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The Kleindienst Nomination (III)

We have previously discussed in this space two separate incidents in the recent career of Acting Attorney General Richard Kleindienst which seem to us to bear directly on the question of his confirmation by the Senate to be Attorney General—the case of his delayed reaction to a bribe offer, and the case of his cover up of the highly improper activities of a U.S. attorney for the Southern District of California. A third aspect of Mr. Kleindienst's record that requires careful scrutiny by those weighing his fitness to be Attorney General is Mr. Kleindienst's role in the notorious ITT affair.

It is important to note at the outset that Mr. Kleindienst became entangled in that affair, not in the Jack Anderson column which revealed Mrs. Beard's memo, but in a subsequent column which had to do with the truthfulness of his official public response last December to Lawrence F. O'Brien, the Chairman of the Democratic Party, who had first raised the question of the campaign financing and its relation to the anti-trust case in an open letter to Mr. Kleindienst. By way of answering that charge, the Attorney General could have clearly said that he knew nothing about the San Diego arrangements, and left it at that. Instead he went on to assert categorically that he also knew nothing about the ITT settlement—that it had been "handled and negotiated exclusively" by the head of the Justice Department's Anti-Trust Division, who was then Mr. Richard McLaren and that only Mr. McLaren could answer Mr. O'Brien's questions. Columnist Anderson said this was "an outright lie" and the record of the Judiciary Committee hearings pretty much bears him out. That record can be briefly summarized:

It begins with the undoubted fact that Mr. McLaren set out to prosecute ITT under the Clayton Act for the clearly stated purpose of carrying it to the Supreme Court for final judgment, in hopes that new law to control conglomerates would result from the Court's ruling. It is equally clear that somewhere along the line Mr. McLaren was persuaded to abandon this position and it is not necessary for our purposes here to conclude whether he was improperly pressured. Insofar as Mr. Kleindienst's nomination is the issue, the only question is whether he had a hand in turning Mr. McLaren around and the only conceivable answer is yes, that he "handled" this critical aspect of the case in a very big way.

According to sworn testimony: ITT President Harold Geneen began with a determination to appeal to President Nixon himself, having failed to turn Mr. McLaren back from his determination to press the ITT case all the way to the Supreme Court. Preliminary to this, ITT officials made exhaustive efforts to sound out the Secretaries of the Treasury and Commerce, the Attorney General, assorted White House aides, and the Chairman of the Council of Economic Advisers, in order to lay the groundwork for their argument that a Supreme Court ruling against ITT could have grave economic consequences for the country, as well as serious financial impact on ITT itself. However, ITT's special counsel, Lawrence Walsh, talked Mr. Geneen out of starting at the top with a direct approach to the President, arguing instead that the Justice Department was the place to begin.

And so Mr. Walsh began—not with the anti-trust division because ITT had already been there and found Mr. McLaren unyielding—but with a letter to Mr. Kleindienst on April 16, 1971. Significantly, Mr. Walsh explained that he was making his approach this way because "I understand that you . . . have already been consulted with respect to the ITT problem." He urged Mr. Kleindienst to initiate a government-wide review of all the implications of a Supreme Court ruling favorable to the government and adverse to ITT; although much has been made of Solicitor General Griswold's view that the government would have lost the case, Mr. Walsh thought it "a high probability" that the government would have won and that the result would have been a sweeping extension of the anti-trust powers of the government. Mr. Walsh also asked Mr. Kleindienst to take steps to delay a government appeal to the Supreme Court in one of the three cases involving ITT, which in fact was done that very weekend.

Shortly thereafter, Mr. Kleindienst was prevailed upon by an ITT official at a cocktail party to meet with ITT director Felix Rohatyn and hear the ITT

argument in greater detail, which he did. After that meeting according to Mr. Walsh's sworn testimony all further thought of approaching the President was abandoned. His exact words are worth recording:

> "The meeting between Rohatyn and Kleindienst had gone so well that we never did anything more. For all practical purposes, the matter of the policy review came to a halt at that point."

Gone so well? And what of Mr. McLaren's well known adamancy? What could Mr. Kleindienst have told Mr. Rohatyn that could have so reassured him that ITT no longer had anything to fear from a Supreme Court ruling and that a divestiture—however substantial and advantageous to the government—would be negotiated out of court?

We do not know the answers. All we know is that Mr. Kleindienst took Mr. Rohatyn to a subsequent meeting with Mr. McLaren and his staff, and sat in on it, and that he then met three more times with Mr. Rohatyn. We know that the White House got into it, through Mr. Peter Flanigan, the President's special envoy to big business, who arranged for a report to be prepared for Mr. McLaren by a private financial expert, Mr. Richard Ramsden. We also know that Mr. Ramsden played a strikingly similar role in an earlier out-of-court settlement of an anti-trust case a year earlier involving Ling-Temco-Vought, in which Mr. McLaren was also dissuaded from pursuing his announced attempt at securing a judgment by the Supreme Court. Mr. McLaren, in other words, was no stranger to this process.

Thus, whatever else may be said of the final disposition of the ITT case, we know it was not "handled and negotiated exclusively" by Mr. McLaren, and that Mr. Kleindienst knew this because he was in the thick of it, and that he nonetheless denied it to Mr. O'Brien. In short, in a matter involving a major legal proceeding and under public challenge from an important official of the opposition party, he made what had to be a carefully calculated choice not to tell the truth.

So, we would add a serious question of reliability, not to say veracity, to the bill of particulars which we think the Senate should take heavily into account in weighing the Kleindienst nomination—a bill of particulars which already includes, among other things (1) an extraordinary insensitivity—to put it mildly—to a proposition which was later determined by a jury to have been an offer of a bribe and (2) the conscious concealment of actions by a subordinate which another Justice Department official considered to be "highly improper." There is a clear pattern of performance here which raises profound questions about Mr. Kleindienst's fitness to be Attorney General and about what his confirmation would say about law enforcement and the interworkings of big government and big business under a system which is already deeply suspect, and we will try to piece all this together, and sum it up, in a subsequent editorial.