

Mr. Kleindienst, Mr. Cox and ITT

Predictably, Archibald Cox's disclosure that he told Senators Edward Kennedy and Phillip Hart about a confidential conversation he had with former Attorney General, Richard G. Kleindienst, has produced a burst of righteous White House indignation—and this time, the White House has something of a point. Confidences are supposed to be kept, particularly confidences gained in the course of a criminal investigation. It is quite clear that Mr. Kleindienst, Mr. Cox and Mr. Nixon, among others, would be a good deal better off if this information had not been made public at this time.

It is true that as members of the Senate Judiciary Committee, the two senators were not exactly strangers to the matter. They and other members of the committee had been seriously concerned about the handling of the ITT case at the time of the hearings on Mr. Kleindienst's nomination to be Attorney General. They and other members of the committee were also concerned about perjury in that testimony. So much so that some of them sent the transcript of the hearings down to the Justice Department with a request that it be examined for possible instances of perjury.

But, if Mr. Cox felt it necessary to make a report on his progress in the perjury investigation, that report should have been made to the full Judiciary Committee. One of the least appropriate circumstances for such a report was an informal gathering where the only senators present were two members of the opposition party who were among the leading opponents of Mr. Kleindienst's nomination.

However much Mr. Cox's conversation with the senators may have enlarged him as a White House target or have undermined his position as an impartial, non-partisan participant in this affair, the manner of the disclosure of the Kleindienst information does not change the substance of the information and that is the heart of the matter. The issue here is whether our government lied about ITT and whether one or more high government officials perjured themselves before a committee of the United States Senate in hearings on Mr. Kleindienst's nomination to be Attorney General.

Let's look first at what Mr. Kleindienst is reported to have told Mr. Cox. In 1971, the report goes, Mr. Kleindienst received a call from John Ehrlichman, then the President's top domestic adviser, asking Mr. Kleindienst to stop an appeal to the Supreme Court in an anti-trust case involving an ITT merger. Mr. Kleindienst declined on the ground that Richard W. McLaren, then head of the Antitrust division at Justice had recommended the appeal and that Solicitor General Griswold had approved the recommendation.

Shortly thereafter, according to Mr. Kleindienst's reported account of events, the President called him on the phone. After calling him a vulgar name and asking, "Don't you understand the English language," Mr. Nixon ordered Mr. Kleindienst to stop the appeal, which Mr. Kleindienst then did. This much the White House has not denied.

Now, let's look at a few of the things our government told us about the handling of the case at the time when a lot of people at the White House and ITT headquarters were wishing they had had the foresight to throw Dita Beard into a shredder.

In November, 1971, responding to an inquiry from Lawrence O'Brien, then chairman of the Democratic National Committee, Mr. Kleindienst wrote, "The settlement between the Department of Justice and ITT was handled and negotiated *exclusively* by Assistant Attorney General Richard W. McLaren, who is in Europe at the present time . . ."

But at his confirmation hearings the following spring, Mr. Kleindienst had to back down a bit and admit that he had been somewhat involved in the settlement in a number of quite specific ways, including several meetings with a representative of ITT, and one session with Mr. McLaren and ITT officials. He insisted, however, that White House involvement had been limited to a little help from Peter Flanagan in finding a man to do a study of the economic impact of the proposed merger. Mr. Kleindienst's testimony on the point was quite clear. He said:

"In the discharge of my responsibilities as the Acting Attorney General in these cases, I was not interfered with by anybody at the White House. I was not importuned; I was not pressured; I was not directed. I did not have conferences with respect to what I should or should not do."

Now we would not argue that the President of the United States has a duty to refrain from discussing anti-trust matters with his acting attorney general. We do contend, however, that he and the men he appoints to run the great departments of government have an obligation to tell the truth to the American people and to the United States Senate, particularly when there is an appearance that a corporate pledge of \$400,000 to help support the Republican National Convention may have been a factor in the out-of-court settlement with ITT. We would add, moreover, that he has an obligation not to cast a cloud over the integrity and the honor of good men whom he has attracted to his government or to compromise them. The reported Kleindienst conversation with Mr. Cox does just that, for it throws into question the sworn testimony of former Solicitor General Griswold and Judge McLaren to the effect that decisions in the ITT case were made — every step of the way—on the merits rather than on political grounds.

Not having believed that the Senate Judiciary Committee's inquiry into the ITT case should have been closed off in the spring of 1972 (or that Mr. Kleindienst, for that matter, should have been confirmed), we have no trouble with the question of what now needs to be done. Just to begin with, the judiciary committee ought to re-open the case, to explore the possibility of perjury and to get at the truth of what, if anything, improper may have been done to bring about an out-of-court settlement which, on balance, was more favorable to ITT than the final judgment which the company feared would be the result of an appeal to the Supreme Court. In the meantime, the ITT investigation which was being conducted by former Special Prosecutor Cox and which is now tentatively back in the hands of the Justice Department, should be vigorously pressed. A resolution of the ITT case becomes yet another imperative in the long hard process now confronting us of restoring public confidence in the government's willingness to enforce the law.