More on What the President Meant

Post 3/13/74

"IT'S DIFFICULT to sort out, so we're not going to say anything further at this time." Thus spoke Ronald Ziegler the other day, commenting on what seems to us a fairly simple matter to sort out. You be the judge. On Aug. 15, 1973, President Nixon issued a formal statement to the nation with respect to what John Dean III told him in the course of their highly important March 21, 1973 meeting. It went as follows:

> "It was on that day also that I learned of some of the activities on which charges of cover-up are now based. I was told that funds had been raised for payments to the defendants with the knowledge and approval of persons both on the White House staff and at the re-election committee. *But I was only told that the money had been used for attorneys' fees and family support, not that it had been paid to procure silence from the recipients.*"

In his press conference last Wednesday, by contrast, the President said the following, of that same March 21, 1973 conversation:

> "Mr. Dean asked to see me and when he came into the office, soon after his arrival, he said that he wanted to tell me some things that he had not told me about the Watergate matter. And for the first time on March 21 he told me that *payments had been made to the defendants for the purpose of keeping them quiet, not simply for their defense.*"

So on August 15 of last year the President said Mr. Dean had told him that hush money payments *had not* been made and a week ago he said Mr. Dean had told him that hush money payments *had* been made. That does not strike us as a difficult distinction to sort out—but it does strike us as a very consequential one.

In between these two statements, it is true, President Nixon elaborated somewhat on his August 15 statement, but not in a way that altered its meaning. For example, at a press conference on Aug. 22, 1973, at San Clemente, the President declared that at their March 21 meeting Mr. Dean had been "concerned" about "raising" hush money for the defendants. The President went on, at that press conference, to discuss in conditional terms the difference between payments solely for legal defense and family support and the same sort of payments made under threat of blackmail to buy silence. But there was no mention of any payments actually having been made; as the President then described his March 21, 1973 exchange with Mr. Dean on the subject of payments to defendants, it had to do with *raising* money, and even this discussion was entirely in hypothetical terms. This account, we might add, is wholly consistent, not just with the August 15 statement, but with the President's first definitive, painstakingly prepared Watergate report on May 22 of last year. What is *not* consistent with these previous statements is his statement of last Wednesday night.

So it is not surprising that one of the convicted Watergate burglars, James W. McCord, has fastened on to this admission by the President as an important new development in the case, and one that could have a critical impact on his own fate as well as on that of the other six original Watergate defendants. Mr. McCord has observed: "The trial was still technically in process, in that sentencing was due March 23, 1973, two days after Nixon's conversation with John Dean. The President suppressed and concealed this evidence from the court." In a lengthy petition to the House of Representatives, Mr. McCord has cited an impressive number of federal statutes and constitutional commands which he believes to have been violated by the President in his failure to forward immediately to the court or the prosecutors the information John Dean had vouchsafed to him on March 21 of last year—according to the President's own admission last week.

Mr. Ziegler, in laying out the difficulties he perceived in sorting out this problem the other day added that "we will address it at some time in the future." It is a matter, he said, of "semantic differences." Well, that's one way of putting it. There are difficulties—and differences—to be sorted out here, all right. But they would appear to us, on the basis of the record as it now stands, to grow out of something far more substantial than a mere misunderstanding over the meaning of words.

The President and the Impeachment Inquiry

Post 3/10/74

LAST WEEK the President's Special Counsel chose Judge Sirica's courtroom as the setting for his announcement that the President was willing to furnish the House Judiciary Committee all the tapes and documents he had already supplied to Special Watergate Prosecutor Leon Jaworski. Subsequently, at his Wednesday news conference, the President himself made a great deal of this decision as a gesture of cooperation with the Committee. He did so by suggesting that Mr. Jaworski had been entirely satisfied with the documentary material he had received from the White House. Mr. Nixon told his television audience that he had turned over "enough material that Mr. Jaworski was able to say that he knew all and that the grand jury had all the information that it needed in order to bring to a conclusion its Watergate investigation."

There are several things to be said about all this, of which three seem to us especially important. One concerns the context in which Mr. St. Clair chose to make the original announcement of the President's intent with respect to a committee of Congress. The day Mr. St. Clair offered this piece of news in court was the day that arguments were being heard concerning Judge Sirica's disposition of the sealed material presented him by the Watergate Grand Jury. The principal question before the court was whether Judge Sirica could and/or should follow the grand jury's recommendation that its findings concerning the President be forwarded to the House Judiciary Committee.

Mr. St. Clair took no position in court on this question. Nevertheless, his timely disclosure of the President's response to the Judiciary Committee could be expected at the very least to seem to diminish the urgency of forwarding the sealed material to the Hill: after all, it guaranteed that large quantities of the raw material on which the grand jury's sealed report was based would become available to the Committee. It goes without saying, however, that it is one thing to send the Judiciary Committee the haystack—and quite another to send it the needle. And this is especially true when you consider that the sealed material furnished Judge Sirica by the grand jury presumably includes not only its findings but also the results of its own proceedings and of interviews conducted by the Special Prosecutor. Obviously none of this material would be part of the package the President originally sent to Mr. Jaworski and now is offering the House Judiciary Committee.

Our second observation concerning Mr. St. Clair's announcement and Mr. Nixon's elaboration on it is that the President was quite wrong in suggesting that the material in question had been considered sufficient and satisfactory by Special Prosecutor Jaworski. On the contrary, Mr. Jaworski in a recent progress report to the Senate Judiciary Committee, asserted that he had been informed by Mr. St. Clair "that the President has decided not to comply with our outstanding requests for recordings for the grand jury investigations of the Watergate break-in and cover-up and certain dairy industry contributions, asserting that to do so would be inconsistent with the public interest and the constitutional integrity of the office of the Presidency." He went on to say: "Accordingly, it is now clear that evidence I deem material to our investigations will not be forthcoming."

Getting down to particulars the Special Prosecutor said that in the case of the Watergate break-in and cover-up the White House had refused requests for recordings of 27 presidential meetings and conversations, even after receiving statements of "particularized need" for each of them. "Although it is true that the grand jury will be able to return indictments without the benefit of this material," Mr. Jaworski said, "the material is important to a complete and thorough investigation and may contain evidence necessary for any future trials." Mr. Jaworski expressed similar dissatisfaction with the White House's response to his request for material concerning the milk deal, the plumbers case and the ITT affair. In short, Mr. Jaworski hardly sounded like a man who was saying that he "knew all."

Our third and final observation has to do with the fact that even if Mr. Jaworski *had* been satisfied with the material to which the White House chose to grant him access, this state of affairs would be of limited relevance to the requests of the House Committee. Just as Mr. Nixon sought to make himself the arbiter of what material the Special Prosecutor and the grand jury should seek for their inquiries, he now seems intent on determining for the House Judiciary Committee what its inquiry should consist of. The most dramatic moment in the President's pursuit of this role in relation to the investigations in the courts came with his spectacular attempt to limit the inquiries of Archibald Cox and unilaterally to determine how much of a federal court's order (not much) need be complied with. Nothing so dramatic has occurred in his relationship with the congressional investigators. But the President and his Special Counsel have been anything but shy about announcing what the Committee should and should not seek and may and may not have and what its procedures must be.

The point of all this is that when you inspect the nature of the President's offerings to the impeachment inquiry in the House you begin to get a sense of anything but openhandedness and self-confident cooperation. The signs are there, in other words, that the President may choose to repeat the now familiar pattern of resistance, circumvention and delay.

McCord Hits Nixon On Funds Silence

3/9/74

By Jules Witcover
Washington Post Staff Writer

James W. McCord Jr., one of the convicted Watergate conspirators, yesterday accused President Nixon of having "deliberately concealed and suppressed" knowledge of hush-money payments to Watergate defendants.

Had the President's knowledge of such payments been made known nearly a year ago when Mr. Nixon first learned of them, McCord charged, disclosure "would have overturned the convictions of the seven Watergate defendants."

Mr. McCord labeled "a fantastic admission" Mr. Nixon's Wednesday night press conference statement that then-White House counsel John W. Dean III on March 21, 1973, "told me that payments had been made to defendants for the purpose of keeping them quiet, not simply for their defense."

Mr. Nixon added Wednesday that "if it had been simply their defense, that would have been proper, I understand, But if it was for the purpose of keeping them quiet—you describe it as hush money—that, of course, would have been an obstruction of justice."

The statement appeared to be directly at odds with what Mr. Nixon said on August 15, 1973, in his televised talk to the nation on Watergate. Speaking of the March 21, 1973, meeting with Dean, he said:

JAMES McCORD
... letter to media

"I was told then that funds had been raised for payments to the defendants, with the knowledge and approval of persons both on the White House staff and at the re-election committee. But I was only told that the money had been used for attorneys' fees and family support, not that it had

See McCORD, A11, Col. 1

McCord Assails Nixon Fund Role

McCORD, From A1

been paid to procure silence from the recipients."

Only the day before the Nixon-Dean meeting, McCord recalled in an open letter to news organizations, U.S. District Court Judge John J. Sirica had opened McCord's sealed letter asserting "there was political pressure applied to the defendants to plead guilty and remain silent."

In failing to advise Sirica or any other authority of the hush-money payments, which Mr. Nixon himself described as an obstruction of justice, the President was in violation of a federal statute against concealment of a felony, McCord charged.

"President Nixon neither immediately made known to Judge Sirica, nor to his Attorney General, nor to the director of the FBI nor to the prosecutors the obstruction of justice information given him by Dean on March 21," McCord said.

"Yet only seven weeks later, Judge (W. Matt) Byrne threw out the Ellsburg case in Los Angeles for identically the same substantive reasons, the concealment of evidence by government, stating that the case had been incurably infected by this government concealment and wrongdoing.

"Had President Nixon either immediately furnished the information to Judge Sirica or ordered Dean to immediately do so, my claim to Judge Sirica in my letter of political pressure on the defendants to remain silent would have been immediately corroborated and all seven convictions or pleas would have had to been [sic] thrown out on the same grounds that Judge Byrne dismissed his case."

Mr. Nixon said at his Wednesday press conference that after the March 21 meeting he ordered key aides to meet with Dean "so that we could find what would be the best way to get the whole story out," and than when Dean failed to produce a requested report, Mr. Nixon directed John D. Ehrlichman on March 30, 1973, "to conduct an independment investigation."

Mr. Nixon's failure to disclose that he knew of the hush-money payments, McCord said, "should have both the prosecutors and the judge before the Circuit Court of Appeals today requesting that my conviction and that of (convicted conspirator G. Gordon) Liddy be immediately dismissed . . . Does it have to take actual murder of the Watergate defendants to conclude presidential wrongdoing?"

McCord cited the misprision of a felony statute, Title 18, Section 4 of the Federal Criminal Code, which says that "whoever having knowledge of the actual commission of a felony cognizable by a court of the United States conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years or both."

President's Statement Worries Ford

3/13/74

By Jules Witcover
Washington Post Staff Writer

Vice President Gerald R. Ford yesterday expressed concern that President Nixon may have opened himself up to accusations of obstructing justice by not reporting a year ago that he was told that hush money had been paid to Watergate defendants.

"I'd think anybody would be [concerned]," the Vice President told a breakfast group of reporters when asked about Mr. Nixon's failure to tell authorities of the payments he has said former White House counsel John W. Dean III advised him of on March 21, 1973.

"I think in retrospect it probably would have been the better procedure [to report the information], if it's perfectly clear that was what was told him," Ford said. "I think I would have, yes."

Ford acknowledged that the accusation of obstruction of justice—by convicted Watergate conspirator James W. McCord Jr. in a petition to the House to impeach Mr. Nixon—could be argued. He added, however, that "you can also get good legal questions" in support of the President.

But when asked for one, Ford—after thinking for a moment—said "I can't give you a legal defense because I don't have the specific details" on how knowledge of the payments came to Mr. Nixon.

Ford then was reminded that the President in his press conference last Wednesday said Dean "told me that payments had been made to defendants for the purpose of keeping them quiet, not simply for their defense." Last Aug. 15, in a televised talk, Mr. Nixon had said just the opposite—that payment went "for attorneys' fees and family support, not that it had been paid to procure silence from the recipients."

"I want to refresh my memory on what he said and what the other evidence might be," Ford said. In doing so, he said, he might reconsider his earlier decision not to listen to tapes the White House has said can exonerate the President.

Ford has contended that if he listened to the tapes, and they didn't clear the President, he might disclose their contents and lead some to accuse him of using them for his own political advantage—presumably to replace Mr. Nixon.

Asked whether determining the facts on the President's actions in this matter were not more important than protecting himself against this kind of hypothetical accusation, Ford said:

See FORD, A8, Col. 5

FORD, From A1

"I'll make that decision, but not at this table."

While "I haven't changed my mind as of this moment" about listening to the tapes, he said, in light of the obstruction of justice charge "I think it raises another question, yes."

Ford has said he has had the opportunity to read summaries of the critical tapes but has declined, preferring to take the word of Senate Minority Leader Hugh Scott (R-Pa.), who says he has read them, that they clear the President.

The Vice President's remarks came a day after the President's chief Watergate lawyer, James D. St. Clair, told The New York Times in an interview that the President as the nation's chief law enforcement officer was obliged when hearing of a crime only to see that the judicial process was set in motion and carried out. He then cited the recent indictment of seven men in the Watergate cover-up as evidence that Mr. Nixon had done so.

McCord is contending that the President's failure to tell U.S. District Court Chief Judge John J. Sirica of the hush-money payments amounted to tampering with a defendant, a federal crime, because two days after the Nixon-Dean conversation McCord and the other six defendants went before Sirica for sentencing. Had Sirica known of the hush-money payments, McCord has contended, all seven convictions would have had to be overturned.

In yesterday's breakfast meeting, Ford said he thought refusal by the President to turn over tapes requested by the House Judiciary Committee could be a "catalyst" to impeachment by the House.

Refusal to respond to a reasonable House request "certainly adds fuel to the fire when you consider 435 members have to make up their minds," Ford said, and would be a factor particularly among members who have not decided on impeachment or are leaning one way or another.

Ford said he has read correspondence between John Doar counsel for the committee's impeachment inquiry, and St. Clair and wants to talk to St. Clair to determine whether the request is reasonable or not. It is his impression, he said, that the request "goes far beyond any act relevant to" the constitutional definition of impeachable crimes.

At the same time, however, Ford said he believes that "any indictable crime" can be grounds for impeachment, including tax fraud.