NYTimes DEC 2 1974 35M

Watergate Aftermath: 2

By Anthony Lewis

WASHINGTON — The Watergate cover-up trial has dramatized the fact that, when President Nixon published his tape transcripts last April, crucial passages were left out. But it is not yet generally realized that the new tapes played at the trial could lead to further prosecutions—of those involved in cutting incriminating material from the transcripts.

Section 1505 of the Federal Criminal Code makes it a felony "corruptly" to "obstruct or impede" any "due and proper" inquiry by a committee of Congress. This parallels Section 1503, the statute used in the cover-up prosecutions, which make it a crime to obstruct judicial proceedings.

When the transcripts were issued on April 30, the accompanying White House brief described them as Mr. Nixon's response to a House Judiciary Committee subpoena for tapes of 42 Presidential conversations. The committee's impeachment inquiry was surely a "due and proper" one, and Section 1505 would appear to cover any deliberate tampering with evidence for such an inquiry.

That there was deliberate tampering in this case can hardly be doubted any longer. One notable example is the tape of a conversation Mr. Nixon had on April 14, 1973, with H. R. Haldeman and John Ehrlichman. As played at the trial, it included this statement by Mr. Nixon about the original Watergate burglars:

"You get them full pardons. That's what they have to have, John."

The passage did not appear in the April transcripts. Instead there was the familiar editorial note for a deletion: "material unrelated to Presidential actions."

The Special Prosecutor's office has made no public comment about all this. But it clearly is interested in the question of who tampered with the transcripts—a question close to its basic interest in the integrity of the legal process. When the burden of the cover-up trial eases, it would not be surprising to see the Special Prosecution force undertake a grand jury investigation of the tampering.

Tracking down who was responsible for the tricks played on the Judiciary Committee and the country will require hard investigation. For instance, did White House secretaries type complete transcripts that were then pruned? Or did the secretaries work from duplicate tapes that had already had the offending passages removed?

Three persons known to have heard the tapes in the White House are J. Fred Buzhardt, the White House counsel, reportedly did most of the listening to tapes for Mr. Nixon. He also maneuvered with the Special Prosecutor. For example, when the prosecutor subpoenaed the tape of a January, 1973, conversation between Mr. Nixon and Charles Colson about clemency for the burglars, Mr. Buzhardt said there was no such conversation. In fact there was, and the devastating tape has now been played at the trial.

The bar has responsibilities in this matter, too. In addition to Mr. Buzhardt, what has come out at the cover-up trial raises serious questions of legal ethics in the case of James St. Clair, Mr. Nixon's impeachment counsel. At the impeachment inquiry Mr. St. Clair indicated that he was not personally listening to tapes in the White House. He said he was too busy. Other possibilities are that he preferred not to know too much, or that he was not allowed to listen.

Some thought he should have insisted on access to the tapes when he took the assignment, given Mr. Nixon's notorious record of dissembling. The job had been offered first to the Solicitor General, Robert Bork, who said he would take it only if assured access to all the evidence. General Haig carried that message and came back with the word that the condition would not be met. Despite pressure, Mr. Bork then declined the job.

ABROAD AT HOME

A lawyer is probably free to decide, originally, how much to ask his client. But it is a very different matter if he becomes aware that the client has tampered with evidence—especially if he, the lawyer, has given assurances to the contrary. Then he must insist on access to all the evidence, or quit.

Mr. St. Clair repeatedly assured the impeachment inquiry and the country that they had the "full and complete story," that the transcripts did "tell it all." Yet soon after April 30 the Judiciary Committee discovered critical omissions. One was of a long passage in which Mr. Nixon said: "I want you all to stonewall it, . . . cover-up or anything else. . . ."

When those discrepancies appeared, in May and June, Mr. St. Clair went right on resisting subpoenas for original tapes. So far as we know, he did not then hear the tapes himself or even demand an explanation of the omissions from his master. Worse yet, in July he suddenly produced one pro-Nixon snippet from a withheld tape—a tape that we now know included other, incriminating passages.

In several interviews lately Mr. St. Clair has said that the impeachment provisions of the Constitution should be amended. But the Constitution needs no cure; it worked in spite of lies and crimes. It would have worked sooner if James St. Clair had had a more sensitive view of his responsibility as a lawyer.