

Clemency: The Roll of the President

In his speech the other night, President Nixon declared, "... I never offered clemency for the (Watergate) defendants." In his May 22, 1973, statement on Watergate, Mr. Nixon said; "At no time did I authorize or know about any offer of executive clemency for the Watergate defendants." Later, on August 15 of last year that was modified when the President admitted "that a member of my staff had talked to one of the defendants about clemency." But the President has stuck to his denials that any offers of clemency had been made by him.

One result is that primary attention has been focused on the President's alleged role in the payment of hush money to Watergate defendant E. Howard Hunt, and on the abundant evidence in the released transcripts having to do with Mr. Nixon's possible involvement in this aspect of the cover-up. But the fact is that the transcripts also raise some interesting questions about the President's possible participation in discussions about offers of clemency as well — although the offers of foreshortened sentences or prison terms may have been couched in other words, such as commutation or parole.

For example released edited transcripts now confirm a previously denied part of the clemency story — Mr. Nixon, himself, spoke to his aide Charles W. Colson about possible commutation of Watergate defendant E. Howard Hunt's sentence prior to the Watergate trial. This took place late one afternoon in January 1973, shortly before the first Watergate trial was to begin, probably around the 3d or 4th of that month. According to the transcripts, the President later recalled the meeting on April 14, 1973, in talking John Ehrlichman.

"As I remember a conversation this day," Mr. Nixon said, "(it) was about 5:30 or 6 o'clock that Colson only dropped it in sort of parenthetically, said I had a little problem today, talking about Hunt, and said I sought to reassure him, you know, and so forth. And I said, well. Told me about Hunt's wife. I said it was a terrible thing and I said obviously we will do just, we will take that into consideration. That was the total of the conversation."

The President brought up the Colson meeting while he, Haldeman and Ehrlichman were trying to figure out what Hunt, convicted and facing a jail term, might say to the prosecutors now that the cover-up was collapsing around him. The President had first raised the question, "Will (Hunt) say that Colson promised him clemency?" The question was important for as Mr. Nixon,

himself, quickly observed, his talk with Colson represented "the only possible involvement of the President in this" — meaning the alleged clemency offer.

Mr. Nixon remembered someone "told Colson not to discuss it with me." Ehrlichman confessed it was he who had given the warning to Colson after Colson had come to him the first days of January 1973 with a letter from Hunt, who was distraught over the death of his wife in an airplane crash.

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"Well," the President intervened, "he raised it, I must say, in a tangential way."

What, exactly, did the President say to Colson that day in January 1973?

Three weeks before he gave the above described version, when the President was somewhat less concerned about his own involvement, he had described his meeting with Colson in slightly different, more damaging terms. In the famous March 21, 1973, meeting with his then counsel, John Wesley Dean III, Mr. Nixon talked of "a discussion with somebody (Colson was not named) about Hunt's problem on account of his wife and I said of course commutation could be considered on the basis of his wife's death..."

Before the turnover and subsequent release of the White House tape transcripts, only three persons besides the President knew for sure of Mr. Nixon's brief exchange with Colson about Hunt—Dean, Ehrlichman, Haldeman and, of course, Colson. Dean told the Senate Watergate Committee that the President had mentioned the Colson meeting on two occasions. Immediately after that testimony, Colson denied he had ever discussed executive clemency for Hunt with the President. In their Senate Watergate Committee testimony, Ehrlichman and Haldeman knocked down Dean's account without directly denying it.

Ehrlichman, for example, when asked about the January 1973 meetings, brought up the fact that he and the President had discussed the problem of clemency in July 1972 a month after the breakin during a walk on the beach near San Clemente. At that time, Ehrlichman testified, "the President wanted no one in the White House to get into this whole area of clemency with anybody involved in this case, and surely not make any assurances to anyone." Thereafter,

Ehrlichman told the senators he never again discussed clemency with the President until it was brought up in the March-April 1973 discussions. By diverting his questioners away from the Nixon-Colson meeting with his July 1972 story, Ehrlichman avoided having to confirm or deny the correct parts of the story told by Dean.

Haldeman's denial of the President's meeting with Colson was as skillful. He testified to the contents of the March 21 conversation between the President and Dean. He said he did not "recall" any discussion "in the context of the President saying that he had discussed (clemency) with Ehrlichman and with Colson." Later Haldeman testified that Dean's "recollection that the President had told him on March 13... he had also discussed Hunt's clemency with Colson is at total variance with everything I have ever heard from the President, Ehrlichman or Colson." Technically, Haldeman was correct in both statements—the President discussed clemency only with Colson not "with Ehrlichman and with Colson" and the talk took place March 21 not March 13 as Dean recalled it.

Why did Colson, Ehrlichman, Haldeman and the President seek to hide a meeting they all knew had taken place. The answer to that, of course, must lie in what was said in the meeting.

According to Dean, Colson on January 4, 1973, told Hunt's lawyer William Bittman that he, Colson, couldn't give a hard and fixed commitment, but that as Hunt's friend he would do all he could to assist Hunt in getting clemency in about a year.

The President, throughout the transcripts, shows a keen interest in getting Hunt out of jail. As early as his February 28, 1973, meeting with Dean he voiced a special sympathy and concern for Hunt. "I feel for those poor guys in jail," the President said, "particularly for Hunt with his dead wife." Dean remarked: "They are hanging tough right now." To which Mr. Nixon replied, "What the hell do they expect though? Do they expect clemency in a reasonable time? What would you advise on that?" Clemency, Dean responded cautiously, was something that would have to be watched closely. The President pursued the question: "You couldn't do it, say, in six months." "No," Dean said, "you couldn't. This thing may become so political as a result of these (Senate Watergate) committee hearings that it is a vendetta."

By the end of the morning in the March 21 conversation, Dean had again convinced the President that clemency would be out of the question, even af-

ter 1974 — a date the President suggested. The President said to Haldeman, who had joined the conversation late, "We are not going to be able to deliver on any of a clemency thing. You know Colson has gone around on this clemency thing with Hunt and the rest." The President, however, is not deterred. "The only thing we could do with (Hunt), he suggests, would be to parole him like the (unintelligible) situation. But you couldn't buy clemency . . . Parole, in appearance, etc., is something I think in Hunt's case, you could do Hunt, but you couldn't do the others. You understand."

During the April 14 morning conference among the President, Ehrlichman and Haldeman referred to earlier, Mr. Nixon raised for the second time his concern over what would happen if Hunt were given immunity from prosecution in return for his testimony on the Watergate affair. "So they could give him immunity for, ah—they could cut his sentence and give him immunity for the cover up; the hush money; clemency. How do you handle the problem of clemency, John?" Unhappily, Ehrlichman's response is described as "(unintelligible)." Haldeman however comes through on the transcript very clear: "Well, you don't handle it at all," he said. "That's Colson's cause that's where it comes from."

Did Colson do it on his own? The former White House special counsel, according to Ehrlichman, denied making any commitment to Bittman on Hunt's getting out of prison. That testimonial conflict plus the President's imprecise recollection of what he did say to Colson and what Colson may have said to him as to why Hunt should get consideration make it all the more important that both the Special Watergate prosecutor and the House Judiciary Committee receive the tape of a January 1973, Nixon-Colson encounter. Both investigating bodies have requested that tape but the President has yet to turn it over. The published record indicates that this one meeting could determine what liability, if any, the President has in the matter of clemency.