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Nixon Vs. The Record

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About half-way through his interview with David Frost that was broadcast last night, former President Richard M. Nixon declared, "I know it really better than you do, and I should know it better because I was there."

That assertion is not open to challenge, but the Watergate case is extraordinary in that so much of the evidence is on the public record.

Foremost, of course, is the fact that virtually every official conversation Nixon had during the period in question was tape recorded, and transcripts of the tapes of the critical discussions have been published.

Second, nearly all of the other participants have testified in public forums.

Finally, the special prosecutor, the Senate Watergate com-

mittee and the House Judiciary Committee made independent evaluations of Nixon's role in Watergate and expressed their views.

What follows is an examination of how Nixon's statements in last night's broadcast compared with the official record on three points on which there was dispute between Nixon and Frost: Whether Nixon was complicit in an obstruction of justice, whether he agreed to pay hush money or grant clemency to E. Howard Hunt Jr., and whether he ever made a personal effort to get to the bottom of the case.

Obstruction of Justice

Much of the first part of the interview dealt with Frost's contention that Nixon, in the days immediately after the Watergate burglary, had participat-

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ed in an obstruction of justice and the former President's assertion that he was not guilty of a crime because his motive was "pure political containment."

The Watergate prosecutors and the House Judiciary Committee found reason to believe that Nixon was, indeed, part of a conspiracy to obstruct justice.

In the indictment in which the former President's top aides, including John N. Mitchell, H. R. Haldeman and John D. Ehrlichman, were charged with conspiring to obstruct justice, Nixon was listed as an unindicted co-conspirator.

Leon Jaworski, then the special prosecutor, has said that Nixon was not actually indicted because there were questions about whether the Constitution permitted the indictment of a sitting President.

The Judiciary Committee, in its first proposed article of impeachment, charged that Nixon had engaged in a plan "to delay, impede and obstruct the investigation."

In its formal report on its impeachment proceedings, the committee concluded that there was "clear and convincing evidence" that Nixon was culpable of "perjury, destruction of evidence (and) obstruction of justice."

Among the evidence that the President personally tried to obstruct the investigation in the first three weeks after the June 17, 1972, Watergate break-in is the following:

• Nixon conceded in the interview with Frost that he had known by June 22 that G. Gordon Liddy had been involved in the burglary and that he had never passed that information to judicial authorities. Nixon noted that he had told authorities about Hunt's involvement, but that was gratuitous information, since the prosecutors already knew it.

• On June 23, Nixon told Haldeman to send officials of the Central Intelligence Agency to the FBI with instructions "to say that we wish for the country, don't go any further into this case." The revelation of the tape of that conversation led directly to Nixon's resignation.

Title 18, Section 1510 of the United States Code states that a person is guilty of obstruction of justice if he "willfully endeavors by means of bribery, misrepresentation, intimidation or force or threats thereof to obstruct, delay or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator."

It is, of course, a moot question whether Nixon committed a criminal offense, since he has been pardoned by former President Gerald R. Ford for any crime he might have committed while President.

Hush Money Clemency

The question of whether Nixon had agreed to give Hunt, one of the Watergate burglars, money or a promise of clemency in return for his silence was one of main points in dispute during the impeachment proceedings.

Nixon contended in the interview with Frost that, while he never rejected the payment of money, he never approved it, and that he had definitely blocked any offer of clemency.

Nixon also said that the money paid to Hunt and the other Watergate defendants was not meant for the purpose of keeping them silent but for legal expenses and humanitarian reasons.

The same arguments were made to no avail by Nixon's lawyers

during the impeachment proceedings.

There is no question but that Hunt was paid \$75,000 in cash on the night of March 21, 1973. There is also no evidence that he was ever directly offered clemency.

Much of the dispute turns on the transcript of Nixon's conversation with John W. Dean III, then his counsel, on the morning of March 21.

Frost read 16 separate comments by Nixon to Dean about the payment of money. Among them were the following:

"Your major guy to keep under control is Hunt."

"We should buy time on that."

"The money can be provided. Mitchell could provide the way to deliver it."

"You'd better damn well get that done, but fast."

In its final impeachment report, the Judiciary Committee concluded: "Evidence clearly establishes that, when the President learned that Hunt was going to talk unless paid a substantial sum of money, he approved of the payment to Hunt rather than taking steps to stop it from being made."

On the question of clemency, the transcripts indicate that Nixon rejected such an offer, but there is evidence that the reason was not because a grant of clemency might be legally or morally wrong but because it was not politically feasible. Nixon said, "You can't do it politically until after the '74 elections, that's for sure."

As to whether Nixon felt compassion for the Watergate burglars and wanted to help them for humanitarian reasons, as he stated during the interview, it is useful to look at who got what.

Of the \$429,500 that the prosecutors said was distributed to the original defendants, roughly two-thirds (\$276,000) went to Hunt and his lawyers. The other defendants got less than \$20,000 each.

The apparent reason comes through in a discussion Nixon had with Charles W. Colson, then his special counsel, on Jan. 8, 1973. Colson told Nixon that Hunt was the only one of the defendants who

had "direct information" and that, as for the others, he (Colson) didn't "give a damn if they spend five years in jail."

Nixon maintained to Frost that he viewed himself as defense counsel to his aides who were in trouble and that he repeatedly tried to find out where the real guilt lay.

Nixon's Personal Inquiry

The record, however, indicates that Nixon, time and again, avoided asking the kind of questions that might have elicited information.

In fact, the Judiciary Committee determined that proof of Nixon's complicity in the Watergate coverup lay not only in his overt actions but also in his failure to take actions that might have brought the facts of the case to light.

For instance, on June 20, 1972, the first working day after the Watergate burglary, Mitchell, then Nixon's campaign director, told Nixon he was sorry he had not kept better control of the campaign staff. Nixon did not ask him what he meant or ask the details of what had happened.

On July 6, L. Patrick Gray III, then acting director of the FBI, told Nixon that he was in jeopardy of being "mortally wounded" by members of the White House staff. Nixon not only did not heed the warning, he did not even ask Gray to what and to whom he was referring.

Nixon said in the interview that on March 22, 1973, he had ordered Dean to prepare a thorough report on Watergate. The former President, in the interview, said that he had told Dean, "If it opens doors, let it open doors."

That particular statement to Dean does not appear in any transcript that was made public during the impeachment proceedings or the Watergate trial. On the other hand, the available transcripts make it apparent that Nixon's instructions to Dean were to draft a report that would, at the same time, convince the public of the innocence of the White House staff and deflect the investigation of the Senate Watergate committee.