

Possibly Damaging Tape Is Submitted Accidentally

White House Supplied the House Panel, Unmasked, With Nixon-Haldeman Talk That Seems to Refute Stand on Dean

By JAMES M. NAUGHTON
Special to The New York Times

WASHINGTON, May 19 — A President Nixon has only grudgingly given Watergate tape recordings to Congress or the courts and now he is refusing to turn over any more tapes. But in one instance, the White House supplied—by accident—potentially damaging recorded evidence to the House impeachment inquiry.

The accidental evidence was on the full tape of the President's conversation on Sept. 15, 1972, with H. R. Haldeman, the former White House chief of staff, and John W. Dean 3d, the former White House legal counsel.

The tape was played Wednesday at a closed hearing of the House Judiciary Committee. The panel members heard, on the recording, Mr. Haldeman praise Mr. Dean as "one of the quiet guys that gets a lot done" and say that the legal counsel was "moving ruthlessly" to investigate the President's political opponents.

"That was a good move, too, bring Dean in," Mr. Haldeman said, according to the Judiciary Committee's transcript. "But it's—

"Yeah," interjected the President.

"It—he'll never, he'll never gain any ground for us," Mr. Haldeman continued. "He's just not that kind of guy. But he's the kind that enables other people to gain ground while he's making sure that you don't fall through the holes."

A central element of Mr. Nixon's defense against impeachment is the White House contention that Mr. Dean was the "mastermind" of the alleged Watergate cover-up. Mr. Haldeman's characterization of the legal counsel seems to refute the contention.

The irony is that this portion of the Sept. 15 conversation took place before Mr. Dean entered the President's office; it was not subpoenaed and it need never have been yielded by the White House.

According to several well-placed investigative officials, here is how the Judiciary Committee accidentally obtained the portion of the recording:

The Watergate special prosecutor went to court last year to obtain, through a subpoena, several White House tapes. One of the tapes was of a Sept. 15, 1972, meeting of the President, Mr. Haldeman and Mr. Dean.

After the courts ordered the President to comply with the subpoena, the Secret Service—which supervised the recording system—copied the relevant sections of the tapes and turned over the copies to the prosecutor's office. But in making a copy of the Sept. 15 conversation, the Secret Service mistakenly included about a quarter-hour of the Nixon-Haldeman discussion

was among evidence turned that preceded the subpoenaed section of the tape.

The tape copy, including the accidental 15 minutes, over to the Judiciary Committee in March by the Watergate grand jury.

It was, perhaps, merely the most striking example of the ingredients—the lapses, the kindnesses, the levity—that make the impeachment process as much a human drama as it is a historic event.

Charles W. Colson, the former White House special counsel, who is one of seven defendants in the Watergate case, once joked that he would walk over his own grandmother to help re-elect President Nixon. Joke or not, Mr. Colson is loyal.

Last year, after his name turned up in the Watergate investigation, Mr. Colson sought legal assistance from a prominent Boston lawyer. The lawyer was James D. St. Clair.

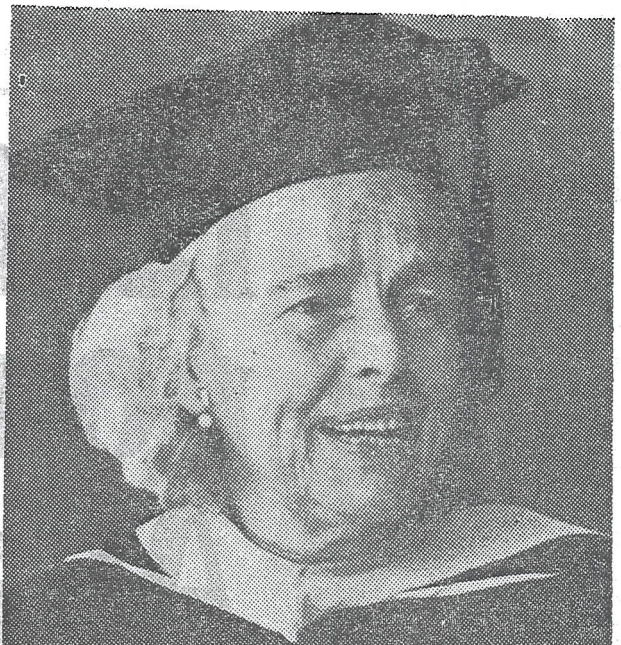
Although it was not widely known, investigative sources said that Mr. St. Clair had several contacts with the Watergate special prosecutor's office on Mr. Colson's behalf. Mr. Colson reportedly was so impressed with Mr. St. Clair's legal ability that, when President Nixon was looking for a defense counsel in the impeachment inquiry, Mr. Colson recommended Mr. St. Clair. Now the Boston attorney works for the President and not for Mr. Colson.

The legal profession's canons of ethics take a broad, if somewhat vague, position against a lawyer's representation of what the canons refer to as "differing interests." The canons say that a lawyer may not take a new client if so doing would be "likely" to cause the lawyer to be disloyal to another client, past or present.

Following the transfer of Mr. St. Clair's legal services from Mr. Colson to Mr. Nixon, the President made public edited transcripts of White House conversations in which Mr. Nixon wondered aloud about Mr. Colson's potential liability for criminal prosecution.

No one has suggested that this disclosure represented a conflict of interest for Mr. St. Clair. No complaints are known to have been made by Mr. Colson, who in fact has taken credit privately for bringing the President and his chief defense lawyer together. Mr. Colson is loyal.

In the first four days of the House impeachment hearings, Mr. St. Clair has said nothing in the single public session and very little in the four closed meetings. But he has exhibited a self-effacing sense of humor.



ADDRESSES COMMENCEMENT: Helen Gahagan Douglas, who opposed Richard M. Nixon in his bid for the U.S. Senate in 1950, speaking to the graduating class of Fairleigh Dickinson University at Teaneck yesterday. She said, "One group of people set themselves up as representatives of the state. Anything was permissible in order to maintain their power."

In an article published last week in The Yale Law Journal, Raoul Berger, the leading legal scholar on impeachment, gave Mr. St. Clair an academic scolding for basing his defense of the President on what Mr. Berger called "instant history" and "sheer effrontery," among other things.

Within the 44-page article, few nice things were said about Mr. St. Clair's interpretation of the Constitution process of impeachment.

It came, then, as something of a surprise to Republican Congressional aides to hear scathing excerpts from the Berger article being read aloud Thursday morning in a small office adjoining the Judiciary Committee meeting room—by Mr. St. Clair. He did it with a smile.

the Judiciary Committee hired John M. Doar as the special counsel on impeachment, Mr. Doar rarely has had a day off and almost never a full night's sleep. Lately, it has been worse than usual.

Each day that the committee members assemble for an impeachment hearing they are given one, and sometimes several, black binders containing sheaves of paper bearing a cold uncolored recitation of evidence relevant to one or another aspect of the inquiry. The presentation, which Mr. Doar had pledged would be "straight down the middle" without conclusions favorable or inimical to Mr. Nixon, has been praised by Republicans and Democrats on the panel.

"Absolutely miraculous," was how Representative Robert McClory of Illinois, the second-ranking Republican, described the presentation, adding that it was "very-low-key, very objective, very fair."

Also very exhausting, apparently, Mr. Doar was up until anywhere from 3 A.M. to 6 A.M. preparing the briefing books before each of the hearings. By the end of last

week, during the fourth long day of the closed sessions, Mr. Doar was said to be having difficulty reading the words without faltering.

When the hearings recessed late Thursday, Mr. Doar was able, as an associate put it, to sleep, "two hours back-to-back" and he arrived, seemingly refreshed, at the office of the chairman Representative Peter W. Rodino Jr., Democrat of New Jersey, with nothing of urgency to do.

He happened on a group of touring teenagers and wound up giving them an impromptu, academic lecture on the impeachment process.

The impeachment inquiry is, of course, an inherent conflict between the Congress and the President. It has also turned out to be something of a rivalry between two Jesuit priests.

They are Dr. John McLaughlin, a special assistant to (and speech writer for) the President, and Representative Robert F. Drinan, Democrat of Massachusetts.

When the edited White House transcripts became public, with copious notations of "(expletive deleted)" Father Drinan disparaged their tone and said that it seemed apparent from the President's "own words he was deeply involved" in the Watergate cover-up.

A few days later, Father McLaughlin said at a news conference that the President's coarse language had "no moral meaning" and was only "a form of emotional drainage" and that Mr. Nixon "acquitted himself throughout these discussions with honor."

Father McLaughlin's comments prompted Paul Conrad, the editorial cartoonist for The Los Angeles Times, to caricature the White House aide as a Watergate "exorcist."

When someone showed the cartoon to Father Drinan shortly before the Judiciary Committee voted last Wednesday to subpoena 11 more White House tapes, the Representative chortled and said, "That's beautiful."