

# Lawyers Cast Doubt on Admissibility

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WASHINGTON, Nov. 11—Federal court hearings on the secret White House tapes have raised serious doubt among legal authorities that many of the tapes will ever be usable as evidence in Watergate criminal trials.

The fact-finding sessions before Judge John J. Sirica, which go into their third week tomorrow, have failed thus far to establish whether two conversations between President Nixon and aides went inadvertently unrecorded, as the White House insists, or were conveniently mislaid, as the Watergate prosecutors have suggested but not openly charged.

What the hearings have established is that the security system under which the tapes were kept, both by the Secret Service and the President's top deputies, was so haphazard and the custody records so uncertain that the recordings may have lost much of their potential evidential value.

### 'Opportunity to Edit'

"No judge is going to let one of those tapes go into evidence," one lawyer familiar with the case predicted, "when there has been so much opportunity over the past few months to edit them into very different kinds of conversations."

If this analysis of the legal situation proves correct, the principal beneficiaries are likely to be former White House and administration officials charged with involvement in the Watergate cover-up and related events.

To the extent that the tapes ultimately are found to contain incriminating conversations, prosecutors in the resulting criminal trials may not be able

to introduce them into evidence because sworn testimony before Judge Sirica during the last two weeks had last serious doubt on their reliability.

This does not mean, however, that the Watergate grand jury cannot base criminal indictments on information in the tapes. The jury, guided by the special Watergate prosecution force, can issue formal accusations that rely on evidence too sketchy to meet the formal admissibility requirements of a trial.

### White House Action

Under an order originally issued by Judge Sirica and affirmed with some modifications by the United States Court of Appeals, the White House was required to surrender nine of the tapes to the judge, who will screen them for relevant evidence and pass it on to the grand jury.

When White House lawyers revealed for the first time two weeks ago that they could not produce two of these conversations because they had allegedly never been recorded, Judge Sirica ordered fact-finding hearings on the matter.

Throughout the hearings, the judge has maintained that one of the court's major purposes was the establishing of a "chain of custody" for each of the tapes that are legally under the court's jurisdiction, although they have not yet been delivered by the White House.

On the basis of testimony so far, that chain is going to be difficult to forge. For example, H. R. Haldeman, the former White House chief of staff, testified last week that he had withdrawn some tapes from the Executive Office Building vault last July 10 and more the following day.

All these tapes were left in a briefcase in the study closet

of Mr. Haldeman's former Georgetown home for one or two nights, otherwise unguarded. The house was empty except for Mr. Haldeman because the family to which he had rented it after his resignation from the Nixon staff was out of town.

During this same period, when the Secret Service had custody of the recordings, they were kept in combination-secured filing cabinets in a secret, locked room in the Executive Office Building, with an auto-

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matic alarm system and a record of who withdrew them and when.

But that record indicated only that the two sets of tapes went to Stephen V. Bull, a Presidential assistant, and made no mention of Mr. Haldeman, obviously leaving open the possibility that an unknown number of other persons had access to them.

The Secret Service log shows that three tapes withdrawn on July 10 were returned on July 12, but the notes on which that

log was based show no return date at all. The notes, introduced in evidence at the hearing, consist of writing on scraps of paper, including one that appears to have been part of a brown paper lunch-bag.

Mr. Haldeman testified that he returned on April 27 another batch of 22 tapes he had withdrawn the day before. But the Secret Service log shows that the recordings did not go back into the vault until May 22, and there is no evidence where they were in the interim.