

In Hot Pursuit of Justice *Part 5/8/73*

"Whatever may appear to have been the case before—whatever improper activities may yet be discovered in connection with this whole sordid affair—I want the American people, I want you to know beyond the shadow of a doubt that during my terms as President justice will be pursued fairly, fully and impartially, no matter who is involved. This office is a sacred trust and I am determined to be worthy of that trust." *President Nixon, in his television address, April 30, 1973.*

These were the words with which the President sought last week to assure us that at last he had fully comprehended the magnitude and the seriousness of the Watergate affair. All of us wanted to believe him and hoped that the new phase would bring us all the facts and restore, in large measure, the credibility of the presidency. In the week that has passed since Mr. Nixon's speech, that hope has been put to a terrible test.

Consider, for example, the case of Egil Krogh, former assistant to John D. Ehrlichman on the White House staff and now Undersecretary of Transportation—on leave. When the Ellsberg case revelations on the ransacking of a Los Angeles psychiatrist's files began turning heat on the White House, Mr. Krogh apparently decided to make some kind of a confession of his role in the thing, which he subsequently did. But, while he was considering his course of action, his associates tell us, he was subject to intense pressure from the White House not to do so. We know, at least, that freshly-minted guidelines on executive privilege were rushed to him before he sent his confessional affidavit by mail and by official channel to Judge W. Matt Byrne in Los Angeles.

Or, consider the new guidelines themselves. When compared with the two most recent Nixon administration versions of the doctrine—the Dean and Kleindienst doctrines—the new version seemed, at first blush to be more reasonable. But, when compared with the Eisenhower version of the privileges—followed by Presidents Kennedy and Johnson—the new Nixon claim is extraordinarily broad. Consider only two points. First, under the Eisenhower view, only the President could assert the privilege or direct his subordinates to do so. The new guidelines permit present and former White House aides to determine for themselves when and where to invoke the privilege or direct his subordinates to do so. The new included within the scope of the Nixon guidelines and presidential papers are defined to cover anything generated in the White House and anything written outside the building, but directed to it. That is a far broader assertion than any President before Mr. Nixon ever made.

Then take the President's statement that he would not want any of his former aides or associates to be accorded the privilege of immunity from prosecution. Again, the first look is deceiving. There is John W. Dean, III hanging out there in limbo with a number of interesting documents in his bank deposit box and some interesting stories to tell. Ordinarily, prosecutors would leap at the prospect of such a productive witness and a grant of immunity would be made to aid the prosecution as was the case with Alfred Baldwin, the wiretap monitor, in

the first Watergate trial. But, this time, Mr. Dean is having to beg for word of immunity from somewhere out there, so he can come in and tell one of the most interesting stories in the whole affair.

And, there is Donald Segretti, the alleged saboteur and reported recruiter of as many as 50 accomplices, being indicted quickly in Florida for the relatively minor offense of making up and causing to be issued a phony letter in the Florida Democratic primary. What stories Mr. Segretti could probably tell to Sen. Ervin's select committee—if only he were unfettered by his indictment. Now, he can appropriately claim that he can't talk about the whole affair because he faces prosecution. So, suddenly, only a week after the President's speech, it looks like cover-up as usual.

But all is not necessarily lost, for us or for the President. The last clear chance, as the lawyers say, is the matter of the Special Prosecutor. Mr. Nixon announced that his new attorney general would have authority to appoint a "special supervising prosecutor" if he deemed it necessary. Though the President could have easily have done it himself, if he really wanted it done, the timing and the handling of the special prosecutor's appointment and role could still make the difference for the President in terms of the faith that he supposedly hopes can be restored.

Unfortunately, however, Mr. Richardson has apparently decided to name the special prosecutor only *after* his own nomination as Attorney General is confirmed by the Senate. If the Judiciary committee buys that, it is buying a prosecutor in a poke.

There are at least three conditions which are required to make the prosecutor fully credible. The first is that his selection itself be made under a process at least once removed from the administration—by a group of past or present leaders of the bar, for example, or by some other body of distinguished jurists or experts on the law with no partisan connections. Second, the special prosecutor should be confirmed by the Senate or at least approved by the Judiciary Committee. Third, he should be chosen immediately—for each day's delay means that the investigation is proceeding under the direction of the same unwonderful people who brought us the shockingly unsatisfactory first Watergate investigation. Finally, he should be given the broadest possible independent authority with regard to the scope of his activities and picking of personnel.

Given the history of this affair—which the President has appropriately dubbed "sordid"—and given at least the appearance of things proceeding almost entirely as usual since the President's speech, it is imperative that the administration take this last opportunity to regain the faith of the public in its willingness and capacity to run an honest government. Anything less than a readiness to permit the sort of investigation the President has himself promised us can only be read as an admission on his part of foreknowledge and complicity not only in the crimes and improprieties that have been committed in his name but in the still continuing effort to stall and evade, and cover up.