

Mr. Ford's Confirmation Testimony

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THE CONTROVERSY over what the Justice Department did or did not do before refusing to open an investigation into charges that President Ford lied during his confirmation hearings makes a mountain out of a molehill. Contrary to the impression left by some news reports, the Justice Department never said it had conducted much of an investigation before announcing its decision. And contrary to the impression that Mr. Ford may have done something wrong by working to cut off the first proposed Watergate investigation, his actions then were the normal ones of the Republican leader of the House of Representatives. Mr. Ford, we should add, has unnecessarily complicated this matter by playing a little loose with what the Department of Justice and the Special Prosecutor have actually done. But the injection of this matter into the campaign has raised a false issue. There is a valid Watergate-related issue involving Mr. Ford, but it has nothing to do with a 1972 investigation or a coverup of it.

The present round of charges and counterclaims was set off by John Dean's statement that White House liaison personnel talked to Mr. Ford in the fall of 1972 about cutting off a Banking Committee investigation into the use of campaign funds in the Watergate affair. Some House Democrats immediately demanded that the Justice Department investigate this to determine whether Mr. Ford had committed perjury during his confirmation hearings. Mr. Ford testified then, and insists now, that he had no recollection of talking to anyone from the White House about that investigation.

The Justice Department announced last Wednesday that after reviewing the record—Mr. Dean's current statements, his past testimony, the confirmation testimony of Mr. Ford, and the denials of Mr. Dean's current charges by two legislative liaison men—it found no basis on which to open a full investigation. All the statement said, once you cut through the legal jargon, is that there is no evidence Mr. Ford committed perjury. Perjury, of course, is a precise crime—intentionally misstating material facts under oath. You can't be convicted of perjury for honestly failing to recollect something. The Justice Department's announcement was also quite precise. It dealt with perjury. It did not deal with the truth or falsity of Mr. Dean's current statements or with who did or did not talk to Mr. Ford in 1972.

Unfortunately, Mr. Ford distorted this statement, and one by the Special Prosecutor, by implying in a

press conference and in the third debate that two new investigations had been conducted into whether or not he had dealt with White House personnel on that matter. He also added that it had been "gone into by two congressional committees." No one, as far as we can tell, has really "gone into" the matter. The committees didn't go beyond Mr. Ford's answers because there was no reason to doubt them. And the Justice Department hasn't because there isn't a perjury case there.

We would like to see the whole matter dropped for two reasons. The first is that we have no reason to doubt that Mr. Ford told the truth when he said he didn't recollect talking with White House personnel; while it is conceivable he had such conversations, we doubt that they were memorable, given the heat he was getting from congressional sources to cut off that investigation. The second reason is that, even if Mr. Ford acted at the request of the White House, he had no way of knowing how much he was covering up. The Banking Committee investigation was quashed in October 1972, before Watergate had expanded much beyond a burglary case and the illegal use of campaign funds. The role of the President was not known then. And many people perceived that committee's proposed investigation as a partisan political effort to exploit a bizarre burglary and the misuse of campaign funds. Most Republicans wanted the investigation postponed at least until after the November election. It is worth noting that six Democrats joined with 15 Republicans in killing the investigation.

Thus, it seems to us that this episode in the Watergate affair is not one that should be used now against Mr. Ford. Neither, for that matter, should be the pardon that he granted to Mr. Nixon. The timing of that may have been bad, but its purpose was not. The only Watergate issue we know of that could be used validly against Mr. Ford now derives from his stubborn and excessive defense of Mr. Nixon in the summer of 1974 when, as Vice President, he should have been maintaining a judicious silence. Instead he was denouncing the vote by the House Judiciary Committee on the first article of impeachment as a "travesty" and insisting he could find nothing in the committee's report to justify impeachment. We suggested then that his loyalty to Mr. Nixon might come back to haunt him someday if he succeeded to the presidency. And so it has. We believe this is a valid issue in the campaign for what it says about the President's perception and judgment of the most serious government crisis of the last century.