

The Strange Case of the Missing Tapes

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In a particular sense the latest turn in the tale of the Watergate tapes defies belief. This is not necessarily to discount out of hand the possibility that what White House counsel J. Fred Buzhardt told federal Judge John Sirica is factually true. Mr. Buzhardt asserted that two of the nine tapes subpoenaed by the Watergate grand jury (and the same two out of the five tapes subpoenaed by the Senate Watergate committee) never have existed. He said one, a recording of a presidential phone conversation with former Attorney General John Mitchell, did not exist because the call was on a phone extension which was not monitored by a recording device. He said the other, the tape of a meeting between John Dean III and the President, did not exist because the conversation had not been picked up, owing to a malfunction of the recording device.

The phone call with Mr. Mitchell was regarded as particularly important because it was presumably the first conversation held by the President and Mr. Mitchell, by then his campaign director, following the arrests of the Watergate burglars. The meeting between Mr. Dean and Mr. Nixon, which took place on April 15 of this year, figured prominently in Mr. Dean's testimony before the Senate Watergate committee implicating the President in the cover-up. It was at this hour-long session, allegedly, that the President told Mr. Dean that he had only been joking when he said it would be no problem to raise a million dollars to keep the Watergate defendants quiet and also expressed his regret at having talked to White House aide Charles Colson about the possibility of executive clemency for the convicted Watergate conspirator, E. Howard Hunt.

That these tapes were held by Mr. Cox to be crucial to the Watergate investigation is beyond dispute. That by some mishap they may never have been recorded is at least conceivable. What is inconceivable is that the President and his advisers could wait until the last minute, just before the scheduled delivery of the tapes to Judge Sirica, to announce to the public, to the grand jury and to the court that this vital evidence did not, in fact, exist—and never had.

It became known in mid-July, after all, that the President had installed a voice-actuated recording system capable of picking up automatically every conversation in his White House and Executive Office Building offices and on the phones in those offices. Within a few days after that, Special Prosecutor Cox requested that certain tapes be turned over to the grand jury. Why didn't the White House disclose at that time that two of the requested tapes did not exist? Why was this not revealed

during the course of the prolonged court contest that ensued—especially in the face of Judge Sirica's order that these specific tapes be among those produced? Why didn't this come up during two sets of negotiations during which a compromise was sought? It is surely logical to suppose that, when the tapes were subpoenaed, the President himself or someone acting for him would have at least checked to see if they existed and might even have been curious about what they contained.

There is a strong suggestion in the public record that the President had in fact been curious. On July 23, Mr. Nixon wrote to Senator Ervin and said: "Before the existence of the tapes became known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth."

There are other troubling questions. When President Nixon prevailed upon Senator Stennis to "verify" the President's "summary" of the contested tapes, did Mr. Nixon fail to warn the senator that he would be forced into the position of having to explain why two of the nine tapes requested by the grand jury were missing? Did he not feel it necessary to alert Senator Ervin and Senator Baker of this discrepancy when he was enlisting their public endorsement of the Stennis arrangement? One explanation—and the one most favorable to the President, to be blunt about it—is that the White House in fact did not discover the discrepancy until this week. But even this best case interpretation betrays a breathtaking incompetence and insensitivity to the elementary requirements of dealing honorably with the court, with opposing counsel and with the public. It would be breathtaking, that is, if we did not already have such a sorry record concerning the White House's handling and mishandling of crucial evidence in this case from the start.

Cast your mind back to the wholesale shredding of documents at the Committee for the Re-Election of the President, to Mr. Stans' destruction of lists of campaign contributors, to Mr. Haldeman's order to Mr. Strachan to make sure that the files were clean, to Mr. Ehrlichman's suggestion to Mr. Dean that he "deep six" some of the evidence found in Howard Hunt's White House safe, and to the eventual destruction of that evidence by none other than the acting director of the FBI, Mr. Gray. There is more, but that is enough — enough to make it very nearly impossible to take at face value, and without further question, the White House's assertion that these tapes are missing only because they never did exist.