

NYTimes AUG 20 1973  
**COX SEEKS REASON  
FOR WITHHOLDING  
OF I.T.T. PAPERS**

**Grand Jury to Ask Why 13  
Vital Memos Did Not Go  
to Justice Department**

**LINK TO ANTITRUST SUIT**

**Memos Crucial to Finding  
on Whether Perjury Was  
Committed by Officials**

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Special to The New York Times

WASHINGTON, Aug. 19—  
The special Watergate prosecutor, Archibald Cox, and his staff have been seeking to find out why 13 "politically sensitive" documents essential to a Justice Department inquiry into possible perjury by high Government officials and officers of the International Telephone and Telegraph Corporation were withheld from the department's Criminal Division during the 1972 Presidential campaign.

This is one of the areas to be explored by a grand jury that convened here last Monday. Setting up the second grand jury was requested by Mr. Cox to investigate Watergate-related matters—campaign financing, "dirty tricks," and possible perjury and obstruction of justice connected with the settlement of three antitrust suits against I.T.T. in 1971.

The fact that former Attorney General Richard P. Kleindienst was the first witness suggested that Mr. Cox intends to take up the I.T.T. case first.

**Memos Termed Crucial**

The documents withheld from the Criminal Division are crucial to the determination of whether perjury or obstruction of justice were committed. These memos and letters by I.T.T. officers contain statements conflicting with testimony by both corporation and Government officials during the hearings in March and April, 1972, on Mr. Kleindienst's nomination.

The fact of the withholding—at least until the end of October last year and possibly later emerged from an examination of testimony last December and in May and June of this year before the investigations subcommittee of the House Commerce Committee. Much of the testimony was

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available to the public, but its significance was overlooked at the time.

The committee did not establish ultimate responsibility for the withholding. But under questioning by the chairman, Representative Harley O. Staggers, Democrat of West Virginia, and the committee counsel, Daniel J. Manelli, William J. Casey, former chairman of the Securities and Exchange Commission, and John Dean 3d, former White House counsel, disclosed the following:

¶Former Attorney General John N. Mitchell had the politically sensitive documents possibly as early as March, 1972, when the Kleindienst hearings began.

¶Mr. Dean received a set of the documents from Mr. Mitchell about the time of Mr. Mitchell's resignation as President Nixon's campaign director on July 1, 1972.

¶Mr. Kleindienst received a set from Mr. Casey immediately after a conference of the two men at the White House on Aug. 25, 1972.

Finally, the S.E.C., which had been investigating the merger of I.T.T. and the Hartford Fire Insurance Company for over two years, had a set of the documents since early March, 1972.

The significance of these dates is that on June 30, 1972, the Senate Judiciary Committee, on the basis of testimony at the Kleindienst hearings and without any knowledge of the "politically sensitive" documents, had asked Attorney General Kleindienst to conduct an investigation of possible perjury in the hearings, Harold P. Shapiro, Deputy Assistant Attorney General in the Criminal Division, was put in charge of the investigation.

Yet, it was not until Oct. 6, 1972, that a set of the documents was formally sent to the Justice Department. They came from the securities commission at that time because Mr. Casey, after consultation with Mr. Dean, decided that this was how to keep them out of the hands of the Staggers subcommittee.

The documents were sent to Deputy Attorney General Ralph E. Erickson. He told the Staggers subcommittee last June 6 that he kept the documents in his safe "for some time, a matter of weeks, probably two weeks, three weeks, I am not sure," before sending them to Mr. Shapiro.

**Not Among Others**

Neither Mr. Kleindienst, Mr. Dean nor Mr. Dean's lawyers could be immediately reached for comment. Mr. Mitchell's attorney, William G. Hundley, said he had no knowledge of the matter and was therefore unable to comment.

The saga of the 13 documents begins in early March, 1972, after Jack Anderson, the columnist, published on Feb. 29 the now famous memo of Dita Beard, the IIT lobbyist, to her boss, William R. Merriam, head of the company's Washington office. The memo, dated June 25, 1971, linked a pledge of \$400,000 for the Republican National Convention, then planned for San Diego, to a settlement of the antitrust suits that would permit IIT to retain Hartford.

Stanley Sporkin, the S.E.C.'s deputy director of enforcement who was in charge of the commission's investigation of I.T.T., read the Beard memo with interest, for it had not been

included among the documents sent to him by the corporation in response to an S.E.C. subpoena.

Mr. Sporkin told the Staggers subcommittee last Dec. 14 that he immediately called Joseph H. Flom, I.T.T.'s attorney on the case, and asked him whether there were other documents undelivered. Mr. Flom said he would get back to him.

Mr. Casey said that before Mr. Flom got back to Mr. Sporkin, John D. Ehrlichman, then the White House domestic adviser, had reached Mr. Casey by telephone on March 6.

"Apparently the I.T.T. lawyers somehow got word to Mr. Ehrlichman," Mr. Casey said, "that the commission was pursuing them for additional documents. I guess he felt the commission was reaching out and poking into something."

During the questioning, Mr. Casey said that he would not say that Mr. Ehrlichman asked him to "curtail" the investigation, but the Presidential aide was "unhappy" and "raised the question whether this was necessary."

**Called Call Improper**

Mr. Casey said he told him that the staff thought it was necessary and he was not going to interfere. And he told the subcommittee, when pressed, that he thought "the Ehrlichman call was clearly improper."

The story goes back to Mr. Sporkin and Mr. Flom, who—Mr. Sporkin testified—came to his office a few days after his call and told him there were some additional documents "along the lines of the Ditta Beard memo" that had not been given to the S.E.C. the corporation was willing to let Mr. Sporkin examine them, Mr. Flom said, but did not think it was necessary to let the commission have copies.

Mr. Sporkin said he told Mr. Flom "that was not the way we carried out our functions," and "he then produced those copies." Mr. Sporkin put them in his safe.

Mr. Sporkin also said he had advised Mr. Flom to offer the documents to the Senate Judiciary Committee, then in the midst of the Kleindienst hearings, because the S.E.C. did not wish "to get embroiled" with the committee by having documents the committee did not have.

He said Mr. Flom later told him that the documents had been tendered to the committee chairman, Senator James O. Eastland, Democrat of Mississippi, who declined them, saying the committee needed only documents already subpoenaed.

The story now leaps to Aug. 15, when Senator Edward M. Kennedy of Massachusetts, a member of the judiciary committee, wrote Mr. Casey. He said that, because of "certain document-destruction" by the I.T.T. after the Beard incident, the commission might have documents on the merger settlement, such as "correspondence, memoranda," that were unavailable elsewhere. Mr. Kennedy said his Subcommittee on Administrative Practice and Procedure would like to see any such documents.

After receiving the Kennedy letter, Mr. Sporkin on Aug. 24 or 25 talked to "lower levels" of the Justice Department about its taking up an obstruction of justice case against I.T.T. because of failure to supply the sensitive documents and shredding others.

As a result of his conversation, Mr. Kleindienst on Aug. 25 called Mr. Casey about the

papers and Mr. Kennedy's request. Mr. Casey said he told Mr. Kleindienst what the papers were, and that they raised questions of obstruction of justice and also perjury in the Kleindienst hearings.

"We had the decision," Mr. Casey said, "of whether to carry on the [S.E.C.] investigation."

**Kleindienst Got Papers**

He said Mr. Kleindienst asked for copies of the papers, which he said were supplied him immediately.

Evidently, it was decided to carry on that investigation because on Aug. 31 Mr. Casey wrote to Mr. Kennedy, rejecting his request on the grounds that the commission always refused to give out material on pending investigations.

The situation changed abruptly, however, on Sept. 21 when Mr. Casey received a letter from Mr. Staggers requesting all the I.T.T. material. The Staggers subcommittee has oversight authority for the S.E.C., and if he should issue a subpoena, he could not be denied as Mr. Kennedy had.

On Oct. 3 Mr. Casey called on Mr. Dean at the White House. He was somewhat surprised to see that Mr. Dean had a set of the sensitive documents on his desk. He also had a copy of the Kleindienst hearings by him.

Mr. Casey testified that Mr. Dean showed him "where one of the I.T.T. officials had been asked if he talked to anybody else at the White House and he said, 'No.'" Then Mr. Dean called his attention to a letter, Mr. Casey said, that "clearly indicated he had." The letter, dated Aug. 7, 1970, was from an I.T.T. vice president, Edward J. Garrity, to Vice President Agnew about a meeting three days earlier.

**Cited Relevance**

"So," Mr. Casey said, "se [Mr. Dean] pointed out the relevance of these documents to the Kleindienst record."

At that point, Mr. Casey said, the news ticker by Mr. Dean's desk carried a ditpatch on a demand by Senator Birch Bayh, Indiana Democrat, for some response to the Judiciary Committee's request for an investigation of perjury in the Kleindienst hearings.

"We are looking at this," Mr. Casey, "and he [Mr. Dean] said, 'Why shouldn't the Justice Department take all this?'"

Three days later the I.T.T. files were shipped to the Justice Department. Thirty-four boxes of records went immediately to the Criminal Division. But the folder with the 13 "politically sensitive documents" went to Deputy Attorney General Erickson. He denied that the election had anything to do with the delay in sending them to the Criminal Division.

In a telephone interview last week, Mr. Shapiro said he was unaware that Mr. Kleindienst had the documents relevant to the perjury investigation for six weeks prior to Oct. 6.

**2 Sources Cited**

When Mr. Casey was asked by Mr. Manelli how Mr. Dean had got the sensitive folder, he said, "I think he got it from Kleindienst." However, in secret testimony last May 24, Mr. Dean said he got the documents from Mr. Mitchell, and other sources said he received them as Mr. Mitchell left the Committee for the Re-election of the President.

When asked where Mr. Mitchell got the documents, Mr. Casey said, "He could have

= gotten it from I.T.T. or I.T.T. lawyers."

In his testimony, Mr. Casey, while conceding that keeping the documents out of the hands of the Stagers subcommittee was "an important consideration" in sending them to the Justice Department, insisted the overriding reason was to let Justice investigate possible obstruction of justice by I.T.T.

However, Mr. Cox, who was given the I.T.T. matter on June 7 because Attorney General Elliot L. Richardson said it had begun to overlap with Watergate, will also be looking for possible obstruction of justice by Administration officials.