Mr. Nixon and ITT

"In the thousands of pages of testimony and analysis regarding the ITT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution from a subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation."—From the President's White Paper on ITT.

NOW THAT may well be so. And if that indeed were all there was to the ITT affair as a matter of concern to Mr. Nixon, then his ITT White Paper could even reasonably be said to lay the matter fairly persuasively to rest as far as the President is concerned. But to argue in that fashion would be to suggest that Richard M. Nixon, over the years of the ITT affair (1969 to 1972) was not in fact President of the United States—and that he was no more than a private citizen, and that Tuesday's ITT White Paper was in the nature of a defendant's brief in an ordinary criminal case. And that, in fact, is the way it reads. On the central question of a possible connection between the ITT settlement and the ITT political contribution it treats the conduct of his subordinates and advisers, including two former attorneys general, John Mitchell and Richard Kleindienst, as if they were in no real way connected with the President, no part of his administration and no part of his responsibility.

That is the first great inadequacy of the President's White Paper on ITT. For we are not dealing, of course, with Richard M. Nixon, private citizen: we are dealing with a head of government entirely responsible for the men he placed in high office and in close association with him, and also responsible, by extension, for their acts. And we are dealing with a President whose performance in office is the subject not only of an investigation by a Special Prosecutor but also of a preliminary inquiry by the House Judiciary Committee studying possible grounds for impeachment. As is argued elsewhere on this page by J. H. Plumb, a professor at Cambridge University, not the least of the tests of a President's conduct of office—and of his liability to impeachment—is his "judgment in choosing ministers" and his responsibility to hold himself "answerable at all times and on all matters, not only for keeping the law but also in choosing men of integrity and honor." It is thus no defense for the President to suggest, by way of arguing his own case, that two of his most trusted associates may have committed perjury or to claim innocence on grounds of ignorance of what was being done in his name and on his behalf by his most trusted and intimate associates.

This is not to argue that the case has been made that the out-of-court settlement of the ITT antitrust suit was arranged "in return for a promise of a political contribution" from ITT—the offer of $400,000 to help finance the Republican convention in 1972. It is only to say that the President's White Paper cannot by the nature of things disassociate him from what happened in the ITT affair. As to what actually did happen, the second great inadequacy of the President's explanation, as with the milk deal, is that the story, even as he tells it, by no means precludes the possibility of gross impropriety at the very least, and at the worst, illegality. As we observed yesterday with respect to the milk case, the distinction between a legal contribution and a criminal bribe may seem a difficult distinction to establish, and the best way to approach a judgment is through its chronology:

• When Richard W. McLaren took over as head of the Justice Department's Antitrust Division at the beginning of the Nixon administration, he immediately embarked on a much-publicized campaign against conglomerate mergers, with the plainly proclaimed intention of obtaining a Supreme Court ruling expanding the reach and powers of the Clayton Antitrust Act. Congress was already talking about moving in this direction with legislation and the leaders of this move were expressly urged by Mr. McLaren to hold off, pending a Supreme Court determination on his lawsuits, one of which was directed at halting three pending ITT acquisitions involving Hartford Fire Insurance Co., Canteen Corp., and Grinnell Corp. There was not the slightest sign at the time that either Mr. McLaren or the Justice Department was acting in any way inconsistent with Mr. Nixon's campaign promises to "make a real effort . . . to clarify this entire conglomerate situation," although the President, in his White Paper, would now have us believe that his policy is to be found in a report of a task force set up during the campaign which strongly urged him, at the time of his inauguration, not to pursue antitrust action against "conglomerate enterprises." If this was in fact administration policy, it is unclear why Mr. McLaren was even appointed, let alone unleashed to conduct his assault through the courts not only against ITT but another conglomerate, Ling-Temco-Vought, Inc., and still less clear how Mr. Nixon could have hailed the ultimate out-of-court settlement much later as "the greatest divestiture in the history of the antitrust law," and at the same time denounce, by contrast, the inaction of the two previous Democratic administrations.

• In October, 1970, the lower courts ruled against the government in the first ITT case, involving Grinnell, but not until the Spring of 1971 were Mr. McLaren and the Justice Department ready with their appeal. At this point, as the President tells it, he suddenly discovered that "the ITT litigation was inconsistent with his own views on antitrust policy," on grounds that it challenged bigness for its own sake, rather than for its effect on competition in the market place. On April 19, the President, according to the White Paper, ordered that the appeal be dropped; two days later, threatened with the resignation of the Solicitor General in protest, he reversed himself. But later in the month, again as he tells it, a "central clearing house" was set up to promulgate government-wide the President's real thinking on antitrust policy and somehow in the process Mr. McLaren was persuaded to abandon his quest for a definitive Supreme Court ruling and to seek a negotiated settlement. Mr. Nixon does not explain this change of heart, other than to cite the Solicitor General's view, as he has done in the past, that the government would probably have lost the case on appeal.

• Entirely missing from the President's recounting is the following history: According to sworn testimony, ITT President Harold Geneen had determined to block an appeal of the Grinnell case, if necessary by appealing directly to the President. ITT Special Counsel Lawrence Walsh talked Mr. Geneen out of starting at the top, however, and into an intense and comprehensive campaign directed at assorted Cabinet officers and members of the White House staff.

On April 16 Mr. Walsh wrote a letter to Deputy Attorney General Kleindienst in which he urged a high-level, interdepartmental review of the government's antitrust policies and baldly warned, in contrast to the estimate of the Solicitor General, of the "high probability" that the government would win its case, to the extreme detriment of the interests of ITT. Mr. Walsh specifically asked for a delay of the government's appeal. At about the same time, at a cocktail party, a meeting was arranged between an ITT director, Felix Rohatyn and Mr. Kleindienst, to give ITT a chance to state its case. The meeting took place on April 20; two days later, Mr. Walsh has testified, the idea of an intergovernmental review was abandoned—"the meeting between Rohatyn and Kleindienst had done so well that

we never did anything more; for all practical purposes, the matter of the policy review came to a halt."

• The following month, on May 12, Mr. Geneen first broached the idea of ITT financial support for the Republican convention, by which time ITT had presented a much more detailed case for the damage that would be done by a settlement along the lines of the one Mr. McLaren had been seeking, and it was possible to perceive the rough outlines of an agreement far more favorable to ITT than the judgment Mr. Walsh feared would be handed down by the Supreme Court.

There is more, much more, to this story—the incriminating Dita Beard memo; the reports of the role of the "plumbers" in spiriting Mrs. Beard out of town and out of sight (for which E. Howard Hunt is said to have worn his fabled red wig); the persistent denials by Mr. Kleindienst and Mr. Mitchell of any role of their own in this affair and of any intervention by the White House, and the clear evidence to the contrary in sworn testimony and in the famous Colson memorandum which came to light at last summer's Ervin Committee hearings on Watergate—not to mention the President's White Paper. But the essence of it all is that at about the same time, two things occurred: there was an abrupt and fundamental reversal of what had seemed to be a firm, fixed government course of action, in a manner which precisely suited the interests of ITT; and there was an offer from ITT of financial support to the Republican Party for the convention which was to nominate Mr. Nixon for a second term as President. Nowhere in his White Paper, does Mr. Nixon so much as imply that he could see even any impropriety—let alone illegality—in this simple fact of an offer of a significant political contribution to the party in power by a powerful business concern with a vital piece of business before the government. This is the third, and in many respects the most appalling, inadequacy in the President's White Paper on the ITT affair.