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The President's Latest Defense

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ON FEBRUARY 2 of last year Judge John J. Sirica took the unusual step of asserting in his courtroom that he did not feel the trial of the seven Watergate conspirators, which had recently been concluded, had produced all the relevant facts of the matter. "I have not been satisfied and I am still not satisfied," Judge Sirica said at one point, "that all the pertinent facts that might be available . . . have been produced before an American jury." At another point, he said apropos of the Ervin committee hearings that were eventually to get under way: "I frankly hope, not only as a judge but as a citizen of a great country and one of millions of Americans who are looking for certain answers, I would hope that the Senate committee is granted the power by Congress by a broad enough resolution to try to get to the bottom of what happened in this case."

This was an important move in a calculated effort on Judge Sirica's part to get at what he strongly suspected to be the larger (hidden) story behind the Watergate burglary. It was, in a certain sense, a cry for help—help from the Senate, the Executive or anybody who might wish to step forward, including in particular the defendants themselves. Subsequently, Judge Sirica was in fact to condition the sentencing of the convicted conspirators on their willingness to cooperate with the Senate Watergate Committee. On March 19 there was a response. One of the convicted men, James McCord Jr., sent a letter to the judge saying that political pressure had been brought to get the defendants "to plead guilty and remain silent," that perjury had been committed during the trial and that "others" had been involved in the Watergate affair who had not been "identified during the trial." He sought a meeting with the judge to elaborate, adding that he would not feel "confident" if he were to share his information with agents of the FBI, the Department of Justice or other "government representatives." On March 23 that letter was made public by Judge Sirica.

That is what was going on in the federal courtroom and it is important background for understanding the implications of what Mr. Nixon now tells us was almost simultaneously going on in the White House. For Mr. Nixon, by his own recently revised account, has now admitted that even as Judge Sirica was receiving public confirmation of his own suspicions of a cover-up of the Watergate case and preparing to hand down sentences within a matter of a few days, the President was receiving exactly the same sort of corroboration from his White House counsel in private. On March 21, 1973, Mr. Nixon told us the week before last—and reaffirmed on Friday in Chicago—John Dean III told him, in the President's words, that "payments had been made to the defendants for the purpose of keeping them quiet, not simply for their defense."

Now what did the President do with these and related allegations from his own White House counsel? What, we mean, did he do specifically in relation to the trial proceedings which were still going on in Judge Sirica's court with information which bore directly and heavily on the outcome of those proceedings? The answer is nothing. The sentencing went forward. And so, for that matter, did the payment of hush money—according to the indictment handed down by the Watergate grand jury a couple of weeks ago.

The President has defended his performance—or the lack of one—in a number of different ways. On the one hand, he and his aides have conducted a relentless campaign to discredit Mr. Dean, whose testimony as well as his character, motives and loyalty have been regularly challenged and disparaged by White House leaks and in public statements by the President and his lawyers. On the other hand, Mr. Nixon has told us of one thing he did do on hearing Mr. Dean's March 21 report on the details of the Watergate coverup—he ordered an immediate investigation. And to whom did he entrust this urgent and grave responsibility? To Mr. Dean. When no report was forthcoming from Mr. Dean—on that point everyone agrees—the "investigation" was apparently turned over to John Ehrlichman, according to the President. Mr. Ehrlichman has testified that he thought of it more in terms of an "inquiry." It doesn't matter: there is still no evidence that any formal report growing out of any presidential "investigation" of Mr. Dean's March 21 report was even prepared—let alone transmitted to the court or to any of the successive prosecutors who have been conducting the Watergate investigations under the authority with the proclaimed full suppotr of the President.

So we are left only with the President's own wildly differing accounts—the ones of last August, which said nothing of the payment of hush money, and the one on March 6 of this year, which suddenly acknowledged that, yes, Mr. Dean had "told him" on March 21, 1973, that money had actually been paid to purchase the silence of defendants. But even this wasn't quite the way it was, the President said last Friday in Chicago, by way of "correcting what may have been a misapprehension" about what he had meant the week before. What he had really meant to say was that "it was alleged" by Mr. Dean that hush money had been paid; Mr. Ehrlichman and H. R. Haldeman and John Mitchell, he went on to explain, "have all denied that this was the case." He doesn't tell us when these denials were first made to him, or what he may have done to resolve these flat contradictions in the accounts of his closest and most trusted associates, or why he didn't call in some of the other lesser figures presumably implicated by Mr. Dean and confront them immediately with the charges.

Instead, he dismisses disclosures having to do with possible criminal activity by his most intimate, official associates as no more than "allegations" in the strict legal sense, requiring no extraordinary action on his part—and justifying no conclusions on anybody else's part—until proven at some future point in a court of law.

Now this, it should be pointed out, is precisely the argument that the present White House Counsel, James D. St. Clair, is beginning to develop publicly on Mr. Nixon's behalf, and it is at least a respectable line of defense if what we are talking about is a charge of misprision of a felony—a failure of anyone "having knowledge of the actual commission of a felony" to report it to the authorities. For it could be argued, presumably, that Mr. Nixon did not have certain "knowledge" that a felony had been committed and that in any case, he is himself in one sense the nation's highest law enforcement officer, with no obligation to report to anybody else. But this is at best a remarkably lame and narrowly legalistic defense for a President of the United States, confronted on March 21 of last year both with Mr. Dean's report and with the circumstances in Judge Sirica's court, and charged under oath with faithfully executing the laws.