

JUN 1 1973

Joseph Alsop

The Nuremberg Analogy

It is dreadful that here in America, we should have to think about the Nuremberg trials. But this is one dreadful result of the dreadful system that formerly prevailed in President Nixon's White House.

It is time to think about the trials, because of the plea that the Nazi leaders vainly made at Nuremberg. In brief, they said that they were free of guilt for all that they had done, because they had been servants of the German state. They had to plead they were only obeying the orders of their master Hitler, quite simply because it was the only plea they could make.

This grim precedent is now relevant to the Watergate horror. Obedience to the President of the United States is again the only plea the more highly placed Watergate defendants can make, if the facts against them are proven. In that event their sole defense will be to say: "We acted on the President's orders."

This fact is most important to note for two reasons. On the one hand, it is actually against the highly placed defendants' interests to sacrifice their chance of making this plea of "orders from the President." What is against interest is always credible. So they have to be believed if they say, instead, "The President knew nothing and ordered nothing."

On the other hand, the course of events has already been affected by the more highly placed defendants' practical interest in accusing the President. Specifically, this has plainly affected the way the President has handled the five men whose mere accusation—whether true or false—can be automatically fatal to him. These five are the former Attorney General, John Mitchell; the Republican bagman, Maurice Stans; and the three top men of the former White House staff, H. R. Haldeman, John Ehrlichman and Charles W. Colson.

If guilty, all these men can mainly help themselves by involving the President. If angry and revengeful, they can destroy him. Hence it has been dangerous for the President to deal too harshly with these men, as has been pointed out by the two wisest analysts of the Nixon White House, John Osborne of *The New Republic*, and this reporter's brother, Stewart Alsop.

The President's need to use kid gloves with these men has in fact stuck out a mile. For example, it was Sunday, April 15, when the distraught Richard Kleindienst and Henry Petersen came over from the Justice Department to the White House, to warn the President that new data had implicated Haldeman and Ehrlichman in the Watergate horror. But it was not until April 30 that the President removed Haldeman and Ehrlichman from his staff. And he only did so with warm compliments for both of them.

Assuming the guilt of Haldeman, Ehrlichman and the others can be proven in court, there are only two ways to read these facts. Either the President is just as guilty as his subordinates. Or he now fears his former subordinates, because he knows they can destroy him—as indeed they can—

by falsely swearing that he gave orders for all they did.

The choice of interpretations is admittedly unpleasant. But there are no other alternative ways to read many bits of evidence, such as the conflicting stories about the role of John Dean III, as told by Dean himself, and by the President himself, and by Ron Ziegler's people later correcting the President. Ehrlichman was involved by the Ziegler correction. And this, one must add, would appear to be supported by an approach by Ehrlichman to Richard Kleindienst on April 14.

At any rate, there are now three thoughts to hold, as the preachers would say. First, it is against interest for the key men accused to clear the President of guilt. Second, they must therefore be believed if they say on oath that the President was guiltless.

And third, the national interest urgently demands an immediate answer to the fundamental question about the President's guilt or guiltlessness.

The national interest could be promptly served in the current Senate investigation, by the aging Sen. Sam J. Ervin and his chief counsel, Sam Dash. But if they put the five key men on oath immediately, and asked them the key question, all the delight of their circus would be lost to counsel Dash and Senator Ervin.

One must add that all the guilty men in the Watergate horror can easily go entirely free of final punishment, if the federal courts follow the Delaney decision of 1952, and the Ervin-Dash circus is also indefinitely prolonged. "No fair trial after a long circus," was the essence of the Delaney decision.