

Ambiguities Cloud Tape Judgments

5/26/74

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The case may seem perfectly clear to a handful of congressional jurors at either extreme, but a forest of question marks and ambiguities confronts these in the troubled middle, where the issue of Richard Nixon's impeachment will most likely be decided.

The President said to John Dean: "Well, for Christ sakes, get it."

What did he mean? Was that his directive to pay the secret hush money that would keep Watergate defendant E. Howard Hunt from talking? Do those words inextricably link Mr. Nixon to the cover-up conspiracy?

"It didn't lead me to believe that it was a directive," said Rep. Delbert Latta, an Ohio Republican who is perhaps the President's most vigorous defender on the House Judiciary Committee.

"There was a command in his voice," insisted Rep. Jerome Waldie, a California Democrat whose enthusiasm for impeachment is never concealed. "It was an imperative."

Somewhere between Latta and Waldie, there are a lot of troubled lawyers among the rest of the Judiciary Committee's 38 members—particularly the middle-ground Republicans and uncommitted Democrats, who also listened last week to that crucial tape recording of a White House conversation on March 21, 1973, but who came away with less settled opinions on what it shows.

"Based upon everything I've heard, it's not clear

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cut," said Maine Republican William Cohen, a small-town mayor from Bangor who got elected to Congress when he was 33 years old. "There is some devastating material and some exonerating material and it shifts back and forth, just like in a trial."

Rep. Thomas F. Railsback, middle-of-the-road Republican from Moline, Ill., whose opinion could swing others in his party, is also troubled by all of the loose ends.

"I think reasonable men could draw different conclusions from the conversations that took place on that day," Railsback said. "What it means to me is that unquestionably we are going to have to call witnesses and subject them to rather strenuous questioning and cross-examination."

Rep. Walter Flowers, a Phi Beta Kappa conservative Democrat from Tuscaloosa, Ala., a man generally disposed to support the President, thought that the Oval Office recordings helped Mr. Nixon's case—save one. That was the morning meeting of March 21 when John Dean told the President about the cover-up and they discussed how to deal with it.

"It's the whole conversation," Flowers said. "The first March 21 conversation doesn't help him a bit. They're clearly talking about paying hush money to Mr. Hunt. It is extremely damaging but I've made no final conclusion."

What these guarded remarks suggest is that the Judiciary Committee is embarked on a long, tortuous summer of inquiry—far more complicated and time-consuming than either the President's men or his inquiry is not supposed to be a trial, yet many of the jurors are asking the kind of questions of evidence which only a trial can resolve. The standard of proof for a grand jury indictment is supposed to be merely "probable cause," but many on the jury want to be convinced "beyond a reasonable doubt" if they are going to indict a President.

A majority of Judiciary Democrats might be willing to vote for impeachment right now, but the final outcome may well depend on how many of these uncommitted men in the middle

can be persuaded to go along. Many of those men were shocked by what they heard last week, but they were also impressed by the ambiguities.

Here, once again, is the nub of the presidential conversation on March 21 from which so many of the question marks flow:

President: That's why for your immediate things you have no choice but to come up with the \$120,000 or whatever it is. Right?

Dean: That's right.

President: Would you agree that's the prime thing that you damn well better get that done?

Dean: Obviously he ought to be given some signal anyway.

President: Well, for Christ sakes, get it. In a way that—who is going to talk to him? Colson? He is the one who is supposed to know him?

Dean: Well, Colson doesn't have any money though. That is thing...

That exchange about money, and others which are less striking, has convinced a lot of transcript readers that the case against Mr. Nixon is iron clad. But, listening to the tapes themselves, a lot of the congressmen still have doubts.

Rep. Charles Wiggins, a California Republican, for instance, lays out the unanswered questions with the tenacity of a skillful defense lawyer. Wiggins asks:

When the President says "get it," is he talking about money or is he talking about the "signal" which Dean has mentioned?

"To be fair, it's ambiguous," said Wiggins. "I believe it's a fair construction that it refers to the signal that John Dean talked about. Now I know it's susceptible to a different construction and I admit that. But let's not say the matter is settled, because it isn't."

There are other questions. Cohen, for instance, wonders about comments recorded later on that crucial day in a second White House meeting where Dean, the President, H. R. (Bob) Haldeman and John D. Ehrlichman continued to discuss alternatives.

"If you stopped right there [with the "get it" remark] you would say it was clear," Cohen said. "But what you have that afternoon are some inferences that it was still tentative. I'd have to go back and listen to the



REP. DELBERT LATTA



REP. JEROME WALDIE

... between them lies the troubled middle

tapes. I'm not settled on it."

In the afternoon meeting, for instance, Mr. Nixon asked once more what they should do about Hunt and the money. Does that question mean the matter really wasn't resolved in the morning session? Or was the President merely asking for a progress report on the delivery? The answer will depend on each committee member's interpretation of the context and tone, plus the complex chain of events that followed those meetings.

The conversational nuances can be tricky. Flowers, for instance, noted this important difference between reading the transcripts and listening to the actual tapes:

"The President uses the word 'Yeah' thousands of times. Nobody uses that word more than he does. If you just read the transcripts, you get the sense that when he says 'Yeah,' he is agreeing with something that is being proposed. But in fact, most of the time he is just acknowledging that he has understood what someone is saying. All he's saying is 'Yeah, I hear you.'"

If those tapes do not settle the question of whether Mr. Nixon ordered the payoff, then committee members like Railsback and Wiggins believe they must ask the participants what they thought the words meant. That means testimony from Dean and Haldeman and others, perhaps even the President, according to Wiggins.

This would get the committee into complicated areas, including grants of immunity to Watergate defendants and the root ques-

tion that decides most criminal trials—which witness do you believe?

In that regard, Wiggins likes to point out that when Dean testified last summer before the Senate hearings Dean did not claim that any presidential directive for payoffs came out of that morning meeting on March 21.

"This is not something that stuck in Dean's mind," Wiggins said, "that this was one of the marching orders that came out of that meeting. Of course, that isn't conclusive either."

Even if consensus is reached on that small moment in the lengthy drama, there still are crucial questions about intent. In that March 21 meeting, for instance, Mr. Nixon talked several times about the legitimacy of legal defense funds for celebrated criminal trials of the 1960s. He talked about the need to help Howard Hunt's family. Could a jury be persuaded that those legal motives inspired the President's action rather than the illegal purpose of obstructing justice?

Wiggins and others assert that the point is worth arguing, one of many that will be thrashed out in the coming weeks as the 38 lawyers on the committee try to reconstruct presidential intentions.

"Where we are going come out of this," Wiggins predicts, "is with a confused and ambiguous picture of the truth. What we're ultimately dealing with is a question of intent, which is not subject to precise mathematical conclusions."

Most committee members from both parties seem to

be earnestly suspending judgment on these fine points while they immerse themselves in the substance and texture of those events.

"I had a splitting headache the other night," said Cohen, "because the quality of the tape was poor and they had the amplification turned way up. You try to go through the details page by page and not succumb to the temptation to make a quick judgment."

Yet the committee members are caught in a squeeze. Inside the elegant Rayburn Building hearing chamber, the pace is slow and deliberate and lawyerly. Outside in the halls, they are engulfed by an army of reporters scrambling for the latest revelation. And, when they venture onto the House floor, colleagues ask them to hurry up and get it over.

"I feel the tension building up on the floor," said Cohen. "They're really getting troubled about how long it's taking. It's almost like being pulled toward a precipice. I've had other members come up and ask me, 'What in God's name is taking you so long?'"

The conventional wisdom

holds that Republicans will suffer most if the House rollcall on impeachment is delayed close to the fall election, when congressmen will have less time to explain their votes, less time to let political passions cool off. "It's murder, absolute murder," said Rep. Charles Sandman, a conservative Republican from Cape May, N.J., "But it's bad for all incumbents, whether you're Republican or Democrat. It's a little harder on Republicans, though."

As the committee slips further behind its schedule, the general feeling among its members is that they will be lucky to report their conclusions and get a House decision before the August recess, which will start Aug. 23. Even that seems too close for comfort to those who will face hostile constituents, no matter which way they vote. But, meanwhile, the investigation gets more complicated, not less.

"I really doubt that the committee will yield to the temptation of making a quick judgment," said Wiggins. "I think it's more likely that we will go down all these roads."