief counsel, Sam Dash, explained it, his staff was working methodically on a "proximity investigation"—checking out everyone close to the key figures in the affair. Thus a routine private staff questioning of Alexander P. Butterfield, a former aide to Haldeman and now administrator of the Federal

Aviation Administration, was scheduled for Friday, July 13—and the staff, as one member put it, "just lucked out."

The meeting was considered of such little importance that a junior staff Republican counsel, Donald Sanders, was interviewing Butterfield about White House record-keeping procedures. No Senator or top counsel was present. Nothing of interest had been learned when, at the very end, Sanders tossed out a throwaway question. Noting that Dean had testified that on one occasion he thought the President was taping a conversation with him, Sanders asked whether "conversations in the President's office are recorded."

No Leaks. "Oh God," replied Butterfield, "I was hoping you wouldn't ask that." He put his hand to his head and seemed shaken. He said that he was worried about violating national security and Executive privilege, but could not evade the question. Then he revealed that Nixon had ordered the Secret Service to install recording devices that would pick up any conversations in his Oval Office and his working quarters in the Executive Office Building. Discussions in the Cabinet Room could also be recorded, although not automatically. The technology was relatively simple (see box page 10).

The three staff members present instantly realized the significance of Butterfield's revelation. They told Dash and the chief Republican counsel, Fred Thompson. Next morning when Chair-

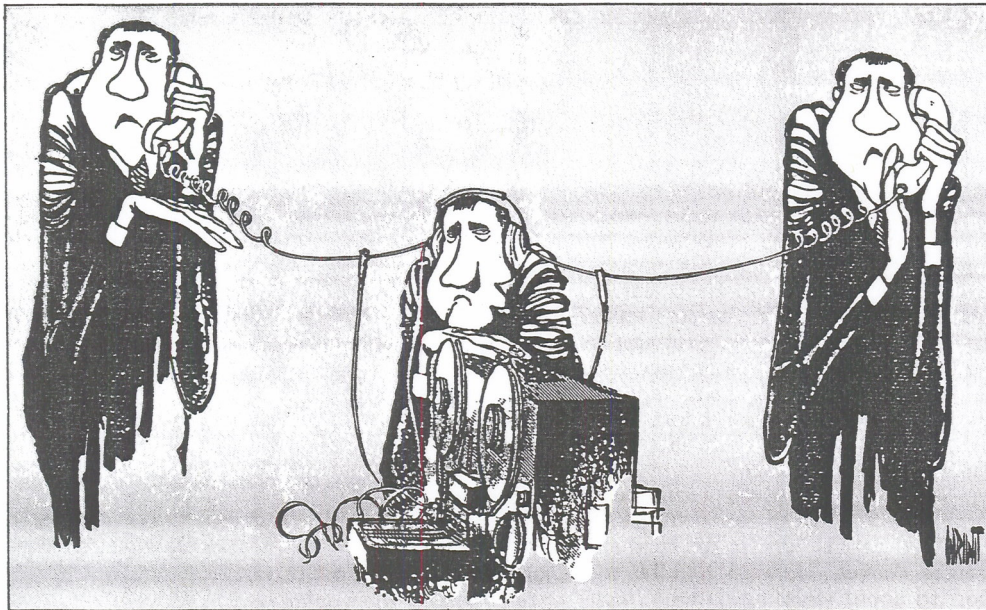


BUTTERFIELD IN NIXON OFFICE (1971)
"I was hoping you wouldn't ask."

man Ervin was informed, he called the news "quite astounding." Determined that this story must not leak to newsmen, as so many staff interviews had, Ervin ordered that not even the other Senators on the committee be immediately informed. Vice Chairman Baker learned of it Sunday morning only when Butterfield, seeking advice, asked to meet with him. Baker told Butterfield that he would have to testify publicly, but should inform White House Counsels Leonard Garment and J. Fred Buzhardt that he intended to do so.

Butterfield, 47, an efficient and

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DON WRIGHT—MIAMI NEWS

bright administrator who had been a U.C.L.A. acquaintance of Haldeman's, advised the White House counsels of his intentions on Sunday. He was not told to invoke Executive privilege, probably because the Ervin staff already had his testimony. Ervin moved swiftly to get Butterfield's information out. On Monday morning the full committee was told about Butterfield's story. A staff attorney was ordered to call Butterfield and tell him that he would be put on television that afternoon. Butterfield, reached in a barbershop, objected, still concerned about national security and worried about missing the opening of a symposium in the Soviet Union on American aerospace products. When Ervin learned of this, he told his staff attorney: "You tell him that I order him to come and testify, and if we have to, we'll subpoena him and bring him in."

Thus a nervous but precise and

wholly cooperative Butterfield became the Ervin committee's first mystery witness. He arrived without an attorney, not having had time even to obtain counsel to accompany him. Speaking in understated, undramatic terms, he told a sensational story of how Nixon had made it a practice to bug all presidential conversations. At no time, so far as he knew, Butterfield said, did Nixon seek to cut off the system or were his visitors or callers informed that their words were being taped.

Plant Theory. In a justifiably cynical Washington, speculation grew that somehow Butterfield was a White House plant, that Nixon wanted the information out because the tapes would clear him. Some White House staffers who claim to have heard the tapes—despite the contention of Presidential Press Secretary Ronald Ziegler that none of the White House counsels have reviewed the tapes—say that the record-

ings do just that. But Senator Baker caustically noted that if he were President and that were true, "I'd have been rolling it [the information] up to Capitol Hill in wheelbarrows."

Butterfield's explanation for revealing the presidential bugging appeared to be a self-protective afterthought. He said that he knew both Haldeman and an assistant, Lawrence Higby, had been quizzed by the committee staff, and he assumed that they must have been asked the same question and answered it honestly. He said he also assumed that the President planned eventually to use the tapes in his own defense.

TIME has learned that Haldeman was not directly asked about the existence of a recording system and did not volunteer the information. Higby, however, was asked whether telephone conversations at the White House were recorded and said he knew of only two taped calls. Declared the committee's deputy counsel, Rufus Edmisten, later: "Butterfield is one of the few people in this entire mess who have impressed me as being a completely honest, sincere and upright guy. It's just preposterous to think that it is some kind of White House ploy."

White House reaction to Butterfield's disclosures indicated that officials there were not prepared for it.

Buzhardt on Monday morning sent a brief letter to the committee confirming that the recording reels had been spinning secretly since the spring of 1971. (Butterfield had thought the operation began a year earlier.) The system was still in use and "was similar to that employed by the last Administration." That evening Buzhardt, Garment, Haig and Ziegler met for two hours at the Bethesda hospital. Apparently after talking to Nixon there, they agreed that the tapes would not be released to

Ervin's committee and that no Secret Service officials would be allowed to testify about how the tapes were handled.

Next day when the Ervin committee tried to question Alfred Wong, who was director of the technical security division of the Secret Service at the time of the eavesdropping installation, he was accompanied by no fewer than six Treasury Department officials. One of them, a department counsel, objected to Wong's answering any questions, and read a letter from Treasury Secretary George Shultz, covering an order from Nixon. The President directed that no Secret Service agent could testify "concerning matters observed or learned while performing protective functions for the President or in their duties at the White House." The last phrase was vital, since taping Nixon's talks does not seem to belong to any protective function of the service.

During a closed session of the Watergate committee, some of the Senators were so irked at this presidential gag that they wanted to bring Wong before the TV cameras immediately; that would force him to refuse before the vast audience to answer questions. Georgia's Herman Talmadge objected that this would produce a "circus" atmosphere, and his calm advice prevailed. Rather than battle fruitlessly at such a low level, he suggested, Ervin should appeal directly to the President. Ervin did so in a low-key, conciliatory note, merely requesting "that you provide the committee with all relevant documents and tapes under control of the White House." Although the matter is obviously urgent, Ervin asked courteously: "May we hear from you at your earliest convenience?"

The Hoax. If a negative response from the President is received early this week, as expected, the committee will almost surely agree to issue a subpoena for the White House tapes, perhaps with a list of specific dates and conversation participants. Ervin is not at all certain that any personal meeting then to discuss the matter with Nixon would be worthwhile. Before the revelation of the recordings, Nixon had agreed to discuss with Ervin his refusal to submit requested presidential papers to the committee. Noting that "I have hopes even when my expectations are not too strong," Ervin said that he would tell the President precisely what he thinks about the implications that result when anyone withholds evidence. Ervin is respectful of, but not awed by, Presidents. Says he: "For a long time, I've proceeded on the basis that all people put on their trousers one leg at a time."

During one brief and bizarre episode, the ever-optimistic Ervin thought that his hopes had been realized beyond expectation. He announced at a session of the televised hearings that he had just received a telephone call from Treasury Secretary Shultz, whose Secret Service is custodian of the tapes. Shultz, the chairman reported, had revealed that

the President had decided to make all relevant tapes available to the committee and would meet with Ervin to arrange the transfer. The chairman praised the President for his "very wise decision." Vice Chairman Baker joined in the salutations, declaring: "It would appear that the White House has shown its spirit of cooperation."

Within a half hour, his face now ruddier than usual, Ervin returned to his Senate Caucus Room microphone to announce that he had been the victim of a hoax. Ervin had just talked to a man "who really assured me he was the real Secretary Shultz, and he informed me that he had had no conversation with me today." Protested the embarrassed Ervin: "It is just an awful thing for a very trusting soul like me to find that there are human beings—if you can call them such—who would perpetrate a hoax like this."

He had believed the first caller, Ervin said, since turning over the tapes was "what I've been praying the White House would do—because it is so rational." Far from amused, both the Ervin staff and the FBI, at White House direction, promptly announced investigations to find who had posed as Shultz.

Beyond its potentially decisive impact on how Americans may judge Nixon's role in Watergate, the revelation of the President's bugging and wiretapping raised other problems for him. It reinforced to a dismaying degree the portrait of a suspicious, self-protective, secretive White House staff.

Even the Butterfield explanation of the rationale for the President's clandestine taping—that it was purely for a historical record—was questioned by a former presidential aide, who had not been aware of the bugging. This aide insisted that it was Nixon's "paranoia about the press" that motivated his taping. Explained this official: "The President has had a bad press for a long time. He ordered the taps and bugs to keep his own record of what happened in his offices, to tell what he considered

to be the true story." Yet it is not at all clear how Nixon could use such recordings to refute press accounts.

If the goal was solely to preserve a record for historians, the practice becomes more tolerable. Certainly, a recorder is a more efficient device than a staff member or stenographer taking notes. But taping seems fair only when all parties to a conversation are aware that their words are being recorded. This may hinder candor somewhat, but so does the presence of a note-taker. When only the President is aware of the listening devices, he is in a position to manipulate and distort the historical record with self-serving or misleading statements.

Other Buggings. The reaction to the revelation among U.S. politicians and officials ranged from outrage to "So what?" AFL-CIO President George Meany called it "so fantastic as to be almost beyond belief. God bless the blunders at Watergate. If they hadn't been so clumsy, America would never have known about things like this." Declared former HEW Secretary Robert H. Finch, a longtime Nixon associate: "I'm literally astonished." Ousted Interior Secretary Walter J. Hickel observed wryly that his problem was not being overheard at the White House but being heard at all. Nevertheless, he thought anybody talking to a President should be aware of any taping "as a matter of self-protection." Republican House Leader Gerald Ford said that he saw "nothing wrong with the practice." Quipped former Republican National Committee Chairman Robert Dole: "I'm glad I always nodded when talking to the President." A Nixon loyalist, former Presidential Aide William Safire, writing in the *New York Times*, said the President was setting "a terrible example" of eavesdropping by his "Monster With Total Recall."

Democrats, predictably, were more critical. Senator George McGovern called the taping "a violation of privacy." House Speaker Carl Albert termed

Presidents rise and fall in favor with a rhythm usually reflecting quite obvious crises and achievements. John Kennedy's chart is somewhat anomalous at first glance. His 83% peak of popularity just after the Bay of Pigs disaster repre-

sented a rally-round-the-President mood and soon dropped. His low in the autumn of 1963 resulted from a huge disaffection among white Southerners after the summer of the spreading sit-in movement and the March on Washington.

the practice "an outrage." Senate Democratic Leader Mike Mansfield said: "I'm not surprised, but I don't like it. I wouldn't mind if they had told me."

Buzhardt's claim that the Johnson Administration had engaged in a similar practice was met with heated denials by some former L.B.J. aides, but it nevertheless seemed generally accurate. Some 500 transcripts of telephone conversations that Lyndon Johnson had selectively and apparently secretly recorded are in the archives of the Johnson Library in Austin, Texas. He was able to push buttons to activate Dictaphones wired to his telephones in both the Oval Office and his White House sleeping quarters. Installed by Army communications experts rather than the Secret Service, the recording equipment was also available in the Cabinet Room. He could reach under the table and throw a switch (among buttons labeled COFFEE, TEA and FRESCA).

Documents in storage for the still-to-be-built Kennedy Library include 68 recordings of John Kennedy's telephone conversations and 125 tapes of presidential meetings. In some cases, said the library's director, Dan H. Fenn Jr., the participants were clearly aware that the recording was being made. He said that most of the topics under discussion seemed to be "highly sensitive foreign policy and national defense matters." Yet the full extent and manner of the Kennedy taping is not clear. The fact that other Presidents also made secret recordings does not make the practice any more attractive. There is a spying, snooping quality in it that seems

beneath the nation's highest office.

Self-taping and self-bugging is not a crime, although recording a telephone conversation without using a beeper to warn the unsuspecting party at the other end is a violation of Federal Communications Commission tariff regulations. The penalty normally is a warning from the telephone company to stop any secret taping or risk the loss of its telephone service. The FCC ordered A T & T to check into the Nixon telephone-taping practice. An official of the A T & T affiliate serving the White House sent a letter of inquiry to the Nixon staff, but conceded: "We certainly wouldn't cut off service to the White House."

The Tampering Theory. There are some who insist that the contents of the tapes, if they are ever made public, will have no great impact on the Watergate drama because they will have been doctored to protect the President. Recording experts seem to disagree on whether this can be done without danger of detection. While tapes can readily be spliced, erased and dubbed to add, delete or transpose dialogue, and then re-taped, the relative age of the tape can be analyzed. So can the precise acoustics, including inaudible frequencies, so that the exact room setting and microphone placement of any new taping would have to duplicate those of the original. To drag even more conspirators into the Watergate cover-up in an effort to accomplish such slick editing would seem unlikely and dangerous indeed.

Moreover, if Dean's version of var-

tion finance committee. Testified Dean: "The President told me I had done a good job and he appreciated how difficult a task it had been and the President was pleased that the case had stopped with Liddy." Dean claimed that Nixon also said, "That's helpful," when Dean explained that lawyers were making out-of-court contacts with a Washington federal judge in an effort to delay consideration of Democratic Party civil suits until after the election. The White House account asserted that Dean had merely "reported Watergate indictments."

FEB. 27, 1973. Dean testified that he was again congratulated by the President on his Watergate work and that he warned Nixon that he was not sure the investigation "could be contained indefinitely." Nixon, he said, replied that he "was confident" Dean could do so. The White House summary: "Dean suggested White House aides submit answers to interrogatories."

FEB. 28. Dean contends that he reported to the President that the cover-up activities could be considered criminal; most notably, he felt that he, Dean, could be charged with obstruction of justice. The White House version is

AP



SPECIAL PROSECUTOR ARCHIBALD COX
Do the tapes tell of crimes?

TIME, JULY 30, 1973

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ious talks with the President is accurate, it would take extensive doctored of the tapes to get the recordings to reflect the conflicting White House version. Among the tapes that would seem to be especially significant for the Ervin committee are those of the following specific Nixon-Dean talks:

SEPT. 15, 1972. This is the earliest date on which, Dean contends, the President made it clear to him that he was aware of the cover-up. He did so, Dean claims, by congratulating him on helping to confine the grand jury indictments to the level of G. Gordon Liddy, the former counsel to the Nixon re-elec-

contradictory: "President inquired of Watergate. Dean said no White House involvement."

MARCH 13. Probably the most significant conversation of all. By Dean's account, the President discussed both payoffs and Executive clemency for the convicted wiretappers. Dean said that he thought it might cost \$1,000,000 to keep the men quiet. "He told me that that was no problem, and he also looked over at Haldeman and repeated the statement." Later, testified Dean: "The President then referred to the fact that Hunt had been promised Executive clemency. He said that he had discussed this matter with Ehrlichman and, contrary to instructions that Ehrlichman had given Colson not to talk to the President about it, that Colson had also discussed it with him later."

The White House version of this meeting made no mention of the \$1,000,000 or Executive clemency. Its main points: "President asked if Mitchell and Colson knew of Watergate. Dean

the grand jury without immunity." If a tape does disclose Nixon's self-serving "joking" reminder about the \$1,000,000, it would clash directly with the claim that he had earlier dismissed such a payoff as pure blackmail.

Beyond the Dean conversations, Nixon's discussions with John Mitchell in numerous telephone talks immediately after the Watergate arrests on June 17, 1972, are wanted by the Ervin committee. According to Mitchell's testimony, in only one of the calls did Nixon even inquire of Mitchell what he knew about the Watergate operation. Also of great interest to the investigators is a June 30, 1972, meeting at which Nixon and Mitchell discussed Mitchell's leaving the Nixon campaign committee. Mitchell testified that the only reason was personal; his wife Martha was insisting that he get out of politics. Committee investigators are highly skeptical that that was the main reason.

The fact that Nixon was always aware that recordings were being made

tee issues a subpoena for specific conversations. Nixon declines to honor the subpoena. The Ervin committee, by majority vote, cites the Secret Service officer who is now custodian of the tapes for contempt of Congress. Also, needing only a majority vote to do so, the full Senate confirms this citation.

This Senate citation is turned over to Special Prosecutor Cox for consideration by a grand jury. An indictment results, and the custodian is arrested. The case comes before Federal District Judge John J. Sirica, who decides against the custodian's plea of Executive privilege. Sirica orders that the tapes be delivered to the Senate committee. The White House appeals, first in the Washington Circuit Court of Appeals, then in the Supreme Court, losing both times (though that is by no means certain). It is now early autumn. The President then either yields to the Supreme Court ruling and furnishes the tapes or ignores it, though it is almost inconceivable that he would not obey the

United States Senate

SELECT COMMITTEE ON
PRESIDENTIAL CAMPAIGN ACTIVITIES
(PURSUANT TO S. RES. 41, 93RD CONGRESS)
WASHINGTON, D.C. 20510

July 17, 1973

The President
The White House
Washington, D. C.

Dear Mr. President:

Today the Select Committee on Presidential Campaign Activities met and unanimously voted that I request that you provide the Committee with all relevant documents and tapes under control of the White House that relate to the matters the Select Committee is authorized to investigate.

THE WHITE HOUSE
WASHINGTON

July 16, 1973

Dear Secretary Shultz:

I hereby direct that no officer or agent of the Secret Service shall give testimony to Congressional committees concerning matters observed or learned while performing protective functions for the President or in their duties at the White House.

ERVIN LETTER REQUESTING NIXON'S SECRET TAPES

If the recordings would clear the President, why not roll them up to Capitol Hill in a wheelbarrow?

said there was nothing specific on Colson; he didn't know about Mitchell but Strachan could be involved. President states again Dean should compile a written report about the matter."

MARCH 21. This is the date on which, both Dean and the White House agree. Dean told the President nearly everything he knew about who might be implicated in Watergate. But the White House also contends that this is the time at which \$1,000,000 in payoff money was mentioned and that the President "stated it was blackmail, that it was wrong, that it would not work, that the truth would come out anyway."

APRIL 15. Dean suspected that this was being taped and he might be being set up as "the fall guy." Dean contends that Nixon told him he had only been "joking" when he had said on March 13 that \$1,000,000 in payoff money was no problem. Nixon, according to Dean, whispered in a corner that he had been "foolish" to discuss Executive clemency with Colson. The White House account claims that at this meeting "the President told Dean that he must go before

could explain what Dean interpreted as Nixon's frequent misunderstandings or apparent non-comprehension of what Dean was telling the President about Watergate. After Dean fully briefed Nixon about all of the implications on March 21, 1973, for example, Nixon's response was a puzzling non sequitur: Why didn't Dean now brief the Cabinet along the same lines?

While the President's anticipated refusal to release the tapes is dangerous politically, since it could widely be interpreted as a deliberate attempt to hide incriminating evidence, it also poses extremely hazardous legal implications. TIME Correspondent David Beckwith, who covers the Supreme Court and the Justice Department, last week consulted Ervin-committee counsels and other legal sources and came up with the following possible and gravely serious scenario in the battle over the tapes:

The President refuses to turn over the tapes, but offers to furnish summaries of the desired conversations. The committee demands the tapes. The President declines again. The commit-

NIXON ORDER BANNING SECRET SERVICE TESTIMONY

tee issues a subpoena for specific conversations. Nixon declines to honor the subpoena. The Ervin committee, by majority vote, cites the Secret Service officer who is now custodian of the tapes for contempt of Congress. Also, needing only a majority vote to do so, the full Senate confirms this citation.

That, of course, is only one complex hypothesis of what might happen. But the momentum of the Watergate hearings has carried far beyond a mere matter in which "others wallow," while Nixon blithely ignores it. The combat over custody of the tapes—even if they are inconclusive—is not some quaint, theoretical argument between two contending branches of Government. Nor is it a political witch hunt. The dispute carries great portents for basic concepts of justice, for public confidence in the Government and, most personally, for Richard Nixon. If ever recorded conversations were, indeed, of historical significance, the President's tapes are profoundly so—and long before their appointed time.