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The missing 18 1/2 minutes: Presidential destruction of incriminating evidence

By: David Kopel
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This week in 1972, a conversation took place which would lead to the most famous incident of evidence destruction by a presidential administration.

At 2:30 a.m. on [June 17, 1972](#), five men were arrested while attempting to plant electronic surveillance devices in the Democratic National Committee headquarters, in the Watergate office building in Washington. On June 19, the Washington Post [published a story](#) by Bob Woodward and Carl Bernstein revealing that one of the five men was James McCord, who was a security contractor with President Nixon's Committee to Re-elect the President (CREEP).

The next day, President Nixon met with his Chief of Staff, [H.R. Haldeman](#), at about 11:30 a.m.

By the Spring of 1973, the Watergate coverup had begun to unravel. Haldeman resigned on April 30, replaced as Chief of Staff by Alexander Haig. On May 17, a [Senate Select Committee on Watergate](#) began hearings. Chairman of the Committee was North Carolina Democrat [Sam Ervin](#), a lawyer who had a long-established record as a defender of civil liberties. Senate Majority Leader Mike Mansfield chose Ervin to head the committee because his integrity was respected on both sides of the aisle. The ranking Republican was Howard Baker of Tennessee, who would become Senate Minority Leader in 1977, then Majority Leader in 1981-84 with the Reagan landslide, and eventually serve as President Reagan's Chief of Staff in 1987-88. Ervin and Baker set the constructive tone for the Committee, which focused on serious investigation, rather than partisan attacks on either side.

President Nixon had been using a voice-activated tape recording system for all Oval Office conversations, White House aide Alexander Butterfield [revealed to the Senate on July 16, 1973](#). Presidents since Truman had recorded some conversations, but Nixon's recording of everything was unique. Two days after Butterfield's revelation, the taping system was dismantled, and the tapes put under Haig's custody.

[Special prosecutor Archibald Cox](#) had been appointed by Attorney General [Elliot Richardson](#) in May 1973. Cox and the Senate Committee both issued subpoenas for some of the tapes, but [Nixon refused to comply](#), claiming executive privilege. Among the tapes at issue was the June 20, 1972, Nixon-Haldeman meeting.

On Saturday evening, October 20, 1973, Cox was fired and the Office of Special Prosecutor abolished. Attorney General Richardson had resigned rather than carry out Nixon's order to fire Cox, and Deputy Attorney General [William Ruckelshaus](#) did the same. [Solicitor General Robert Bork](#) was next in line, and he later recounted that he too considered resigning, but then decided that the constitutional crisis would be even worse if the President could not find a cabinet official who would carry out his orders. The "[Saturday Night Massacre](#)" instantly ignited the greatest American political firestorm in living memory (or at any time since), and Nixon quickly retreated, acceding to the appointment of Texas corporate lawyer [Leon Jaworski](#) as the new Special Prosecutor.

Nixon moved forward to implement his preferred alternative to turning over the tapes, a plan which the Senate Committee had been willing to accept, but Cox was not: Nixon's long-time personal secretary [Rose Mary Woods](#) would type transcripts of the tapes. Nixon would remove portions which he considered irrelevant to the subpoenas. Mississippi Senator John Stennis would listen to the tapes, to verify the transcripts' accuracy. [Stennis](#), who had first entered the Senate in 1947, was a very conservative Democrat from Mississippi. His integrity was widely respected; he was Chair of the Senate Ethics Committee, and author of the Senate's first Code of Ethics. However, Stennis was 82 years old, and hard of hearing.

Without Stennis participating, the White House would [release the transcripts the next year](#), in April 1974. But something would be missing. On [November 17, 1973](#), the White House informed Federal District Judge John Sirica that the 18 1/2 minute Nixon-Haldeman conversation of June 20, 1972, had been erased. White House Counsel [Fred Buzhardt](#) told the Court that he no explanation for the erasure.

Nixon's Secretary Rose Mary Woods took the blame for the first five minutes of the erasure. She said that she had been transcribing the tape, and when she reached to take a phone call, her foot hit a pedal on the recording machine, inadvertently causing the tape player to "record" over the original tape's contents. Reporters were called to the White House to watch her perform a re-enactment, and the [photos of her performing a tremendous stretch](#), which she supposedly held for five minutes, were rejected as implausible. Moreover, the particular tape recording machine does not operate the way she had claimed; simply pressing the foot pedal to "record" would not initiate a recording unless the play button was being manually depressed at the very same time.

Chief of Staff [Alexander Haig](#) blamed the 18 1/2 minute gap on a "sinister force." In January 1974, experts who examined the tape reported that there were four or five separate erasures.

Nixon was determined to hold on, and while his support among Democrats and Independents had collapsed, he retained the support of a dwindling majority of Republicans.

On July 27, 1974, the House Judiciary Committee voted to send to the full House 3 of 5 proposed [Articles of Impeachment](#). The first article, accusing the President of obstruction of justice, was adopted by a bipartisan 27-11 vote. The second article, accusing the President of having used the IRS and other federal agencies against political opponents, and of having conducted illegal electronic surveillance, was adopted 28-10. The third article, for the President's refusal to comply with congressional subpoenas, passed 21-17. Articles 4 and 5 (for illegally

waging war in Cambodia, and for cheating on Nixon's own income taxes) were rejected by a bipartisan committee majority.

Judge Sirica had rejected Nixon's motion to quash the Special Prosecutor's subpoena duces tecum for the tapes. Sirica ordered that the tapes be delivered to him for in camera review. He stayed his order pending appellate review. The case went to the Supreme Court, with argument on July 8, 1974, and a decision 16 days later. In [*United States v. Nixon*](#), Chief Justice Burger's opinion for the 8-0 Court [former DOJ official Rehnquist had recused himself] upheld the District Judge's order to produce the tapes. Nixon had been saying that he would obey a "definitive" order of the Supreme Court, and the absence of a dissent eliminated any room for Nixon to refuse.

Among the tapes released soon afterward was the "[smoking gun](#)." It was a June 23, 1972, Nixon-Haldeman conversation in which the two cooked up a plan to tell FBI Director Patrick Gray to stop investigating the Watergate burglary because of national security implications. Nixon's support fell a few more points in the opinion polls, down to about 20%, and to much less than that in Congress. Facing inevitable impeachment and conviction by huge majorities, Nixon resigned, on August 8, 1974.

As for the missing 18 1/2 minutes, the mystery was never solved. The Watergate prosecutors decided that the public had Watergate fatigue, and so the issue was not pursued. The prosecutors concentrated on garnering convictions of all the Watergate principals, which they did—except for Nixon, who had been pardoned by his successor Gerald Ford.

Nixon and Haldeman took the content of the conversation to their graves. Efforts were made in 2009 to recover the tape's contents, but were unsuccessful. Attorney James D. Robenalt, [writing on the Washington Decoded website](#), has penned a detailed article which makes a plausible case that Haig erased the tape. Others argue that the evidence suggests that Nixon himself (who was a very good lawyer) performed the erasure.

At the time of Nixon's resignation, some of his supporters expressed the wish that Nixon had simply burned all the tapes, in defiance of the subpoenas. Although this would have been very bad politically for Nixon, it could not possibly have been as politically bad as the eventual release of the smoking gun tape.

The political reaction to the erasure of 18 1/2 minutes of the June 20 tape seriously eroded Nixon's already-poor credibility. However, at the time of the erasure (probably the Fall of 1973) Nixon still retained at least a fighting chance of retaining enough Republican support in the Senate to prevent the 2/3 majority necessary for impeachment.

If one can imagine a modern-day President Frank Underwood, the lesson he might draw from the story of the 18 1/2 minute gap is that brazen destruction of highly incriminating evidence is the wisest political strategy. Even when the claim about how the evidence was destroyed was obviously false, there may be enough members of the President's own party who will continue to look the other way, as long as they are not presented with a smoking gun. President Underwood might remember that Alexander Haig went on to become Secretary of State under Ronald

Reagan. President Underwood might also tell the public that, as with Richard Nixon, many of his opponents were cynical partisan zealots. Like the mainstream media, anti-Nixon partisans had paid scant attention when Nixon's predecessor, Democrat Lyndon Johnson, engaged in many of the same crimes and abuses as did Nixon. By the end of Johnson's term in 1968, he was getting a lot of criticism from the press and from his own party for the Vietnam War, but not for his domestic violations of the U.S. Constitution and the U.S. Code.

In a two-party system, it is likely that the energy for investigations of a President of one party will come from the other party. Among the heroes of the story are the men like Baker, Richardson, and Ruckelshaus, who at a time when the Constitution was in danger, put the national interest above partisan interest.

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