

# Days of Testimony About Tape Gap Leave Questions, Including Big One

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Special to The New York Times

WASHINGTON, Dec. 7—The White House lawyer began walking out of the courtroom. He got as far as the hallway, turned around, and hurried back to the cluster of reporters still inside.

"I don't want to be quoted," he said. "But wait for the technical experts, just wait."

And that advice, offered yesterday afternoon after Judge John J. Sirica recessed the hearing into the 18-minute gap on a crucial Watergate tape, appeared to acknowledge that the explanations offered in court of just how the gap had occurred did not answer the question.

Gen. Alexander M. Haig Jr., President Nixon's chief of staff, suggested yesterday that Rose Mary Woods, Mr. Nixon's personal secretary, had accidentally created the entire 18-minute gap. Miss Woods has testified that she may have caused five minutes of the gap by letting her tape machine record a five-minute telephone call. General Haig said he felt that the phone call might have lasted 18 minutes or longer and that Miss Woods might not be aware that she had talked for that long.

Yet that explanation was offered outside of court; in court, neither General Haig nor anyone else from the White House was willing to say for sure just how the gap occurred. And the Sirica hearings thus ended with the same question with which they had begun — "How did it happen?" as the judge himself put, in a tone heavy with frustration, one day last week.

## Other Questions Result

The hearings, moreover, produced some other questions as well—especially about operations and communication inside the White House.

The lawyer who now heads Mr. Nixon's legal team in Watergate matters, J. Fred Buzhardt Jr., testified that he had not discussed with President Nixon in "specific" terms the fact that the 18-minute gap obliterated the only segment on the tape that concerned Watergate. According to notes about the June 20, 1973 conversation kept by H. R. Haldeman, then the President's chief of staff, Mr. Nixon ordered him at that time to tape "public relations" moves to counteract the effect of the Watergate break-in three days earlier.

Samuel Powers, a Florida trial lawyer who joined the Nixon legal team early last month, testified that he had never discussed the matter of the missing 18-minutes with Mr. Nixon.

He had only one meeting with the President, he said, and it took place on Nov. 16. That was two days after Mr. Powers had allegedly first learned of the gap, and one day after Mr. Nixon is said to have learned of the full extent of the gap. But Mr. Powers did not mention it to Mr. Nixon, explaining that the meeting was simply a chance for him to be introduced to the President.

## Garment Cites Delay

And according to toher testimony last week, yet another White House lawyer—Leonard Garment, the President's chief counsel — did not learn anything at all about the gap until Nov. 17. That was more than six weeks after the President was told by Miss Woods that she might have caused an erasure on the tape, and three days after Mr. Buzhardt and Mr. Powers said they discovered that the erasure lasted 18 minutes instead of the four or five that Miss Woods had indicated.

So, to many lawyers here and elsewhere, the testimony raises questions about the kind of legal counsel the White House lawyers are providing, or being permitted to provide, their client.

That question had been raised before when Mr. Buzhardt first stated — on Nov. 21, the day he announced publicly the existence of the gap — that he had not realized until a week before that the tape recording in question was covered by the

Watergate prosecution's subpoena got recordings of nine Presidential conversations.

Last week Mr. Powers testified that he had realized as soon as he read the subpoena that the conversation was covered.

## Authority Unclear

The hearings in Judge Sirica's court also raised questions about who has power in the White House.

General Haig, for instance, testified that it was he who decided to shut down the White House's tape recording system last July in the wake of the outcry caused by the public disclosure of the system. President Nixon was ill at the time with viral pneumonia. According to General Haig, he made the decision and later informed Mr. Nixon, who "approved," the general said.

Yet, General Haig conceded under questioning that he was "concerned" and disturbed when he belatedly learned that Mr. Haldeman had been allowed to listen to some of the tape recordings last July. He gave orders at that point, he testified, that Mr. Haldeman was not to be given any tapes without his, General Haig's, knowledge.

General Haig testified that Mr. Haldeman "does not influence what we do at the White House"—testimony that was interpreted by observers as an attempt to counteract the impressions given a day earlier in testimony by Lawrence M. Higby, a former Haldeman aide. Mr. Higby had described how Mr. Haldeman had given him certain "instructions" about getting documents out of files Mr. Haldeman had left behind.

But when Richard Ben-Veniste, the assistant watergate special prosecutor, asked General Haig about some of those instructions, General Haig conceded that he had not known about them previously.

## The 'Sinister Force'

Amid all of that, the key question remains: How was the gap caused? As Judge Sirica put it on Wednesday, when he recalled Miss Woods to court, did it happen by accident or was it, instead, a "cover-up?"

When the White House first disclosed the existence of the gap on Nov. 21, according to testimony by both Mr. Buzhardt and General Haig, at least some White House aides believed that it might have been caused, in General Haig's words, by "some sinister force."

Then, on Nov. 26, the White House presented the court with a document saying that the entire gap was believed to have been caused by a mistake on a tape recorder — "Miss Woods's mistake. Miss Woods described her alleged mistake the same day.

And then, after Miss Woods had continually modified her testimony about the mistake to become more and more insistent

that she could have caused only about five minutes of the gap, Mr. Buzhardt — who had signed the Nov. 26 document—said on Nov. 29 that the explanation in that document was "not a certainty at all, but instead, 'just a possibility.'"

## Contradictions Arise

The various White House staff members who took the witness stand often contradicted one another on dates and details. Often, too, they said "I can't recall" or "I didn't focus on that" or "that wasn't my area of responsibility."

For example, Mr. Powers testified that on Nov. 14, after he and Mr. Buzhardt had played the tape and found that there was an 18-minute gap, Miss Woods had come into the room and shown them the recorder on which she had made her mistake.

Mr. Buzhardt indicated that this demonstration by Miss Woods occurred on Nov. 15. And Miss Woods said that while she had stopped in to see the two men while they were working—which day, she couldn't remember — she certainly hadn't taken her tape recorder in to show them.

## Agreement on Outline

For all the contradictions, the White House employees did agree. Mr. Buzhardt had told General Haig on Sept. 28 or 29 that the Haldeman-Nixon conversation was not subpoenaed. Miss Woods made a mistake with her recorder on Oct. 1 while replaying the June 20 tape. She told the President immediately. On Nov. 14, after showing the subpoena to Mr. Powers, Mr. Buzhardt revised his judgment and decided the conversation was subpoenaed after all. On Nov. 14, Mr. Buzhardt and Mr. Powers heard the 18-minute "hum," as the White House calls it, for the first time.

On Nov. 14, still according to the outline, Mr. Nixon was informed of the gap and the fact that the subpoena covered the tape. Later, on Nov. 15, the White House learned, after reading Mr. Haldeman's notes, of the content of the conversation that the "hum" obliterated.

And Mr. Nixon, who was in the midst of the series of meetings he was holding with Congressmen in attempt to rebuild confidence in the Presidency, was informed of this as well.

Judge Sirica has decided to postpone any ruling on the matter until he hears from the technical experts who are examining the June 20 tape. And then, as he has said, he has several options: He can make a finding of fact, saying that the gap was caused deliberately, or accidentally, or carelessly. In addition, he can suggest that the prosecution present the whole affair to a grand jury for inquiry into whether there are grounds to indict anyone for criminal activity.