WXPost MAR 17 1974

Nixon's Legal Defense Narrows

MAR 17 1974

By George Lardner Jr.
Washington Post Staff Writer

Any impeachment inquiry into President Nixon's conduct, Archibald Cox said last fall, should consider whether the President lived up to his responsibilities "in seeking out and facilitating the punishment of those who had done wrong in high places."

It is a guideline that has suddenly acquired a razor's edge with the President's admission this month that he had been told on March 21, 1973, that payments had been made to Watergate defendants "for the purpose of keeping them quiet, not simply for their defense."

The conversation was tape-recorded, but it was not until after Cox was fired as Watergate special prosecutor for insisting on it and other subpoenaed White House tapes that the President finally surrendered it to the courts last November.

"The President's duty is to see that the laws are faithfully executed," Cox has said more recently. "Is it an impeachable violation of this responsibility for him to refrain for months from any form of personal intervention when there is first, suspicion and later at least some evidence that his

News Analysis

highest personal aides and party officials are obstructing justice by covering up criminal misconduct, for him to withhold disclosure and refuse evidence . . .?"

White House special counsel James D. St. Clair, the President's chief defense lawyer, insists that Mr. Nixon did all he had to do

See LEGAL, A3, Col. 1

LEGAL, From A1

as the nation's "chief law enforcement officer."

Denying that the President violated the law in failing to tell prosecutors of the hush-money report, St. Clair maintained in a spate of interviews this past week that Mr. Nixon's job was simply to see to it that the wheels of justice started rolling.

This, St. Clair submitted, was done.

"I would think that a responsible public official receiving information would seek to investigate it, first in-house and then outside, which was done in this case . . . After investigation, it was reported," St. Clair told ABC-TV in one of the interviews.

The when of any such report, however, was not mentioned. The tape of the March 21 meeting was not turned over to U.S. District Court Judge John J. Sirica until Nov. 26—more than seven months after White House counsel John W. Dean III told Mr. Nixon that hush money has been paid.

And until his press conference this month, the President himself never acknowledged getting any such information from Dean and, in fact, had publicly denied it. Mr. Nixon finally corroborated the report only after indictments had been returned accusing seven of his former White House aides and campaign advisers of conspiracy with others "known and unknown" in the Watergate cover-up.

The admission touched off new controversy over whether Mr. Nixon obstructed justice or committed the crime of misprision (concealment of a felony). The federal law on misprision 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 no more than $500 or imprisoned not more than three years, or both."

The White House defense has been narrow and letter-of-the-law. According to St. Clair, the misprision statute is beside the point since the President "happens to be the ranking law enforcement officer in the country" himself. The statute, St. Clair is apparently hinting, cannot be applied to Mr. Nixon because he is the highest "authority under the United States"—someone to be reported to rather than someone obligated to make reports.

Beyond that, both Mr. Nixon and his special counsel are pointedly emphasizing that whatever Dean said was simply an "allegation"—and no more. This, the White House seems to be saying, can hardly be called "knowledge of the actual commission of a felony."

"You should realize simply because information is given does not constitute proof of the fact," St. Clair said in the ABC interview.

". . . It was alleged (at the March 21 meeting) that payments had been made to defendants for the purpose of keeping them still," Mr. Nixon said in Chicago Friday in an effort to clear up what he sad "may have been a misapprehension" over his earlier remarks. "Former White House aides H. R. (Bob) Haldeman and John D. Ehrlichman and former Attorney General John N. Mitchell, he added, "have all denied" that payments were made for that purpose.

Presumably, the President could have reported the "allegations" to the overseers of the original Watergate investigation — Assistant Attorney General Henry E. Petersen and former Attorney General Richard G. Kliendienst — at their talks with him on April 15, 1973.

Instead, according to their testimony before the Senate Watergate committee, they briefed Mr. Nixon on what Dean was starting to tell government prosecutors. The President has said that after the March 21 meeting, he told Dean to write "a full report of everything he knew." When Dean failed to produce the report, Mr. Nixon said he told Ehrlichman to conduct "an independent investigation." The President said last week it was on April 14 that Ehrlichman submitted that report.

Petersen testified that he told the President on April 15 that Ehrlichman and Haldeman ought to be fired.

"He (Mr. Nixon) was concerned that perhaps Dean was trying to lighten the load on himself by impeaching Haldeman and Ehrlichman and the question in the forefront of his mind was the validity of the Dean information (to government prosecutors)," Petersen said. "I think it is fair to say he was kind of upset about Dean. He said that when he first learned about this — that there were more problems in store for him than he had anticipated — on March 21 and he had asked John Dean to reduce them to writing . . ."

Q. "Did he say precisely what Dean had told him on March 21?"

Petersen: "No sir, he did not."

Q. "Did he indicate that on March 21, he had learned what you were telling him?"

Petersen: "No sir, he did not. What he did suggest was that after Dean had failed to provide him this report, he had told Ehrlichman to conduct an investigation. I never asked him for the product of Ehrlichman's investigation, nor do I know what it consisted of."

The White House translation of all this is that Mr. Nixon was simply proceeding "with caution, but determination to get the truth," as one high but unnamed White House official told United Press International Friday.

"The wheels of justice, they may grind slowly, but the grand jury has now spoken and sought to charge, so far, seven individuals," says St. Clair. "The proper administration of justice, in my view, so far at least, has proceeded."

In short, the White House says it is confident that Mr. Nixon's defense against impeachment is still solidly based on the grounds that he was not "directly involved" in any Watergate-related scandals.

The investigations, however, are not yet completed. Evidence is still being sought. Set against the White House standards are those of Archibald Cox, whose ouster last October led to the first widespread demands for the President's impeachment. St. Clair maintains that the President can be impeached only for "serious" violations of criminal law—"criminal offenses of such a serious nature to be akin to treason and bribery."

By contrast, Cox asks simply: Did Mr. Nixon do his duty? Does he have an affirmative responsibility to "seek out and facilitate the punishment of those who had done wrong in high places?" Or is he beyond impeachment, as the White House suggests, so long as he committed no "serious" crimes?

The questions used to suggest their own separate answers. But whether they still do has become a matter of public debate.