

GAP IN NIXON TAPE STILL A MYSTERY; INQUIRY IS CLOSED

OCT 16 1975

Watergate Prosecutor, in an
Interim Study, Says 'Small'
Group Caused Erasure

INSUFFICIENT EVIDENCE

Ruth Says F.B.I. Wiretaps
and Alleged I.T.T. Offer
Are Unresolved Areas

NYTimes

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Special to The New York Times

WASHINGTON, Oct. 15—The special Watergate prosecutor reported today that his office had failed to establish responsibility for the gap in a tape recording of a conversation between President Nixon and H. R. Haldeman, his chief of staff, shortly after the 1972 Watergate break-in.

Henry S. Ruth, in a 277-page report issued two days before his scheduled resignation as special prosecutor, said the investigation of the tape gap and inquiries in several other areas were now closed.

The report noted that although appeals of some Watergate-related convictions remained to be argued and "a few" inquiries were still active, most of the investigations and prosecutions that grew out of the major political scandal of the century were now complete. It said the time was "appropriate to summarize the completed work."

The report said that more than 50 individuals were questioned by a Federal grand jury about the 18½ minute erasure, in a recording of an Oval Office conversation on June 20, 1972, just three days after the break-in, and that the prosecutor's office concluded that the responsibility lay with "a very small number of persons. . . ."

But the lawyers who worked on the investigation were, in the end, "unable to obtain evidence sufficient to prosecute any individual," the report explained.

Other Investigations

Other investigations that came to naught, according to

the report, included the following:

Some aspects of the allegations that the Nixon Administration had settled three anti-trust suits in 1971 against the International Telephone and Telegraph Company in return for I.T.T.'s alleged offer to help finance the 1972 Republican National Convention.

Possible criminality surrounding the installation by the Federal Bureau of Investigation, at the request of the White House, of wiretaps on the home telephones of 13 Nixon Administration officials and four newsmen over a two-year period between 1969 and 1971.

The alleged misuses by officials of the Nixon White House of Federal Agencies, including the Internal Revenue Service, to "harass" Lawrence F. O'Brien, the former Democratic national chairman; to punish individuals the Nixon Administration had singled out as its "enemies," and to favor its supporters.

The prosecutor's report gave

Continued on Page 33, Column 3

Continued From Page 1, Col. 1

little indication of why these and similar investigations, including an inquiry into a \$100,000 cash payment from Howard R. Hughes, the industrialist, to an associate of Mr. Nixon, had not culminated in prosecutions.

The special prosecutor's 277-page report was originally intended as a final summation of its work, which has resulted in the convictions of more than 50 individuals and a number of corporations. All of the corporations were convicted of having made illegal financial contributions to political candidates.

But earlier this month, Attorney General H. Levi ordered that the special prosecutor's office be kept intact as an independent arm of the Justice Department, to clear up the few pending investigations and to handle the appeals arising from convictions in the Watergate cover-up trial and other cases.

Thus, the report made available to reporters today was described by officials at the prosecutor's office as simply an "interim" account of the investigations undertaken so far.

Henry S. Ruth Jr., the special prosecutor, said in an interview today, however, that the matters contained in the report represented by far the bulk of the Watergate prosecutor's work.

Nixon Disputed

The prosecutor's report disclosed that the Watergate prosecution force had concluded

as early as January, 1974, that Mr. Nixon had known about and acted to further the cover-up of the Watergate break-in well before March 21, 1973, the date the former President cited repeatedly as his first awareness that some of his aides were involved in the possible obstruction of justice.

Mr. Ruth, who resignation will take effect on Friday, said today that only "three or four" relatively minor investigations remained open. One concerns allegations that a \$300,000 contribution to Mr. Nixon's re-election organization by Ruth L. Farkas was tendered in return for her appointment as Ambassador to Luxembourg. Mrs. Farkas is the wife of the president of Alexander's.

Mr. Ruth, who has accepted a position at the Urban Institute, a policy study organization here, will be succeeded by Charles F. Ruff, a former professor of law at Georgetown University and now a Justice Department official.

Mr. Ruff will become the fourth special Watergate prosecutor since the office was established in May of 1973. Then the first indications were emerging that high-ranking officials of Mr. Nixon's re-election committee and some within the White House had acted to cover up the responsibility for the Watergate break-in.

Five men wearing surgical gloves and carrying burglar's tools and bugging equipment were caught by the police in the early morning of June 17, 1972, in the Democratic National Committee's sixth-floor headquarters suite at the Watergate complex.

The men, led by Bernard L. Barker, a Cuban-American from Miami, had entered the Democrats' offices to repair a telephone wiretap they had placed

the previous month on the telephone of Lawrence F. O'Brien, the Democratic national chairman. They carried cash that was later found to have been furnished by the Committee for the Re-election of the President, the Nixon campaign organization.

Archibald Cox, then and now a professor at the Harvard University Law School, as sworn in as the first prosecutor on May 25, 1973. Mr. Cox was discharged five months later, on orders from Mr. Nixon, in the "Saturday night massacre" that also cost the jobs of Attorney General Elliot L. Richardson and his deputy, William D. Ruckelshaus.

Leon Jaworski, Mr. Cox's successor, left the office in October, 1974, two months after Mr. Nixon resigned under threat of impeachment by the House of Representatives for his role in the Watergate cover-up.

The Federal grand jury hearing evidence in the cover-up case, and which ultimately indicted seven of Mr. Nixon's White House and political aides, including Mr. Haldeman, John D. Ehrlichman, and John N. Mitchell, the former Attor-

ney General, wanted to include Mr. Nixon's name in the indictment with the others, the report said.

But Mr. Jaworski, it said, concluded that the Supreme Court wouldn't sustain a criminal indictment of an incumbent President and advised the 23 grand jurors to submit, though the court, the evidence they had assembled to the House Judiciary Committee, which was then engaged in the impeachment inquiry.

In the Oval Office

The committee eventually voted three articles of impeachment charging Mr. Nixon with a variety of offenses, but he resigned on Aug. 9, 1974, four days after he made public a recording of an Oval Office conversation in which he had ordered that an attempt be made to limit the Federal investigation of the Watergate break-in.

The grand jury, the report said, then authorized Mr. Jaworski to name Mr. Nixon as an unindicted co-conspirator in the Watergate cover-up case.

Following Mr. Nixon's resignation, the report said, renewed consideration was given within the special prosecutor's office to the prospective prosecution of the former President, a question that was obviated by the general pardon granted to Mr. Nixon a month later by President Ford.

Ford Pardon Questioned

The report disclosed that the Nixon pardon "generated extensive discussion and legal research" by the prosecutor's office to examine the possibility that it was invalid, having preceded a formal indictment, or amounted to illegal interference with the special prosecutor's mandate to decide for himself whom to prosecute.

Mr. Jaworski decided, however, not to challenge the legality of the pardon on the ground that the Presidential pardoning power was probably not subordinate to the prosecutor's mandate, and that to test that issue in court "would constitute a spurious proceeding."

The prosecutor's report took account of the contribution that it had made, in "uncovering years of actual and alleged

Government abuses," to what it termed the weariness that had fallen over the nation after Watergate.

But Mr. Ruth found encouragement in the angry public reaction that attended the dismissal of Mr. Cox after he refused to agree to a White House demand that he not pursue his quest for copies of the White House tape recordings.

"The national government had offered its people sense of justice," Mr. Ruth wrote in what he described as a "personal" note. "The citizens wanted to control what would happen, and they eventually did. When vigilance erupted, institutions responded. One must believe that unresponsive power, both public and private, can never overcome that will."