

Mr. Nixon's Evidence

By Tom Wicker

The acquittal of John Mitchell and Maurice Stans and statements by the jurors that they did not believe John Dean's testimony ought to give the House Judiciary Committee a new determination to obtain the tapes already subpoenaed from Richard Nixon. Precisely because Mr. Nixon's lawyers and defense counsel for the Watergate defendants will now press the issue of Mr. Dean's believability (as they already are doing), the actual record of what was said in 1972 and 1973 in those crucial White House meetings becomes more important than ever.

It could be quite wrong, however, to draw the conclusion that other juries in other cases with other defendants—such as H. R. Haldeman and John Ehrlichman—will always choose not to believe John Dean, who will be a principal witness in most of the Watergate cases.

Defense counsel in all those cases will rightly raise the question of Mr. Dean's reliability, but conscientious juries are likely to answer it for themselves more nearly on the basis of testimony presented, and confirmed or refuted in their presence, than on allegations by lawyers. Besides, Mr. Dean will not be the only witness in these cases.

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 Mr. 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. The committee is right to insist that, without that record, it cannot come to fair judgment on the matters it is considering.

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. However the White House may talk of "national security" problems and Mr. Nixon's barnyard language, edited transcripts will inevitably cause widespread suspicion that evidence is

IN THE NATION

being concealed from the Judiciary Committee and the public.

Nor will the Nixon plan to offer some means of verifying 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 would not likely abandon if the verifier—no doubt to be appointed by Mr. Nixon—happened to judge that some material relevant to the committee inquiry had been deleted.

Paradoxically, the White House says it wants the inquiry speeded up, 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.

His 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." He made the tapes, and he ought at least to take responsibility for that, if for nothing else.

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. If the tapes could do that, any damage to the principle of confidentiality would be as nothing by comparison.