

'Discovery of Truth'^{MT} 6/28/73

At the core, it has now become one man's word against another's. John W. Dean 3d, a heretofore obscure young lawyer, and Richard M. Nixon, President of the United States, are now on public record in conflict on some ~~key~~ points related to the Watergate conspiracy and its aftermath. These points are crucial to the determination whether or not specific crimes were committed at the highest level of the United States Government. Much of the next phase in the various Watergate investigations will have to focus ultimately on the relative credibility of these two men, based on their testimony, their records and the availability of corroboration for their differing accounts. The tough, point-by-point verbal duel yesterday between Mr. Dean and the White House, through Senator Inouye's dramatic interrogation, brings the clash to a head-on collision.

However awesome a conflict of this sort may seem in the present circumstances, involving the most responsible elected office of the land, the legal situation is hardly peculiar or even unusual. Anglo-Saxon jurisprudence has a time-honored technique for discovering truth, for sorting out the value of one man's word against another's. This is the familiar practice of cross-examination.

Mr. Nixon obviously has every right to present his version of the facts before any judgment is made—not only the right but indeed the obligation. It is especially important for the President that his testimony be given under the circumstances most conducive for generating the widest degree of confidence. Mr. Dean and all the other witnesses before the Senate Committee and the grand juries and in forthcoming trials will spend many hours engaged in the test of cross-examination. For his own sake and that of the Presidency, Mr. Nixon should be willing to submit himself to the same legal test.

Written answers to questions would hardly be sufficient. The President has already delivered himself of written testimony, notably his May 22 memoranda, but this has left doubts and conflicts that perhaps could be resolved under cross-examination. Moreover, as one experienced cover-up artist has testified in reference to an earlier stage of the Watergate deception, "written interrogatories were something that could be handled, whereas appearances might create serious problems." The quotation comes from John W. Dean 3d.

Both the special Watergate prosecutors and the Senate investigators would confront weighty constitutional issues the moment they sought personal testimony from the President of the United States. All sides would want to consider carefully the procedures to be followed and the best forum for cross-examining the witness. But Mr. Nixon would not help his claim to credibility if he used the Presidential office as a shield to protect himself from the same test that his accusers are now undergoing.

Dean John Henry Wigmore, the most respected of American jurists in the field of evidence, wrote, "Cross-examination is beyond doubt the greatest legal engine ever invented for the discovery of truth." In circumstances such as the nation now faces, no one—not in the Congress, nor the public, nor in the White House—could rightly settle for any less than this greatest test of credibility.