

NYTimes AUG 2 1973
Text of Memo From Colson to Haldeman on Kleindienst

Special to The New York Times

WASHINGTON, Aug. 1— Following is the text of a March 30, 1972, memorandum from Charles W. Colson, then a special counsel to President Nixon, to H. R. Haldeman, then the President's chief of staff, regarding on-going hearings before the Senate Judiciary Committee on the nomination of Richard G. Kleindienst to be Attorney General. The critical issue before the committee was an allegation that Justice Department officials had decided an antitrust case involving the International Telephone and Telegraph Corporation to the advantage of the company after the firm pledged \$400,000 toward expenses for the Republican National Convention originally scheduled for San Diego.

Memorandum For: H. R. Haldeman March 30, 1972
From: Charles Colson
Subject: I.T.T.

There are four points in the analysis you outlined to MacGregor and me this morning with which MacGregor, Wally Johnson and I disagree:

[1]

Mitchell, Kleindienst or Mardian dealing with Eastland and MacGregor presumably dealing with the other members of the committee guarantees a divided approach. One or the other has to call the shots. Kleindienst has already this morning told MacGregor that he, MacGregor, should not deal with any of the other Republican Senators (Scott, Cook, etc.) but rather should deal only through Hruska. In the kind of day-to-day operation this is, that is simply an untenable arrangement.

I know you and the Presi-

dent are concerned that all of us are taken away from other more important matters. You should be, however, equally concerned that Mitchell in the last 30 days has done little with respect to the campaign and that may be a more serious loss than MacGregor's time and mine.

[2]

On the one hand, you have the assessment of Kleindienst, Mardian and Mitchell as to what will happen in the committee and on the floor. On the other hand, you have the legislative assessment of MacGregor, Colson and Johnson which is very different. (Johnson spent from 1968-1970 as minority counsel of this same committee and has been involved in all of the confirmation battles of this Administration either from the committee end or from the Justice Department end. He left the committee to go to Justice in 1970. MacGregor spent 10 years in Congress. I spent 5 years as a senior Senate assistant and 9 years in law practice, involving very considerable contact with the Hill. The Justice team simply has not had the same experience.)

Admittedly it is all opinion at this point, but Johnson, MacGregor and I unanimously do not believe that Kleindienst can be confirmed by June 1. Johnson does not feel he can be confirmed at all and on this point I am at least doubtful. I emphasize that this is an opinion and a judgment call. Lots of things could happen. We could get a big break in the case; the media could turn around and become sympathetic to Kleindienst; the Democrats could

decide that they are better having him in the job than beating him. Obviously, there are many unforeseen possibilities, but as of now that is our best assessment. I would think that whatever decision we make now should be based on the most knowledgeable — and I would add the most detached — assessment of our legislative prospects.

Wally Johnson has done a detailed analysis of the various procedural moves that are likely to be made in committee or on the floor. He is not shooting from the hip. He has analyzed it and a senate vote in his judgment cannot be achieved by June 1; the Democrats will only let it come to a vote if they have votes to reject Kleindienst, which is the least desirable outcome. Neither Johnson, MacGregor or Colson are prepared to predict whether we can hold the votes necessary to confirm him should the nomination in fact get to a vote.

[3]

Assuming MacGregor, Johnson and Colson are correct, then setting June 1 as our deadline date merely puts the hard decision off to a time when it will be considerably more volatile politically than it is today. Kleindienst's withdrawal will then be an admission of defeat but it will come two months closer to the election. In June Kleindienst will be a hot issue for the Democratic convention. Confirmation of Kleindienst's replacement will also be vastly more difficult in June than it would be now. Obviously this again is opinion.



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Charles W. Colson

[4]

The most serious risk for us is being ignored in the analysis you gave us this morning—there is the possibility of serious additional exposure by the continuation of this controversy. Kleindienst is not the target, the President is, but Kleindienst is the best available vehicle for the Democrats to get to the President. Make no mistake, the Democrats want to keep this case alive—whatever happens to Kleindienst—but the battle over Kleindienst elevates the visibility of the I.T.T. matter and, indeed, guarantees that the case will stay alive. It may stay alive in any event and, hence, the key question not addressed in your analysis is whether pendency or withdrawal of the Kleindienst nomination serves to increase the Democrats' desire to continue. That is the hardest call to make but for the following reasons it may be the most important point to make.

Neither Kleindienst, Mitchell nor Mardian know of the potential dangers. I have deliberately not told Kleindienst or Mitchell since both may be recalled as witnesses and Mardian does not understand the problem. Only Fred Fielding, myself and Ehrlichman have fully examined all the documents and/or information that could yet come out. A summary of some of these is attached.

Certain I.T.T. files which were not shredded have been turned over to the S.E.C., there was talk yesterday in the committee of subpoenaing these from I.T.T. These files would undermine Griswold's testimony that he made the decision not to take the appeal to the Supreme Court. Correspondence to Connally and Peterson credits the delay in Justice's filing of the appeal to the Supreme Court in the Grinell case to direct intervention by Peterson and Connally. A memo sent to the Vice President, addressed, "Dear Ted," from Ned Gerrity tends to contradict John Mitchell's testimony because it outlines Mitchell's agreement to talk to McLaren following Mitchell's meeting with Geneen in August, 1970.

Nomination



At Watergate committee table, from left: Senators Lowell P. Weicker Jr. and Edward J. Gurney; Fred D. Thompson, minority counsel; Senator Sam J. Ervin Jr.; Samuel Dash, chief counsel, and James Hamilton, assistant chief counsel, and Senators Daniel K. Inouye and Joseph M. Montoya. **1**

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It would carry some weight in that the memo was written contemporaneous with the meeting. Both Mitchell and Geneen have testified they discussed policy only, not this case, and that Mitchell talked to no one else. The memo further states that Ehrlichman assured Geneen that the President had "instructed" the Justice Department with respect to the bigness policy. (It is, of course, appropriate for the President to instruct the Justice Department on policy, but in the context of these

hearings, that revelation would lay this case on the President's doorstep.) There is another internal Ryan to Merriam memo, which is not in the hands of the S.E.C.; it follows the 1970 Agnew meeting and suggests that Kleindienst is the key man to pressure McLaren, implying that the Vice President would implement this action. We believe that all copies of this have been destroyed.

[2]

There is a Klein to Halde- man memo, date June 30, 1971, which of course pre- cedes the date of the I.T.T. settlement, setting forth the \$400,000 arrangement with I.T.T. Copies were addressed to Magruder, Mitchell and Timmons. This memo put the A.G. on constructive notice at least of the I.T.T. commit- ment at that time and before the settlement, facts which he has denied under oath. We don't know whether we have recovered all the copies. If known, this would be con- siderably more damaging than Rieneke's statement. Magruder believes it is pos- sible, the A.G. transmitted his copy to Magruder. Mag- ruder doesn't have the copy he received, he only has a Xerox of the copy. In short, despite a search this memo could be lying around any- thing at 1701.

[3]

Q. The Justice Department has (thus far resisted a re- quest for their files, although their files were opened to Robert Hammond, one of Turner's deputies and a hold- over who is now a practicing Democratic lawyer in Wash- ington. Hammond had access to several memos that could be embarrassing. Whether he kept them or not is unknown,

but it is probable that he re- calls them. One is a memo of April, 1969, from Kleindienst and McLaren to Ehrlichman responding to an Ehrlichman request with respect to the rationale for bringing the case against I.T.T. in the first place. There is a subsequent April, 1970, memo from Hulin to McLaren stating that Ehrlichman had discussed his meeting with Geneen with the A.G., and suggesting to McLaren that Mitchell could give McLaren "more speci- fied guidance."

There is another memo of September, 1970, from Ehrlichman to the A.G. re- ferring to an "understand- ing" with Geneen and com- plaining of McLaren's ac- tions. There is a May 5, 1971, memo from Ehrlichman to the A.G. alluding to discus- sions between the President and the A.G. as to the "agreed upon ends" in the resolution of the I.T.T. case and asking the A.G. whether Ehrlichman would work directly with Mc- Laren or through Mitchell. There is also a memo to the President in the same time period. We know we have control of all the copies of this, but we don't have con- trol of the original Ehrlich- man memo to the A.G. This memo would once again con- tradict Mitchell's testimony and more importantly direct- ly involve the President. We believe we have absolute se- curity on this file within Jus- tice, provided no copies were made within Justice and pro- vided there are no leaks. We have no idea of the distribu- tion that took place within Justice.

[4]

Merriam's testimony will of necessity involve direct contact with Jack Gleason. I can't believe that after Mer- riam's testimony, Gleason will not be called as a wit- ness.