

# A 'Missing Tape' Theory

Trying to reconstruct what happened during various phases of the Watergate affair is much like putting together a jigsaw puzzle without having all the pieces. The White House announcement that a key April 15, 1973 conversation between the President and his former counsel, John Wesley Dean III, was not recorded by the automatic taping system installed in the President's EOB office represents one of those missing pieces.

Using White House logs presented at Judge Sirica's hearing on the non-existent tapes (a June 20, 1972 call is also said not to have been recorded) along with testimony both in the courtroom and before the Senate Watergate committee, plus some personal speculation, one can come up with a theory of what might have happened.

In suggesting this analysis, I am not saying my version will turn out to be

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exactly what happened (the missing piece, so to speak) but rather that the truth may lie somewhere between my theory and the White House explanation that the tape ran out and no one discovered that fact until Oct. 27.

For the sake of argument, however, suppose the regular taping system did run out before the President and Dean met on the evening of April 15. (The idea that the tape ran out is like saying Air Force One was permitted to run out of gas—and almost as likely.) Or better yet, suppose the regular taping system was turned off that afternoon because the business being conducted in the EOB office was not of the character President Nixon wanted recorded for any future history of his days in the White House. Even if the system were inoperative, a tape of the Dean conversation could have been one made by a machine operated by the President—a recorder not as sensitive as the regular system and one whose tape never went to the Secret Service but rather remained with the President or his personal aides and thus was never stored in the vault with the other White House tapes.

As testimony before the Senate committee showed, making special tapes of Watergate related conversations was widespread among White House aides. John Ehrlichman, in particular, followed that practice. In the case of two surreptitiously-taped telephone conversations—one with former Attorney General Richard Kleindienst and one with Nixon fundraiser Herbert Kalmbach—Ehrlichman was alleged to have asked leading questions that drew answers favorable to the former White House aide's position.

With that as background, recall for a moment what the situation was on the weekend of April 14-15. Dean and his lawyers had been talking to the federal prosecutors for more than a week and Dean had, since April 9, been taunting Haldeman and Ehrlichman

with the fact that someone had been talking to the prosecutors. On April 13, Haldeman learned that Jeb Stuart Magruder was going to tell all to the prosecutors. He learned this following a conversation that took place that day between Haldeman's aide, Lawrence Higby, and Magruder and which, by the way, was recorded. On Saturday, April 14, the President met with Haldeman and Ehrlichman in three separate 90-minute meetings. Between those sessions, Ehrlichman met first with John Mitchell and later with Magruder, after the latter's session with the federal investigators. Ehrlichman taped both his meetings. Did he play them for the President?

On Sunday afternoon, April 15, the President learned from Attorney General Kleindienst and Assistant Attorney General Henry Petersen of Dean's statements to the prosecutors implicating Haldeman and Ehrlichman in alleged criminal acts. The President was, according to Petersen, defensive about his two key aides. He balked at Petersen's suggestion Haldeman and Ehrlichman be separated from the White House staff. In fact, Mr. Nixon wanted to fire the informer, Dean, immediately, a step Petersen opposed. The Assistant Attorney General argued that Dean should not be dismissed for cooperating with the government investigators—at least not until a decision was made on whether to grant him immunity from prosecution. Instead, Petersen suggested the President meet with Dean and hear directly what he had been saying to the prosecutors.

After the two Justice Department officials left at 5:15 p.m., the President and his longtime friend, Charles (Bebe) Rebozo drove to the Washington Navy Yard and took a dinner sail on the presidential yacht, Sequoia. When the President returned to the White House about 8 p.m., he immediately went to his EOB office and a meeting with Haldeman and Ehrlichman. A half hour earlier, Ehrlichman had called Dean and asked him to meet with him at the White House. At first Dean accepted, then after consulting with his lawyer, decided to cancel the meeting. Instead, it was suggested Dean should ask to talk directly with the President. Dean's request apparently was delivered to the President while he was meeting with Haldeman and Ehrlichman. Mr. Nixon called Petersen, who again encouraged a direct confrontation with Dean and so the meeting was arranged for 9 p.m.

At 9:15 p.m., Haldeman and Ehrlichman left the President's EOB office and two minutes later Dean walked in. Had they left behind a tape recorder—perhaps in the President's desk or on a table—to record Dean's conversation?

Dean was subsequently to tell the Watergate committee of this meeting. "The President almost from the outset began asking me a number of leading questions, which made me think that

*"A tape of the Dean conversation could have been made on another machine."*

the conversation was being taped and that a record was being made to protect himself." Dean also noted that toward the end of the conversation, the President left his chair and went to a corner of the office and "in a barely audible tone said to me he was probably foolish to have discussed (Watergate conspirator E. Howard) Hunt's clemency with Colson." The normal White House recording system was designed to pick up low tones, but a separate tape recorder would not. That very action would indicate the President might have been conscious that some taping was going on.

The President and Dean talked for 55 minutes. Four minutes after Dean left, Haldeman and Ehrlichman returned to the President's office and the three were together for 59 minutes. On that occasion did the President play a tape of the Dean meeting?

A tape of that Dean meeting was on Mr. Nixon's mind three days later when a question arose as to whether Dean had been offered immunity for his testimony. In a call to Petersen, the President blurted out that Dean had told him he had immunity. "I have it on tape," Mr. Nixon said, "if you want to hear it."

So there is the theory. The regular White House tape ran out, or it was stopped, but the conversation was on another separate tape. Such a separate tape could have been given to the prosecutors without compromising the elaborate White House recording system which the President wanted kept secret. Such a separate tape also could have been the one Haldeman listened to on April 16—his aide, Higby, has testified he did hear one around then—explaining why the Secret Service logs of the White House tapes do not show a withdrawal until April 25. A separate tape also could have been destroyed in June, after Special Prosecutor Archibald Cox asked for it—and still permit testimony that no White House recording system tape of the April 15 meeting with Dean ever existed. It is a long-shot theory, but not as unreasonable as some past Watergate theories that have turned out to be true. And it is not as far-fetched as the idea that the President, Haldeman and Ehrlichman took no steps to be certain they had their chief adversary, John Dean, on tape that night.