

Mr. Nixon's Evidence

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By Tom Wicker

The massive pile of transcript pages that Richard Nixon now says is to be made public may give him a short-term political boost; in the long run, however, this gesture does not answer the needs of the House Judiciary Committee or conform to any law but Mr. Nixon's own.

The committee did not subpoena edited transcripts; it subpoenaed taped recordings. The committee did not subpoena Mr. Nixon's versions of what was said, or his conclusions as to what is relevant. It subpoenaed the literal records—the tape recordings of those crucial conversations in the White House, of which Mr. Nixon wants only selected parts to be known.

Coming on top of the acquittal of John Mitchell and Maurice Stans and statements by the jurors in that case that they did not believe John Dean's testimony, Mr. Nixon's speech—plausible though his "compromise" offer may seem—ought to give the judiciary committee a new determination to enforce its subpoena and obtain the tapes. Precisely because Mr. Nixon's lawyers and defense counsel for the Watergate defendants will now press the issue of Mr. Dean's believability (as Mr. Nixon himself did), the actual record of what was said in 1972 and 1973 in those crucial White House meetings becomes more important than ever.

That a jury may not have thought Mr. Dean believable in his testimony in one case against two particular defendants does not, moreover, prove that therefore Mr. Nixon or John Ehrlichman or Charles Colson is necessarily telling the truth on all other matters. The notion that if John Dean is a liar, everyone else must be truthful, falls of its own weight.

The fact is that an official record exists; it could confirm or refute many of Mr. Dean's statements; so that record—Mr. Nixon's tapes—is documentary evidence of the most crucial nature.

Edited transcripts of these conversations will not serve the purpose. If John Dean's veracity is suspect, not even the most avid supporter can deny that Mr. Nixon's is, too—after the missing tapes, the 18-minute gap in one of the most important of them, and the many conflicting and self-serving statements Mr. Nixon has made. Edited transcripts will inevitably cause widespread suspicion that evidence is being concealed from the Judiciary Committee and the public.

Nor will the Nixon plan to allow Chairman Rodino and Representative

IN THE NATION

Hutchinson to verify the honesty of the edited transcripts eliminate the problem. It would still leave the White House in the position of deciding what is "relevant" and what is not, a position Mr. Nixon was careful in his speech to preserve against the possibility that the two committee members might judge that some material relevant to the committee inquiry had been deleted.

Paradoxically, Mr. Nixon called again for the inquiry to be speeded up and the matter laid to rest, but the verification task would be immense; Mr. Nixon's lawyers spent more than 300 hours auditing only a part of the tapes, and had a crew of secretaries transcribing them. Surely the only real "verification" would be for someone to check every emendation against the original tape, a lengthy and laborious job and one that in itself would violate Mr. Nixon's claim of privilege for the expurgated material. He was careful also to insist that Mr. Rodino and Mr. Hutchinson—not their expert staff members—undertake this laborious and tricky task.

Mr. Nixon's repeated rationale for his unwillingness to turn over the original tapes, even to a properly constituted Congressional committee pursuing a constitutional function, is that he is protecting the powers of the Presidency. If the confidentiality of Presidential conversations is once breached, Mr. Nixon contends, future occupants of the office will not be able to claim the confidentiality necessary to do the nation's business.

Aside from the fact that if this personal conclusion is allowed to stand contrary to court rulings and Congressional subpoenas, the Presidency is not merely protected but made immune to law—aside, too, from the fact that the "principle" happens to be self-serving in the extreme—aside from all that, it was Richard Nixon, if anyone, who put Presidential confidentiality in jeopardy by clandestinely recording conversations on tape that could be lost, stolen or subpoenaed in pursuit of the legal principle that "the public is entitled to every man's evidence."

Besides, if Mr. Nixon really wanted to protect the Presidency, he could do it in no better way than to clear it of the suspicion that it is occupied by a felon who connived at constitutional violations and the obstruction of justice. Edited transcripts can't do that; if the tapes could, any damage their release might do to the principle of confidentiality would be as nothing by comparison.