

The President's 'Sullen Silence'

It is now clear that while Mr. Nixon's employees were writing memos about how to "maximize the fact of our incumbency," their behavior was as bad as their prose: a crime wave was planned in Mr. Nixon's residence, by Mr. Nixon's employees, on Mr. Nixon's behalf.

Now it is time for Mr. Nixon to answer the grave charges against him and to dissipate the smog being laid down by his current employees.

The White House says Mr. Nixon will respond to the charges of criminality leveled against him and his former employees at a time and in a manner he deems appropriate. Thus the White House position for the next six weeks or so is: Trust Mr. Nixon's sense of propriety.

That is easier said than done and there is no reason why we should feel obliged to do it. To put the matter bluntly, Mr. Nixon's current silence, reverberating around the evasiveness of the April 30 speech and the porousness of the May 22 statement, relieves us of the obligation to assume him innocent until proven guilty.

Mr. Nixon used to understand such things. Twenty-five years ago this summer the House Committee on Un-American Activities was having trouble with witnesses who constantly invoked the Fifth Amendment to avoid testifying. An exasperated young committee member named Nixon told one recalcitrant witness, "It is pretty clear, I think, that you are not using the defense of the Fifth Amendment because you are innocent."

Rep. Nixon had a point. He understood that the original and valid purpose of the Fifth Amendment was to protect individuals from the arbitrary exercise of state power. He understood the principle stated by Prof. Sidney Hook: invoking the Fifth Amendment's protection "establishes a pre-

sumption of guilt or unfitness with respect to the issue in question which is relevant to inferences made in a non-legal or moral context."

Mr. Nixon's sullen silence now, after an avalanche of sworn testimony against him, is the moral equivalent of an invocation of the Fifth Amendment and it establishes similar presumptions. It is natural and reasonable to infer from Mr. Nixon's silence that he has nothing to say that would help his case.

Lawyers have a homey rule that Mr. Nixon must know: If you have the law on your side, argue the law; if you have the facts, argue the facts; if you have neither, pound the table. Mr. Nixon's lawyers have taken to pounding the table with "hypotheses" such as that offered to the Ervin Committee by special counsel J. Fred Buzhardt, which said: John Dean and John Mitchell did the bad things. By labeling the Buzhardt memo, a "hypothesis," the White House was trying to tell us that it likes to market-test hypotheses before embracing them. Someone at the White House must have said, "Let's run this hypothesis up the flagpole and see if anyone goes 'yechh!' Lots of people did, so down came the hypothesis. Now what?"

Now Melvin Laird has weighed in with the observation that the nation cannot afford to be distracted by Watergate. The last time Mr. Laird delivered himself of an opinion on the subject (before he was a Nixon employee) he said he did not want to know anything nasty about the President and Watergate. Obviously someone is trying to distract someone from something. Apparently Mr. Nixon is stalling so he can tailor his next definitive Watergate statement to the as yet uncertain terrain that will emerge from the testimony of his first batch of

employees. He is still concerned with what he needs to say, not with what he ought to say, with what he can get away with, not with what is true.

At this point there probably is no way to hold Mr. Nixon's feet to the fires that he and his first batch of employees lit. Certainly it does no good firing editorial apostrophes across the bow of his ship of fools: the captain is incommunicado, he doesn't read newspapers, and he won't watch television until the Ohio State-Michigan game.

But he should be told that every day he remains silent builds a momentum for disbelieving his next "hypothesis." And Mr. Laird, who does read newspapers, should be told that it will not do for him or his employer to distract us from Watergate by reminding us that Leonid Brezhnev likes Mr. Nixon, and that Mr. Nixon got the POWs home.

When Alger Hiss was being evasive he bragged that "I too have had a not insignificant rôle in the magnificent achievements of our nation in recent times" and said that his friends included senators and Eleanor Roosevelt. Congressman Nixon tartly (and rightly) dismissed Hiss' bragging as "innocence by association."

The Washington Post

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Published by The Washington Post Company,
1150 15th St. NW, Washington, D.C. 20005

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