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When Homer Nodded

By Anthony Lewis

ABROAD AT HOME

BOSTON, Oct. 31—The White House effort to turn Archibald Cox's indiscretion into a high crime and misdemeanor would be funny if it were not so ugly. The men who tapped their colleagues' telephones now lecture us on the sin of breaking confidences!

The transparent strategy was to use this episode to change the subject — to make the country forget its doubts about the President. For the moment the White House seemed to have the initiative. Then came a new thunderbolt: the missing tapes. Once again events have shown that there is no way to stop the process that Watergate started.

But it still may be useful to put the Cox affair in perspective. It begins with one large irony: In recent Washington history no one has run a more discreet operation than Archibald Cox did during his six months as special prosecutor. Over that time, although he and his staff were dealing with the most explosive material, there were no leaks of substance.

Just compare the performance of the special prosecutor's office, for example, with what happened during the investigation of Vice President Agnew. The leaks there were profuse. They were infinitely more damaging. They violated specific grand jury rules. And they evidently came from the Nixon Administration.

Or compare the record of the Senate Watergate committee, whose continuous leaks before hearings have done much to cripple its own effectiveness. Senators in general are not in a strong position to point fingers at indiscretion. It is especially droll to see a show of indignation from the Senate Republican leader, Hugh Scott, who is widely admired for his jolly inability to keep any secret.

The facts also need some consideration. Former Attorney General Kleindienst had testified at his confirmation hearings that, in the I.T.T. antitrust case, "I was not interfered with by anybody at the White House. I was not importuned; I was not pressured; I was not directed." It was no secret that both the Justice Department and Mr. Cox had looked into those hearings for possible perjury.

Mr. Kleindienst came in voluntarily and told Mr. Cox that he had been ordered by President Nixon to delay an appeal in the I.T.T. case. In the circumstances he had no privilege, and he was not giving legally secret testimony. He well knew that what he said might be used to help prepare a prosecution. For Mr. Cox to disclose it violated no rule or law.

But of course Mr. Cox would not

and did not defend his action in those legal terms. He had made a personal undertaking to Mr. Kleindienst and declared it "inexcusable" that he had violated it. Beyond that it was a silly mistake, a political indiscretion, to mention the matter to two strong Democratic members of the Senate Judiciary Committee, though the committee as a whole had a legitimate interest as the body before which Mr. Kleindienst had originally testified.

Looking back on this whole strange period some day, historians will surely relate this little episode to the extraordinary character of Archibald Cox. It is hard to think of anyone else in Washington who would have felt compelled to own up to such a leak—one, moreover, that was almost certainly not responsible for the newspaper story in question. It was Mr. Cox's innocence that delivered him unto his enemies.

The important thing now is not to let the White House obscure the substance of what is involved by the outcry over leaks. That was the technique that Spiro Agnew tried. It did not work there, and it is not likely to here.

The narrow issue is the I.T.T. case itself. Mr. Kleindienst, by a further public statement has now brought attention back to the question of White House intervention. It is essential, in the interest of justice and public confidence, that the lingering doubts about who told the truth be settled by law.

The broader issue is the whole future of the effort to investigate and punish those responsible for Watergate and other crimes of politics. For the White House is plainly trying to do more than discredit Archibald Cox after dismissing him; it is out to get rid of the whole special prosecution staff—and if possible the idea of a genuinely independent special prosecutor.

That is why the flap over this leak poses such a challenge to the steadfastness of Congress in its insistence that no man shall investigate himself. After all that has happened, even now the sudden nonexistence of critical White House tapes, no serious person can doubt that only a prosecutor given genuine independence by law can restore public confidence in the search for truth.

Is there any effective way, under our constitutional system, to investigate suspected wrongdoing at the very top of the political structure? That is the question that underlies our turmoil. I will not go away.