

Nixon Transcripts: Potential Key to Judiciary

By JAMES M. NAUGHTON

Special to The New York Times

WASHINGTON, May 5 —

President Nixon refused to give his Watergate tape recordings to the House Judiciary Committee, but in surrendering—and making public—edited transcripts of the taped conversations he may nonetheless have sealed the outcome of the impeachment inquiry. For all the multitude of “(unintelligible)” and “(inaudible)” holes in the 1,254-page narrative, the transcripts seem to contain the potential for self-destruction: recorded comments that could be construed as grounds for criminal prosecution of a citizen, and as grounds for impeachment of a President.

Many of those who have read segments of the Watergate narrative have professed revulsion by the often raw and mean-spirited tone of discussions in an Oval Office where the nation has chosen to presume that morality and statesmanship prevail. Republican Senator Robert O. Packwood of Oregon found the President's attitude toward government “rather frightening.”

A Gallup poll, released yesterday, suggested that among those citizens familiar with the contents of the transcripts a plurality now thought less of Mr. Nixon and felt there was enough evidence for the House to vote impeachment.

Last to Read Transcripts

Ironically, the 36 men and 2 women whose analysis of the White House dialogue will mean the most—the members of the Judiciary Committee who will first weigh officially whether the President is innocent of wrongdoing—are among the last to have a chance to read the transcripts. They were preoccupied all last week drafting rules to govern the impeachment hearings.

But for a few committee members who pored through the 1,254 pages, one of them by reading nearly all night, the effect was, in the words of Representative George E. Danielson of California, “damning to the President.” Representative John E. Seiberling of Ohio, like Mr. Danielson a liberal Democrat, told an interviewer he had been able to read only scattered portions, “but it doesn't matter where you read—there's pay-dirt on every page.” And a Republican, preferring anonymity, said that once he completes a thorough study of the narrative he might change his earlier judgment and insist that the President hand over at least

some of the actual recordings as evidence.

Thus the real impact of the White House transcripts on the President's future may turn out to be not so much political, as Mr. Nixon evidently hoped in going on national television to try to explain them, as judicial. Judiciary committee members have arrived at an informal understanding that, while a President might properly be impeached for a severe breach of public trust that was not an indictable crime, the Congress and the country probably would find it difficult to understand and accept any verdict not based on evidence that at least smacked of criminality.

think you have to handle Hunt's financial situation damn soon?”

Mr. Dean said he had discussed the problem the previous night with former Attorney General John N. Mitchell, and the President then said:

“It seems to me we have to keep the cap on the bottle that much, or we don't have any options.”

“That's right,” said Mr. Dean. “Either that or it all blows right now?” Mr. Nixon asked.

Later in that discussion, when Mr. Dean said he himself might be liable to a charge of obstruction of justice, the following exchange occurred:

Mr. Dean—Well, I have been

doesn't have to be continued? Let me put it this way: Let us suppose that you get the million bucks [Mr. Dean's estimate of the total hush money cost over two years] and you get the proper way to handle it. You could hold that side?

Mr. Dean—Uh huh.

Mr. Nixon—It would seem to me that would be worthwhile.

Still later, after they were joined by H. R. Haldeman, the former White House chief of staff, Mr. Dean told the President that Mr. Hunt and other convicted Watergate burglars were likely to be granted immunity from further prosecution and called to testify before a grand jury. Mr. Nixon asked what the burglars might gain from that. Mr. Dean said, “Nothing.”

“To hell with it!” the President said, and this conversation ensued:

Mr. Dean—They're going to stone wall it, as it now stands. Excepting Hunt. That's why his threat.

Mr. Haldeman—It's Hunt opportunity.

Mr. Nixon—That's why for your immediate things you have no choice but to come up with the \$120,000, or whatever it is [Mr. Hunt was currently demanding]. Right?

Mr. Dean—That's right.

Mr. Nixon—Would you agree that that's the prime thing that

P Your definition of their (unintelligible)
 H On the other side (unintelligible)
 P On Dean, he told him to lie?

The inquiry has focused, accordingly, largely on whether Mr. Nixon's conduct in the Watergate case and other matters—campaign financing, electronic surveillance, or income tax payments—constituted violations of criminal law. On that point, the Watergate transcripts could have a fundamental bearing.

Virtually every section of the transcripts contains conversations that the impeachment investigators might wish to pursue to determine whether they were incriminating or innocuous. Some of them appear, though, to be central and obvious.

Under Section 1510 of the United States Coup, “whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator” can be prosecuted for obstruction of justice.

The White House transcripts show that John W. Dean 3d, then the President's counsel, warned Mr. Nixon on March 21, 1973, that E. Howard Hunt Jr., a convicted Watergate burglar, had threatened to reveal other “seamy” activities performed for the White House—evidently a 1971 burglary of the office of Dr. Daniel Ellsberg's former psychiatrist—unless he continued to receive hush money. For nearly 90 minutes, Mr. Nixon considered options for dealing with the threat.

“Just looking at the immediate problem,” he asked Mr. Dean at one point, “don't you

a conduit for information on taking care of people out there who are guilty of crimes.

Mr. Nixon—Oh, you mean like the blackmailers?

Mr. Dean—The blackmailers. right.

Mr. Nixon—Well, I wonder if that part of it can't be—I wonder if that doesn't—let me put it frankly: I wonder if that

Panel's Findings on Possible Criminal Acts

you damn well better get that done?

The conversation continued, with various alternatives explored and Mr. Nixon never making, so far as the transcripts show, a decision whether to pay silence money to Mr. Hunt. Later the same day, however, according to a Watergate cover-up indictment on March 1, some \$75,000 more was relayed to Mr. Hunt.

As for the White House explanation that there was legitimate concern that Mr. Hunt's testimony about the Ellsberg burglary could jeopardize national security, the White House transcripts quote the President as having said of the burglary, "I don't know what the hell we did that for!" And Mr. Dean advised the President that a national security rationale "won't sell ultimately in a criminal situation."

The United States Code also specifies, in Section 1505, that it is an obstruction of justice to try to corruptly "influence, intimidate, or impede" any witness at a Congressional investigation.

Mr. Nixon's edited transcripts show that, on Sept. 15, 1972, during the Presidential election campaign, Mr. Nixon told Mr. Dean not to worry about Congressional investigations of the Watergate case that were being considered, but never came off, in the House Banking and Cur-

rency Committee and a Senate Judiciary subcommittee.

"The worst may happen but it may not," Mr. Nixon said. "So you just try to button it up as well as you can and hope for the best, and remember, basically, the damn business is, unfortunately, trying to cut our losses."

In a discussion on Feb. 28,

they caught (inaudible) somebody according to Ziegler has someth

1973, about the Senate Watergate committee hearings that were then pending, the President talked with Mr. Haideman and Mr. Dean about the possibility of falsely listing Charles W. Colson, a former White House special counsel, as a "consultant" to the President so that he could claim executive privilege and avoid testifying if called before the Watergate panel.

On April 14, in a conversation about negotiations between the White House and the Watergate committee over the extent to which executive privilege might be a factor in attempts by the panel to question Mr. Nixon's aides, John D. Ehrlichman suggested a test

case in court over a committee subpoena.

"We don't want a court case," Mr. Nixon said.

"Well, now, here's what I'm getting at," Mr. Ehrlichman replied. "The court case will delay any appearance by any White House people. We'll agree that we'll abide the outcome of the case. Then if

Mitchell does get indicted, Mitchell's lawyers are going to somehow move to stop the Ervin hearing."

Throughout the transcripts, Mr. Nixon is depicted as considering such suggestions for various ways to keep details of the Watergate case from becoming public. Most of these proposals apparently never were followed up, but the transcripts alone do not make clear if that was the case in every instance.

Under the general criminal conspiracy statute, Section 371, it is a serious violation if "two or more persons conspire to commit any offense" and one or more of the persons subsequently takes some action in-

tended, whether successful or not, to achieve the objective of the conspiracy.

Mr. Nixon and his lawyer have argued, most recently in a 50-page brief accompanying the edited transcripts, that the recorded dialogue is full of ambiguities which could be distorted if taken out of context. "Not once," the brief asserts, "does it appear that the President of the United States was engaged in a criminal plot to obstruct justice."

Standing alone, many of the seemingly incriminating sections of the transcripts may not constitute technical elements of crimes or provide, as the Judiciary Committee member read them, a foundation for impeachment charges.

But they raise questions which, without either the tape or other convincing evidence to affirm or rebut the suggestion of wrongdoing, may be difficult to answer. The segment of the White House narrative that might echo through the impeachment hearings is an exchange that took place on April 14, 1973, more than three weeks after the President, by his account, first learned of the actual scope of the Watergate cover-up:

Mr. Ehrlichman—but what's been bothering me is—

Mr. Nixon—that with knowledge, we're still not doing anything.