

White House Denies New Tapes 'Gap'

By George Lardner Jr.
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Watergate prosecutors disclosed yesterday that 19 minutes of conversation are missing from the tape recording of a meeting between President Nixon and former aide John D. Ehrlichman on March 20, 1973.

The prosecutors called it a "gap." The White House strenuously denied the description, and said there was a perfectly innocent explanation for the long stretch of missing conversation.

Mr. Nixon's chief defense lawyer, James D. St. Clair, said the recording machine simply ran out of tape during the conversation in question. He said it apparently took Secret Service technicians manning the equipment that long to notice that the reel had run out and install a new one in its place.

Declaring that it was "misleading" to call this "a gap," St. Clair said he intended to register "a sharp complaint" with Special

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Prosecutor Leon Jaworski about the matter.

Assistant Special Prosecutor Richard Ben-Veniste disclosed the missing 19 minutes in the tape at the windup of a contentious hearing yesterday morning before U.S. District Court Judge John J. Sirica.

The House Judiciary Committee has subpoenaed the recording as part of its investigation into the final delivery of "hush money" to Watergate conspirator E. Howard Hunt's lawyer on the night of March 21, 1973.

The President's lawyers have maintained that the payment had already been set in motion before Mr. Nixon was informed on March 21 of Hunt's "blackmail" demands. If Mr. Nixon had known of Hunt's demand on March 20, a key portion of his defense against charges that he took part in the cover-up conspiracy would crumble.

Watergate prosecutors have not subpoenaed the March 20 Nixon-Ehrlichman tapes themselves, but Ben-Veniste said it had been "the subject of a compromise offer" by Mr. Nixon's lawyers in the prolonged dispute over the President's tapes.

Ben-Veniste cited the long blank spot in protesting the refusal of White House lawyers to determine whether any of the 64 recordings that the prosecutors have subpoenaed for the Watergate cover-up trial did not exist.

St. Clair told the prosecutors in a May 30 letter that such a check had been made for the conversations that the House Judiciary Committee had subpoenaed, but indicated that he saw no merit in undertaking the same "time-consuming task" for the tapes Jaworski wants.

At the hearing before Judge Sirica, Ben-Veniste also reported that on at least one occasion in the White House's production of edited transcripts of some of Mr. Nixon's conversations, "an original tape was torn and to some extent, mangled."

Prosecutor James Neal, the head of the task force prosecuting the alleged Watergate cover-up conspiracy, added still another protest.

He said that St. Clair's apparent offer Monday before the Supreme Court to surrender the tapes of 20 of the conversations that the White House has made public in expurgated form was "illusory" and meaningless.

All the White House has offered, Judge Sirica was told, is to provide presumably dubbed recordings reproducing the White House edited transcripts word for word, and no more. If half a sentence is left out in the transcript, Neal said, then that half sentence would be left out in the tapes the White House has offered to produce without further action from the Supreme Court.

Neal said that Watergate prosecutors learned all this only after Monday's Supreme Court hearing.

White House lawyer John J. Chester replied that it was only "the Special Prosecutor's hunger for the President's private and confidential conversations" that led them to think they would get the complete tapes rather than edited versions. He said St. Clair had never meant to offer anything more.

"We thought we were making an offer of substantial value," Chester said. "We cannot go beyond the offer."

Judge Sirica, however, said he saw no merit in listening to a string of edited tapes that might omit crucial remarks, perhaps including statements that might tend to exonerate the Watergate cover-up defendants. Lawyers for several of the defendants, including William G. Hundley who represents former Attorney General John N. Mitchell, strongly agreed.

"It's important to get the originals," Hundley said. He said it would be "an awful waste" of Sirica's time to take up the White House proposal.

Overruling Chester's protests, the judge indicated his agreement and approved the request of Watergate prosecutors to send a transcript of yesterday's hearing to the Supreme Court. Neal said this would let the justices know that the dispute before them still involves 64 subpoenaed recordings rather than just 44.

"I'm not trying to interfere with the Supreme

Court," Sirica said, "but I do think that counsel's request is a fair one under the circumstances."

Ben-Veniste spoke up near the close of the hearing. Introducing a series of letters into the record, he said he wanted to underscore Jaworski's attempts since May 22 to find out which of the 64 conversations might not exist on tape.

Judge Sirica had ordered Mr. Nixon to surrender all the recordings on May 20. Two days later, Jaworski wrote St. Clair at the White House in light of what the Special Prosecutor called "the regrettable experience" last fall when the White House reported that two tapes of conversations subpoenaed by the Watergate grand jury did not exist and that there was an 18½-minute gap on another.

Jaworski asked in the letter for a report on what new tapes might not exist. He also asked the White House to set aside the precise conversations covered by his subpoena "in a manner designed to insure their security."

St. Clair replied on May 30 that he saw no need for either step. He said he considered "existing security arrangements" for all of Mr. Nixon's tapes "quite satisfactory."

Apparently hoping to enlist Judge Sirica's help, Ben-Veniste said that prosecutors had learned that one of the taped conversations subpoenaed by the House Judiciary Committee—which the White House has checked—"has a gap of approximately 19 minutes."

Ben-Veniste identified the conversation at issue as one between Mr. Nixon and Ehrlichman on the late afternoon of March 20, 1973, and said it was "obviously a very significant" discussion.

White House logs show the conversation took place between 4:26 p.m. and 5:39 p.m. in the Oval Office on that date. Lawyers for the House impeachment inquiry have said that it was on March 20 that Ehrlichman "became concerned that Mr. Hunt's blackmail attempt" might lead to exposure of the White House "plumbers" unit that had carried out the 1971 Ellsberg break-in.

In addition, the Watergate



By Joe Heiberger—The Washington Post

Watergate assistant special prosecutors Richard Ben-Veniste and Jill Volner arrive at U.S. District Court.

grand jury has charged that it was on March 19, 1973, that Ehrlichman told White House Counsel John W. Dean III to convey Hunt's demands for approximately \$120,000 to former Attorney General Mitchell.

In a statement complaining of Ben-Veniste's report, St. Clair, who did not attend the hearing, called it "particularly misleading."

He said Ben-Veniste failed to make clear "that the Oval Office recording system did not have a automatic switching system" that would activate a backup machine when a reel of tape ran out.

Although Secret Service technicians made checks each day, St. Clair added, "in fact, there were many days when . . . it was necessary to replace a tape that had run out, and whenever this occurred, any conversation taking place at the time was not recorded."

Jaworski's office said last night that it had no intention of backing down.

"This office stands by what Mr. Ben Veniste said in court this morning," stated James S. Doyle, the spokesman for the special prosecutors. "Beyond that it is complete news to us that there may be portions missing of other tapes under subpoena.

If this is true, as the press represents Mr. St. Clair has said, then the White House should inform the courts of the details immediately.

The prosecutors refused to disclose how they learned of the missing 19 minutes in the Nixon-Ehrlichman conversation, but it seemed likely that the information grew out of the ongoing federal grand jury inquiry into the 18½-minute gap on a subpoenaed June 20, 1972, tape which experts have said was the result of five separate erasures, all done manually. St. Clair, in his statement, said the prosecutors have known of the missing 19 minutes in the March 20 conversation, "in detail, since early June."